

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 23, 43, 45, and 49

RIN Number 3038-AE32

#### Certain Swap Data Repository and Data Reporting Requirements

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing amendments to parts 23, 43, 45, and 49 of the Commission’s regulations to improve the accuracy of data reported to, and maintained by, swap data repositories (“SDRs”). Among other changes, the proposed amendments would modify existing requirements for SDRs to establish policies and procedures to confirm the accuracy of swap data with both counterparties to a swap. The proposed amendments would further require reporting counterparties to verify the accuracy of swap data pursuant to those SDR procedures. The Commission is also proposing certain amendments to parts 23, 43, 45, and 49 to provide enhanced and streamlined oversight over SDRs and data reporting generally.

**DATES:** Comments must be received on or before July 29, 2019.

**ADDRESSES:** You may submit comments, identified by RIN number 3038-AE32, by any of the following methods:

- The agency’s website, at <http://comments.cftc.gov>. Follow the instructions for submitting comments through the website.
- *Mail:* Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according

to the procedures established in § 145.9 of the Commission’s regulations.<sup>1</sup>

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

#### FOR FURTHER INFORMATION CONTACT:

Benjamin DeMaria, Special Counsel, 202-418-5988, [bdemaria@cftc.gov](mailto:bdemaria@cftc.gov) or Meghan Tente, Lead Attorney-Advisor, 202-418-5785, [mtente@cftc.gov](mailto:mtente@cftc.gov), Division of Market Oversight, Data and Reporting Branch, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Background
  - A. Introduction
  - B. Statutory Authority
  - C. Regulatory History—Final Rulemakings
- II. Proposed Amendments to Part 49
  - A. § 49.2—Definitions
  - B. § 49.3—Procedures for Registration
  - C. § 49.5—Equity Interest Transfers
  - D. § 49.6—Request for Transfer of Registration
  - E. § 49.9—Open Swaps Reports Provided to the Commission
  - F. § 49.10—Acceptance of Data
  - G. § 49.11—Verification of Swap Data Accuracy
  - H. § 49.12—Swap Data Repository Recordkeeping Requirements
  - I. § 49.13—Monitoring, Screening, and Analyzing Data
  - J. § 49.15—Real-Time Public Reporting by Swap Data Repositories
  - K. § 49.16—Privacy and Confidentiality Requirements of Swap Data Repositories
  - L. § 49.17—Access to SDR Data
  - M. § 49.18—Confidentiality Arrangement
  - N. § 49.20—Governance Arrangements (Core Principle 2)
  - O. § 49.22—Chief Compliance Officer
  - P. § 49.24—System Safeguards
  - Q. § 49.25—Financial Resources
  - R. § 49.26—Disclosure Requirements of Swap Data Repositories
  - S. § 49.28—Operating Hours of Swap Data Repositories
  - T. § 49.29—Information Relating to Swap Data Repository Compliance
  - U. § 49.30—Form and Manner of Reporting and Submitting Information to the Commission
  - V. § 49.31—Delegation of Authority to the Director of the Division of Market

<sup>1</sup> 17 CFR 145.9.

Oversight Relating to Certain Part 49 Matters

- III. Proposed Amendments to Part 45
  - A. § 45.2—Swap Recordkeeping
  - B. § 45.14—Verification of Swap Data Accuracy and Correcting Errors and Omissions in Swap Data
- IV. Proposed Amendments to Part 43
  - A. § 43.3—Method and Timing for Real-Time Public Reporting
- V. Proposed Amendments to Part 23
  - A. § 23.204—Reports to Swap Data Repositories
  - B. § 23.205—Real-Time Public Reporting
- VI. Request for Comments
- VII. Related Matters
  - A. Regulatory Flexibility Act
  - B. Paperwork Reduction Act
  - C. Cost-Benefit Considerations
  - D. Anti-Trust Considerations

## I. Background

### A. Introduction

Pursuant to the Dodd-Frank Act,<sup>2</sup> beginning in 2011, the Commission adopted parts 45 and 49 of its regulations to implement a swap data reporting and recordkeeping regime along with registration requirements and duties for SDRs.<sup>3</sup> In 2012, the Commission adopted part 23 of its regulations, which sets forth requirements for swap dealers (“SDs”) and major swap participants (“MSPs”) related to the timely and accurate reporting, confirmation, and processing of swaps.<sup>4</sup> The regulations the Commission is proposing to amend with this release concern data reporting and recordkeeping duties generally and other duties for SDRs.

### B. Statutory Authority

Section 727 of the Dodd-Frank Act added section 2(a)(13)(G) to the Commodity Exchange Act (“CEA” or “Act”), which requires all swaps—whether cleared or uncleared—to be reported to SDRs,<sup>5</sup> which are registered

<sup>2</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010), available at <https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>.

<sup>3</sup> Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011) (“Part 49 Adopting Release”); Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012) (“Part 45 Adopting Release”).

<sup>4</sup> See Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128 (Apr. 3, 2012) (“Part 23 Adopting Release”).

<sup>5</sup> Section 721 of the Dodd-Frank Act amended section 1a of the CEA to add the definition of SDR. Pursuant to section 1a(48) of the CEA, the term SDR “means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose

entities created by section 728 of the Dodd-Frank Act.<sup>6</sup> Section 728 of the Dodd-Frank Act added section 21 to the CEA,<sup>7</sup> which governs registration and regulation of SDRs, and directs the Commission to promulgate rules concerning those duties and responsibilities.

To register and maintain registration with the Commission, SDRs are required to comply with specific duties and core principles enumerated in CEA section 21 as well as other requirements that the Commission may prescribe by rule. In particular, CEA section 21(c) mandates that SDRs: (1) Accept data; (2) confirm with both counterparties the accuracy of submitted data; (3) maintain data according to standards prescribed by the Commission; (4) provide direct electronic access to the Commission or any designee of the Commission (including another registered entity); (5) provide public reporting of data in the form and frequency required by the Commission; (6) establish automated systems for monitoring, screening, and analyzing data (including the use of end-user clearing exemptions) at the direction of the Commission; (7) maintain data privacy; (8) make data available to other specified regulators, on a confidential basis, pursuant to section 8 of the CEA,<sup>8</sup> upon request and after notifying the Commission; and (9) establish and maintain emergency and business continuity-disaster recovery (“BC-DR”) procedures. CEA section 21(f)(4)(C) further requires the Commission to establish additional duties for SDRs to minimize conflicts of interest, protect data, ensure compliance, and guarantee the safety and security of the SDR.<sup>9</sup> Section 21(b) of the CEA also directs the Commission to prescribe standards for data recordkeeping and reporting that apply to both registered entities and reporting counterparties.<sup>10</sup>

Section 4s(f) of the CEA,<sup>11</sup> added by section 731 of the Dodd-Frank Act, established recordkeeping and reporting requirements for SDs and MSPs. CEA section 4s(f)(1)(A)<sup>12</sup> requires SDs and

MSPs, among other things, to provide transaction and position reports that the Commission requires by rule or regulation. CEA section 4s(f)(2)<sup>13</sup> requires the Commission to adopt rules governing, among other things, recordkeeping and reporting by SDs and MSPs.

### C. Regulatory History—Final Rulemakings

On August 4, 2011, the Commission adopted part 49 of the Commission’s regulations.<sup>14</sup> Part 49 implements the requirements of section 21 of the CEA by setting forth the specific duties that SDRs are required to comply with to be initially registered as an SDR and maintain such registration as an SDR with the Commission. As part of the Part 49 Adopting Release, the Commission, among other sections, adopted § 49.11 regarding the confirmation of data accuracy.

Pursuant to CEA section 4s(f)(2), the Commission promulgated swap reporting rules for SDs and MSPs, including §§ 23.204–205, which were both adopted on April 3, 2012.<sup>15</sup> Section 23.204(a) requires SDs and MSPs to report all information and swap data in accordance with part 45. Section 23.204(b) requires SDs and MSPs to have the procedures and electronic systems necessary to report all information and swap data required to be reported in accordance with part 45. Sections 23.205(a) and (b) establish parallel requirements for SDs and MSPs with respect to the real-time reporting requirements of part 43.

Since the Commission adopted part 49 in 2011, Commission staff has led many efforts to evaluate and improve reporting issues relating to data accuracy. Commission staff leads or participates in several international regulatory working groups concentrating on harmonization of data reporting and is incorporating in this release lessons learned from these undertakings and best practices from the international regulatory community. Commission staff’s efforts have also included the formation of an interdivisional staff working group to identify, and make recommendations to resolve, reporting challenges associated with certain swap data recordkeeping and reporting provisions.<sup>16</sup> The Commission has also

requested comments from the public on reporting issues.<sup>17</sup>

Throughout these ongoing efforts, the Commission has generally adhered to the view that verification of data accuracy can be achieved through: (i) SDR processes confirming the accuracy of data submitted; (ii) data reconciliation exercises by entities that reported data; and (iii) the prompt reporting of errors and omissions when discovered.<sup>18</sup>

Most recently, based in part on information received during the ongoing efforts described above, Commission staff announced a comprehensive review of swap reporting regulations and released the Roadmap to Achieve High Quality Swap Data (“Roadmap”)<sup>19</sup> to solicit feedback on improvements to data reporting and how the Commission’s regulatory goals may be achieved without imposing unnecessary burdens on market participants. Commission staff requested comments in response to the Roadmap (“Roadmap Request for Comment”) and received a number of comment letters that addressed data accuracy and confirmation of data reported to SDRs, among other subjects.<sup>20</sup>

References to “commenters” in this release refer to those who submitted comment letters in response to the Roadmap Request for Comment. Summaries and a discussion of the relevant comments submitted by those commenters appear in the appropriate section in this release.<sup>21</sup>

The revisions and additions proposed in this release are intended to address the SDR Operations Review goals of the Roadmap related to confirming the accuracy of swap data,<sup>22</sup> to improve the clarity and consistency of regulations governing SDRs, and to bolster the Commission’s oversight of SDRs. This proposal is the first of three anticipated Roadmap rulemakings that, when all of

<sup>17</sup> See, e.g., Review of Swap Data Recordkeeping and Reporting Requirements, Request for Comment, 79 FR 16689 (Mar. 26, 2014).

<sup>18</sup> See *id.* at 16695.

<sup>19</sup> See CFTC Letter 17–33, Division of Market Oversight Announces Review of Swap Reporting Rules in Parts 43, 45, and 49 of Commission Regulations (July 10, 2017), available at <http://www.cftc.gov/ido/groups/public/@llettergeneral/documents/letter/17-33.pdf>; Roadmap to Achieve High Quality Swap Data, available at [http://www.cftc.gov/ido/groups/public/@newsroom/documents/file/dmo\\_swapdataplan071017.pdf](http://www.cftc.gov/ido/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf).

<sup>20</sup> These comment letters are available at <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1824>.

<sup>21</sup> See section II.G.1.

<sup>22</sup> See Roadmap, p. 6 (stating the Commission’s intent to “Identify the most efficient and effective solution for swap counterparty(ies) to confirm the accuracy and completeness of data held in an SDR.”).

of providing a centralized recordkeeping facility for swaps.” 7 U.S.C. 1a(48).

<sup>6</sup> The Commission notes that there are currently three SDRs provisionally registered with the Commission: CME Inc., DTCC Data Repository (U.S.) LLC (“DDR”), and ICE Trade Vault, LLC (“ICE”).

<sup>7</sup> 7 U.S.C. 24a.

<sup>8</sup> 7 U.S.C. 12(e).

<sup>9</sup> Pursuant to this provision, the Commission may develop one or more additional duties applicable to SDRs. 7 U.S.C. 24a(f)(4). This provision is referred to as “Core Principle 4.”

<sup>10</sup> See 7 U.S.C. 24a(b)(1)(B).

<sup>11</sup> 7 U.S.C. 6s(f).

<sup>12</sup> 7 U.S.C. 6s(f)(1)(A).

<sup>13</sup> 7 U.S.C. 6s(f)(2).

<sup>14</sup> See Part 49 Adopting Release.

<sup>15</sup> See Part 23 Adopting Release.

<sup>16</sup> See Press Release, CFTC to Form an Interdivisional Working Group to Review Regulatory Reporting (Jan. 21, 2014), available at <http://www.cftc.gov/PressRoom/PressReleases/pr6837-14>.

the planned rulemakings are complete, should achieve the Roadmap's overall goals of improving the quality, accuracy, and completeness of the data reported to the Commission, streamlining data reporting, and clarifying obligations for market participants.<sup>23</sup> When the Commission proposes the next two rulemakings, the Commission anticipates re-opening the comment period for this proposal to provide market participants with an opportunity to comment collectively on the three rulemakings together, because the proposals address interconnected issues. As the Roadmap rulemakings must all work in tandem to achieve these goals, the Commission also anticipates that key provisions of each rulemaking would have the same compliance date, regardless of when each rulemaking is released in final form. The Commission intends to provide a sufficient implementation period for these various rulemakings in order to give SDRs and market participants enough time to implement and test the changes that would be required.

Where possible, in creating the proposed regulations set forth in this release, the Commission has taken into consideration certain pertinent rules adopted by other regulators, including the European Securities and Markets Authority ("ESMA") and the U.S. Securities and Exchange Commission ("SEC").<sup>24</sup> This is particularly the case for the SEC's regulations relating to the registration, duties, and core principles of Security-Based Swap Data Repositories ("SBSDRs")<sup>25</sup> and reporting requirements for Security-Based Swaps ("SBSs") set forth in Regulation SBSR ("Regulation SBSR").<sup>26</sup> The Commission notes that

<sup>23</sup> See *id.* at 3 (describing the Commission's goals for the review of reporting regulations).

<sup>24</sup> The Commission has also reviewed the SEC's recent proposed rule on risk mitigation techniques for uncleared security-based swaps, which addresses issues related to reconciling security-based swap transactions and confirming the transaction data. See generally Risk Mitigation Techniques for Uncleared Security-Based Swaps, 84 FR 4614 (Feb. 15, 2019).

<sup>25</sup> See generally Security-Based Swap Data Repository Registration, Duties and Core Principles, 80 FR 11438 (Mar. 19, 2015) ("SBSDR Adopting Release"). The SEC adopted Rules 13n-1 through 13n-12 (17 CFR 240n-1 through 240n-12) under the Securities Exchange Act of 1934 ("Exchange Act") relating to the registration and operation of SBSDRs.

<sup>26</sup> See generally Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 FR 14740 (Mar. 19, 2015) ("SBSR Adopting Release"). The SEC adopted Regulation SBSR (Rules 900 through 909, 17 CFR 242.900 through 909) to create a reporting framework for SBSs. The SEC has also adopted additional regulations regarding the reporting and dissemination of certain

there are similarities between the regulatory framework for SBSDRs and the SDR regulations that are the subject of this proposal.

## II. Proposed Amendments to Part 49

### A. § 49.2—Definitions

#### 1. Formatting Change to § 49.2(a)

The defined terms in § 49.2(a) currently are numbered and arranged in alphabetical order. The Commission is proposing to remove the numbering and instead arrange the defined terms in § 49.2(a) solely in alphabetical order. Arranging the defined terms in § 49.2(a) solely in alphabetical order would require the Commission to make fewer conforming changes to § 49.2(a) and other regulations when adding or removing defined terms in the future, as the Commission currently proposes to do.<sup>27</sup>

#### 2. Proposed Changes to § 49.2

##### i. Conforming and Ministerial Changes to Some Definitions

The Commission proposes non-substantive conforming and ministerial changes to certain definitions to provide clarity and for consistency with other Commission regulations.<sup>28</sup> Specifically, the Commission is proposing the following changes to definitions in § 49.2(a):

- "Asset class": Modify the definition to conform the wording to the definition of "asset class" used in part 43.<sup>29</sup>
- "Commercial use": Modify the definition to use active instead of passive voice, and to change use of swap data for regulatory purposes and/or responsibilities to use of SDR data for regulatory purposes and/or to perform its regulatory responsibilities.
- "Market participant": Change the term "swaps execution facilities" to

information related to SBSs. See generally 81 FR 53546 (Aug. 12, 2016).

<sup>27</sup> The Office of the Federal Register prefers the solely alphabetical approach to definitions sections. See Office of the Federal Register, Document Drafting Handbook May 2017 Update, Revision 5, 2-31 (2017) ("Definitions. In sections or paragraphs containing only definitions, we recommend that you do not use paragraph designations if you list the terms in alphabetical order.").

<sup>28</sup> Other than removing subsection numbering and ministerial corrections as discussed above in section II.A.1, the Commission is not proposing any substantive changes to the definitions of "affiliate," "control," "foreign regulator," "independent perspective," "position," or "section 8 material," as those terms are defined in current § 49.2(a).

<sup>29</sup> See 17 CFR 43.2 (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.).

"swap execution facilities," to conform to section 5h of the Act and other Commission regulations, and make the term counterparty singular.

- "Non-affiliated third party": Clarify paragraph (3) to identify "a person jointly employed" by an SDR and any affiliate.
- "Person associated with a swap data repository": Clarify that paragraph (3) includes a "jointly employed person."
- "Swap data": Modify the definition to more closely match the related definitions of "SDR data" and "swap transaction and pricing data" that are being added to § 49.2(a) and to incorporate the requirements to provide swap data to the Commission pursuant to part 49.

Finally, the Commission proposes to remove the term "capitalized" from § 49.2(b), to reflect that most defined terms used in part 49 are not capitalized in the text of part 49. The Commission does not consider any of the above changes to be substantive.

##### ii. "As Soon As Technologically Practicable"

The Commission proposes to add the term "as soon as technologically practicable" as a defined term to standardize the meaning and use of this term across the Commission's swap reporting regulations. The term as soon as technologically practicable would mean as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants. The term is intended to be identical to the use of the term as it is used in parts 43 and 45 of the Commission's regulations.<sup>30</sup>

##### iii. "Non-Swap Dealer/Major Swap Participant/Derivatives Clearing Organization Reporting Counterparty"

The Commission proposes to add the term "non-swap dealer/major swap participant/derivatives clearing organization reporting counterparty," defined to mean a reporting counterparty that is not a swap dealer, major swap participant, derivatives clearing organization, or exempt derivatives clearing organization. The Commission believes the defined term would provide clarity in part 49.

<sup>30</sup> See 17 CFR 43.2 (defining of as soon as technologically practicable). Part 45 of the Commission's regulations also uses the term "as soon as technologically practicable" in the same way as part 43 and this proposed definition, but does not define the term.

## iv. "Open Swap"

The Commission proposes to add the term "open swap" as a defined term and to define the term as an executed swap transaction that has not reached maturity or the final contractual settlement date, and has not been exercised, closed out, or terminated. The Commission considers an "open swap" to mean a swap that is still in force or "alive." This definition is intended to function the same as the definitions of "open swap"<sup>31</sup> and "closed swap"<sup>32</sup> in part 20, but provides more clarity as to the Commission's meaning of the term.

## v. "Reporting Counterparty"

The Commission proposes to add the term "reporting counterparty" as a defined term to standardize its meaning and use across the Commission's swap reporting regulations. Reporting counterparty would mean the counterparty responsible for reporting SDR data to an SDR pursuant to parts 43, 45, or 46 of the Commission's regulations. The term is intended to be functionally equivalent to the term "reporting party," as defined in part 43,<sup>33</sup> the term "reporting counterparty," as defined in part 45,<sup>34</sup> and the term "reporting counterparty," as defined in part 46.<sup>35</sup> The Commission notes that the reporting counterparty may not always be the entity reporting SDR data to the SDR, particularly for transactions executed on swap execution facilities ("SEFs") or designated contract markets ("DCMs"), but it is the counterparty responsible for the initial and subsequent SDR data reporting, as determined by parts 43, 45, or 46 of the Commission's regulations, as applicable to a particular swap.

## vi. "SDR Data"

The Commission proposes to add the term "SDR data" as a defined term. SDR data would mean the specific data elements and information required to be reported to an SDR or disseminated by an SDR, pursuant to two or more of parts 43, 45, 46, and/or 49, as

applicable. The Commission notes that in this context, "disseminated" would include SDRs making swap data available to the Commission as required by part 49.

The term SDR data would refer to multiple sources of data reported to the SDR or disseminated by the SDR. For example, SDR data could refer to all data reported or disseminated pursuant to parts 43, 45, and 46, or may refer to data reported or disseminated pursuant to parts 45 and 46, depending on the context in which the term is used. This is in contrast with the proposed term "swap transaction and pricing data," discussed below, which would only refer to data reported to the SDR or publicly disseminated by the SDR pursuant to part 43 and the term "swap data," which would only refer to data reported to the SDR or made available to the Commission pursuant to part 45. The Commission believes that consolidating references to the different types of data that must be reported to an SDR and data the SDR must make available to the public or to the Commission into a single term would provide clarity throughout part 49.

## vii. "SDR Information"

The Commission proposes to amend the existing definition of "SDR information" to add "related to the business of the swap data repository that is not SDR data" to the end of the current definition. The Commission believes this change would make clear that the scope of SDR information is limited to information that the SDR receives or maintains related to its business that is not the SDR data reported to or disseminated by the SDR. SDR information would include, for example, SDR policies and procedures created pursuant to part 49.<sup>36</sup>

## viii. "Swap Transaction and Pricing Data" and "As Soon as Technologically Practicable"

The Commission proposes to add the terms "swap transaction and pricing data" and "as soon as technologically practicable" as defined terms from part 43. Swap transaction and pricing data would mean the data elements and information required to be reported to an SDR or publicly disseminated by an SDR, as applicable, pursuant to part 43. Though this phrase is not currently defined in part 43, it is used throughout that part to refer to the data that must be reported to an SDR and publicly disseminated by an SDR pursuant to

part 43, and the meaning of the term added here is identical. The Commission is proposing to adopt the same definition of as soon as technologically practicable defined in part 43, which means as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants. The Commission is proposing to add both phrases as defined terms in part 49 to increase consistency in terminology used in the Commission's swap reporting regulations.

## ix. Removal of "Reporting Entity"

The Commission proposes to remove the term "reporting entity" from part 49. The Commission believes that "reporting entity" is no longer necessary with the proposed addition of the defined term for "reporting counterparty," because reporting counterparties are also reporting entities under the current definition.<sup>37</sup> SEFs and DCMs are the only entities that may have the responsibility to report data that are not included in the proposed definition of "reporting counterparty." The Commission notes that this proposed rule would retain most requirements related to reporting entities, but would update the terminology used to describe the requirements. As a result, most obligations for reporting entities would still exist under the proposed amendments.

## x. Removal of "Registered Swap Data Repository"

The Commission proposes to remove the term "registered swap data repository" from part 49. The Commission believes the term "registered swap data repository" is not needed in part 49 because the defined term "swap data repository" already exists in § 1.3.<sup>38</sup> The definition of "swap data repository" in § 1.3 is identical to the definition contained in section 1a(48) of the CEA.<sup>39</sup> This definition of

<sup>31</sup> See 17 CFR 20.1 (Open swap or swaption means a swap or swaption that has not been closed.).

<sup>32</sup> See 17 CFR 20.1 (Closed swap or closed swaption means a swap or swaption that has been settled, exercised, closed out, or terminated.).

<sup>33</sup> See 17 CFR 43.2 (Reporting party means the party to a swap with the duty to report a publicly reportable swap transaction in accordance with part 43 and section 2(a)(13)(F) of the CEA.).

<sup>34</sup> See 17 CFR 45.1 (Reporting counterparty means the counterparty required to report swap data pursuant to part 45, selected as provided in § 45.8.).

<sup>35</sup> See 17 CFR 46.1 (Reporting counterparty means the counterparty required to report swap data pursuant to part 46, selected as provided in § 46.5.).

<sup>36</sup> This clarification is particularly relevant for the SDR recordkeeping obligations in the proposed amendments to § 49.12, discussed below in section II.H.

<sup>37</sup> See 17 CFR 49.2(a)(12) (defining "reporting entity" as those entities that are required to report swap data to a registered swap data repository which includes derivatives clearing organizations, swap dealers, major swap participants and certain non-swap dealer/non-major swap participant counterparties.).

<sup>38</sup> See 17 CFR 1.3 (defining "swap data repository" as "any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.").

<sup>39</sup> See 7 U.S.C. 1a(48) ("The term 'swap data repository' means any person that collects and maintains information or records with respect to

“swap data repository” therefore already applies, and would continue to apply, to part 49 and all other Commission regulations and, when combined with § 49.1,<sup>40</sup> removes the need for a separate defined term for “registered swap data repository.” The inclusion of the word “registered” in “registered swap data repository” and the definition of the term<sup>41</sup> also creates unnecessary confusion as to when the requirements of part 49 apply to entities that are in the process of registering as SDRs or are provisionally registered as SDRs under the requirements of § 49.3(b).<sup>42</sup> Finally, the removal of the term “registered swap data repository” would decrease inconsistency in terms within part 49 and would also increase consistency between part 49 and other Commission regulations, which overwhelmingly use the term “swap data repository.” The Commission emphasizes that removing the defined term “registered swap data repository” is a non-substantive amendment that would not in any way modify the requirements applicable to current or future SDRs.

*Request for Comment.* The Commission requests comment on all aspects of the proposed changes to § 49.2. The Commission also invites specific comment on the following:

(1) Are there any proposed amendments to definitions in existing regulations in part 49 that are unclear or inaccurate?

#### B. § 49.3—Procedures for Registration

Section 49.3 of the Commission’s regulations establishes procedural and substantive requirements for SDR registration. In relevant part, § 49.3 requires persons seeking SDR registration to file an application for registration on Form SDR<sup>43</sup> and to amend it periodically.<sup>44</sup> Specifically, current § 49.3(a)(5) requires that if any information in Form SDR or any amendment becomes inaccurate for any reason, whether before or after the registration application has been granted, the SDR shall promptly file an

amendment on Form SDR updating such information. In addition, § 49.3(a)(5) requires the SDR to submit an annual amendment to Form SDR within sixty days after the end of the SDR’s fiscal year.

The Commission is proposing to amend § 49.3(a)(5) to remove the requirement for SDRs to: (i) File an annual amendment to Form SDR; and (ii) amend Form SDR after the registration application has been granted pursuant to § 49.3(a). Accordingly, as proposed, § 49.3(a)(5) would simply require an SDR to amend Form SDR to correct inaccuracies until its application for registration has been granted.

The Commission no longer believes that the requirement to amend Form SDR after registration is needed because the SDRs registered under § 49.3(a) will have demonstrated the ability to meet initial registration and compliance requirements in order to receive registration and the registered SDRs will still submit changes to many of the items in Form SDR as rule filings under part 40.<sup>45</sup> The Commission is also proposing new § 49.29, which would permit the Commission to request that SDRs produce information demonstrating compliance with the Commission’s regulations, as discussed further in section II.T. The Commission does, however, believe that updates to Form SDR are still necessary prior to the granting of registration under § 49.3(a), because the application would still be active and the applicant would still need to demonstrate the ability to meet initial registration and compliance requirements.

Consistent with the above proposed amendments, the Commission is also proposing to amend Form SDR to remove the references to annual amendments and amendments after SDR registration.<sup>46</sup>

As discussed below in section II.O, current § 49.22(f)(2) requires that the annual compliance report be provided to the Commission concurrently with the filing of the annual amendment to Form SDR that must be submitted to the Commission pursuant to § 49.3(a)(5) of this part. The Commission is proposing removing the reference to § 49.3(a)(5) from § 49.22(f)(2), to reflect the removal

of the annual amendment requirement from § 49.3(a)(5).

*Request for Comment.* The Commission requests comment on all aspects of the proposed changes to § 49.3(a)(5).

#### C. § 49.5—Equity Interest Transfers

The Commission is proposing to amend § 49.5 to streamline the requirements for equity interest transfers for SDRs. The Commission believes that the amendments to § 49.5 simplify the notification and timing requirements associated with transfers of equity interest for SDRs.

##### 1. Notification of Intended Equity Interest Transfer—Proposed § 49.5(a)

Current § 49.5(a) establishes the requirement for SDRs to provide the Commission an equity transfer notification. Specifically, current § 49.5(a) requires that: (i) Upon entering into any agreement that could result in an equity interest transfer of ten percent or more in the SDR, the SDR shall file a notification with the Secretary of the Commission in the manner specified by the Secretary, no later than the business day following the date on which the SDR enters into a firm obligation to transfer the equity interest; and (ii) that the SDR amend any information that is no longer accurate on Form SDR consistent with the procedures set forth in § 49.3.

Proposed § 49.5 would revise current § 49.5(a) in several respects. First, proposed § 49.5 would make clear that the proposed rule would apply to both the direct and indirect transfers of ten percent or more of the equity interest in the SDR. The Commission believes that including both direct and indirect transfers of equity ownership in proposed § 49.5 is necessary for the Commission to properly oversee SDRs and to address any compliance concerns that may arise from the indirect transfer of equity interest in an SDR through transactions involving an SDR’s direct or indirect parent company, but not the SDR itself.

Second, proposed § 49.5 would require that the SDR file the equity transfer notification at the earliest possible time but no later than the open of business ten business days following the date upon which a firm obligation is made to transfer, directly or indirectly, ten percent or more of the equity interest in the SDR. The Commission believes SDRs may need additional time to file the necessary documents, and ten business days would provide greater flexibility to SDRs without sacrificing the

transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.”).

<sup>40</sup> See 17 CFR 49.1 (“The provisions of this part apply to any swap data repository as defined under Section 1a(48) of the [CEA] which is registered or is required to register as such with the Commission pursuant to Section 21(a) of the [CEA].”).

<sup>41</sup> See 17 CFR 49.2(a)(11) (“The term ‘registered swap data repository’ means a swap data repository that is registered under Section 21 of the [CEA].”).

<sup>42</sup> See 17 CFR 49.3(b) (creating standards for granting provisional registration to an SDR).

<sup>43</sup> See 17 CFR 49.3(a)(1).

<sup>44</sup> See 17 CFR 49.3(a)(5).

<sup>45</sup> See 17 CFR 40.1, 40.5, and 40.6 (containing the filing and review provisions applicable to rules under the Commission’s regulations).

<sup>46</sup> The Commission is proposing various non-substantive amendments to Form SDR. These amendments include making terminology consistent throughout Form SDR, fixing incorrect references and misspellings, and fixing grammatical and style errors.

information the Commission needs to conduct effective oversight of SDRs.

Third, proposed § 49.5 would specify that the equity transfer notification be filed electronically with the Secretary of the Commission and the Director of the Division of Market Oversight (“DMO”) via email. The Commission is also proposing to remove the requirement to amend information that is no longer accurate on Form SDR due to the equity interest transfer because the requirement is duplicative in light of the requirements of both current and proposed § 49.3(a)(5).<sup>47</sup>

## 2. Documentation Requirements—Proposed § 49.5(b)

Current § 49.5(b) sets forth the documentation requirements for the equity transfer notice. Current § 49.5(b) requires that: (i) The notification include any relevant agreements, corporate documents, charts outlining new ownership or corporate or organizational structure, a brief description of the purpose and any impact of the transfer, and a representation from the SDR that it meets all of the requirements of section 21 of the Act and Commission regulations; (ii) the SDR keep the Commission apprised of the projected date that the transaction will be consummated, and provide the Commission any new agreements or modifications to the original agreements filed pursuant to § 49.5; and (iii) the SDR notify the Commission of the consummation of the transaction on the day it occurs.

The Commission is proposing to simplify current § 49.5(b) and instead simply provide that the Commission may, upon receiving an equity transfer notification from an SDR, request that the SDR provide supporting documentation for the transaction. The Commission believes that reserving the authority to request supporting documentation rather than compelling specific production would satisfy the Commission’s need for information without placing unnecessary burdens on SDRs.

## 3. Notification of Completed Equity Interest Transfer—Proposed § 49.5(c)

Current § 49.5(c) requires that, upon the transfer, the SDR file with the Secretary of the Commission a certification that the registered SDR meets all of the requirements of section 21 of the Act and Commission

regulations, and state whether changes to any aspects of the SDR’s operations were made as a result of such change in ownership, with a description of any such change. The certification may rely on and be supported by reference to an SDR registration application or prior filings made pursuant to a rule submission requirement, along with any necessary new filings, including material updates of prior submissions. The certification must be filed within two business days of the date on which the equity interest was acquired.

Proposed § 49.5(c) would instead require that upon the transfer of the equity interest, whether directly or indirectly, the SDR shall file electronically with the Secretary of the Commission and DMO a certification that the SDR meets all of the requirements of section 21 of the Act and Commission regulations, no later than two business days following the date on which the equity interest of ten percent or more was acquired. The Commission believes proposed § 49.5(a) and (c) would provide the Commission with the pertinent information it needs to assess the impact of an equity interest transfer on the SDR’s operations.

*Request for Comment.* The Commission requests comment on all aspects of the proposed changes to § 49.5.

## D. § 49.6—Request for Transfer of Registration

The Commission is proposing amendments to streamline the requirements for the transferring of SDR registration to a successor entity in § 49.6. As part of these amendments, the Commission is proposing to retitle the section “Request for transfer of registration,” to more accurately reflect the subject of the regulation.

Proposed § 49.6(a) would require that an SDR seeking to transfer its registration from its legal entity as a result of a corporate change that creates a new legal entity file a request for approval to transfer such registration with the Secretary of the Commission in the form and manner specified by the Commission. Examples of such corporate changes could include, but are not limited to, re-organizations, mergers, acquisitions, bankruptcy, or other similar events that result in the creation of a new legal entity for the SDR.

Proposed § 49.6(b) would specify that an SDR file a request for transfer of registration as soon as practicable prior to the anticipated corporate change.

Proposed § 49.6(c) would set forth the information that must be included in the request for transfer of registration, including the underlying

documentation that governs the corporate change, governance documents, and representations by the transferee entity, among other information. Proposed § 49.6(d) would specify that upon review of a request for transfer of registration, the Commission, as soon as practicable, shall issue an order either approving or denying the request for transfer of registration.

Current § 49.6(a) requires that in the event of a corporate transaction that creates a new entity, an SDR must request a transfer of its registration, rules, and other matters no later than 30 days after the succession. Current § 49.6(a) also specifies that the registration shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files a Form SDR application for registration, and the predecessor files a Form SDR request for vacation, provided, however, that the registration of the predecessor SDR shall cease to be effective 90 days after the Form SDR registration application is filed by the successor SDR.

Current § 49.6(b) requires that if the succession is based solely on a change in the predecessor’s date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor SDR on Form SDR to reflect these changes. The amendment shall be an application for registration filed by the predecessor and adopted by the successor.

The Commission believes that the amendments to § 49.6 would simplify the process for requesting a transfer of SDR registration. The Commission believes the requirement, timing, content of requests, and format of a Commission determination in proposed § 49.6(a), (b), (c), and (d) respectively, would achieve the Commission’s information needs when an SDR seeks to transfer registration. These requirements would streamline the requirements for SDRs by setting forth a clear process for transfer that focuses on informing the Commission of changes relevant to the Commission in carrying out its oversight responsibilities, as opposed to requiring SDRs to file new Forms SDR, which would likely duplicate most of the transferor’s current Form SDR.

*Request for Comment.* The Commission requests comment on all aspects of the proposed changes to § 49.6.

<sup>47</sup> Proposed § 49.5(a) would continue to apply the requirement to update information in Form SDR that is no longer accurate due to an equity interest transfer to an SDR whose application for registration has not been granted under § 49.3(a).

*E. § 49.9—Open Swaps Reports Provided to the Commission*

The Commission is proposing to replace current § 49.9 with requirements for SDRs to provide open swaps reports to the Commission.<sup>48</sup> The Commission proposes renaming § 49.9 “Open swaps reports provided to the Commission” to reflect this change.

Proposed § 49.9(a) would require SDRs to provide the Commission with open swaps reports that contain an accurate reflection of the swap data for every swap data field required to be reported under part 45 for every open swap maintained by the SDR, organized by the unique identifier created pursuant to § 45.5 of the Commission’s regulations associated with each open swap,<sup>49</sup> as of the time the SDR compiles the open swaps report.

Proposed § 49.9(b) would require SDRs to transmit all open swaps reports to the Commission as instructed by the Commission, and notes that such instructions may include, but would not be limited to, the method, timing, and frequency of transmission, as well as the format of the swap data to be transmitted.<sup>50</sup>

Current § 49.9 lists and briefly summarizes the duties of SDRs. Current § 49.9 does not contain any unique regulatory requirements, but instead references where the duties are found in other sections of part 49.<sup>51</sup> The Commission believes that current § 49.9 is superfluous because all of the SDR duties listed in § 49.9 are also contained, in much greater detail, in the other sections of part 49. The Commission notes that removing current § 49.9 would be a non-substantive change that would not affect the requirements for SDRs found in the

other sections of part 49, including the sections currently referenced in § 49.9.

The Commission believes that regularly receiving accurate and up-to-date information on the open swaps maintained by each SDR is necessary for the Commission to perform its regulatory functions. While the specific requirements in proposed § 49.9 are new to part 49, SDRs currently send open swaps reports to the Commission on a regular basis. The Commission currently uses open swaps reports to produce a weekly swaps report that is made available to the public<sup>52</sup> and for entity-netted notional calculations.<sup>53</sup> The Commission also uses open swaps to perform market risk and position calculations, and for additional market research projects.

SDRs currently provide open swaps reports that use different calculation approaches and different formats. These variations among SDRs reduce the Commission’s ability to effectively use the swap data. The Commission notes that the proposed regulations would standardize a type of report the SDRs already create for the Commission. The Commission believes that providing standards for how the swap data in open swaps reports should be provided to the Commission would help remedy issues the Commission faces in trying to reconcile open swaps reports across the SDRs.

The Commission notes that it would have the ability to instruct SDRs as to all aspects of transmitting the open swaps reports to the Commission under proposed § 49.9. These instructions may include the method of transmission (*e.g.*, file types and methods used for transmission), the timing of transmission, the frequency of transmission, and the formatting of the swap data included in the reports. The Commission believes that retaining the flexibility to determine how SDRs would provide open swaps reports to the Commission and the ability to modify the requirements over time as needed would allow the Commission to use the information in the reports to fulfill its regulatory responsibilities while not requiring unnecessary effort on the part of the SDRs.

The Commission intends to work with the SDRs before creating or modifying any instructions pursuant to proposed § 49.9 and would provide a reasonable

amount of time for SDRs to adjust their systems before any instructions take effect. The Commission notes that it currently works with SDRs to implement changes to open swaps reports, with SDRs being given time to update their systems as needed. The Commission anticipates using a similar process when working with the SDRs on the new requirements for open swaps reports.

*Request for Comment.* The Commission requests comment on all aspects of the proposed changes to § 49.9.

*F. § 49.10—Acceptance of Data*

The Commission proposes amending § 49.10 to add a new paragraph (e) to address correction of errors and omissions in SDR data. SDRs are currently required to publicly disseminate cancellations and corrections to swap transaction and pricing data as soon as technologically practicable after receipt of any cancellation or correction,<sup>54</sup> and transmit corrections to errors and omissions in swap data previously transmitted to the Commission in the same format as the erroneous or omitted swap data was originally transmitted.<sup>55</sup>

Swap counterparties, SEFs, and DCMs currently have obligations to report errors and omissions to the reporting counterparty, SEF, DCM, or SDR, depending on whether they are reporting swap transaction and pricing data or swap data.<sup>56</sup> The Commission is proposing to move the obligations for SDRs in correcting errors and omissions to § 49.10(e), to place all obligations for SDRs in part 49.<sup>57</sup> The Commission believes proposed § 49.10(e) is consistent with the SDRs’ duty to correct errors and omissions that already exists in the CEA and current Commission regulations.

Proposed § 49.10(e) would set forth the general requirement that an SDR correct errors and omissions in SDR

<sup>48</sup> As discussed above in section II.A, the Commission is proposing to define an open swap as an executed swap transaction that has not reached maturity or the final contractual settlement date, and has not been exercised, closed out, or terminated.

<sup>49</sup> Proposed § 49.11 would also require SDRs to distribute open swaps reports to reporting counterparties. While a distinct report and separate requirement from proposed § 49.9, the Commission expects that the swap data contained in the open swaps reports provided to the Commission under proposed § 49.9 and the swap data provided to reporting counterparties under proposed § 49.11 would be identical, except for any data that is required to be kept confidential, if both reports reflect data as of the same moment. See section II.C below.

<sup>50</sup> As discussed below in section II.V, proposed § 49.31 would delegate the Commission’s authority in proposed § 49.9, including the authority to create instructions for transmitting open swaps reports to the Commission, to the Director of DMO.

<sup>51</sup> As discussed below in section II.Q, the Commission is proposing conforming amendments to § 49.25 to remove references to amended § 49.9.

<sup>52</sup> The Commission’s various public reports, including the weekly swaps reports, are available at <http://www.cftc.gov/MarketReports/index.htm>.

<sup>53</sup> See “Introducing ENNs: A Measure of the Size of Interest Rate Swaps Markets,” Jan. 2018, available at [https://www.cftc.gov/sites/default/files/idc/groups/public/@economicanalysis/documents/file/oce\\_enns0118.pdf](https://www.cftc.gov/sites/default/files/idc/groups/public/@economicanalysis/documents/file/oce_enns0118.pdf).

<sup>54</sup> See 17 CFR 43.3(e)(1), (3), and (4) (requiring an SDR to publicly disseminate corrections and cancellations to data and containing requirements for cancellation and correction).

<sup>55</sup> See 17 CFR 45.14(c) (requiring corrections to be transmitted to the Commission in the same format as the data was originally transmitted, unless otherwise approved).

<sup>56</sup> See § 43.3(e) for swap transaction and pricing data, discussed below in section IV.A, and § 45.14 for swap data, discussed below in section III.B. The obligations for swap counterparties, SEFs, and DCMs to report errors and omissions in swap transaction and pricing data and swap data would remain in their current sections.

<sup>57</sup> Parts 43 and 45, while containing provisions related to SDR acceptance and dissemination of data, concentrate on the reporting and dissemination of data by all market participants, while part 49 contains provisions that govern the registration and operations of SDRs more generally.



data that was previously reported to the SDR or was not previously reported to the SDR as required,<sup>58</sup> regardless of the state of the swap that is the subject of the SDR data.

Proposed § 49.10(e)(1)–(4) would set forth the specific requirements SDRs would need to meet to fulfill the general requirement in § 49.10(e). Proposed § 49.10(e)(1) would require an SDR to accept corrections for errors and omissions reported to the SDR pursuant to parts 43, 45, and 46.

Proposed § 49.10(e)(2) would require each SDR to correct the reported errors and omissions as soon as technologically practicable after the SDR receives a report of errors or omissions.

Proposed § 49.10(e)(3) would require an SDR to disseminate corrected SDR data to the public and the Commission, as applicable, as soon as technologically practicable after the SDR corrects the SDR data. Proposed § 49.10(e)(4) would require SDRs to establish, maintain, and enforce policies and procedures designed for the SDR to fulfill its responsibilities under § 49.10(e)(1)–(3).<sup>59</sup>

As noted above, new § 49.10(e) is designed to complement the correction provisions of other parts of the Commission's swap reporting regulations that apply to the entities reporting errors and omissions to SDRs, including proposed § 45.14(b), to ensure that errors and omissions in SDR data are corrected and disseminated as soon as possible.<sup>60</sup> The Commission also notes that SDRs currently have the duty to correct all SDR data previously reported, and all SDR data that was erroneously not reported as required, and to properly disseminate the corrections as required, including making the corrected SDR data available

to the Commission as instructed,<sup>61</sup> which will continue pursuant to proposed § 49.17.<sup>62</sup>

Finally, the Commission notes that, as specified in § 49.10(e), the requirements of new § 49.10(e) would apply regardless of the state of the swap, meaning SDRs would have to correct and disseminate SDR data for swaps that have matured or were otherwise terminated and are no longer open swaps. The Commission believes this requirement is necessary for SDRs to continue to maintain and disseminate SDR data that accurately reflects market activity to the public<sup>63</sup> and regulators. Further, SDRs currently do regularly make and disseminate corrections to previously-reported SDR data and SDR data that was not initially reported as required, including SDR data for previously matured or terminated swaps.

In general, the Commission believes that specifying SDRs' responsibilities to receive corrections to SDR data from market participants, make the corrections to the SDR data, and to provide the corrected SDR data to the public and the Commission, as applicable, would further the Commission's goal of having accurate and complete SDR data available to both the Commission and the public by clearly delineating the SDRs' responsibilities in the process.

*Request for Comment.* The Commission requests comment on all aspects of proposed § 49.10(e).

#### *G. § 49.11—Verification of Swap Data Accuracy*

The Commission proposes to revise the current requirements of § 49.11 that set forth SDRs' responsibilities to confirm the accuracy and completeness of swap data reported to SDRs. At the same time, the Commission is proposing to revise the requirements of § 45.14 for reporting counterparties, SEFs, and DCMs to verify swap data and correct errors in swap data.<sup>64</sup> The Commission

believes that revised § 49.11 and § 45.14 would provide SDRs, reporting counterparties, SEFs, and DCMs with a clear understanding of their respective responsibilities for verifying swap data.

The Commission is proposing to change the name of § 49.11 to “Verification of swap data accuracy” from “Confirmation of data accuracy” in order to reduce the number of differing uses of the word “confirmation” within the Commission's regulations. The Commission uses different tenses of the word “verify”<sup>65</sup> for the proposed requirement for the same reason.

#### *1. General Requirement To Verify Swap Data Accuracy—Proposed § 49.11(a)*

The Commission proposes to amend § 49.11(a) to include a general requirement that SDRs verify the accuracy and completeness of swap data that the SDRs receive from SEFs, DCMs, and reporting counterparties, or third-party service providers acting on their behalf.<sup>66</sup> Revised § 49.11(a) would also require each SDR to establish, maintain, and enforce policies and procedures reasonably designed to verify the accuracy and completeness of swap data that it receives from SEFs, DCMs, reporting counterparties, or third-party service providers.<sup>67</sup>

As noted above, proposed § 45.14(a) contains companion requirements to proposed § 49.11(a) that would require reporting counterparties to verify swap data with SDRs and to conform to the relevant SDR's verification policies and procedures in fulfilling their verification responsibilities.<sup>68</sup>

Section 21(c)(2) of the CEA requires SDRs to confirm with both counterparties to the swap the accuracy of the data that was submitted.<sup>69</sup> The Commission implemented section 21(c)(2) through adopting current § 49.11. Current § 49.11(a) requires that SDRs establish and adopt policies and procedures to ensure the accuracy of

<sup>58</sup> The Commission notes that the failure to perform the initial data reporting as required under parts 43, 45, or 46 is an “omission” for the purposes of those parts and proposed § 49.10. The SDR would be required to correct the omission pursuant to proposed § 49.10, just as it would be required to correct any other error or omission, regardless of the state of the swap, and disseminate the corrected data as required in proposed § 49.10.

<sup>59</sup> The Commission notes that the policies and procedures for reporting corrections to the SDR created pursuant to § 49.10(e) would be subject to disclosure to SEFs, DCMs, and reporting counterparties under proposed § 49.26(j). See section II.R below. The Commission is aware of previous instances where market participants were not provided with SDR policies and procedures related to the reporting or correction of data and were unaware of the SDR's requirements, which unnecessarily interfered with the reporting and correction processes. The requirements of proposed § 49.10(e)(4) and proposed § 49.26(j) are intended to prevent a similar situation from occurring in the context of data corrections.

<sup>60</sup> See section III.B below.

<sup>61</sup> See 17 CFR 43.3(e) (correction and dissemination requirements for swap transaction and pricing data); 17 CFR 45.14 (correction and dissemination requirements for swap data); see also 17 CFR 49.13(a) (requiring SDRs to transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission.).

<sup>62</sup> See section II.L below. As discussed in that section, SDRs are currently required to provide the Commission with direct electronic access to SDR data, including scheduled data transfers to the Commission.

<sup>63</sup> The Commission understands that market participants use the real-time swap transaction and pricing data disseminated by SDRs pursuant to part 43 for a variety of purposes, including modeling of the swaps markets that impacts their decisions related to transacting in swaps.

<sup>64</sup> See section III.B below.

<sup>65</sup> The Commission recognizes that CEA section 21(c)(2) uses the term “confirm,” but for the reasons stated above believes “verification” and “verify” are necessary to avoid confusion.

<sup>66</sup> The Commission notes that an SDR may receive swap data from any SEF, DCM, or reporting counterparty, as defined in proposed § 49.2, but that the SDR would, under the proposed regulations, verify the accuracy and completeness of swap data with the reporting counterparty for a given swap, as discussed in this section. Likewise, under proposed § 45.14(a), the reporting counterparty would be required to verify the accuracy and completeness of swap data as required by that section.

<sup>67</sup> SDRs would be required make their policies and procedures created pursuant to proposed § 49.11(a) available to their users and potential users under the requirements of proposed § 49.26(j).

<sup>68</sup> See section III.B below.

<sup>69</sup> 7 U.S.C. 24a(c)(2).



swap data and other regulatory information that is reported to an SDR. Current § 49.11(b) generally requires an SDR to confirm the accuracy and completeness of all swap data submitted pursuant to part 45. The Commission provided an exception to the requirement that SDRs confirm with both counterparties to the swap the accuracy of the data that was submitted in § 49.11(b)(1)(ii) for swap creation data and § 49.11(b)(2)(ii) for swap continuation data when swap data is received from a SEF, DCM, derivatives clearing organization (“DCO”), or from a third-party service provider acting on behalf of the swap counterparty, under certain conditions.<sup>70</sup>

SDRs are required under current § 49.11(b)(1)(i) and § 49.11(b)(2)(i) to notify both counterparties to a swap when swap data is submitted directly via a swap counterparty, such as an SD, MSP, or non-SD/MSP counterparty, and not by a SEF, DCM, DCO, or a third-party service provider.<sup>71</sup> However, because counterparties do not currently have a corollary obligation to respond to the SDRs’ notifications, SDRs have adopted rules based on the concept of negative affirmation: Reported swap data is presumed accurate and confirmed if a counterparty does not inform the SDR of errors or omissions or otherwise make modifications to a trade record for a certain period of time.<sup>72</sup>

When the Commission adopted current § 49.11, it did not believe that requiring an SDR to affirmatively communicate with both counterparties to a swap was necessary when the swap data was submitted to the SDR by a SEF, DCM, DCO, or third-party service provider.<sup>73</sup> However, based on the Commission’s experience with swap data submitted by SEFs, DCMs, DCOs, and third-party service providers since the rule was adopted, the Commission believes that such swap data has not been consistently complete and accurate in some instances, and the swap data accuracy is not sufficient to justify the exception to the requirement that SDRs confirm the reported swap data’s accuracy with swap counterparties. The

current requirements have had a negative effect on swap data accuracy and consistency, which has hampered the Commission’s ability to carry out its regulatory responsibilities.

Commission staff received many comments on confirmation requirements for swap data reported to SDRs in response to the Roadmap Request for Comment.<sup>74</sup> In general, the SDRs commented that they cannot meet their obligation to confirm data with both counterparties because non-reporting counterparties are not required to confirm data reported to the SDR under current regulations.<sup>75</sup> The SDRs also stated that they often have no way to contact non-reporting counterparties because non-reporting counterparties are not obligated to connect to the SDRs’ services.<sup>76</sup> SDRs also commented that the obligation to confirm data accuracy should generally reside with the entities that are in the best position to know whether the reported data is accurate and complete (*i.e.*, the parties to the swap, not the SDRs).<sup>77</sup>

As a result, many SDRs advocated for removing some or all SDR obligations from § 49.11 of the Commission’s regulations.<sup>78</sup> The Joint SDR letter commented that the Commission should clearly define the obligations of counterparties to confirm the accuracy and completeness of reported data, including requiring non-reporting counterparties to on-board with every SDR and to follow the SDRs’ processes and procedures, if the non-reporting

counterparties have confirmation obligations.<sup>79</sup>

Other commenters, including end-user groups, opposed confirmation requirements for non-reporting counterparties.<sup>80</sup> Chatham stated that non-reporting parties are rarely the cause of errors in the swap data and that reconciliation by reporting counterparties in conjunction with more robust validation of swap data would render reconciliation by non-reporting counterparties unnecessary.<sup>81</sup> CEWG advocated against any periodic reconciliation, and suggested that if reconciliation is required, it only be required for position data.<sup>82</sup>

The Commission’s proposed revisions to § 49.11 and § 45.14(a)<sup>83</sup> should provide more detail on the responsibilities of SDRs, working in conjunction with reporting counterparties, to verify the accuracy and completeness of swap data. As described in the discussions of proposed § 49.11(b)–(d) below, the Commission is proposing that SDRs only verify swap data with reporting counterparties because the Commission believes this would be the most practical approach to verification. The Commission understands that SDRs are not parties to swaps and are therefore unable to verify the accuracy and completeness of swap data without the assistance of a swap counterparty.

The Commission believes reporting counterparties are in the best position to verify swap data with SDRs. The CEA’s swap reporting framework is based on reporting counterparties reporting swap data on behalf of non-reporting counterparties.<sup>84</sup> Because of the data reporting requirements for reporting counterparties, reporting counterparties are connected to SDRs for reporting, while non-reporting counterparties, especially those that are not SDs/MSPs, often lack such connections.<sup>85</sup> For

<sup>70</sup> In these cases, §§ 49.11(b)(1)(ii) and 49.11(b)(2)(ii) relax the general requirement that the SDR affirmatively notify both counterparties directly if: (1) The SDR has formed a reasonable belief that the swap data is accurate; (2) the swap data or accompanying information reflect that both counterparties agreed to the swap data; and (3) the counterparties were provided with a 48-hour correction period.

<sup>71</sup> See 17 CFR 49.11(b).

<sup>72</sup> See, e.g., CME Rules 604.A and 604.B; DTCC Data Repository (U.S.) LLC Rule 3.3.3.3; and ICE Trade Vault Rules 4.6 and 4.7.

<sup>73</sup> See Part 49 Adopting Release at 54547 (describing the requirements of § 49.11).

<sup>74</sup> The following organizations submitted comments related to confirmation and reconciliation for data reported to SDRs: American Counsel of Life Insurers (“ACLI”); Commercial Energy Working Group (“CEWG”); Chatham Financial (“Chatham”); CME Group (“CME”); Coalition for Derivatives End-Users (“Coalition”); Depository Trust & Clearing Corporation (“DTCC”); Eurex Clearing AG (“Eurex”); a joint comment letter from BSDL LLC, Chicago Mercantile Exchange Inc., and ICE Trade Vault (“Joint SDR”); Global Financial Markets Association (“GFMA”); ICE Trade Vault (“ICE”); International Energy Credit Association (“IECA”); a joint letter comment letter from International Swaps and Derivatives Association, Inc. and the Securities Industry and Financial Markets Association (“ISDA/SIFMA”); Japanese Bankers Association (“JBA”); Natural Gas Supply Association (“NGSA”); a joint comment letter from National Rural Electric Cooperative Association and American Public Power Association (“NRECA/APPA”); and Securities Industry and Financial Markets Association Asset Management Group (“SIFMA AMG”).

<sup>75</sup> Joint SDR Letter at 5; ICE Letter at 2.

<sup>76</sup> Joint SDR Letter at 5; DTCC Letter at 3; ICE Letter at 2.

<sup>77</sup> Joint SDR Letter at 5 (listing CME and ICE as supporting this belief); CME Letter at 2; DTCC Letter at 3.

<sup>78</sup> Joint SDR Letter at 5; CME Letter at 2; ICE Letter at 2.

<sup>79</sup> Joint SDR Letter at 5 (listing CME and ICE as providing this recommendation).

<sup>80</sup> Coalition Letter at 4 (noting that end-users do not have the dedicated systems, personnel, or resources to confirm swap details with SDRs); IECA Letter at 2; NRECA/APPA Letter at 3; Chatham Letter at 3–4; JBA Letter at 1–2; NGSA Letter at 3; ISDA/SIFMA Letter at 6; ACLI Letter at 2–3; SIFMA AMG Letter at 1–2.

<sup>81</sup> Chatham Letter at 3–4.

<sup>82</sup> CEWG Letter at 3.

<sup>83</sup> See section III.B.

<sup>84</sup> As discussed in the Part 45 Adopting Release, in designating reporting counterparties to report on behalf of non-reporting counterparties, Congress made a policy choice to place lesser burdens on non-reporting counterparties. See 77 FR 2136, 2166 (discussing the reporting counterparty hierarchy in CEA section 4(a)(3)).

<sup>85</sup> The Commission notes that under current and proposed § 45.14(b), a non-reporting counterparty’s correction responsibilities are limited to notifying

entities that never serve as reporting counterparties, such a requirement would mean the expense of building, maintaining, and operating systems to connect to SDRs purely for the purposes of verifying swap data. The Commission believes this outcome would be inconsistent with the CEA's goal of placing swap data reporting responsibilities on reporting counterparties.

## 2. Distribution of Open Swaps Reports—Proposed § 49.11(b)

To meet the requirement to verify swap data accuracy in proposed § 49.11(a), proposed § 49.11(b) would require an SDR to distribute to each reporting counterparty on a regular basis an open swaps report detailing the swap data maintained by the SDR for all open swaps.<sup>86</sup>

The Commission notes that the open swaps report would contain the same type of information that would be provided to the Commission in an open swaps report under proposed § 49.9, as of the time the SDR compiles the open swaps report, but limited to the open swaps for which the recipient of the open swaps report is the reporting counterparty.<sup>87</sup> The Commission notes that an SDR would not be required to provide an open swaps report to an entity that does not have any open swaps at the time the SDR compiles a particular open swaps report, even if the entity has been the reporting counterparty for swaps previously maintained by the SDR. For example, if all of the swaps for which an entity was the reporting counterparty were terminated before the SDR begins compiling an open swaps report, the SDR need not provide an open swaps report to that reporting counterparty. The SDR would need to provide subsequent open swaps reports to the entity if the entity becomes the reporting counterparty for any swaps that are open as of the time of a

the reporting counterparty of the errors and omissions, as opposed to notifying the SDR. See 17 CFR 45.14(b); section III.B below. Requiring non-reporting counterparties to verify swap data would be the only instance where a non-reporting counterparty has swap data responsibilities with SDRs outside of corrections.

<sup>86</sup> Under proposed § 45.14(a), a reporting counterparty would then compare its books and records related to each swap for which it is the reporting counterparty against the report to determine if the swap data the SDR maintains is complete and accurate. See section III.B below.

<sup>87</sup> The Commission anticipates that, because the SDR would be required to regularly distribute the open swaps report on the same day during the verification period for each individual reporting counterparty under proposed § 49.11(b)(1)–(2), the SDR would begin to compile the open swaps report at the same time before each distribution.

subsequent regular compiling of open swaps reports.

The Commission also notes that it is not proposing to prescribe how an SDR must distribute the open swaps reports to reporting counterparties. Commission staff understands some SDRs “push” or actively send information to reporting counterparties, while other SDRs typically have customers “pull” information by having those customers connect to SDR systems to retrieve the information. The Commission would not have a preference between these two approaches, provided that the SDR has instructed its customers on when and how the SDR would distribute the open swaps reports in the SDR's swap data verification policies and procedures that it makes available to market participants pursuant to proposed § 49.26(j), such that the SDR's customers are able to effectively access and utilize the open swaps reports.

The Commission also notes that it does not have a preference as to the communication methods, such as file types and data languages, that the SDRs and reporting counterparties use when distributing the open swaps reports, as long as the communication methods are made clear in the SDR's swap data verification policies and procedures and the entities can effectively communicate regarding the contents of each open swaps report, including accounting for all necessary automated systems, mapping of data fields, and potential data translation between data languages. The Commission would expect SDRs and reporting counterparties to work together to devise efficient and effective methods for successfully distributing the open swaps reports, with particular attention paid to creating a distribution system that minimizes the burden of distribution for non-SD/MSP/DCO reporting counterparties. Reporting counterparties are already connected to SDRs to fulfill their reporting responsibilities under part 45 and therefore the Commission anticipates that SDRs and reporting counterparties would be able to communicate easily, potentially through existing infrastructure for reporting swap data.

## 3. Content of Open Swaps Reports—Proposed § 49.11(b)(1)

Proposed § 49.11(b)(1) would require an SDR to distribute an open swaps report that contains an accurate reflection of the swap data for every swap data field required to be reported for swaps pursuant to part 45 for every open swap maintained by the SDR for which the recipient of the report is the reporting counterparty, organized by the unique identifier created pursuant to

§ 45.5 of the Commission's regulations associated with every open swap, as of the time the SDR compiles the open swaps report.

The Commission notes that the swap data to be included in the open swaps report would need to include every data field required to be reported for swaps under part 45, unless access to a particular data field is prohibited by other Commission regulations.<sup>88</sup>

The Commission believes that having every reporting counterparty review the swap data and respond to the SDR as required in proposed § 45.14 would improve the quality of swap data by facilitating the discovery and correction of errors and omissions. Proposed § 49.11(b)(1) would facilitate this review by requiring the SDRs to provide the swap data for all of a reporting counterparty's open swaps on a regular basis. The Commission anticipates this process would be largely automated and would become more efficient over time as reporting counterparties and SDRs gain experience with verification.

The Commission is not proposing specific requirements for the formatting of the open swaps report provided pursuant to proposed § 49.11(b)(1), but the Commission expects that the swap data included in the open swaps report would be identical to the swap data provided to the Commission pursuant to proposed § 49.9 in all instances where the two reports reflect swap data as of the same time, except for any data that is required to be kept confidential.<sup>89</sup> The Commission believes it is important that the reporting counterparty would be able to review the same swap data that is provided to the Commission as of the moment the SDR compiled the open swaps report, to help ensure data consistency.

## 4. Frequency of Open Swaps Reports for SD, MSP, and DCO Reporting Counterparties—Proposed § 49.11(b)(2)

Proposed § 49.11(b)(2) would require SDRs to distribute the open swaps reports to all SD/MSP/DCO reporting counterparties on a weekly basis, no

<sup>88</sup> The Commission notes that the confidentiality requirements, particularly § 49.17(f), would apply to the open swaps reports. Under § 49.17(f), for example, an SDR may not include the identity or legal entity identifier of the non-reporting counterparty to the swap (or the non-reporting counterparty's clearing member for the swap) if the swap was executed anonymously on a SEF or DCM and cleared in accordance with the Commission regulations referenced in § 49.17(f)(2). See 17 CFR 49.17(f)(2) (providing the exception to the general prohibition on market participant access to swap data maintained by SDRs).

<sup>89</sup> See section II.E above (discussing the proposed requirements for providing open swaps reports to the Commission).

later than 11:59 p.m. Eastern Time<sup>90</sup> on the day of the week that the SDR chooses to regularly distribute the open swaps reports. The Commission notes that it is not prescribing the day that the SDR chooses to distribute the open swaps report, but would require that the SDR use the same day of the week for each distribution. The Commission would also require that the SDR distribute all of the open swaps reports to the relevant reporting counterparties on the same day. Distributing the open swaps reports irregularly may create the unnecessary risk of confusion and/or missed reports, and may lead to swap data not being properly verified. Regular distribution would also allow reporting counterparties to prepare for when they would be required to fulfill their verification responsibilities.

The Commission believes that SDs, MSPs, and DCOs, as large, sophisticated Commission-registered entities that are accustomed to swap data regulatory compliance, and as the most likely entities to serve as reporting counterparties,<sup>91</sup> can efficiently verify swap data on a weekly basis. Further, as SDs, MSPs, and DCOs are the reporting counterparty for the overwhelming majority of swaps,<sup>92</sup> requiring these entities to review the swap data maintained for their open swaps on a weekly basis would ensure that the large majority of open swaps would be verified within a week of execution, which would also facilitate the prompt correction of any errors or omissions in the swap data for these swaps.

#### 5. Frequency of Open Swaps Reports for Non-SD/MSP/DCO Reporting Counterparties—Proposed § 49.11(b)(3)

Proposed § 49.11(b)(3) would require SDRs to distribute the open swaps reports to non-SD/MSP/DCO reporting counterparties on a monthly basis, no later than 11:59 p.m. Eastern Time on the day of the month that the SDR chooses to regularly distribute the open swaps reports. For the reasons discussed above with respect to proposed

§ 49.11(b)(2), the Commission is not prescribing the day of the month that the SDR chooses to distribute the open swaps reports, but does require that the SDR use the same day of the month for each distribution. The Commission is also proposing to require that the SDR distribute all of the open swaps reports to the relevant reporting counterparties on the same day.

The Commission believes that monthly distribution would satisfy the Commission's need for accurate swap data. The Commission is aware that non-SD/MSP/DCO counterparties tend to be less active in the swaps markets with fewer resources to devote to regulatory compliance. The Commission understands that this is particularly true of swaps end-users that use swaps infrequently and are more likely to engage in swaps for hedging purposes. Non-SD/MSP/DCO counterparties are also the reporting counterparties for relatively few swaps;<sup>93</sup> therefore, the Commission believes that there would not be a significant risk of errors associated with less frequent verification for these reporting counterparties.

#### 6. Receipt of Verification of Data Accuracy or Notice of Discrepancy—Proposed § 49.11(c)

Proposed § 49.11(c) would require SDRs to receive from each reporting counterparty to which it sends an open swaps report, in response to the open swaps report, either a verification of data accuracy indicating that the swap data contained in the open swaps report distributed pursuant to § 49.11(b) is accurate and complete or a notice of discrepancy indicating that the data contained in an open swaps report contains one or more discrepancies.<sup>94</sup> Proposed § 49.11(c) would also require SDRs to establish, maintain, and enforce policies and procedures reasonably designed for the SDR to successfully receive the verification of data accuracy or the notice of discrepancy.

The Commission notes that an SDR would not fully satisfy the requirements of proposed § 49.11 until it receives the verification of data accuracy or notice of discrepancy. The Commission believes that proposed § 49.11(c) would help ensure that the reporting counterparty has received and reviewed the open

swaps report, which would aid the data correction process and improve the quality of swap data. The Commission also believes that proof of compliance would assist the SDRs and the Commission with any necessary compliance reviews.

The requirement to establish, maintain, and enforce policies and procedures regarding this stage of verification would help ensure that the SDR is fully prepared to perform its verification duties and, because the policies and procedures would be made available to reporting counterparties pursuant to proposed § 49.26(j), would help ensure that the verification process is clear and efficient for reporting counterparties and SDRs. The Commission notes that it is not prescribing the methods for how SDRs fulfill their responsibilities under proposed § 49.11(c), but does expect that the SDRs would be reasonable in the requirements of their policies and would utilize methods that are as low-cost and efficient as possible. The Commission particularly encourages SDRs to be accommodating for non-SD/MSP/DCO reporting counterparties.

The Commission notes that proposed § 45.14 includes corresponding requirements for reporting counterparties to verify the accuracy and completeness of swap data in response to the open swaps reports and for reporting counterparties to follow an SDR's verification policies and procedures in fulfilling their verification responsibilities, including analyzing and responding to open swaps reports. These corresponding requirements would help ensure that reporting counterparties respond to the open swaps reports in a timely and efficient manner, such that SDRs can fulfill their responsibilities under proposed § 49.11(c).

The Commission also clarifies that, given the separate proposed companion requirements for reporting counterparties, an SDR would not be responsible for failing to satisfy the requirements of § 49.11 in the instance where an SDR made a full, good-faith effort to comply with proposed § 49.11, and followed its policies and procedures created pursuant to proposed § 49.11 in doing so, but was prevented from fulfilling the requirements because of a reporting counterparty failing to meet its responsibilities to respond to the open swaps report as required under proposed § 45.14(a). In such a situation, the reporting counterparty would be held responsible for its failure to satisfy the requirements of proposed § 45.14.

<sup>90</sup> The Commission is specifying a time under proposed § 49.11 for consistency purposes. SDRs would need to account for the adjustments to Eastern Time that occur during the year in their verification policies and procedures and reporting counterparties would need to accommodate these adjustments in their verification practices.

<sup>91</sup> Any swap involving at least one SD, MSP, or DCO as a counterparty will have a reporting counterparty that is a SD, MSP, or DCO. See 17 CFR 45.8 (providing the requirements for determining which counterparty to a swap is the reporting counterparty).

<sup>92</sup> See De Minimis Exception to the Swap Dealer Definition, 83 FR 56666, 56674 (Nov. 13, 2018) (stating that, in 2017, approximately 98 percent of swap transactions involved at least one registered SD).

<sup>93</sup> See *id.* (finding that, during the examination period, 98 percent of swap transactions involved at least one SD/MSP counterparty).

<sup>94</sup> The Commission notes that an SDR receiving a notice of discrepancy should expect to—and be prepared to—receive corrections for the errors and omissions in the swap data close in time to when it receives the notice of discrepancy, due to the requirements of proposed § 45.14(b).

## 7. Amending Verification Policies and Procedures—Proposed § 49.11(d)

Proposed § 49.11(d) would require SDRs to comply with the requirements under part 40 of the Commission's regulations when adopting or amending their verification policies and procedures.<sup>95</sup>

*Request for Comment.* The Commission requests comment on all aspects of proposed § 49.11. The Commission also invites specific comment on the following:

(2) Is the Commission's proposed approach, which does not involve non-reporting counterparties in the verification process, an effective approach to verification? Why or why not? Are there additional benefits or costs to involving non-reporting counterparties in the verification process that have not been considered? Please be specific.

(3) Should the Commission be more prescriptive in how the SDRs must distribute the open swaps reports to reporting counterparties pursuant to proposed § 49.11(b)? If so, what should be the requirements included in the prescribed approach? Please be specific.

(4) Should the Commission be more prescriptive for the distribution timing and formatting for the open swaps reports the SDRs would provide to the reporting counterparties pursuant to proposed § 49.11(b)(2) and (3)? If so, what should be the requirements in the prescribed approach? Please be specific.

(5) Should the Commission prescribe any aspect of how SDRs must receive verifications of accuracy or notices of discrepancy pursuant to proposed § 49.11(c)? If so, what should be the requirements in the prescribed approach? Please be specific.

(6) Should the Commission require the verification of all swap data messages, as opposed to open swaps reports? Please explain why or why not. If so, what would be the costs and benefits associated with requiring the verification of all swap data messages? Please be specific.

(7) Should the Commission require verification of open swaps reports more or less frequently than weekly for reporting counterparties that are SDs, MSPs, or DCOs? If so, please explain why and suggest a more appropriate verification frequency.

(8) Should the Commission require verification of open swaps reports more

or less frequently than monthly for reporting counterparties that are not SDs, MSPs, or DCOs? If so, please explain why and suggest a more appropriate verification frequency.

(9) Should reporting counterparties also be required to verify the completeness and accuracy of swap transaction and pricing data submitted pursuant to part 43? Please explain why or why not.

## H. § 49.12—Swap Data Repository Recordkeeping Requirements

Current recordkeeping requirements for SDRs are found in §§ 49.12, 45.2(f), and 45.2(g) of the Commission's regulations. Current § 49.12 contains recordkeeping requirements for SDRs, which include both specific provisions and references to the recordkeeping requirements for SDRs included in parts 43 and 45.<sup>96</sup> The Commission is proposing amendments to the SDR recordkeeping rules to clarify ambiguities, resolve inconsistencies, and move requirements for SDRs currently in part 45 to part 49.

Proposed § 49.12(a) would require that SDRs keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the SDR, including, but not limited to, all SDR information and all SDR data that is reported to the SDR.

Proposed § 49.12(b) would specify separate recordkeeping requirements for SDR information in proposed § 49.12(b)(1) and SDR data reported to the SDR in proposed § 49.12(b)(2). Proposed § 49.12(b)(1) would require that an SDR maintain all SDR information, including, but not limited to, all documents, policies, and procedures required to be kept by the Act and the Commission's regulations, correspondence, memoranda, papers, books, notices, accounts, and other such records made or received by the SDR in the course of its business. All SDR information would be maintained in accordance with § 1.31 of this chapter.

Proposed § 49.12(b)(2) would require an SDR to maintain all SDR data and timestamps reported to or created by the SDR, and all messages related to such reporting, throughout the existence of the swap that is the subject of the SDR data and for five years following final termination of the swap, during which time the records would be readily accessible by the SDR and available to the Commission via real-time electronic access, and for a period of at least ten additional years in archival storage from

which such records are retrievable by the SDR within three business days.<sup>97</sup>

Proposed § 49.12(c) would require SDRs to create and maintain records of SDR validation errors and SDR data reporting errors and omissions. Proposed § 49.12(c)(1) would require an SDR to create and maintain an accurate record of all reported SDR data that fails to satisfy the SDR's data validation procedures. The records would include, but would not be limited to, records of all of the SDR data reported to the SDR that failed to satisfy the SDR data validation procedures, all SDR validation errors, and all related messages and timestamps.

Proposed § 49.12(c)(2) would require an SDR to create and maintain an accurate record of all SDR data errors and omissions reported to the SDR and all corrections disseminated by the SDR pursuant to parts 43, 45, and 46. SDRs would be required to make the records available to the Commission on request.

The Commission is proposing to amend § 49.12(d) by replacing it with a revised version of current § 49.12(c) that would require that: (i) All records required to be kept pursuant to part 49 must be open to inspection upon request by any representative of the Commission or any representative of the U.S. Department of Justice; and (ii) an SDR must produce any record required to be kept, created, or maintained by the SDR in accordance with § 1.31.

Finally, the Commission is proposing a technical change to move the current requirements of § 49.12(e) to the proposed revised requirements of SDRs to monitor, screen, and analyze SDR data in § 49.13, as discussed further below in section II.I.

Current § 49.12<sup>98</sup> contains recordkeeping requirements for SDRs, which include both specific provisions and references to the recordkeeping requirements for SDRs included in parts 43 and 45.<sup>99</sup> Current § 49.12(a) requires an SDR to maintain its books and records in accordance with the recordkeeping requirements of part 45.<sup>100</sup>

Current § 49.12(b) requires the SDR to maintain swap data (including historical

<sup>97</sup> The proposed retention period is the current requirement for SDR records retention. See 17 CFR 45.2(g) (requiring that all records required to be kept by an SDR be kept readily accessible and electronically available to the Commission throughout the existence of the swap and for five years after final termination of the swap and then kept in archival storage for an additional period of at least ten years).

<sup>98</sup> See 17 CFR 49.12.

<sup>99</sup> See generally 17 CFR 49.12, 17 CFR 45.2.

<sup>100</sup> The recordkeeping requirements of part 45 for SDRs are found in §§ 45.2(f) and (g). See 17 CFR 45.2(f) and (g).

<sup>95</sup> Verification policies and procedures would be considered "rules" for the purposes of part 40 requirements. See 17 CFR 40.1, 40.5, and 40.6 (containing the filing and review provisions applicable to rules under the Commission's regulations).

<sup>96</sup> See generally 17 CFR 43.3(h)(4), 17 CFR 45.2.

positions) throughout the existence of the swap and for five years following the final termination of the swap, during which time the records must be readily accessible by the SDR, available to the Commission via real-time electronic access, and in archival storage from which the data is retrievable by the SDR within three business days.<sup>101</sup> Current § 49.12(b) however does not fully account for the requirements of § 45.2(g)(2).<sup>102</sup> Additionally, the sections of part 45 applicable to SDRs apply to all records, as opposed to current § 49.12(b), which only applies to swap data.

Current § 49.12(c) requires all records that are required to be kept pursuant to part 49 be open to inspection upon request by any representative of the Commission and the U.S. Department of Justice. Current § 49.12(c) also requires that copies of all SDR records will be provided, at the expense of the SDR or person required to keep such records, to any representative of the Commission upon request, either by electronic means or in hard copy, or both, as requested by the Commission.

Current § 49.12(d) requires an SDR to comply with the real time public reporting and recordkeeping requirements of § 49.15 and part 43. Current § 49.12(e) requires an SDR to establish policies and procedures to calculate positions for position limits and for any other purpose as required by the Commission.

The Commission's proposed amendments to § 49.12(a) incorporate the provisions of current § 45.2(f). Current § 49.12(a) implies that the recordkeeping requirements only apply to swap data<sup>103</sup> while § 45.2(f) clearly states that its requirements apply to records, not only data reported to the SDR.<sup>104</sup> As discussed in section III.A, coupled with the deletion of § 45.2(f) and (g), this amendment would reduce confusion that may arise from having separate SDR recordkeeping requirements in two different rules. This amendment would also clearly state that an SDR is required to keep records beyond just the swap data that is

reported to the SDR, which is consistent with the requirements of current § 45.2(f). The Commission notes that, despite the amendment to § 49.12(a), the actual requirements for an SDR would remain the same, because the amendments to § 49.12(a) are merely reproducing the § 45.2(f) requirements, which have applied to SDRs since the effective date for part 45 in 2012.

The Commission is proposing to amend current § 49.12(b) because: (i) Current § 49.12(b) only applies to swap data,<sup>105</sup> as opposed to all records required to be kept by an SDR;<sup>106</sup> (ii) current § 49.12(b) only fully includes the record retention and retrieval requirements of § 45.2(g)(1),<sup>107</sup> though the requirements of § 45.2(g)(2)<sup>108</sup> also apply to all SDR records; and (iii) neither current § 49.12(b) nor § 45.2 distinguish between records of data related to swaps and other records required to be kept by SDRs in regards to the retention periods. Current § 49.12(b) and § 45.2 use the existence of the swap as the basis for the record retention timeframes, but this offers no guidance on how long to keep a record of SDR information, such as SDR policies and procedures. The Commission proposes to remove these inconsistencies and to clarify the scope of SDR recordkeeping, while also consolidating SDR recordkeeping obligations in one regulation.

Proposed § 49.12(b)(1) also requires that the SDR information be maintained in accordance with § 1.31.<sup>109</sup> The proposed changes to § 49.12(b) would also help harmonize the Commission's regulations with the SEC's regulations.<sup>110</sup> The SDR information

listed in the proposed changes to § 49.12(b)(1) largely matches the SEC's requirement for SBSDR recordkeeping<sup>111</sup> and the retention provisions of § 1.31 of this chapter largely match the requirement for SBSDRs.<sup>112</sup> Further, any SDR that also registers with the SEC as an SBSDR would have to comply with § 49.12 and § 240.13n-7, and therefore consistency between the recordkeeping provisions would be particularly beneficial to these SDRs. The SDR information records requirement is also similar to recordkeeping obligations for DCMs,<sup>113</sup> SEFs,<sup>114</sup> and DCOs.<sup>115</sup>

By specifically requiring records to be kept for all SDR data reported to the SDR, including all timestamps and messages to or from the SDR related to the reported SDR data, as opposed to only swap data,<sup>116</sup> and requiring that the records be kept for ten years in archival storage,<sup>117</sup> proposed § 49.12(b)(2) would reorganize current § 49.12(b). These "new" requirements are however already applicable to SDR recordkeeping by virtue of their inclusion in § 45.2(f) and (g).<sup>118</sup>

regulations governing SBSDRs. *See* 17 CFR 240.13n-7(b) (listing recordkeeping requirements for SBSDRs); 17 CFR 240.13n-7(d) (excluding "transaction data and positions" from the recordkeeping requirements and instead referring to 17 CFR 240.13n-5 for this recordkeeping).

<sup>111</sup> *See* 17 CFR 240.13n-7(b)(1) (Every security-based swap data repository shall keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Securities Exchange Act and the rules and regulations thereunder, correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such.).

<sup>112</sup> *Compare* 17 CFR 1.31(b)(3) (A records entity shall keep each regulatory record for a period of not less than five years from the date on which the record was created.) and 17 CFR 1.31(b)(4) (A records entity shall keep regulatory records exclusively created and maintained on paper readily accessible for no less than two years. A records entity shall keep electronic regulatory records readily accessible for the duration of the required record keeping period.) with 17 CFR 240.13n-7(b)(2) (Every SBSDR shall keep all such documents for a period of not less than five years, the first two years in a place that is immediately available to representative of the Securities and Exchange Commission for inspection and examination.).

<sup>113</sup> *See* 17 CFR 38.951.

<sup>114</sup> *See* 17 CFR 37.1001.

<sup>115</sup> *See* 17 CFR 39.20.

<sup>116</sup> *See* 17 CFR 49.12(b) (A registered swap data repository shall maintain swap data throughout the existence of the swap and for five years following final termination of the swap).

<sup>117</sup> Current § 49.12(b) does not specifically include the ten-year requirement, though current § 49.12(a) does state that books and records must be kept in accordance with the requirements of part 45, which does include the ten-year requirement. *See* 17 CFR 49.12(a) and (b); 17 CFR 45.2(g)(2).

<sup>118</sup> *See* 17 CFR 45.2(f) and (g). Though the term "swap data" is defined in § 49.2(a) to mean the specific data elements and information set forth in

<sup>101</sup> *See* 17 CFR 49.12(b).

<sup>102</sup> Section 45.2(g)(2) requires that all records required to be kept by an SDR must be kept in archival storage for ten years after the initial § 45.2(g)(1) retention period. Current § 49.12(b) only includes the initial retention period.

<sup>103</sup> *See* 17 CFR 49.12(a) (regarding the swap data required to be reported to the swap data repository).

<sup>104</sup> *See* 17 CFR 45.2(f) (Each swap data repository registered with the Commission shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the swap data repository and all swap data reported to the swap data repository, as prescribed by the Commission.).

<sup>105</sup> *See* 17 CFR 49.12(b) (A registered swap data repository shall maintain swap data).

<sup>106</sup> *See* 17 CFR 45.2(f) (Stating that SDRs are required to keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the swap data repository and all swap data reported to the swap data repository).

<sup>107</sup> *See* 17 CFR 45.2(g)(1) (Throughout the existence of the swap and for five years following the final termination of the swap, during which time the records must be readily accessible by the swap data repository and available to the Commission via real time electronic access.).

<sup>108</sup> *See* 17 CFR 45.2(g)(2) (Hereafter, for a period of at least ten additional years in archival storage from which they are retrievable by the swap data repository within three business days.).

<sup>109</sup> Section 1.31 of the Commission's regulations is the Commission's general recordkeeping provision, which requires, among other requirements, that all regulatory records that do not pertain to specific transactions and are not retained oral communications be kept for no less than five years from the creation date of the record. *See* 17 CFR 1.31(b)(3).

<sup>110</sup> The concept of separate recordkeeping requirements for information similar to SDR information and for SDR data reported to an SDR has already been adopted by the SEC in its

Proposed § 49.12(b)(2) would reproduce the requirements of § 45.2(f) and (g) in part 49 to minimize the number of regulatory sections that contain recordkeeping and retention requirements for SDRs.

The Commission notes that though the Commission is specifically proposing recordkeeping requirements for SDR data validation errors and SDR data reporting errors in this proposed § 49.12(c), this would not in any way limit the scope of recordkeeping requirements in proposed § 49.12 to these records. The recordkeeping discussed in proposed § 49.12(c) would also be required under the more general recordkeeping provisions of proposed § 49.12.

The Commission notes that it believes SDRs already receive the data validations information that would be required in proposed § 49.12(c) via regular interaction with SEFs, DCMs, and reporting counterparties, but emphasizes that it must be maintained in order to allow for assessments of reporting compliance, including the initial reporting and the correction of the SDR data. The Commission also notes that because the records addressed by proposed § 49.12(c) are all comprised of or relate to SDR data reported to SDRs, all records created and maintained by the SDR pursuant to proposed § 49.12(c) would be subject to the requirements of proposed § 49.12(b)(2).

The Commission notes that current § 49.12(d)<sup>119</sup> is redundant because its requirements that an SDR comply with the real time public reporting and recordkeeping requirements prescribed in § 49.15 and part 43 are also required

by revised §§ 49.12(b)(2) and 49.15, as well as part 43. The Commission further notes that though current § 49.12(d) is proposed to be removed, SDRs would still be subject to the real time public reporting and recordkeeping requirements of § 49.15 and part 43.

*Request for Comment.* The Commission requests comment on all aspects of proposed § 49.12. The Commission also invites specific comment on the following:

(10) Would SDRs be substantially impacted by changing the archival storage requirements of current § 45.2(g)(2) and proposed § 49.12(b)(2) from ten years to a different period of time? If so, what would be the correct length of time, and how would this change impact the SDRs? Please include specific facts and figures when providing comments.

#### *I. § 49.13—Monitoring, Screening, and Analyzing Data*

Section 21(c)(5) of the CEA specifically requires SDRs to, at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing swap data, including compliance and frequency of end-user clearing exemption claims by individuals and affiliated entities.<sup>120</sup> The Commission believes, based on the text of section 21(c)(5) of the CEA, that SDRs function not only as repositories for swap data, but also as providers of data support for the Commission's oversight of swaps markets and swap market participants. To implement section 21(c)(5), the Commission adopted current § 49.13 and § 49.14.

Current § 49.13 requires SDRs to: (i) Monitor, screen, and analyze all swap data in their possession as the Commission may require, including for the purpose of any standing swap surveillance objectives that the Commission may establish as well as ad hoc requests; and (ii) develop systems and maintain sufficient resources as necessary to execute any monitoring, screening, or analyzing functions assigned by the Commission.

In the Part 49 Adopting Release, the Commission received comments relating to §§ 49.13(a) and 49.14 indicating concerns that the then-proposed regulations did not sufficiently describe the specific tasks SDRs are expected to perform.<sup>121</sup> In response, the

Commission specifically stated that its intention in adopting §§ 49.13(a) and 49.14 was to codify the statutory requirements in CEA section 21(c)(5) and later establish specific monitoring, screening, and analyzing duties when its knowledge of the swaps markets was more fully-developed.<sup>122</sup>

The Commission has worked with SDRs to implement the Commission's swap reporting regulations since 2011. In that time, SDRs have worked with Commission staff to produce reports that enable the Commission to perform oversight and monitoring of the swaps market. For instance, Commission staff uses the open swaps reports to monitor risk. In addition, reports on clearing exception elections provide the Commission with information on which entities are claiming exemptions from the Commission's mandatory clearing requirement for swaps.

As noted in the Part 49 Adopting Release, the Commission intended to establish specific monitoring, screening, and analyzing duties for SDRs separately. The Commission believes that, based on its experience working with SDRs to monitor, screen, and analyze swap data as directed by CEA section 21(c)(5) thus far, it is prepared to identify the specific duties. The Commission expects specifying these topic areas would not impose substantial new fixed costs on SDRs because SDRs have already established the technology and related infrastructure designed to monitor, screen, and analyze data at the request of the Commission as required under current § 49.13(a).

Finally, the Commission notes that the requested tasks would only be performed by SDRs to provide the Commission with data and reports related to the listed topic areas that would assist the Commission in performing its regulatory functions. The Commission would not expect SDRs to perform any of the Commission's regulatory functions or to provide recommendations to the Commission.

The Commission proposes to amend § 49.13 to provide more detail on the monitoring, screening, and analyzing tasks that SDRs may be required to perform as directed by the Commission. The Commission is also proposing to amend § 49.13 to make clear that the requirements of proposed § 49.13 would apply to SDR data reported to the SDR pursuant to parts 43, 45, and 46. CEA section 21(c)(5) requires SDRs to

part 45 of this chapter, the Commission notes that the term "swap data" is not currently defined in part 45. Section 45.2(f) requires the SDR to keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities related to the business of the swap data repository and all swap data reported to the swap data repository, as prescribed by the Commission. This expansive requirement for "all pertinent data and memoranda" for all activities related to the business of the swap data repository and all swap data reported to the swap data repository shows that § 45.2(g) requires the SDRs to keep records of data from activities beyond reporting pursuant to part 45 of this chapter, including, for example, all of the required swap transaction and pricing data reporting pursuant to part 43 of this chapter. The "full, complete, and systematic records" that must be kept for "all activities related to the business" of the SDR also include all messages related to the reported data, including all messages sent from the SDR and to the SDR. This recordkeeping obligation on SDRs is analogous to recordkeeping obligations on DCMs, SEFs, and DCOs. See 17 CFR 38.950, 37.1001, and 39.20(a).

<sup>119</sup> See 17 CFR 49.12(d) (A registered swap data repository shall comply with the real time public reporting and recordkeeping requirements prescribed in § 49.15 and part 43 of this chapter.).

<sup>120</sup> 7 U.S.C. 24a(c)(5).

<sup>121</sup> See letters from: (1) Americans for Financial Reform on February 22, 2011; (2) Chris Barnard on May 25, 2011; (3) Better Markets on February 22, 2011; (4) CME Group on February 22, 2011; (5) Depository Trust & Clearing Corporation on February 22, 2011; (6) Reval on February 18, 2011; (7) SunGard Energy & Commodities on February 22,

2011; and (8) TriOptima on February 22, 2011 available at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=939>.

<sup>122</sup> See Part 49 Adopting Release at 54548.

establish automated systems for monitoring, screening, and analyzing swap data, but the term “swap data” is not defined in the CEA. The Commission believes that monitoring, screening, and analyzing tasks could be incomplete if limited to only swap data, as defined in § 49.2.<sup>123</sup>

Proposed § 49.13(a) would generally require that an SDR: (i) Establish automated systems for monitoring, screening, and analyzing all relevant SDR data in its possession in the form and manner as directed by the Commission, and (ii) routinely monitor, screen, and analyze relevant SDR data at the request of the Commission.<sup>124</sup>

Proposed § 49.13(a)(1) would require SDRs to utilize relevant SDR data maintained by the SDR to provide information to the Commission concerning such relevant SDR data. Proposed § 49.13(a)(1) would state that monitoring, screening, and analyzing requests may require the SDRs to compile and/or calculate the requested information within discrete categories, including comparing information among categories, and lists potential topics areas for which the Commission could request related data and reports: (i) The accuracy, timeliness, and quality of SDR data; (ii) updates and corrections to, and verification of the accuracy of, SDR data; (iii) currently open swaps and the consistency of SDR data related to individual swaps; (iv) the calculation of market participants' swap positions, including for purposes of position limit compliance, risk assessment, and compliance with other regulatory requirements;<sup>125</sup> (v) swap counterparty exposure to other counterparties and standard market risk metrics; (vi) swap valuations and margining activities; (vii) audit trails for individual swaps, including post-transaction events such as allocation, novation, and compression, and all related messages; (viii) compliance with Commission regulations; (ix) market surveillance; (x)

the use of clearing exemptions and exceptions; and/or (xi) statistics on swaps market activity.

Proposed § 49.13(a)(2) would state that all monitoring, screening, and analyzing requests shall be at the discretion of the Commission, which includes, but is not limited to, the content, scope, and frequency of each required response, and require that all information provided pursuant to a request conform to the form and manner requirements established for the request pursuant to proposed § 49.30.<sup>126</sup>

Proposed § 49.13(a)(3) would require that all monitoring, screening, and analyzing requests be fulfilled within the time specified by the Commission for the particular request.<sup>127</sup> Proposed § 49.13(b) would require that SDRs establish, and at all times maintain, sufficient information technology, staff, and other resources to fulfill the requirements in § 49.13 in the manner prescribed by the Commission.

The Commission is also proposing to create a new § 49.13(c) that would incorporate current § 49.15(c)<sup>128</sup> but also expand it to require SDRs to promptly notify the Commission of any swap transaction for which the SDR is aware that it did not receive swap data according to part 45, or data according to part 46, in addition to the current requirement to notify the Commission of any swap transaction and pricing data not received according to part 43.

The Commission is providing the following list of examples of monitoring, screening, and analyzing tasks that the Commission could request in the future pursuant to proposed § 49.13(a)(1). All of the examples would

fall under at least one of the topic areas included in proposed § 49.13(a)(1). The Commission emphasizes that the following list is merely examples, is not exhaustive, and does not limit the Commission's ability to request that SDRs perform other monitoring, screening, and analyzing tasks that would fall under the topics listed in proposed § 49.13(a).

Examples of potential future monitoring, screening, and analyzing activities include reports or information concerning: (i) The reporting (or corrected non-reporting) of swap transactions and any subsequent changes related to the swap, such as life cycle events, as defined in part 45; (ii) the timeliness of reporting through the tracking of execution and reporting timestamps; (iii) the altering or amending of swap terms after the initial public reporting of the swap transaction and pricing data; (iv) the application of the SDR's data validation procedures and information regarding data validation errors; (v) the identification and treatment of duplicate records; (vi) net and gross positions relating to unique product identifiers; (vii) positions of swap counterparties on an aggregate basis, including futures-equivalent positions identified with the legal entity to which a legal entity identifier is assigned; (viii) swap cancellations; (ix) accuracy and quality of reported SDR data; and (x) the positions of swap counterparties.

The Commission notes that an information request under § 49.13(a)(1) could require an SDR to review a market participant's open swap positions for swaps where that market participant elected a clearing exemption. Such a request would combine categories in § 49.13(a)(1)(iii) and (x). Proposed § 49.13(a)(1) also states that such monitoring, screening, and analyzing requests could require SDRs to provide information comparing certain metrics over a period of time. For instance, an information request could require SDRs to compare the accuracy, timeliness, and quality of SDR data submitted by one or more SEFs, DCMs, or reporting counterparties over a defined period of time. Finally, information requests could require SDRs to compare two or more categories of information across a defined period of time.

The Commission understands that SDRs can only be expected to perform monitoring, screening, and analyzing tasks based on the SDR data available to each SDR and that the results of any task would be limited to the SDR data for swaps reported to each SDR. The Commission also expects that SDRs and Commission staff would work together

<sup>123</sup> Current and proposed § 49.2 limit “swap data” to data reported to an SDR pursuant to part 45. See 17 CFR 49.2(a)(15). The proposed amendments to § 49.2(a) do not substantively change the definition of “swap data” for the purposes of part 49.

<sup>124</sup> As discussed further below, proposed § 49.13(a) would more closely track the language of CEA section 21(c)(5) that requires SDRs to at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing swap data, including compliance and frequency of end-user clearing exemption claims by individual and affiliated entities.

<sup>125</sup> The Commission notes that the Commission regulations currently require SDRs to establish policies and procedures to calculate swap positions in § 49.12(e). The Commission is proposing to incorporate the current § 49.12(e) into proposed § 49.13(a), without substantively modifying the requirements for SDRs to calculate swap positions.

<sup>126</sup> The Commission, as discussed below in section II.U, is proposing to adopt § 49.30 to establish a “form and manner” regulation applicable to how information reported to, and maintained by, SDRs would be formatted and delivered to the Commission. The term “formatted” refers to how the information would be presented and could include, but is not limited to, attributes such as data messaging standards, allowable values, and levels of precision, as well as instructions on how the information would be transmitted, including, but not limited to, direct electronic access by Commission staff or by the SDR sending the information to the Commission, and the frequency and timing of delivery.

<sup>127</sup> The Commission anticipates working with the SDRs and providing a reasonable time to fulfill each request based on the specific circumstances, including the volume of information requested and the complexity of the request.

<sup>128</sup> See 17 CFR 49.15(c) (Duty to Notify the Commission of Untimely Data). A registered swap data repository must notify the Commission of any swap transaction for which the real-time swap data was not received by the swap data repository in accordance with part 43 of this chapter. As discussed further below, the Commission believes moving § 49.15(c) to § 49.13 would help consolidate the information SDRs need to send to the Commission into one part.



to design each task before a task is prescribed, as is current practice.

Finally, the Commission believes that expanding the notice requirements of current § 49.15(c) under new proposed § 49.13(c) would improve the Commission's ability to monitor compliance with its regulations and increase the Commission's ability to efficiently respond to compliance issues by helping the Commission learn of compliance issues as soon as possible so that the issues can be remedied. SDRs are often in the best position to know of non-compliance with the data reporting requirements because of the information they receive from market participants. For example, SDRs would quickly know if a reporting counterparty has reported swap data pursuant to part 45 in an untimely manner because the SDR receives the swap data, including the execution timestamp, and can quickly compare when the swap was executed and when the swap data was received. The Commission acknowledges that SDRs can only identify and notify the Commission of SDR data reporting non-compliance based on the SDR data they receive and does not expect SDRs to inform the Commission of reporting issues of which they are not aware. Expanding the notice requirement to noncompliance with parts 45 and 46 would help the Commission to learn of a wider range of compliance issues when they first arise, which in turn would help the Commission to work with market participants and SDRs to fix issues as quickly as possible.

*Request for Comment.* The Commission requests comment on all aspects of proposed § 49.13. The Commission also invites specific comment on the following:

(11) Should the Commission require SDRs to calculate positions for market participants? Are there technological and/or regulatory limitations that would make such tasks difficult to perform and unlikely to achieve the desired results? Please be specific.

(12) Should the SDRs create a process whereby the counterparties whose positions have been calculated based on data contained in the SDR have the opportunity to review and subsequently challenge and/or correct the results? Please explain why or why not.

(13) Are there specific reports or sets of data that the Commission should consider obtaining from SDRs to monitor risk exposures of individual counterparties to swap transactions, to monitor concentrations of risk exposures, or for other purposes? Please be specific.

(14) Are there specific reports or sets of data that the Commission should

consider obtaining from SDRs to evaluate systemic risk or that could be used for prudential supervision? Are there any other reports or sets of data that the Commission should consider obtaining from SDRs that would not be included in the categories listed in proposed § 49.13(a)(1)? Please be specific.

(15) Are there any other tasks or functions that SDRs could perform related to swap data that could help the Commission better assess individual market participant risks and market risks generally? Please be specific.

(16) Would any of the specific monitoring, screening, or analyzing topic areas enumerated under proposed § 49.13(a)(1) impose new or substantial costs on SDRs that are not present under the requirements of current § 49.13 and section 21(c)(5) of the CEA? If so, please describe and quantify these costs.

(17) Is it sufficiently clear in this proposal that the Commission intends for SDRs to provide data and information under proposed § 49.13 solely to assist the Commission in performing its regulatory functions, rather than expecting SDRs to perform any direct oversight of market participants? If not, how should the Commission clarify that proposed § 49.13 would require SDRs to provide data and information solely to assist the Commission in performing its regulatory functions?

#### *J. § 49.15—Real-Time Public Reporting by Swap Data Repositories*

The Commission proposes to amend § 49.15 to conform to the proposed amended definitions in § 49.2 as described in section II.A. As discussed above in section II.I, the Commission is also proposing to move current § 49.15(c) to § 49.13(c). The Commission also proposes to amend current § 49.15(a) and § 49.15(b) to remove the term “swap data,” which is defined as part 45 data, and replace it with language clarifying that § 49.15 pertains to swap transaction and pricing data submitted to a registered SDR pursuant to part 43. These non-substantive changes do not affect the existing requirements of § 49.15.

#### *K. § 49.16—Privacy and Confidentiality Requirements of Swap Data Repositories*

In connection with the proposed amendments to multiple definitions in § 49.2,<sup>129</sup> the Commission proposes to make conforming amendments to § 49.16. The Commission proposes to amend § 49.16(a)(1) to clarify that the policy and procedure requirements of

§ 49.16 apply to SDR information and to any SDR data that is not swap transaction and pricing data disseminated under part 43. Such policies and procedures must include, but are not limited to, policies and procedures to protect the privacy and confidentiality of any and all SDR information and all SDR data (except for swap transaction and pricing data disseminated under part 43) that the SDR shares with affiliates and non-affiliated third parties.

The Commission is also making conforming amendments related to the proposed removal of the term “reporting entity” and the proposed definitions of “SDR data” and “swap data.”

The Commission notes that these proposed amendments are non-substantive and would not affect the existing requirements or applicability of § 49.16.

#### *L. § 49.17—Access to SDR Data*

The Commission is proposing to amend § 49.17 to clarify some of the regulation's requirements with respect to the Commission's access to SDR data. Current § 49.17 sets forth the procedures by which the CFTC and other regulators may access SDR data.

##### *1. Direct Electronic Access Definition—§ 49.17(b)*

The Commission proposes to amend the § 49.17(b)(3) definition of “direct electronic access” to mean an electronic system, platform, framework, or other technology that provides internet-based or other form of access to real-time SDR data that is acceptable to the Commission and also provides scheduled data transfers to Commission electronic systems.

Current § 49.17(b)(3) defines direct electronic access as an electronic system, platform or framework that provides internet or Web-based access to real-time swap transaction data and also provides scheduled data transfers to Commission electronic systems. Currently, § 49.17(b)(3) does not include the possibility of other types of technology and does not leave the Commission any discretion over access to the data. The Commission believes its proposed changes to the definition would allow more flexibility in regards to the potential methods and forms of direct electronic access that may be provided to the Commission, and would remove any confusion over the type of data to which the term “direct electronic access” applies.

The Commission believes that adding “other technology” to the existing list of methods would make clear that the Commission may decide to accept other

<sup>129</sup> See section II.A above.

methods of access, as long as the method is able to efficiently provide real-time access to SDR data and scheduled SDR data transfers to the Commission. The Commission believes flexibility in terms of the technology SDRs use to provide direct electronic access could accommodate rapid advances in technology and would not inadvertently prevent the use of future technological innovations that may provide more efficient direct electronic access to SDR data.

In addition, the Commission proposes to change the current § 49.17(b)(3) text that provides internet or Web-based access to real-time swap transaction data to that provides internet-based or other forms of access to real-time SDR data. The Commission considers the removal of “Web-based” to be a non-substantive change, as the term is redundant with “internet-based.” The addition of “or other form of access” is, as with the addition of “other technology,” intended to provide more flexibility for providing direct electronic access to the Commission by making clear that the Commission may decide to accept other forms of access that are not internet-based, as long as the access to SDR data is real-time and provides for scheduled SDR data transfers to the Commission.

The Commission believes that requiring that the method(s) and form(s) of direct electronic access be “acceptable to the Commission” would make it clear that the Commission anticipates working with SDRs to decide the acceptable methods and forms of direct electronic access. This amendment would codify the Commission’s current practice of working with SDRs to implement changes, as discussed above in section II.E. The Commission and SDRs routinely work together to provide both real-time internet-based access to SDR data and scheduled transfers of SDR data to the Commission. The Commission believes that the most important consideration in whether a form of access may be acceptable to the Commission would be whether the Commission can successfully utilize the method or form of access. The Commission believes this is necessary to help ensure that the direct electronic access provided is useful to the Commission and to help ensure that an SDR cannot unilaterally change the method or form of direct electronic access in a way that may prevent the Commission from performing its regulatory functions. Though the Commission intends to be flexible in regards to the methods and forms of direct electronic access, especially in

the context of technological advancement, the Commission believes it is important to retain the ability to decide the acceptable methods and forms for direct electronic access at its sole discretion.

Nothing in the proposed revisions to § 49.17(b)(3) would prevent the SDRs from incorporating new technology into their systems for collecting SDR data or maintaining the SDR data within their own systems, as long as the SDR data is collected by the SDRs and provided to the Commission as required. The Commission would however expect SDRs to provide reporting counterparties with commonly-used methods for reporting SDR data to the SDR and not to force reporting counterparties to unnecessarily expend resources on the latest technology by unreasonably limiting available reporting methods. The Commission would also expect SDRs to be particularly accommodating of non-SD/MSP/DCO reporting counterparties that may not have the resources to spend on technology.

Finally, the current definition of “direct electronic access” includes an SDR providing access to “real-time swap transaction data.”<sup>130</sup> The correct defined term for the data being referenced is “SDR data.” In order to remove any confusion and increase the consistent use of terms, the Commission proposes to remove the word “transaction” and replace “swap” with “SDR” so that the phrase is instead “real-time SDR data.”<sup>131</sup> This non-substantive change does not change the current requirements or current SDR practice for providing the Commission with direct electronic access to SDR data.

## 2. Commission Access—§ 49.17(c)

The Commission proposes to amend § 49.17(c) by incorporating the requirements of current § 45.13(a),<sup>132</sup> along with additional clarifications to consolidate the requirements for Commission access to SDR data and to describe the SDRs’ responsibilities to provide SDR data to the Commission.

<sup>130</sup> 17 CFR 49.17(b)(3).

<sup>131</sup> The Commission notes that the phrase “real-time” is often used to reference swap transaction and pricing data that is publicly reported pursuant to part 43. In this instance, the term refers to direct electronic access requiring that SDR data be available in real time to the entity granted direct electronic access (*i.e.*, the Commission or its designee).

<sup>132</sup> The Commission is not proposing to modify current § 45.13(a) in this rulemaking. The Commission expects that subsequent rulemakings based on the Roadmap would modify the requirements of § 45.13 in ways that are not inconsistent with proposed § 49.17.

The Commission is also proposing non-substantive edits to § 49.17 to conform terms used in the section with the rest of the Commission’s regulations (*e.g.*, replacing “swap data and SDR Information” with “SDR data and SDR Information”).

Proposed § 49.17(c) would require SDRs to provide access to the Commission for all SDR data maintained by the SDR.<sup>133</sup> Proposed § 49.17(c) would also incorporate all of the current requirements of § 49.17(c)(1). Current § 49.17(c)(1) requires SDRs to provide direct electronic access to the Commission or the Commission’s designee, including another registered entity, in order for the Commission to carry out its legal and statutory responsibilities under the Act and related regulations. The proposal would retain current § 49.17(c)(1) as § 49.17(c) and incorporate a modified version of current § 45.13(a).

Specifically, proposed § 49.17(c)(1) would also require SDRs to maintain all SDR data reported to the SDR in a format acceptable to the Commission, and to transmit all SDR data requested by the Commission to the Commission as instructed by the Commission. Proposed § 49.17(c)(1) would also provide that the instructions may include, but are not limited to, the method, timing, and frequency of transmission, as well as the format and scope of the SDR data to be transmitted.

Proposed § 49.17(c)(1) would change the requirements of current § 45.13(a) from maintaining and transmitting “swap data” to maintaining and transmitting “SDR data,” to make clear that the SDRs must maintain all SDR data reported to the SDRs in a format acceptable to the Commission and transmit all SDR data requested by the Commission, not just swap data.<sup>134</sup>

Proposed § 49.17(c)(1) would also broaden the requirements of current § 45.13(a) from transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission<sup>135</sup> to transmit all SDR data requested by the Commission to the Commission as instructed by the Commission, and

<sup>133</sup> See 17 CFR 49.17(c)(1) (Direct Electronic Access. A registered swap data repository shall provide direct electronic access to the Commission or the Commission’s designee, including another registered entity, in order for the Commission to carry out its legal and statutory responsibilities under the Act and related regulations.).

<sup>134</sup> The Commission does not believe this revision is a change from current SDR practice.

<sup>135</sup> 17 CFR 45.13(a).

explains what these instructions may include.

The Commission believes that these revisions would make clear that the Commission's ability to set the parameters of SDR data transmission is not limited to requiring electronic transfers in a particular format, as could be inferred from current § 45.13(a).<sup>136</sup> The Commission believes it needs the ability to instruct SDRs as to all aspects of SDR data transfers to the Commission. These instructions could include, but are not necessarily limited to, method of transmission (e.g., electronic or non-electronic transmission and file types used for transmission), the timing of data transmission, the frequency of data transmission, the formatting of the data to be transmitted (e.g., data feeds or batch transmission), and the actual SDR data to be transmitted.

While these revisions may appear to broaden the scope of the Commission's ability to define the terms of data transfer to the Commission, current § 45.13(a) gives the Commission broad discretion in instructing SDRs on how to send data to the Commission to enable the Commission to perform its regulatory functions, increase market transparency, and mitigate systemic risk.<sup>137</sup> Current SDR practice also reflects the Commission's wide discretion in instructing SDRs in how to send data to the Commission, as the SDRs currently send large amounts of data to the Commission on a regular basis in various formats, based on instructions provided by the Commission. The Commission also believes incorporating the current § 45.13(a) requirements in § 49.17(c) would help SDRs by locating more of their SDR responsibilities located in part 49.

Though SDRs may need to update their systems in response to changing Commission instructions over time, the Commission expects to work with the SDRs to ensure that any changes are practical and reasonable, and provide time for the SDRs to adjust their systems.

<sup>136</sup> See *id.* (stating that SDRs shall transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission.).

<sup>137</sup> See Part 45 Adopting Release at 2169 (requiring an SDR to maintain all swap data reported to it in a format acceptable to the Commission, and to transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission); see also Part 49 Adopting Release at 54552 (stating that the Commission does not believe that SDRs should have the discretion or ability to determine the appropriate data sets that should be provided to the Commission).

### 3. Technical Correction—§ 49.17(f)(2)

The Commission proposes to amend § 49.17 to replace an incorrect reference to “37.12(b)(7)” at the end of paragraph (f)(2) with the correct reference to “39.12(b)(7)” of the Commission's regulations, as there is no § 37.12(b)(7) in the Commission's regulations.<sup>138</sup> The Commission also proposes non-substantive amendments to § 49.17(f)(2) to incorporate proposed changes in terminology used in § 49.17(f)(2) in order for the terms used to be consistent with the terms listed in proposed § 49.2(a).

### 4. Delegation of Authority—§ 49.17(i)

The Commission proposes to move the delegation of authority in current § 49.17(i) to § 49.31(a)(7). Current § 49.17(i) delegates to the Director of DMO the authority reserved to the Commission in current § 49.17. This includes the authority to instruct SDRs on how to transmit SDR data to the Commission. As discussed further below in section II.V, the Commission is proposing to include as many delegations of authority as possible for part 49 in proposed § 49.31, including the delegation of authorities reserved to the Commission in § 49.17, to improve consistency within the part and remove confusion that may arise from listing delegations of authority in multiple sections. The Commission emphasizes that this change would not affect the current delegation of authority, as all functions reserved to the Commission in § 49.17 would still be delegated to the Director of DMO in proposed § 49.31.

*Request for Comment.* The Commission requests comment on all aspects of proposed § 49.17. The Commission also invites specific comment on the following:

(18) Is there a need to further clarify any of the requirements of the revised paragraphs of proposed § 49.17? If so, which requirements and what information need to be clarified? Please be specific.

(19) Are there any aspects of current or proposed § 49.17 that would inhibit or in any way prevent experimentation with or development of new technological approaches to SDR operations or providing SDR data to the Commission? If so, what are these inhibitors and how can they be mitigated?

### M. § 49.18—Confidentiality Arrangement

The Commission is proposing to move the delegation of authority in current § 49.18(e) to § 49.31(a)(8). Current

§ 49.18(e) delegates to the Director of DMO all functions reserved to the Commission in § 49.18, including the authority to specify the form of confidentiality arrangements required prior to disclosure of swap data by an SDR to an appropriate domestic or foreign regulator, and the authority to limit, suspend, or revoke such appropriate domestic or foreign regulators' access to swap data held by an SDR.

As discussed further below in section II.V, the Commission believes market participants would benefit by being able to locate most delegations of authority in proposed § 49.31. All functions reserved to the Commission in current § 49.18 would continue to be delegated to the Director of DMO under this proposed amendment.

### N. § 49.20—Governance Arrangements (Core Principle 2)

The Commission proposes to amend citations to § 49.2 within § 49.20 to conform to proposed changes in the numbering of the definitions contained in proposed § 49.2, as discussed above in section II.A. The Commission also proposes to make conforming changes to reflect the proposed changes to definitions in § 49.2. The Commission is proposing to amend current citations to § 49.2(a)(14) in § 49.20(b)(2)(v) and to § 49.2(a)(1) in § 49.20(c)(1)(ii)(B) to citations to § 49.2(a). The Commission also proposes to update these paragraphs and § 49.20(b)(2)(vii) to reflect proposed changes related to the definitions of “SDR data,” “SDR information,” “registered swap data repository,” and “reporting entity.” These non-substantive changes do not affect the existing requirements of § 49.20.

### O. § 49.22—Chief Compliance Officer

The Commission is proposing to amend § 49.22 to clarify obligations, make technical corrections and non-substantive changes, and remove unnecessary requirements.

The Commission is proposing to define senior officer in § 49.22(a) as the chief executive officer or other equivalent officer of the SDR.<sup>139</sup>

Proposed § 49.22(b)(1)(i) would specify that the chief compliance officer (“CCO”) of an SDR shall have the authority and resources to develop, in consultation with the board of directors or senior officer, the policies and procedures of the SDR and enforce such policies and procedures to fulfill the

<sup>139</sup> The Commission notes that this amendment would define a term that is currently used throughout § 49.22.

<sup>138</sup> See 17 CFR 37.12(b).

duties set forth for CCOs in the CEA and Commission regulations.

Proposed § 49.22(c)(1) would clarify that only the SDR's board of directors or senior officer may appoint the CCO, and require that SDRs notify the Commission within two business days of the appointment, whether interim or permanent. Proposed § 49.22(c)(2) would require that the CCO report directly to the board of directors or the senior officer of the SDR. Proposed § 49.22(c)(3) would specify that only the board of directors or the senior officer may remove the CCO, and that the SDR shall notify the Commission within two business days of the removal, whether interim or permanent.

Proposed § 49.22(c)(4) would contain the requirement currently found in § 49.22(c)(1) for the CCO to meet with the board of directors or senior officer of the SDR at least annually.

Proposed § 49.22(d)(2) would provide more detail on conflicts of interest obligations by making clear that CCOs must take "reasonable steps," in consultation with the board of directors or the senior officer of the SDR, to resolve any "material" conflicts of interest that may arise, and would no longer list specific types of conflicts. Proposed § 49.22(d)(4) would remove an unnecessary reference to § 49.18. Proposed § 49.22(d)(5)–(6) would specify that SDRs must establish procedures reasonably designed to handle, respond, remediate, retest, and resolve noncompliance issues identified by the CCO through any means, including any compliance office review, look-back, internal or external audit finding, self-reported error, or validated compliant, and establish and administer a compliance manual designed to promote compliance with the applicable laws, rules, and regulations and a written code of ethics for the SDR designed to prevent ethical violations and to promote honesty and ethical conduct by SDR personnel.

Proposed § 49.22(e) would streamline, clarify, and rearrange the requirements of the SDR annual compliance report. The Commission is proposing to streamline and combine current § 49.22(e)(1) and (2) into proposed § 49.22(e)(1). The Commission is also proposing to remove many of the examples of how material compliance issues can be identified from current § 49.22(e)(5) so as not to imply any limits on the material compliance matters that must be described. Finally, the Commission proposes to add "in all material aspects" to the end of current § 49.22(e)(6) in proposed § 49.22(e)(5), in order to reduce CCOs' concerns with

certifying the annual compliance report's accuracy.

Proposed § 49.22(f)(1) would remove the requirement for any discussion of the annual compliance report after submission to the board of directors or senior officer to be recorded in the board minutes or other similar record as evidence of compliance with the submission requirement.<sup>140</sup>

Proposed § 49.22(f)(2) would increase the amount of time that SDRs have to submit the annual compliance report to the Commission from 60 days to 90 calendar days after the end of the SDR's fiscal year. As discussed above in section II.B, the Commission is also proposing to remove the annual amendment requirement in § 49.3(a)(5). The Commission is therefore also proposing to remove the reference to § 49.3(a)(5) from § 49.22(f)(2).

Proposed § 49.22(f)(3) would include a requirement that, where an amendment to the annual compliance report must be submitted to the Commission, the CCO also submit the amended annual compliance report to the SDR's board of directors or the senior officer.<sup>141</sup>

Proposed § 49.22(f)(4) would allow the Commission to more easily grant requests for an extension of time to file the annual compliance report by removing the requirement that SDRs must show "substantial, undue" hardship.

Proposed § 49.22(g) would simplify the language and organization of the recordkeeping requirements for records related to the SDRs' policies and records created related to the annual compliance report, and would no longer contain specific examples of records, but would still require the same records be maintained in accordance with proposed § 49.12.

Current § 49.22 sets forth the requirements for SDR CCOs, including: Their designation and qualifications; their appointment, supervision, and removal; their duties; and their responsibilities with respect to the annual compliance report and recordkeeping.

The Commission believes that the amendments discussed above would

clarify and streamline the requirements for, and responsibilities of, CCOs in a manner that balances the Commission's interest in providing CCOs discretion in fulfilling their duties against clearly specifying their responsibilities. The large majority of proposed amendments are non-substantive changes that would clarify the requirements, simplify the wording of the requirements, reorganize the requirements into a more logical order, or remove unnecessary text.

Proposed § 49.22(d)(2) would change the duties for CCOs related to conflicts of interest to a more practical requirement. Current § 49.22(d)(2) implies that a CCO should resolve all conflicts of interest, regardless of their potential effect on the operations of the SDR.<sup>142</sup> The Commission does not believe a CCO should be required to expend resources to resolve every conceivable conflict of interest that may affect an SDR and instead proposes to require CCOs to take reasonable steps to resolve any material conflicts of interest that may arise. This proposed requirement for taking reasonable steps to resolve material conflicts of interest reflects the CCO's practical ability to detect and resolve conflicts. Moreover, the proposed amendment reflects the Commission's belief that a CCO is well positioned to assess whether a potential conflict of interest is material to his or her SDR's ability to comply with the Act and the Commission's regulations. The Commission believes that proposed § 49.22(d)(2) would allow SDRs to address conflicts of interest while mitigating the burdens associated with addressing the conflicts.

The Commission notes that, while proposed § 49.22(d)(2) removes the three examples of potential conflicts of interest from current § 49.22(d)(2)(i)–(iii),<sup>143</sup> these three examples would still need to be addressed if they rise to the level of a material conflict of interest.

The Commission also proposes to streamline the requirements on SDRs in preparing the annual compliance report in proposed § 49.22(e)(1). Proposed § 49.22(e)(1) would remove the current § 49.22(e)(2)<sup>144</sup> required comparison of all applicable Commission regulations and CEA requirements with each SDR

<sup>140</sup> The Commission notes that, even with the removal of this requirement, the Commission may still require an SDR to provide a demonstration of compliance with the requirements of proposed § 49.22(f) under proposed § 49.29. See section II.T below.

<sup>141</sup> The Commission is also proposing a change to § 49.22(f)(3) to correct the inaccurate reference to § 49.22(e)(67). There is no § 49.22(e)(67) and the proposed amendment would instead reference the correct § 49.22(e)(5). This technical amendment does not affect the existing requirements of § 49.22(f)(3).

<sup>142</sup> See 17 CFR 49.22(d)(2) (requiring the CCO to, in consultation with the board of directors or senior officer, resolve any conflicts of interest that may arise).

<sup>143</sup> See *id.* (including conflicts between (i) business considerations and compliance requirements, (ii) business considerations and the requirement that the SDR provide fair and open access, and (iii) SDR management and members of the SDR's board of directors as examples of conflicts of interest to be addressed by the SDR's CCO).

<sup>144</sup> See 17 CFR 49.22(e)(2).

policy designed to satisfy each requirement and assessment of the effectiveness of each policy and areas for improvement. Proposed § 49.22(e)(1) would replace this requirement with a more targeted requirement to describe and assess the effectiveness of SDR policies and procedures designed to reasonably ensure compliance with the Act and applicable Commission regulations. Based on its experience in reviewing annual compliance reports, the Commission believes this more targeted requirement would focus on the most important and useful information in the annual compliance report and reduce the burden on SDRs in creating the assessment for the annual compliance report without any detrimental effects on SDR compliance or the Commission's ability to perform its oversight functions.

The Commission notes that it would also have the ability to request copies of any SDR policies and procedures and to request a demonstration of compliance with any SDR obligations under the Act or Commission regulations under proposed § 49.29.

The Commission also believes that multiple proposed changes to § 49.22(f) would simplify requirements and reduce compliance burdens on SDRs related to submitting the annual compliance reports. The proposed amendments would remove the requirement to record the submission of the annual compliance report and any subsequent discussion of the report in the board minutes (proposed § 49.22(f)(1)) as this requirement would be incorporated into the general recordkeeping requirement in proposed § 49.22(g); extend the time to submit the annual compliance report to the Commission from 60 to 90 days (proposed § 49.22(f)(2)) in recognition that the CCO has to prepare other year-end reports, such as the fourth quarter financial report; and allow reasonable requests for additional time to file an annual compliance report to be granted (proposed § 49.22(f)(4)) to provide more flexibility. Each of these amendments would simplify requirements or reduce compliance burdens on SDRs, without any substantial effect on the Commission's ability to oversee SDRs.

Finally, the Commission notes that the proposed changes to § 49.22(g) would simplify the wording of the recordkeeping requirement by removing the lengthy examples of records to be kept.<sup>145</sup> This proposed change does not, however, in any way limit the records that must be preserved under proposed § 49.22(g). All of the records listed in

current § 49.22(g) would still be required to be kept pursuant to proposed § 49.22(g) and proposed § 49.12(b)(1), along with any other qualifying records that are not listed.

*Request for Comment.* The Commission requests comment on all aspects of the proposed amendments to § 49.22. The Commission also invites specific comment on the following:

(20) Has the § 49.22(b)(2)(ii) prohibition on a CCO also serving as an SDR's general counsel or as a member of the SDR's legal department presented SDRs with any challenges or raised concerns that could be fixed by a change to the prohibition?

(21) Does proposed § 49.22(d)(2) provide CCOs with sufficient clarity as to the conflicts of interest that are within the scope of their responsibilities under the proposed rule?

(22) Does proposed § 49.22(d)(2) provide CCOs with sufficient authority to resolve any conflicts of interest that may arise as required by section 21(e)(2)(C) of the Act?

#### P. § 49.24—System Safeguards

The Commission proposes to make non-substantive amendments to § 49.24. Current § 49.24(d) governs SDR BC-DR plans, resources, and procedures. The proposed amendments to § 49.24 provide more detail as to the duties and obligations that SDRs must fulfill by expanding the non-exhaustive list of duties and obligations to include specific reference to §§ 49.10 to 49.21, § 49.23, and §§ 49.25 to 49.27. The Commission emphasizes that this list is provided merely for clarity purposes and would not in any way excuse any SDR from any of the duties and obligations included in other sections of the Commission's regulations. As the duties and obligations of these sections currently apply to SDRs and would continue to apply to SDRs, this non-substantive change would not affect the requirements applicable to SDRs.

The Commission also proposes to make technical amendments to § 49.24(i), to remove a reference to § 45.2. As described above in section II.H, the Commission is moving the SDR recordkeeping requirements contained in current § 45.2(f) and (g) to § 49.12 for consistence and clarity purposes. This proposed technical change would conform § 49.24(i) to the proposed changes to § 45.2 and § 49.12, but would not change any of the requirements applicable to SDRs.

#### Q. § 49.25—Financial Resources

As discussed above in section II.E, the Commission proposes conforming changes to § 49.25 to remove the

reference to § 49.9 and to core principle obligations identified in § 49.19. Proposed § 49.25(a) would instead refer to SDR obligations under "this chapter," to be broadly interpreted as any regulatory or statutory obligation specified in part 49. These technical changes do not impact existing obligations on SDRs.

The Commission is proposing one specific change to § 49.25(f)(3). Current § 49.25(f)(3) requires SDRs to submit their financial resources reports no later than 17 business days after the end of the SDR's fiscal quarter, or a later time that the Commission permits upon request. The Commission is proposing to amend § 49.25(f)(3) to extend the time SDRs have to submit their quarterly financial resources reports to not later than 40 calendar days after the end of the SDR's first three fiscal quarters, and not later than 90 calendar days after the end of the SDR's fourth fiscal quarter, or such later time as the Commission may permit in its discretion.

The Commission believes aligning the 90 calendar day deadline with the amended timeframe for SDRs submitting CCO reports in § 49.22(f)(2)<sup>146</sup> would help SDRs in planning their yearly compliance obligations.

*Request for Comment.* The Commission requests comment on all aspects of the proposed amendments to § 49.25.

#### R. § 49.26—Disclosure Requirements of Swap Data Repositories

The Commission proposes to amend § 49.26 to conform defined terms with the proposed amendments to § 49.2 discussed above in section II.A. The Commission also proposes to make updates to the introductory paragraph of § 49.26 to reflect updates to the terms "SDR data," "registered swap data repository," and "reporting entity." Current § 49.26 requires SDRs to furnish SEFs, DCMs, and reporting counterparties with an SDR disclosure document that sets forth the risks and costs associated with using the services of the SDR, and contains the information enumerated in § 49.26(a) through (i). These non-substantive amendments would not change the current requirements of § 49.26.

The Commission also proposes to add new § 49.26(j), which would require that the SDR disclosure document set forth the SDR's policies and procedures regarding the reporting of SDR data to the SDR, including the SDR data validation procedures, swap data verification procedures, and procedures

<sup>145</sup> See 17 CFR 49.22(g).

<sup>146</sup> Discussed above in section II.O.

for correcting SDR data errors and omissions.

The Commission believes that § 49.26(j) would assist market participants with acquiring information regarding SDR operations that would help inform their decision-making in regards to choosing which SDRs to use for swaps reporting. Disclosing the SDR data reporting policies and procedures, the SDR data validation procedures, the swap data verification procedures, and the SDR data correction procedures would also increase data quality by helping reduce the number of data errors and omissions by providing the SEFs, DCMs, and reporting counterparties with the information needed to properly design their reporting systems before any reporting occurs. The Commission notes that the requirements to provide the policies and procedures for reporting, validations, verification, and corrections would apply for all SDR data to be reported, as applicable.

*Request for Comment.* The Commission requests comment on all aspects of proposed § 49.26. The Commission also invites specific comment on the following:

(23) Should the Commission require any other specific information be disclosed by SDRs to facilitate market participants' informed decision making? If so, please describe what other information should be disclosed and why. Please be specific.

#### S. § 49.28—Operating Hours of Swap Data Repositories

The Commission is proposing to add new § 49.28 to provide more detail on SDRs' responsibilities with respect to hours of operation. The proposed amendments reflect the Commission's belief that SDRs should operate as continuously as possible while still being afforded the opportunity to perform necessary testing, maintenance, and upgrades of their systems.

##### 1. General Requirements—§ 49.28(a)

Proposed § 49.28(a) would require an SDR to have systems in place to continuously accept and promptly record all SDR data reported to the SDR, and, as applicable, publicly disseminate all swap transaction and pricing data reported to the SDR as required under part 43.

Proposed § 49.28(a)(1) would allow an SDR to establish normal closing hours to perform system maintenance during periods when, in the SDR's reasonable estimation, the SDR typically receives

the least amount of SDR data.<sup>147</sup> Under proposed § 49.28(a)(1), an SDR would also have to provide reasonable advance notice of its normal closing hours to market participants and to the public.

Proposed § 49.28(a)(2) would allow an SDR to declare, on an ad hoc basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. Similar to proposed § 49.28(a)(1), proposed § 49.28(a)(2) instructs SDRs to schedule special closing hours during periods when, in the SDR's reasonable estimation, the special closing hours would, to the extent possible given the circumstances prompting the special closing hours, be least disruptive to the SDR's SDR data reporting responsibilities. Proposed § 49.28(a)(2) would also require the SDRs to provide reasonable advance notice of the special closing hours to market participants and the public whenever possible, and, if advance notice is not reasonably possible, to give notice to the public as soon as is reasonably possible after declaring special closing hours.

Current § 43.3(f) regulates the hours during which SDRs that accept and publicly disseminate swap transaction and pricing data must operate. Current § 43.3(f) reflects the Commission's beliefs that the global nature of the swaps market requires that SDRs be able to publicly disseminate swap transaction and pricing data at all times and that SDRs that publicly disseminate swap transaction and pricing data should generally be fully operational 24 hours a day, 7 days a week.<sup>148</sup> While the Commission strongly encourages SDRs to adopt redundant systems to allow public reporting during closing hours, current § 43.3(f) allows SDRs to schedule downtime to perform system maintenance. Current § 43.3(g) addresses SDRs' obligations regarding swap transaction and pricing data sent to an SDR for publicly reportable swap transactions during closing hours.

The Commission proposes to include the requirements of current § 43.3(f) and

§ 43.3(g) in proposed § 49.28 and to expand the operating hours requirement beyond public reporting of swap transaction and pricing data to also explicitly include fulfilling an SDR's responsibilities under parts 45, 46, and 49. This proposed change is intended to make clear that the obligations of SDRs to operate near continuously is not limited to the receipt and dissemination of swap transaction and pricing data pursuant to part 43, but instead SDRs must be able to continuously perform all of their data-related responsibilities required under the Commission's regulations.

The Commission also believes that it would help SDRs and market participants to move all SDR operating hours requirements to part 49. The proposed requirements discussed above would also include many of the requirements of the SEC's operating hours regulations governing SBSDRs to increase consistency between the regulations for SDRs and SBSDRs.<sup>149</sup>

##### 2. Part 40 Requirement for Closing Hours—§ 49.28(b)

Proposed § 49.28(b) would require SDRs to comply with the requirements under part 40 of the Commission's regulations when adopting or amending normal closing hours and special closing hours.<sup>150</sup> The Commission anticipates that, due to the unexpected and emergency nature of special closing hours, rule filings related to special closing hours would typically qualify for the emergency rule certification provisions of § 40.6(a)(6).<sup>151</sup> This requirement is already applicable to SDRs pursuant to current § 43.3(f)(3).<sup>152</sup>

<sup>149</sup> The SEC's operating hours regulations are contained in 17 CFR 242.904. While current § 43.3(f) allows SDRs to schedule closing hours while avoiding the times that, in an SDR's estimation, U.S. markets and major foreign markets are most active, and requires the SDRs to provide advance notice of closing hours to market participants and the public, current § 43.3(f) does not make a distinction between regular closing hours and special closing hours. The distinction is present, however, in operating hours requirements for SBSDRs, and proposed § 49.28(a)(1)–(2) would largely adopt the SBSDR requirement. These requirements would make clear that an SDR may establish both normal and special closing hours and would allow an SDR that also registers with the SEC as an SBSDR to effectively follow the same operating hours requirements.

<sup>150</sup> Closing hours would be considered "rules" for the purposes of part 40 requirements. See 17 CFR 40.1, *et. seq.*

<sup>151</sup> See 17 CFR 40.6(a)(6) (containing the requirements for establishing standards for responding to an emergency and for emergency rule filings); see also 17 CFR 40.1(h) (defining "emergency" for the purposes of part 40).

<sup>152</sup> See 17 CFR 43.3(f)(3) (A registered swap data repository shall comply with the requirements under part 40 of this chapter in setting closing hours and shall provide advance notice of its

<sup>147</sup> The Commission notes that this would be a minor change from the existing requirements of § 43.3(f)(2), which prescribes that SDRs avoiding scheduling closing hours during the time when the SDR reasonably estimates that the swaps markets are most active. The Commission believes times when SDRs receive less SDR data would be a better measure of when to schedule normal closing hours for SDRs.

<sup>148</sup> See Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1204 (Jan. 9, 2012) (The Commission agrees that the global nature of the swaps market requires that an SDR be able to publicly disseminate swap transaction and pricing data at all times and believes that SDRs that publicly disseminate swap transaction and pricing data should be fully operational 24 hours a day, 7 days a week.).

### 3. Acceptance of SDR Data During Closing Hours—§ 49.28(c)

Proposed § 49.28(c) would require an SDR to have the capability to accept and hold in queue any and all SDR data reported to the SDR during normal closing hours and special closing hours. The Commission believes this requirement would help to avoid the loss of any SDR data that is reported to an SDR during closing hours and to facilitate the SDR's prompt fulfillment of its data reporting responsibilities, including public dissemination of swap transaction and pricing data, as applicable, once the SDR reopens from closing hours. Proposed § 49.28(c) would expand the similar existing requirements for swap transaction and pricing data in § 43.3(g)<sup>153</sup> to all SDR data and would largely follow the SBSDR requirements to receive and hold in queue information regarding security-based swaps.<sup>154</sup>

Proposed § 49.28(c)(1) would require an SDR, on reopening from normal or special closing hours, to promptly process all SDR data received during the closing hours and, pursuant to part 43, to publicly disseminate swap transaction and pricing data reported to the SDR that was held in queue during the closing hours. Proposed § 49.28(c)(1) would expand the similar existing requirements for the SDRs to disseminate swap transaction and pricing data pursuant to § 43.3(g)(1)<sup>155</sup> to also include the prompt processing of all other SDR data received and held in queue during closing hours. The proposed requirements would also largely follow the SBSDR requirements for disseminating transaction reports after reopening following closing hours.<sup>156</sup>

closing hours to market participants and the public.).

<sup>153</sup> See 17 CFR 43.3(g) (During closing hours, a registered swap data repository shall have the capability to receive and hold in queue any data regarding publicly reportable swap transactions pursuant to this part.).

<sup>154</sup> See 17 CFR 242.904(c) (During normal closing hours, and to the extent reasonably practicable during special closing hours, a registered security-based swap data repository shall have the capability to receive and hold in queue information regarding security-based swaps that has been reported pursuant to §§ 242.900 through 242.909.).

<sup>155</sup> See 17 CFR 43.3(g)(1) (Upon reopening after closing hours, a registered swap data repository shall promptly and publicly disseminate the swap transaction and pricing data of swaps held in queue, in accordance with the requirements of this part.).

<sup>156</sup> See 17 CFR 242.904(d) (When a registered security-based swap data repository re-opens following normal closing hours or special closing hours, it shall disseminate transaction reports of security-based swaps held in queue, in accordance with the requirements of § 242.902.).

The Commission believes SDR closing hours should disrupt the data reporting process as little as possible, and therefore believes that the SDRs should be responsible for receiving, holding, and then disseminating SDR data as required, as opposed to disrupting the reporting systems of SEFs, DCMs, and reporting counterparties.

Proposed § 49.28(c)(2) would require SDRs to immediately issue notice to all SEFs, DCMs, reporting counterparties, and the public in the event that an SDR is unable to receive and hold in queue any SDR data reported during normal closing hours or special closing hours. Proposed § 49.28(c)(2) would also require SDRs to issue notice to all SEFs, DCMs, reporting counterparties, and the public that the SDR has resumed normal operations immediately on reopening.<sup>157</sup> Proposed § 49.28(c)(2) would then require a SEF, DCM, or reporting counterparty that was not able to report SDR data to an SDR because of the SDR's inability to receive and hold in queue any SDR data to immediately report the SDR data to the SDR.

Proposed § 49.28(c)(2) would expand the similar existing requirements for swap transaction and pricing data in § 43.3(g)(2)<sup>158</sup> to all SDR data and would largely follow the SBSDR requirements to receive and hold in queue information regarding security-based swaps.<sup>159</sup> The Commission

<sup>157</sup> Consistent with the current requirements under part 43, an SDR may issue such notices to its participants and the public by publicizing the notices that the SDR is unable to receive and hold in queue any SDR data and that the SDR has resumed normal operations in a conspicuous place on the SDR's website. See 77 FR at 1205, n. 208 (allowing SDRs to provide reasonable advance notice of its closing hours to participants and the public by providing notices directly to its participants or publicizing its closing hours in a conspicuous place on its website).

<sup>158</sup> See 17 CFR 43.3(g)(2) (If at any time during closing hours a registered swap data repository is unable to receive and hold in queue swap transaction and pricing data pursuant to this part, then the registered swap data repository shall immediately upon reopening issue notice that it has resumed normal operations. Any registered swap execution facility, designated contract market or reporting party that is obligated under this section to report data to the registered swap data repository shall report the data to the registered swap data repository immediately after receiving such notice.).

<sup>159</sup> See 17 CFR 242.904(e) (If a registered security-based swap data repository could not receive and hold in queue transaction information that was required to be reported pursuant to §§ 242.900 through 242.909, it must immediately upon reopening send a message to all participants that it has resumed normal operations. Thereafter, any participant that had an obligation to report information to the registered security-based swap data repository pursuant to §§ 242.900 through 242.909, but could not do so because of the registered security-based swap data repository's inability to receive and hold in queue data, must promptly report the information to the registered security-based swap data repository.).

emphasizes that it would expect SDRs to be able to accept and hold in queue SDR data that is reported during closing hours. The inability to accept and hold in queue SDR data would need to be a rare occurrence that results from unanticipated emergency situations. The provisions in § 49.28(c)(2) would only be included as a last resort to prevent data loss.

Though proposed § 49.28 would apply to all SDR data, as opposed to only swap transaction and pricing data reported pursuant to part 43, the Commission believes that proposed § 49.28 would have little impact on the operations of SDRs. Proposed § 49.28 largely encompasses the requirements of current § 43.3(f) and (g), which already apply to SDRs, and the sections that largely conform to SEC regulations governing SBSDRs would allow an SDR that also registers with the SEC as an SBSDR to effectively comply with one set of regulations. The Commission also understands that SDRs currently routinely receive and hold in queue all SDR data submitted during declared SDR closing hours, regardless of whether that data is being submitted pursuant to part 43 or another Commission regulation. As a result, the Commission believes that expanding the operating hours requirements to all SDR data would have little practical impact on current SDR operations.

*Request for Comment.* The Commission requests comment on all aspects of proposed § 49.28. The Commission also invites specific comment on the following:

(24) Does proposed § 49.28 provide SDRs sufficient flexibility to conduct necessary maintenance on their electronic systems while still facilitating the availability of SDR data for the Commission and the public? Please be specific.

### T. § 49.29—Information Relating to Swap Data Repository Compliance

The Commission is proposing to add new § 49.29 to provide for information requests from the Commission to SDRs regarding information the Commission needs to perform its duties and regarding SDR compliance with regulatory duties and core principles.

Proposed § 49.29(a) would require SDRs, upon request by the Commission, to file certain information related to its business as an SDR or other such information as the Commission determines to be necessary or appropriate for the Commission to perform its regulatory duties. The SDRs would be required to provide the requested information in the form and



manner and within the time specified by the Commission in its request.

Proposed § 49.29(b) would require SDRs, upon request by the Commission, to demonstrate compliance with their obligations under the CEA and Commission regulations, as specified in the request. The Commission notes that the requests may include, but are not limited to, demonstrating compliance with the core principles applicable to SDRs under section 21(f) of the CEA and part 49. SDRs would be required to provide the requested information in the form and manner and within the time specified by the Commission in its request.

The Commission notes that these requests may be made for any Commission oversight purpose. For example, the Commission may request SDRs to provide information relating to their operations or their practices in connection with their compliance with particular regulatory duties and core principles, other conditions of their registration, or in connection with the Commission's general oversight responsibilities under the CEA. Proposed § 49.29 is based on existing Commission requirements applicable to SEFs and DCMs.<sup>160</sup>

The Commission notes that proposed § 49.29 facilitates the removal of the requirement for annual Form SDR updates from § 49.3(a)(5), as the Commission would be able to request the same information that would be contained in Form SDR and its exhibits as needed without the need for a regular full Form SDR update.

*Request for Comment.* The Commission requests comment on all aspects of proposed § 49.29.

#### *U. § 49.30—Form and Manner of Reporting and Submitting Information to the Commission*

The Commission is proposing to add new § 49.30 to place the various requirements for form and manner requests to SDRs from the Commission in one section. The proposed changes to part 49 of the Commission's regulations set forth in this proposal contain various regulatory provisions that would require SDRs to provide reports and other information to the Commission in "the form and manner" requested or directed by the Commission. In particular, proposed §§ 49.13(a) and 49.29 would require SDRs to provide reports and certain other information to the Commission in the "form and manner" requested or directed by the Commission.

Proposed § 49.30 would establish the broad parameters of the "form and manner" requirement. Unless otherwise instructed by the Commission, an SDR would have to submit SDR data reports and any other information required under part 49 to the Commission, within the time specified, using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission. The "form and manner" requirement proposed in § 49.30 would not supplement or expand upon existing substantive provisions of part 49, but instead, would only allow the Commission to specify how existing information reported to, and maintained by, SDRs should be formatted and delivered to the Commission.

Proposed § 49.30 provides that the Commission would specify, in writing, the format, coding structure, and electronic data transmission procedures for various reports and submissions that are required to be provided to the Commission under part 49. The Commission notes that these written instructions would include the most recent, and any future, "guidebooks" or other technical specifications published on the Commission's website, as applicable.<sup>161</sup>

*Request for Comment.* The Commission requests comment on all aspects of proposed § 49.30. The Commission also invites specific comment on the following:

(25) Should the Commission provide a single format or coding structure for each SDR to deliver reports and other information in a consistent manner? Are existing standards and formats sufficient for providing the Commission with requested information? Please explain why or why not.

(26) Should the Commission require specific electronic data transmission methods and/or protocols for SDRs to disseminate reports and other information to the Commission? Please explain why or why not.

#### *V. § 49.31—Delegation of Authority to the Director of the Division of Market Oversight Relating to Certain Part 49 Matters*

The Commission is proposing to add new § 49.31 to consolidate delegations of authority for part 49. Current part 49 and many amendments to part 49

proposed in this release include provisions that require SDRs to perform various functions at the request of the Commission or to provide information as prescribed by the Commission or as instructed by the Commission. The Commission proposes to delegate the authority to exercise most of the listed part 49 functions to the Director of DMO to facilitate the Commission's ability to respond to changes in the swaps market and technological developments, and to ensure the Commission's ability to quickly and efficiently access information and data from the SDRs in order to efficiently fulfill its market surveillance responsibilities and other regulatory obligations.

The Commission is proposing to delegate the functions in the below current and proposed regulations to the Director of DMO, and to such members of the Commission's staff acting under his or her direction as he or she may see fit from time to time.

Proposed § 49.31(a)(1) would delegate to the Director of DMO the authority to request documentation related to an SDR equity interest transfer pursuant to § 49.5.<sup>162</sup>

Proposed § 49.31(a)(2) would delegate to the Director of DMO the authority to instruct SDRs on how to transmit open swaps reports to the Commission pursuant to § 49.9.<sup>163</sup>

Proposed § 49.31(a)(3) would delegate to the Director of DMO the authority to modify the requirement for an SDR to accept all data from all swaps in an asset class once the SDR includes the asset class in its application for registration pursuant to § 49.10.<sup>164</sup>

Proposed § 49.31(a)(4) would delegate to the Director of DMO the authority to request records pursuant to § 49.12.<sup>165</sup>

Proposed § 49.31(a)(5) would delegate to the Director of DMO the authority to request SDRs monitor, screen, and analyze SDR data pursuant to § 49.13.<sup>166</sup>

Proposed § 49.31(a)(6) would delegate to the Director of DMO the authority to request SDRs disclose aggregated SDR data in the form and manner prescribed by the Commission pursuant to § 49.16.<sup>167</sup>

Proposed § 49.31(a)(7) would delegate to the Director of DMO the authority to prescribe the form of direct electronic access that SDRs make available to the Commission, prescribe the format by which SDRs maintain SDR data, to request SDRs transmit SDR data to the

<sup>161</sup> The Commission's current published "guidebooks" include those published for reporting required by parts 15, 16, 17, 18, and 20 of the Commission's regulations relating to ownership and control reports, large traders reports, and data reporting. These guidebooks are available on the Commission's website at <http://www.cftc.gov/Forms/index.htm>.

<sup>162</sup> See section II.C above.

<sup>163</sup> See section II.E above.

<sup>164</sup> See section II.F above.

<sup>165</sup> See section II.H above.

<sup>166</sup> See section II.I above.

<sup>167</sup> See section II.K above.

<sup>160</sup> See, e.g., 17 CFR 37.5 and 38.5.

Commission, and to instruct SDRs on transmitting SDR data to the Commission pursuant to § 49.17.<sup>168</sup>

Proposed § 49.31(a)(8) would delegate to the Director of DMO the authority to permit SDRs to accept alternative forms of confidentiality arrangements and the ability to direct SDRs to limit, suspend, or revoke access to swap data pursuant to § 49.18.<sup>169</sup>

Proposed § 49.31(a)(9) would delegate to the Director of DMO the authority to grant extensions to the annual compliance report deadline pursuant to § 49.22.<sup>170</sup>

Proposed § 49.31(a)(10) would delegate to the Director of DMO the authority to require SDRs to exercise emergency authority or provide the documentation underlying an SDR's decision to exercise its emergency authority pursuant to § 49.23.<sup>171</sup>

Proposed § 49.31(a)(11) would delegate to the Director of DMO the authority to determine an SDR to be a "critical SDR" and to request copies of BC–DR books and records, assessments, test results, plans, and reports pursuant to § 49.24.<sup>172</sup>

Proposed § 49.31(a)(12) would delegate to the Director of DMO the authority to determine the amount, value, and types of financial resources SDRs must maintain to perform their statutory duties set forth in part 49 and request reports of financial resources pursuant to § 49.25.<sup>173</sup>

Similar to provisions relating to demonstrations of compliance by SEFs,<sup>174</sup> proposed § 49.31(a)(13) would delegate to the Director of DMO the authority to request information from SDRs related to their business as SDRs or information the Commission determines is necessary or appropriate to perform its statutory and regulatory responsibilities in the form and manner specified by the Commission, as well as written demonstrations of compliance by in the form and manner specified by the Commission pursuant to § 49.29.<sup>175</sup>

Proposed § 49.31(a)(14) would delegate to the Director of DMO the authority to establish such format, coding structure, and electronic data transmission procedures for SDR data reports and any other information

required by the Commission under part 49 pursuant to § 49.30.<sup>176</sup>

### III. Proposed Amendments to Part 45

#### A. § 45.2—Swap Recordkeeping

The Commission is proposing a non-substantive change to remove current § 45.2(f) and (g). Current § 45.2 lists the general recordkeeping requirements of part 45, with § 45.2(f) and (g) applying specifically to SDRs.<sup>177</sup> Current § 45.2(f) contains the SDR recordkeeping requirements and current § 45.2(g) includes the SDR record retention requirements.

Part 45 generally focuses on duties to report swap data to SDRs, while part 49 addresses obligation of SDRs. Part 49 is therefore the more logical location for SDR recordkeeping requirements. As described above, the Commission is proposing to expand on the SDR recordkeeping requirements in § 49.12, which includes incorporating the requirements of current § 45.2(f) and (g), among other amendments.<sup>178</sup> Current § 45.2(f) and (g) would be redundant, as their provisions are subsumed in proposed § 49.12, and keeping the paragraphs in part 45 could cause confusion as to the recordkeeping requirements that apply to SDRs. The Commission notes that all of the actual requirements contained in current § 45.2(f) and (g) would continue to apply to SDRs, because the requirements are included in proposed § 49.12.

#### B. § 45.14—Verification of Swap Data Accuracy and Correcting Errors and Omissions in Swap Data

The Commission is proposing to amend § 45.14 to facilitate the verification of swap data by reporting counterparties and to simplify and improve the requirements for correcting errors and omissions in swap data previously reported or erroneously not reported as required by Commission regulations. As discussed above in section II.G, the Commission is also amending the SDRs' responsibilities to verify the accuracy and completeness of swap data reported to SDRs. The Commission believes that revised § 49.11 and proposed § 45.14(b) would provide SDRs, swap counterparties, SEFs, and DCMs with a clear understanding of their respective responsibilities in having errors or omissions in swap data corrected.

1. Verification of Swap Data Accuracy to a Swap Data Repository—§ 45.14(a)

The Commission is proposing to move the requirements in current § 45.14(a) to § 45.14(b). In its place, the Commission is proposing the new requirements for reporting counterparties to verify swap data.

Proposed § 45.14(a) would generally require that reporting counterparties verify the accuracy and completeness of swap data for swaps for which they are the reporting counterparty.<sup>179</sup> Proposed § 45.14(a)(1) would require that a reporting counterparty reconcile its internal books and records for each open swap for which it is the reporting counterparty with every open swaps report provided to the reporting counterparty by an SDR pursuant to proposed § 49.11. Proposed § 45.14(a)(1) would further require that reporting counterparties conform to the swap data verification policies and procedures created by an SDR pursuant to proposed § 49.11.

Proposed § 45.14(a)(2) would require that reporting counterparties submit either a verification of data accuracy or a notice of discrepancy in response to every open swaps report received from an SDR within the following timeframes: (i) 48 hours of the SDR providing the open swaps report if the reporting counterparty is an SD, MSP, or DCO; or (ii) 96 hours of the SDR providing the open swaps report for non-SD/MSP/DCO reporting counterparties.<sup>180</sup>

Proposed § 45.14(a)(3) would require that, if a reporting counterparty finds no discrepancies between the accurate and current swap data for a swap according to the reporting counterparty's internal books and records and the swap data for the swap contained in the open swaps report provided by the SDR, the reporting counterparty submit a verification of data accuracy indicating

<sup>179</sup> This paragraph is the counterpart to the verification requirements for SDRs contained in proposed § 49.11. See section II.G above. The SDRs would provide their verification policies and procedures to their users and potential users pursuant to proposed § 49.26(f).

<sup>180</sup> As explained above in section II.G, non-SD/MSP/DCO reporting counterparties tend to be entities that are less active in the swaps markets and tend to have fewer resources that can be devoted to regulatory compliance, including verification systems, than would be expected for a larger registered entity such as an SD, MSP, or DCO. The Commission believes that requiring non-SD/MSP/DCO reporting counterparties to respond to an open swaps report within 96 hours would fulfill the Commission's needs to have swap data verified (and corrected, as needed) while also minimizing the burden on these reporting counterparties in a way that does not compromise swap data or the Commission's ability to perform its regulatory functions.

<sup>168</sup> See section II.L above.

<sup>169</sup> See section II.M above.

<sup>170</sup> See section II.O above.

<sup>171</sup> See 17 CFR 49.23.

<sup>172</sup> See 17 CFR 49.24.

<sup>173</sup> See 17 CFR 49.25.

<sup>174</sup> See 17 CFR 37.5 (containing requirements for demonstrations of compliance by SEFs and delegating the authority contained in the section to the Director of DMO).

<sup>175</sup> See section II.T above.

<sup>176</sup> See section II.U above.

<sup>177</sup> See generally 17 CFR 45.2.

<sup>178</sup> See section II.H above.

that the swap data is complete and accurate to the SDR in the form and manner required by the SDR's swap data verification policies and procedures created pursuant to § 49.11.

Finally, proposed § 45.14(a)(4) would require that, if a reporting counterparty finds any discrepancy between the accurate and current swap data for a swap according to the reporting counterparty's internal books and records and the swap data for the swap contained in the open swaps report provided by the SDR, including, but not limited to, any over-reporting or under-reporting of swap data for any swap, the reporting counterparty submit a notice of discrepancy to the SDR in the form and manner required by the SDR's swap data verification policies and procedures created pursuant to § 49.11.

The Commission is proposing the new verification rules in § 45.14(a) to help improve swap data quality by facilitating the resolution of any discrepancies between the reporting counterparties' records of their open swaps and the swap data maintained by an SDR. The Commission believes the most effective way to accomplish verification is by having reporting counterparties compare their own records for each open swap as of the moment captured in the open swaps report with the swap data included for each swap in an open swaps report. The Commission believes that these requirements would help ensure that reporting counterparties perform the reconciliation promptly and provide a response to the SDR, which would ensure that swap data is reviewed in a timely manner and that SDRs can fulfill their verification responsibilities under proposed § 49.11.

The Commission notes that a reporting counterparty would be required to perform this reconciliation for every open swap included in each open swaps report provided to the reporting counterparty by any SDR.<sup>181</sup> The Commission also notes that not receiving an expected open swaps report from an SDR that the reporting counterparty believes maintains swap data for open swaps for which it is the reporting counterparty would constitute an error or omission that the reporting counterparty must correct with the SDR

pursuant to proposed § 45.14(b). Likewise, receiving an open swaps report for swaps that are no longer open would also constitute an error that would require correction under proposed § 45.14(b).

The Commission also notes that for all reporting counterparties the timing requirement of proposed § 45.14(a) is based on when the SDR makes the open swaps report available to the reporting counterparty, not when the reporting counterparty receives or accesses the open swaps report. A reporting counterparty's failure to receive or access, and analyze, an open swaps report that was properly provided by an SDR would not excuse the reporting counterparty from the requirements of proposed § 45.14(a). This standard would help ensure that reporting counterparties maintain properly functioning systems for the timely receipt and review of open swaps reports that conform to SDR verification policies and procedures.

The Commission is not proposing a form or manner for the verification of data accuracy in proposed § 45.14(a)(3) or the notice of discrepancy in proposed § 45.14(a)(4), but is instead proposing that the reporting counterparty provide a verification or notice that meets the requirements of the SDR's verification policies and procedures created pursuant to § 49.11. This requirement would help ensure that reporting counterparties provide verifications of data accuracy or notices of discrepancy to the SDRs that the SDRs can use to complete the verification process. As reporting counterparties already report information to SDRs under other Commission regulations, the Commission expects that SDRs and reporting counterparties would work together to design the method for submitting verifications and notifications that is the most efficient and convenient for both parties, with particular attention to creating a system that is not unnecessarily burdensome for non-SD/MSP/DCO reporting counterparties.

The Commission notes that the notice of discrepancy is not the means by which the reporting counterparty would correct errors or omissions in swap data. The process of error correction would be governed by proposed § 45.14(b), as discussed below. The notice of discrepancy would merely be a notice that the reporting counterparty does not believe that one or more elements of swap data contained, or missing, in the open swaps report are correct. Finding any discrepancy in the swap data would however prompt a reporting counterparty's responsibility to correct

all discrepancies in the swap data pursuant to proposed § 45.14(b).

The Commission emphasizes the importance of robust and thorough verification processes under proposed § 45.14(a). For clarity, examples of unsatisfactory verification would include, but are not limited to: (i) Failure to perform the verification in a timely manner as required by proposed § 45.14(a); and (ii) providing a verification of data accuracy indicating that the swap data was complete and accurate for swap data that was not correct when verified. The Commission would consider any error or omission that reasonably could have been discovered during the verification process to have been discovered by the reporting counterparty, and therefore providing a verification of data accuracy in response to an open swaps report that contains an error or omission would not comply with the proposed requirements. The Commission also notes that each incorrect verification, including the failure to recognize the same error or omission in swap data over time and allowing the error or omission to persist over multiple open swaps reports and verifications, would also not comply with the proposed requirements.

Finally, the Commission expects that a reporting counterparty repeatedly discovering errors or omissions in the open swaps reports, especially if there is a discernable pattern in the errors or omissions, would prompt the reporting counterparty to evaluate its reporting systems to discover any potential systemic errors or omissions, including working with the SDR to improve its data reporting, as needed. The Commission notes that a pattern of failures may implicate other requirements for further action and disclosure of non-compliance by registered entities, such as SDs, MSPs, SEFs, DCMs, or DCOs.

## 2. Corrections of Errors and Omissions in Swap Data—§ 45.14(b)

The Commission is proposing amendments to the § 45.14(b) requirements for correcting errors and omissions in swap data that was previously reported to an SDR or that was not reported as required.<sup>182</sup> These

<sup>181</sup> The SDRs would provide open swaps reports to the individual reporting counterparties in accordance with the frequency and timing requirements included in proposed § 49.11. An entity would only be required to verify the accuracy and completeness of swap data for open swaps to which it is the reporting counterparty, such that if a reporting counterparty did not have any open swaps with an SDR, it would not receive an open swaps report from that SDR and would not be required to verify swap data with that SDR.

<sup>182</sup> The Commission notes that the failure to perform the initial reporting of swap data as required under § 45.3 is an "omission" for the purposes of current and proposed § 45.14. The omission must be corrected pursuant to the same requirements as any other error or omission, regardless of the state of the swap, by reporting the swap data as soon as technologically practicable after discovery of the failure to report. This includes reporting the omitted swap data to the SDR as

error and omission correction requirements are effectively the same as the correction requirement in current § 45.14, but the Commission is proposing to clarify which entities have the correction reporting responsibilities.

Proposed § 45.14(b)(1) would require any SEF, DCM, or reporting counterparty that by any means becomes aware of any error or omission in swap data previously reported to an SDR by the SEF, DCM, or reporting counterparty to submit corrected swap data to the SDR.<sup>183</sup> Proposed § 45.14(b)(1) would also require any SEF, DCM, or reporting counterparty that by any means becomes aware of any swap data not reported to an SDR by the SEF, DCM, or reporting counterparty as required to submit corrected swap data to the SDR.<sup>184</sup> Awareness of errors and omissions to be corrected would include, but would not be limited to, errors or omissions present in the swap data in the open swaps reports provided as part of the verification process specified in proposed § 45.14(a).<sup>185</sup> The error and omission correction requirements would apply regardless of the state of the swap, and include the correction of swaps that are no longer open or “alive.”

Proposed § 45.14(b)(1)(i) would retain the current § 45.14(a)(2) requirement that SEFs, DCMs, and reporting counterparties correct swap data “as soon as technologically practicable following discovery of the errors or omissions,” but would backstop “as soon as technologically practicable” for

corrections at three business days after discovery of the error or omission.

Proposed § 45.14(b)(1)(ii) would require that if a SEF, DCM, or reporting counterparty is unable to correct errors or omissions within three business days of discovery, the SEF, DCM, or reporting counterparty must immediately inform the Director of DMO, or such other Commission employees whom the Director of DMO may designate, in writing, of the errors or omissions and provide an initial assessment of the scope of the errors or omissions<sup>186</sup> and an initial remediation plan for correcting the errors or omissions.

Proposed § 45.14(b)(1)(iii) would require that a SEF, DCM, or reporting counterparty conform to the SDR’s policies and procedures for corrections of errors and omissions that the SDRs would be required to create under proposed § 49.10.<sup>187</sup> By following the relevant SDR’s policies and procedures for swap data correction, provided to users by the SDRs pursuant to proposed § 49.26(j), SEFs, DCMs, and reporting counterparties would be able to correct swap data with as little effort as necessary.

Proposed § 45.14(b)(2) would require a non-reporting counterparty that by any means becomes aware of any error or omission in swap data previously reported to an SDR, or the omission of swap data for a swap that was not previously reported to an SDR as required, to notify the reporting counterparty for the swap of the errors or omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions.

Proposed § 45.14(b)(2) would also specify that a non-reporting counterparty that does not know the identity of the reporting counterparty for a swap must notify the SEF or DCM where the swap was executed of the errors or omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days after the discovery. Proposed § 45.14(b)(2) would also require that if the reporting counterparty, SEF, or DCM, as applicable, and the non-reporting counterparty agree that the swap data

for a swap is incorrect or incomplete, the reporting counterparty, SEF, or DCM, as applicable, must correct the swap data in accordance with proposed § 45.14(b)(1).<sup>188</sup>

Current § 45.14(a) generally requires that each registered entity and swap counterparty required to report swap data must also report any errors and omissions discovered in the swap data as soon as technologically practicable after the errors or omissions are discovered and contains specific instructions for reporting errors or omissions in continuation data reported using the snapshot method.

Current § 45.14(b) requires the non-reporting counterparty to promptly notify the reporting counterparty of any errors or omissions and requires the reporting counterparty to correct the errors or omissions under the terms of current § 45.14(a).

Current § 45.14(c) requires: (i) Registered entities or swap counterparties to report corrections in the same format as the original reporting of the swap data, unless otherwise approved by the Commission’s Chief Information Officer (“CIO”); and (ii) the SDR to transmit the corrections for errors and omissions in swap data in the same format used to originally disseminate the swap data, unless otherwise approved by the Commission’s CIO.

The Commission is proposing to clarify that swap data must be corrected “regardless of the state of the swap that is the subject of the swap data” so market participants are aware that all incorrect or omitted swap data must be corrected, even if the swap that the swap data described has been terminated, matured, or otherwise ceased to be an open swap. The Commission does not believe this is a new requirement, as the current correction requirements of § 45.14 do not have time restrictions. Many of the Commission’s regulatory responsibilities involve using swap data for swaps that were executed months or years earlier, including terminated, matured, or otherwise no-longer-open swaps. Incorrect swap data for these swaps, or a lack of any required reporting, would interfere with the Commission’s ability to generate holistic, accurate, data-driven policies, analyses, and reports.

The requirement to correct all swap data, regardless of status, also helps

required by the SDR for an initial report of swap data.

<sup>183</sup> See 17 CFR 45.14(a) (Each registered entity and swap counterparty required by this part to report swap data to a swap data repository, to any other registered entity or swap counterparty, or to the Commission shall report any errors and omissions in the data so reported.).

<sup>184</sup> The Commission notes that successful reporting of swap data that was not previously reported as required would entail the relevant SEF, DCM, or reporting counterparty completing the reporting process for the omitted swap data as instructed in the relevant SDR’s policies and procedures for reporting omitted swap data created pursuant to proposed § 49.10(e).

<sup>185</sup> This would include any open swaps that should be in the open swaps report but were omitted or swaps that are no longer open but still remain listed in the report, in addition to any errors or omissions in the swap data contained in the report. The requirement would also include, for example, a SEF, DCM, or reporting counterparty being informed of errors or omissions by an outside source, such as a non-reporting counterparty, a SEF or DCM, or the Commission; errors or omissions discovered by a SEF, DCM, or reporting counterparty during a review of its own records or voluntary review of swap data maintained by the SDR, including the discovery of any over- or under-reporting of swap data; and the discovery of errors or omissions during the investigation of a separate issue.

<sup>186</sup> The Commission anticipates that this would include the causes of the errors or omissions, the number of swaps affected, the USIs for the affected swaps, and the date range for the affected swaps, among other information.

<sup>187</sup> See section II.F above. The Commission expects that SEFs, DCMs, reporting counterparties, and SDRs would work together to devise effective correction policies, with particular attention paid to minimizing the effort needed to correct swap data for non-SD/MSP/DCO reporting counterparties.

<sup>188</sup> This requirement is largely the same as the requirements of current § 45.14(b). See 17 CFR 45.14(b) (Upon receiving such notice, the reporting counterparty shall report a correction of each such error or omission to the swap data repository as provided in paragraph (a) of this section.).

ensure that SEFs, DCMs, and reporting counterparties would establish and maintain properly functioning reporting systems to prevent reporting errors or omissions, as correcting swap data for swaps, including terminated swaps, would require effort that can be avoided by initially reporting correct swap data. Proper and thorough system design and testing during the implementation process for these proposed rules would benefit market participants in the form of less time and resources spent on later error and omission corrections. The Commission expects that, as swap data reporting improves over time, the resources needed to correct swap data would decrease.

As with the verification requirements discussed above, the Commission also expects that a SEF, DCM, or reporting counterparty that repeatedly discovers errors or omissions, especially repeated errors or omissions that follow a pattern, such as the reporting for a certain type of swap regularly resulting in errors, would evaluate its reporting systems to discover and correct any issues. This would include working with the relevant SDR to address any reporting issues. A SEF, DCM, or reporting counterparty that fails to perform such an evaluation and improvement in light of repeated errors may not be in compliance with the Commission's regulations.

The Commission is aware that some errors or omissions may not be able to be corrected within three business days of discovery, depending on the gravity and complexity of the reporting problems. The Commission believes having the SEF, DCM, or reporting counterparty notify the Commission of such errors and omissions pursuant to proposed § 45.14(b)(1)(ii), formulate a plan to correct the errors or omissions, and perform the corrections as soon as possible would help alert the Commission to swap data that is unreliable, particularly if it may be unreliable for an extended period of time, and facilitates the fastest correction of the swap data. The Commission also believes that the requirements of proposed § 45.14(b)(1)(ii) would incentivize SEFs, DCMs, and reporting counterparties to fix reporting errors and omissions as quickly as possible, and to invest the resources to prevent reporting errors and omissions from occurring in the first place. The Commission notes that these proposed requirements are similar to current industry practice, as SEFs, DCMs, and reporting counterparties regularly inform Commission staff of reporting errors or omissions and work with Commission staff as they correct

the errors and omissions, which typically includes detailed remediation plans and specific timelines for completion.

The Commission is retaining the requirement from current § 45.14(b) that the non-reporting counterparty inform the reporting counterparty of the errors or omissions, instead of the non-reporting counterparty reporting the errors or omissions itself.<sup>189</sup> The Commission believes that it is not necessary for a non-reporting counterparty to undertake reporting corrections to an SDR because the non-reporting counterparty is often not a user of the SDR or any SDR, and may never serve as a reporting counterparty for swaps. In contrast, the reporting counterparties would already be users of the relevant SDR, and would have continuation data reporting responsibilities for the swap. The reporting counterparty is therefore the logical counterparty to perform the error and omission corrections without the need for the non-reporting counterparty to expend resources on error and omission reporting.

The Commission notes that the proposed requirement for the reporting counterparty and non-reporting counterparty to agree that the swap data is incorrect or incomplete before the reporting counterparty must correct errors discovered by the non-reporting counterparty is included in § 45.14(b)(2) to reduce the likelihood of the reporting of corrections when there is a legitimate dispute over whether swap data contains an error or omission. Neither party may arbitrarily or falsely withhold agreement that an error or omission exists, particularly if a reporting counterparty is withholding agreement in order to avoid its responsibility to correct errors or omissions. The parties would be expected to resolve any dispute before the error or omission is corrected.

Similarly, when the non-reporting counterparty does not know the identity of the reporting counterparty and instead reports the errors or omissions to the SEF or DCM, if the SEF or DCM and the non-reporting counterparty agree that the relevant swap data is incorrect or incomplete, then the SEF or DCM would correct the errors or omissions in accordance with proposed § 45.14(b)(2). Also, no SEF, DCM, or non-reporting counterparty may arbitrarily or falsely withhold agreement

that an error or omission exists, particularly if the SEF or DCM is withholding agreement to avoid its responsibility to correct errors or omissions. The entities would be expected to resolve any dispute with each other before the error or omission is corrected. The Commission expects that a SEF or DCM, when necessary, would be capable of contacting a reporting counterparty to confirm whether the error or omission reported by the non-reporting counterparty exists without revealing the identity of the non-reporting counterparty to the reporting counterparty.

The Commission is also proposing to remove the Commission's ability under current § 45.14(c) to approve the use of different data formats for corrections because the Commission does not believe that the use of different data formats for corrections is necessary and believes that the possibility adds uncertainty and potential delays to the correction process. SEFs, DCMs, reporting counterparties, and SDRs are all capable of reporting corrections using the same format as initial swap data reporting and would all know the correct format in advance of reporting under the requirements of proposed §§ 49.17<sup>190</sup> and 49.26(j).<sup>191</sup> Additionally, proposed § 45.14(b)(1)(iii) would require SEFs, DCMs, and reporting counterparties to report corrections of errors or omissions in conformity with the SDR's policies and procedures for correcting errors and omissions created pursuant to proposed § 49.10, which would include how to properly format swap data in order for the SDR to successfully complete the correction process. The Commission believes that this approach would be more flexible than the current requirements, as the SDRs would be able to require a different format for reporting errors and omissions without requiring approval from the Commission.

Finally, the current § 45.14(c) requirement for an SDR to transmit corrections to errors or omissions in swap data in the same format as the SDR typically transmits swap data to the Commission would be redundant, because the requirement does still effectively apply to all SDRs under proposed § 49.17, which requires SDRs to transmit all SDR data requested by the Commission to the Commission as instructed by the Commission.<sup>192</sup>

<sup>189</sup> See 17 CFR 45.14(b) (Each counterparty to a swap that is not the reporting counterparty . . . and that discovers any error or omission with respect to any swap data reported to a swap data repository for that swap, shall promptly notify the reporting counterparty of such error or omission.).

<sup>190</sup> See section II.L above.

<sup>191</sup> See section II.R above.

<sup>192</sup> See section II.L above (describing the proposed requirements for SDRs to transmit data to the Commission).

*Request for Comment.* The Commission requests comment on all aspects of proposed § 45.14. The Commission also invites specific comment on the following:

(27) Should the Commission be more prescriptive in how reporting counterparties must complete the verification process? If so, please describe in detail.

#### IV. Proposed Amendments to Part 43

##### *A. § 43.3—Method and Timing for Real-Time Public Reporting*

##### 1. Correction of Errors and Omissions in Swap Transaction and Pricing Data—§ 43.3(e)

The Commission is proposing to amend the error and omission correction requirements for swap transaction and pricing data under § 43.3(e) to conform with the proposed amendments to § 45.14(b) for swap data discussed above in section III.B.

Proposed § 43.3(e)(1) would require any SEF, DCM, or reporting counterparty that by any means becomes aware of any errors or omissions in swap transaction and pricing data previously reported to an SDR by the SEF, DCM, or reporting counterparty to submit corrected swap transaction and pricing data to the SDR. Proposed § 43.3(e)(1) would also require any SEF, DCM, or reporting counterparty that by any means becomes aware of the omission<sup>193</sup> of swap transaction and pricing data previously not reported to an SDR by the SEF, DCM, or reporting counterparty as required, to submit corrected swap transaction and pricing data to the SDR.<sup>194</sup> As with proposed § 45.14(b), the error and omission correction requirements would apply regardless of the state of the swap, and include the correction of swaps that are no longer open or “alive.”<sup>195</sup>

<sup>193</sup> The Commission notes that the failure to perform the initial reporting of swap transaction and pricing data as required under current and proposed § 43.3 is an “omission” for the purposes of both current and proposed § 43.3(e). The omission must be corrected pursuant to the same requirements as any other error or omission, regardless of the state of the swap, by reporting the swap transaction and pricing data as soon as technologically practicable after discovery of the failure to report. This includes reporting the omitted swap transaction and pricing data to the SDR as required by the SDR for an initial report of swap transaction and pricing data.

<sup>194</sup> The Commission notes that successful reporting of swap transaction and pricing data that was erroneously not previously reported as required would entail the relevant SEF, DCM, or reporting counterparty completing the reporting process for the omitted swap data as instructed in the relevant SDR’s policies and procedures created pursuant to proposed § 49.10(e).

<sup>195</sup> This requirement is effectively the same as current § 43.3(e)(1).

Proposed § 43.3(e)(1)(i) would adopt the same timing requirements as proposed § 45.14(b)(1)(i) for SEFs, DCMs, and reporting counterparties to correct swap transaction and pricing data “as soon as technologically practicable following discovery of the errors or omissions,” with a three business day backstop following the discovery of the errors or omissions.

Similar to proposed § 45.14(b)(1)(ii), proposed § 43.3(e)(1)(ii) would provide that if a SEF, DCM, or reporting counterparty is unable to correct the errors or omissions within three business days following discovery of the errors or omissions, the SEF, DCM, or reporting counterparty must immediately inform the Director of DMO, or such other employees of the Commission that the Director of DMO may designate, in writing, of such errors or omissions and provide an initial assessment of the scope of the errors or omissions<sup>196</sup> and an initial remediation plan for correcting the errors or omissions.<sup>197</sup>

Proposed § 43.3(e)(1)(iii) would require that a SEF, DCM, or reporting counterparty conform to an SDR’s policies and procedures for corrections of errors and omissions in previously reported swap transaction and pricing data and reporting of omitted swap transaction and pricing data that the SDRs would be required to create under proposed § 49.10.<sup>198</sup> By following the relevant SDR’s policies and procedures for swap data correction, which would be provided to users by the SDRs pursuant to proposed § 49.26(j), the Commission expects that SEFs, DCMs, or reporting counterparties would know how to correct swap data before correction is required and would be able to properly correct swap data with as little effort as necessary.<sup>199</sup>

Proposed § 43.3(e)(2) would require a non-reporting counterparty that by any means becomes aware of any error or omission in swap transaction and pricing data previously reported to an SDR, or the omission of swap transaction and pricing data for a swap

<sup>196</sup> The Commission anticipates that this would include the causes of the errors or omissions, the number of swaps affected, the USIs for the affected swaps, the date range for the affected swaps, among other information.

<sup>197</sup> The Commission needs to know as soon as possible if swap transaction and pricing data is unreliable, particularly if for an extended period of time, so that the Commission may alert the public as needed.

<sup>198</sup> See section II.F above.

<sup>199</sup> The Commission expects that SEFs, DCMs, reporting counterparties, and SDRs would work together to devise effective correction policies, with particular attention paid to minimizing the effort needed to correct swap data for non-SD/MSP/DCO reporting counterparties.

that was not previously reported to an SDR as required, to notify the reporting counterparty for the swap of the errors and omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions.

Proposed § 43.3(e)(2) would also specify that a non-reporting counterparty that does not know the identity of the reporting counterparty for a swap must notify the SEF or DCM where the swap was executed of the errors and omissions as soon as technologically practicable after discovery of the errors or omissions, but no later than three business days after the discovery. Proposed § 43.3(e)(2) would also require that, if the reporting counterparty, SEF, or DCM, as applicable, and the non-reporting counterparty agree that the swap transaction and pricing data for a swap is incorrect or incomplete, the reporting counterparty, SEF, or DCM, as applicable, must correct the swap transaction and pricing data in accordance with proposed § 43.3(e)(1).

The Commission believes that the amendments to § 43.3(e) would help ensure that errors or omissions in swap transaction and pricing data are corrected as soon as possible. The proposed rule would also clarify that swap transaction and pricing data must be corrected regardless of the state of the swap that is the subject of the swap transaction and pricing data to ensure that all incorrect or omitted swap transaction and pricing data is corrected, even if the swap that the swap transaction and pricing data relates to has been terminated, matured, or otherwise ceased to be an open swap. This is not a new requirement, as the current correction requirements in § 43.3(e) do not have time restrictions. The Commission also believes that proposed § 43.3(e) would help ensure that the public has access to the most accurate and complete swap transaction and pricing data possible. Incorrect swap transaction and pricing data harms market integrity and price discovery, long after the swap has been executed.

The requirement to correct all swap transaction and pricing data, regardless of status, also helps ensure that SEFs, DCMs, and reporting counterparties would maintain properly functioning reporting systems to prevent reporting errors or omissions, as correcting swap transaction and pricing data for swaps, including terminated swaps, would require effort that can be avoided by initially reporting correct swap transaction and pricing data. Proper and

thorough system design and testing during the implementation process for these proposed regulations would benefit market participants in the form of less time and resources spent on error corrections in the future. The Commission expects that, as data reporting improves over time, the resources needed to correct swaps, including swaps that are no longer open, would diminish.

The Commission also notes that the discovery of errors under proposed § 43.3(e)(1) includes any errors or omissions revealed when reporting counterparties are reconciling swap data during the verification process required under proposed § 45.14(a) that would also be errors or omissions in swap transaction and pricing data. The means of discovery are unlimited, however, and would also include, for example, a SEF, DCM, or reporting counterparty being informed of errors or omissions by an outside source, such as a non-reporting counterparty, an exchange, or the Commission; errors or omissions discovered by a SEF, DCM, or reporting counterparty during a review of its own records or voluntary review of swap transaction and pricing data maintained by the SDR, including the discovery of any over- or under-reporting of swap transaction and pricing data; and the discovery of errors or omissions during the investigation of a separate issue.

The Commission expects that a SEF, DCM, or reporting counterparty that repeatedly discovers errors or omissions, especially repeated errors or omissions that follow a pattern, such as the reporting for a certain type of swap regularly resulting in errors, would evaluate its reporting systems to attempt to find and promptly correct any issues discovered. This would include working with the relevant SDR to address any reporting issues. A SEF, DCM, or reporting counterparty that fails to perform such an evaluation and improvement in light of repeated errors may not be in compliance with the Commission's regulations.

The Commission is aware that some errors and omissions may not be able to be corrected within three business days of discovery. The Commission believes having the SEF, DCM, or reporting counterparty notify the Commission of such errors and omissions pursuant to proposed § 43.3(e)(1)(ii), formulate a plan to correct the errors and omissions, and to perform the corrections as soon as possible would help alert the Commission to swap transaction and pricing data that is unreliable, particularly if it may be unreliable for an extended period of time, and facilitates the fastest correction of swap

transaction and pricing data. The Commission also believes that proposed § 43.3(e)(1)(ii) would incentivize SEFs, DCMs, and reporting counterparties to fix reporting errors and omissions as quickly as possible. The Commission notes that these proposed requirements are consistent with industry practice, as SEFs, DCMs, and reporting counterparties regularly inform Commission staff of reporting errors or omissions and work with Commission staff as they correct the errors and omissions, which typically includes remediation plans and timelines for completion.

The Commission is proposing to require, as with proposed § 45.14(b)(2), that the non-reporting counterparty inform the reporting counterparty of the errors or omissions. The Commission believes that it is not necessary for a non-reporting counterparty to undertake the burden of reporting corrections to an SDR because the non-reporting counterparty is often not a user of the SDR, and may never serve as a reporting counterparty for any swaps. In contrast, reporting counterparties would already by definition be users of the relevant SDR, and would have continuation data reporting responsibilities for the swap. The reporting counterparty is therefore the logical counterparty to perform the error and omission corrections without the need for the non-reporting counterparty to use additional resources on error and omission reporting.

The Commission notes that the proposed requirement for the reporting counterparty and non-reporting counterparty to agree that the swap transaction and pricing data is incorrect or incomplete before the reporting counterparty must correct errors discovered by the non-reporting counterparty is included to avoid the reporting of corrections when there is a legitimate dispute over whether the swap transaction and pricing data contains an error or omission. Neither party may arbitrarily or falsely withhold agreement that an error or omission exists, particularly if a reporting counterparty is withholding agreement in order to avoid its responsibility to correct errors or omissions. The parties would be expected to resolve any dispute with each other before the error or omission is corrected.

Similarly, in the instance where the non-reporting counterparty does not know the identity of the reporting counterparty and instead reports the errors or omissions to the SEF or DCM, if the SEF or DCM and the non-reporting counterparty agree that the relevant swap transaction and pricing data is incorrect or incomplete, then the SEF or

DCM must correct the errors or omissions in accordance with proposed § 43.3(e)(1). No SEF, DCM, or non-reporting counterparty may arbitrarily or falsely withhold agreement that an error or omission exists, particularly if the SEF or DCM is withholding agreement to avoid its responsibility to correct errors or omissions. The entities would be expected to resolve any dispute with each other before the error or omissions is corrected. The Commission expects that a SEF or DCM, when necessary, would be capable of contacting a reporting counterparty to confirm whether the error or omission reported by the non-reporting counterparty exists without revealing the identity of the non-reporting counterparty to the reporting counterparty.

## 2. Proposed Deletions—§ 43.3(f) and (g)

The Commission is proposing to delete current § 43.3(f) and (g). The Commission is proposing to include the operating hours requirements for SDRs in new § 49.28,<sup>200</sup> which includes incorporating the requirements of current § 43.3(f) and (g). Current § 43.3(f) contains the hours of operations requirements<sup>201</sup> and current § 43.3(g) contains the requirements for SDRs to accept swap transaction and pricing data during closing hours.<sup>202</sup>

Keeping the paragraphs in part 43 could also cause confusion as to the requirements that apply to SDRs, because proposed § 49.28 would apply to all SDR data and also incorporates provisions from SBSDR operating hours requirements. The Commission notes that most of the requirements contained in current § 43.3(f) and (g) would continue to apply to SDRs, because the requirements are included in proposed § 49.28.

*Request for Comment.* The Commission requests comment on all aspects of proposed § 43.3.

## V. Proposed Amendments to Part 23

### A. § 23.204—Reports to Swap Data Repositories

Proposed § 23.204(c) would require each SD and MSP to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that the SD or MSP complies with all obligations to report swap data to an SDR consistent with part 45. Proposed § 23.204(c) also would require an SD or MSP to review its policies and procedures on an annual basis and to update its policies and procedures as

<sup>200</sup> See section II.S above.

<sup>201</sup> See 17 CFR 43.3(f).

<sup>202</sup> See 17 CFR 43.3(g).



needed to reflect the requirements in part 45.

As part of the SD/MSP requirements set forth in part 23 of the Commission's regulations, the Commission currently requires SDs/MSPs to report all information and swap data required for swap transactions as set forth in part 45.<sup>203</sup> The Commission also currently requires that SDs/MSPs have in place the electronic systems and procedures necessary to transmit electronically all information and swap data required to be reported in accordance with part 45.<sup>204</sup>

The Commission notes that, pursuant to other Commission regulations, SDs and MSPs are already expected to establish policies and procedures related to their swap market activities, including but not limited to, swaps reporting obligations.<sup>205</sup> The proposed amendments would make that expectation explicit with respect to swap data reporting obligations.

The Commission believes that the annual review requirement in proposed § 23.204(c) would help ensure that SD/MSP policies and procedures remain current and effective over time. The proposal is also substantially similar to the requirements that the SEC has enacted for SBSDs and SBS MSPs.<sup>206</sup>

As part of the goal to increase the reliability, accuracy, and completeness of SDR data reported to and maintained by SDRs, the Commission believes that it is important to make clear the responsibilities of SDs and MSPs to ensure proper reporting of swaps for which they act as reporting counterparties. Accordingly, the Commission proposes that SDs/MSPs that report to an SDR should be explicitly required to adopt policies and procedures reasonably designed to ensure compliance with their reporting obligations under parts 43 and 45.<sup>207</sup>

The policies and procedures required by proposed § 23.204(c) should address how the SD or MSP would comply with the requirements of part 45, including, but not necessarily limited to: (i) The reporting process and designation of

responsibility for reporting swap data; (ii) reporting system outages or malfunctions, and when and how back-up systems are to be used in connection with required reporting; (iii) verification of all swap data reported to an SDR pursuant to proposed § 45.14(a) and in accordance with the policies and procedures of such SDR established under proposed § 49.11; (iv) a training program for employees responsible for swap data reporting; (v) control procedures relating to swap data reporting and designation of personnel responsible for testing and verifying such policies and procedures; and (vi) reviewing and assessing the performance and operational capability of any third party that carries out any duty required by part 45 on behalf of the SD or MSP.

These issues are also generally the issues that the SEC contemplated being addressed by SBSDs and SBS MSPs in their policies and procedures adopted pursuant to the SBSR Adopting Release.<sup>208</sup> In conjunction with “know your counterparty” obligations under current § 23.402(b), such policies should also ensure that the SD/MSP would have all necessary counterparty information, including, but not limited to, legal entity identifier (“LEI”) or acceptable counterparty identifier, U.S. Person status, and SD/MSP status, to accurately report all swap data required by part 45 for swaps for which the SD/MSP has reporting obligations.

#### *B. § 23.205—Real-Time Public Reporting*

Similar to the requirements of proposed § 23.204(c) discussed above in section V.A, the Commission is proposing § 23.205(c), which would require SDs and MSPs to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that the SD or MSP complies with any obligations to report swap transaction and pricing data to an SDR consistent with part 43 of the Commission's regulations. As with swap data under § 23.204(c), proposed § 23.205(c) is intended to promote complete and accurate reporting of swap transaction and pricing data by SDs and MSPs, consistent with their obligations under part 43 and the CEA.<sup>209</sup> The Commission believes that the addition of this proposed requirement would help to improve the extent and quality of overall compliance with the reporting requirements of part 43. Similar to

proposed § 23.204(c), proposed § 23.205(c) would require an SD or MSP to review its policies and procedures on an annual basis and to update its policies and procedures as needed to reflect the requirements of part 43. The periodic review requirement would help ensure that these policies and procedures remain current and effective over time. The proposal is also substantially similar to the requirements that the SEC has enacted for SBSDs and SBS MSPs.<sup>210</sup>

The SD/MSP recordkeeping and reporting requirements in part 23 also currently require SDs/MSPs to report all information and swap transaction and pricing data required in accordance with the real-time public reporting requirements as set forth in part 43.<sup>211</sup> The Commission also requires that SDs/MSPs have in place the electronic systems and procedures necessary to transmit electronically all information and swap transaction and pricing data required to be reported in accordance with part 43.<sup>212</sup>

The policies and procedures required by proposed § 23.205(c) should address how the SD or MSP will comply with the requirements of part 43, including, but not necessarily limited to: (i) The reporting process and designation of responsibility for reporting swap transaction and pricing data; (ii) reporting system outages or malfunctions, and when and how back-up systems are to be used in connection with required reporting; (iii) a training program for employees responsible for real-time reporting; (iv) control procedures relating to real-time reporting and designation of personnel responsible for testing and verifying such policies and procedures; (v) reviewing and assessing the performance and operational capability of any third party that carries out any duty required by part 43 of the Commission's regulations on behalf of the SD or MSP; and (vi) the determination of whether a new swap transaction or amendment, cancellation, novation, termination, or other lifecycle event of an existing swap, is subject to the real time reporting requirements of part 43. These issues are a subset of the general issues that the SEC contemplated being addressed by SBSDs and SBS MSPs in their policies and procedures adopted pursuant to the SBSR Adopting Release.<sup>213</sup>

*Request for Comment.* The Commission requests comment on all

<sup>203</sup> See 17 CFR 23.204(a).

<sup>204</sup> See 17 CFR 23.204(b).

<sup>205</sup> See, e.g., 17 CFR 3.3(d)(1) (requiring a chief compliance officer to administer each of the registrant's policies and procedures relating to its business as an SD/MSP that are required to be established pursuant to the Act and the Commission's regulations); 17 CFR 3.2(c)(3)(ii) (requiring the National Futures Association to assess whether an entity's SD/MSP documentation demonstrates compliance with the Section 4s Implementing Regulation to which it pertains which includes § 23.204 and § 23.205).

<sup>206</sup> See SBSDR Adopting Release at 14647–14648; see also 17 CFR 242.906(c).

<sup>207</sup> The amendments for part 43 reporting are discussed below in section IV.A.

<sup>208</sup> See SBSDR Adopting Release at 14648; see also 17 CFR 242.906(c).

<sup>209</sup> Section 2(a)(13) of the CEA directs the Commission to adopt regulations for the public availability of swap transaction and pricing data. See 7 U.S.C. 2(a)(13).

<sup>210</sup> See SBSDR Adopting Release at 14647–14648.

<sup>211</sup> See 17 CFR 23.205(a).

<sup>212</sup> See 17 CFR 23.205(b).

<sup>213</sup> See SBSDR Adopting Release at 14648.

aspects of proposed §§ 23.204(c) and 23.205(c). The Commission also invites specific comment on the following:

(28) Should proposed § 23.204(c) and § 23.205(c) specify the elements to be included in the required policies and procedures? If so, what specific elements should be included in the proposed regulation, and why? Please be specific.

## VI. Request for Comments

The Commission requests comments concerning all aspects of the proposed regulations, including, without limitation, all of the aspects of the proposed regulations on which comments have been requested specifically herein. The Commission also invites comments on the following:

(29) Please describe the nature of any changes necessary, *i.e.*, operational, technological, administrative, etc., for SDRs, other registered entities, and swap counterparties to comply with the regulations proposed in this release, including the length of time needed to implement each type of change, whether a phase-in period is needed, and how any phase in of any final rules should be structured. Please describe how any changes to systems made by one type of entity, such as the SDRs, would require changes to systems by other entities within the swaps reporting environment, and what sequencing of changes would need to occur.

(30) Would the proposed amendments and additions to parts 23, 43, 45, and 49 adequately improve the data quality and accuracy of reported SDR data maintained by SDRs? If not, please explain.

(31) Are additional changes necessary to parts 23, 43, 45, and 49 (or other parts of the regulations) to ensure the quality of reported SDR data held and maintained by SDRs? If so, please explain.

## VII. Related Matters

### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.<sup>214</sup> The Commission has previously established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.<sup>215</sup> The amendments to part 49 proposed herein

would have a direct effect on the operations of SDRs. The Commission has previously certified that SDRs are not small entities for purpose of the RFA.<sup>216</sup> Proposed §§ 23.204(c) and 23.205(c), which require SDs and MSPs to have policies and procedures to ensure compliance with requirements of parts 45 and 43, respectively, would have a direct impact on the operation of SDs and MSPs. The Commission has previously certified that SDs and MSPs are also not small entities for purpose of the RFA.<sup>217</sup>

Proposed § 45.14(a), which requires all reporting counterparties to verify the accuracy of swap data with the SDR, would have a direct impact on all reporting counterparties. These reporting counterparties may include SDs, MSPs, DCOs,<sup>218</sup> and non-SD/MSP/DCO counterparties. Regarding whether non-SD/MSP/DCO reporting counterparties are small entities for RFA purposes, the Commission notes that section 2(e) of the Act prohibits entities from entering into swaps unless the entity qualifies as an eligible contract participant (“ECP”), except for swaps executed on or pursuant to the rules of a DCM.<sup>219</sup> The Commission has previously certified that ECPs are not small entities for purposes of the RFA.<sup>220</sup> The vast majority of swap are not conducted on DCMs, and therefore must involve ECPs. A recent Commission staff review of swap data, including swaps executed on or pursuant to the rules of a DCM, identified nearly 1,600 non-SD/MSP/DCO reporting counterparties. Based on

its review of publicly available data, the Commission believes that the overwhelming majority of these non-SD/MSP/DCO reporting counterparties are either ECPs or do not meet the definition of “small entity” established in the RFA. Accordingly, the Commission does not believe the proposed rule would affect a substantial number of small entities.

Therefore, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), hereby certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities.

### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (“PRA”) <sup>221</sup> imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. This proposed rulemaking would result in the collection of information within the meaning of the PRA, as discussed below. The proposed rulemaking contains collections of information for which the Commission has previously received three control numbers from OMB: (1) OMB Control Number 3038–0096 (relating to swap data recordkeeping and reporting by market participants); (2) OMB Control Number 3038–0070 (relating to real-time swap transaction and pricing data); and (3) OMB Control Number 3038–0086 (relating to obligations of SDRs).

The Commission is proposing to amend information collections 3038–0096, 3038–0070, and 3038–0086 to accommodate new information collection requirements for swap market participants and SDRs that require approval from OMB under the PRA. The following amendments to the obligations of market participants and SDRs are expected to modify the existing annual burden for complying with the requirements of parts 43, 45, and 49.

The proposed amendments to § 45.2 would move the requirements of paragraphs (f) and (g) to proposed § 49.12, in order to better organize regulations related to SDRs. The proposed amendments to § 45.14 would require reporting counterparties to verify swap data reported to an SDR pursuant to the policies and procedures established by that SDR and would require SEFs, DCMs, and reporting counterparties to provide additional information to the Commission regarding correction of errors and

<sup>216</sup> See Swap Data Repositories, Proposed Rule, 75 FR 80898, 80926 (Dec. 23, 2010) (basing determination in part on the central role of SDRs in swaps reporting regime, and on the financial resource obligations imposed on SDRs).

<sup>217</sup> See Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules, Final Rule, 77 FR 20128, 20194 (Apr. 3, 2012) (basing determination in part on minimum capital requirements).

<sup>218</sup> The Commission has previously certified that DCOs are not small entities for purposes of the RFA. See Derivatives Clearing Organization General Provisions and Core Principles, Final Rule, 76 FR 69334, 69428 (Nov. 8, 2011).

<sup>219</sup> See 7 U.S.C. 2(e).

<sup>220</sup> See Opting Out of Segregation, Final Rule, 66 FR 20740, 20743 (Apr. 25, 2001). The Commission also notes that this determination was based on the definition of ECP as provided in the Commodity Futures Modernization Act of 2000. The Dodd-Frank Act amended the definition of ECP as to the threshold for individuals to qualify as ECPs, changing an individual who has total assets in an amount in excess of to an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of. Therefore, the threshold for ECP status is currently higher than was in place when the Commission certified that ECPs are not small entities for RFA purposes, meaning that there are likely fewer entities that could qualify as ECPs than when the Commission first made the determination.

<sup>221</sup> See 44 U.S.C. 3501.

<sup>214</sup> See 5 U.S.C. 601 *et seq.*

<sup>215</sup> See Policy Statement and Establishment of “Small Entities” for purposes of the Regulatory Flexibility Act, 47 FR 18618, 18618–21 (Apr. 30, 1982).

omissions in swap data in certain circumstances. The proposed amendments to § 43.3 would require SEFs, DCMs, and reporting counterparties to provide additional information to the Commission regarding correction of errors and omissions in swap transaction and pricing data in certain circumstances and would move the requirements of paragraphs (f) and (g) to proposed § 49.28. The proposed amendments to part 49 would require SDRs to: (i) Continue to amend Form SDR as required, but remove the annual amendment requirement and limit the amendment requirement to before an application for registration is granted, as set forth in proposed § 49.3(a)(5); (ii) provide notifications and certifications to the Commission related to equity interest transfers, as set forth in proposed § 49.5; (iii) request transfer of registration, as set forth in proposed § 49.6; (iv) provide open swaps reports to the Commission, as set forth in proposed § 49.9; (v) correct errors and omissions in SDR data and create policies and procedures to accomplish the corrections, as set forth in proposed § 49.10(e); (vi) compile and distribute to each applicable reporting counterparty an open swaps report and to receive a response to each open swaps report, as set forth in proposed § 49.11; (vii) establish automated systems for monitoring, screening, and analyzing all SDR data in their possession in the form and manner as may be directed by the Commission under proposed § 49.13(a); (viii) provide SDR users and potential users with SDR policies and procedures related to reporting SDR data, as provided in proposed § 49.26(j); (ix) operate continuously, except for normal closing hours and special closing hours, as provided in proposed § 49.28; and (x) provide the Commission with information related to their business as an SDR and such information as the Commission determines to be necessary to perform its duties under the CEA and Commission regulations and provide the Commission with information and/or SDR data as requested to demonstrate SDR compliance with the CEA and Commission regulations, as set forth in proposed § 49.29.

The Commission therefore is submitting this proposal to the Office of Management and Budget (“OMB”) for its review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Responses to this collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act (“FOIA”) and 17 CFR 145,

“Commission Records and Information.” In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the Act, from making public data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.<sup>222</sup> The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.<sup>223</sup>

#### 1. Revisions to Collection 3038–0096 (Swap Data Reporting)

##### i. Amended § 45.2

The Commission is proposing to remove paragraphs (f) and (g) from § 45.2 in order to move the requirements of these paragraphs to proposed § 49.12. Paragraphs (f) and (g) contain recordkeeping requirements specific to SDRs. Current § 49.12 already incorporates the requirements of current § 45.2(f) and (g), and proposed § 49.12 would include the same requirements, but this proposed deletion and move is intended to better organize regulations for SDRs by locating as many SDR requirements as possible in part 49 of the Commission’s regulations. Moving the requirements would however modify collection 3038–0096 because it would remove these recordkeeping requirements from part 45 of the Commission’s regulations. As a result, the Commission estimates that moving these requirements would result in a reduction of 50 annual burden hours for each SDR in collection 3038–0096, for a total reduction of 150 annual burden hours across all three SDRs.

##### ii. Amended § 45.14

Proposed § 45.14(a) would require all reporting counterparties to verify the accuracy and completeness of all swap data for all open swaps to which they are the reporting counterparty. Reporting counterparties would comply with this provision by conforming to the verification policies and procedures of the relevant SDR(s) established pursuant to proposed § 49.11(a), including receiving and responding to the open swaps reports provided by the SDR(s). Section 21(c)(2)<sup>224</sup> of the Act requires SDRs to confirm the accuracy of reported swap data with the counterparties to the swap. Compliance with proposed § 45.14(a) would constitute a collection of information not currently included in collection

3038–0096, and therefore would require a revision of that collection.

Compliance with proposed § 45.14(a) would be based on compliance with SDR verification policies and procedures, but would require reporting counterparties to receive and respond to open swaps reports on a weekly or monthly basis, depending on the registration status of the reporting counterparty. The Commission expects that compliance with this section would include: (1) A one-time hours burden to establish internal systems needed to perform their verification responsibilities, and (2) an ongoing hours burden to complete the verification process for each report provided by an SDR.

In order to comply with the relevant SDR verification policies and procedures as required to complete the verification process, the Commission believes that reporting counterparties would be required to create their own verification systems or modify their existing connections to the SDRs. The Commission estimates that each reporting counterparty would incur an initial, one-time burden of 100 hours to build, test, and implement their verification systems based on SDR instructions. This burden may be reduced, if complying with SDR verification requirements only requires reporting counterparties to make small modifications to their existing SDR reporting systems, but the Commission is estimating the burden based on the creation of a new system. The Commission also estimates an ongoing annual burden of 10 hours per reporting counterparty to maintain their verification systems and to make any needed updates to verification systems to conform to any changes to SDR verification policies and procedures. As there are approximately 1,702 reporting counterparties based on data available to the Commission, the Commission estimates a one-time overall hours burden of 170,200 hours to build reporting counterparty verification systems and an ongoing annual overall hours burden of 17,020 hours to maintain the reporting counterparty verification systems.

Proposed § 45.14(a) would also require reporting counterparties to reconcile the swap data in their internal books and records with the swap data in each open swaps report provided by an SDR and to respond to each open swaps report with a verification of data accuracy or a notice of discrepancy, as instructed by the relevant SDR verification policies and procedures. For SD, MSP, or DCO reporting counterparties, data verification would

<sup>222</sup> 7 U.S.C. 12.

<sup>223</sup> 5 U.S.C. 552a.

<sup>224</sup> 7 U.S.C. 24a(c)(2).

be at most a weekly occurrence for each SDR where the reporting counterparty maintains any open swaps. For non-SD/MSP/DCO reporting counterparties, data verification would be at most a monthly occurrence for each SDR where the reporting counterparty maintains any opens swaps. The Commission also expects, based on discussions with SDRs and reporting counterparties, that the verification process will be largely automated for all parties involved. The Commission is therefore estimating an ongoing average burden of two hours per open swaps report per reporting counterparty.

As there are 117 SDs, MSPs, or DCOs that clear swaps registered with the Commission, the Commission estimates<sup>225</sup> that these 117 reporting counterparties would, at maximum, be required to verify data 52 times per year, for an overall additional annual hours burden of 12,168 ongoing burden hours related to the verification process for these reporting counterparties. The Commission also estimates, based on data available to the Commission, that there are 1,585 non-SD/MSP/DCO reporting counterparties.<sup>226</sup> The Commission estimates that these 1,585 reporting counterparties would be required to, at maximum, verify data 12 times per year, for an overall additional annual hours burden of 38,040 burden hours related to verification process for these reporting counterparties.

Proposed § 45.14(b) would, similar to current § 45.14, require SEFs, DCMs, and reporting counterparties to correct errors and omissions in swap data previously reported to an SDR, or erroneously not reported to an SDR as required, as soon as technologically practicable after discovery of the errors or omissions. Proposed § 45.14(b) would also require a non-reporting counterparty to report a discovered error or omission to the relevant SEF, DCM, or reporting counterparty as soon as technologically practicable after discovery of the error or omission.<sup>227</sup>

<sup>225</sup> Though there are 117 SDs, MSPs, or DCOs that clear swaps registered with the Commission that could be a reporting counterparty, not all potential reporting counterparties would be performing data verification for any given verification cycle. Only those reporting counterparties with open swaps as of the moment the SDRs create the open swaps reports would perform data verification for that verification cycle.

<sup>226</sup> Though there are 1,585 non-SD/MSP/DCOs that could be a reporting counterparty, not all potential reporting counterparties would be performing data verification for any given verification cycle. Only those reporting counterparties with open swaps as of the moment the SDRs create the open swaps reports would perform data verification for that verification cycle.

<sup>227</sup> The Commission notes that proposed § 45.14(b)(2) does add provisions that are not

These proposed requirements, being effectively the same as the requirements in current § 45.14, do not require amendments to the collection.

Proposed § 45.14(b)(1)(ii) does, however, include the new requirement for SEFs, DCMs, and reporting counterparties to notify the Director of DMO when errors or omissions cannot be corrected within three business days and, in such case, to provide the Director of DMO with an initial assessment of the errors and omissions and an initial remediation plan. This requirement would constitute a new collection of information. The Commission estimates that each SEF, DCM, and reporting counterparty would, on average need to provide notice and initial assessments to the Commission under proposed § 45.14(b)(1)(ii) once per year and that each instance would require 30 burden hours.<sup>228</sup> As there are approximately 1,729 SEFs, DCMs, and reporting counterparties that handle swaps, the Commission estimates an overall additional annual hours burden of 51,870 hours related to this requirement. This estimate is based on the Commission's experience with the current practices of SEFs, DCMs, and reporting counterparties regarding the reporting of errors and omissions, including the initial assessments and remediation plans that SEFs, DCMs, and reporting counterparties provide to the Commission under current practice. The Commission does not anticipate any one-time, initial burdens related to proposed § 45.14(b)(1)(ii).

The Commission therefore estimates that the overall burden for updated Information Collection 3038–0096 will be as follows:

*Estimated number of respondents affected:* 1,732 SEFs, DCMs, DCOs, SDRs, and reporting counterparties.

present in current § 45.14(b) to address the situation where a non-reporting counterparty does not know the identity of the reporting counterparty. The Commission does not believe that these additions have PRA implications, as the amount of information the non-reporting counterparty must provide and the frequency with which it must be provided remain the same and are de minimis. The only change is the requirement that non-reporting counterparties inform the SEF or DCM of errors, instead of the reporting counterparty. SEFs and DCMs have correction responsibilities under current § 45.14(b) and proposed § 45.14(b)(2) does not change these responsibilities.

<sup>228</sup> The Commission notes that, currently, it receives significantly less than one notice and initial assessment of reporting errors and omissions per SEF, DCM, or reporting counterparty per year, but is estimating one notice and initial assessment here, as the proposed requirements of § 45.14(a) may reveal more reporting errors to reporting counterparties that would then prompt corrections pursuant to proposed § 45.14(b).

*Estimated annual number of responses per respondent:* 257,595.

*Estimated total annual responses:* 446,154,518.

*Estimated burden hours per response:* 0.005.

*Estimated total annual burden hours per respondent:* 1,316.

*Estimated aggregate total burden hours for all respondents:* 2,279,202.

## 2. Revisions to Collection 3038–0070 (Real-Time Transaction Reporting)—Amended § 43.3

Proposed § 43.3(e) would, as with swap data under proposed § 45.14(b), require SEFs, DCMs, and reporting counterparties to correct errors and omissions in swap transaction and pricing data previously reported to an SDR or erroneously not reported to an SDR as soon as technologically practicable after discovery of the errors or omissions. Proposed § 43.3(e) would also require a non-reporting counterparty to report a discovered error or omission to the relevant SEF, DCM, or reporting counterparty as soon as technologically practicable after discovery of the error or omission. These proposed requirements are intend to match the requirements in proposed § 45.14(b), but are also effectively the same as the requirements of current § 43.3(e).<sup>229</sup> These proposed requirements therefore do not require amendments to the collection.

Proposed § 43.3(e)(1)(ii) does, however, include the new requirement for SEFs, DCMs, and reporting counterparties to notify the Director of DMO when errors or omissions cannot be corrected within three business days and, in such case, to provide the Director of DMO with an initial assessment of the errors and omissions and an initial remediation plan. This requirement would constitute a new collection of information. The Commission estimates that each SEF, DCM, and reporting counterparty would, on average need to provide notice and initial assessments to the Commission under proposed

<sup>229</sup> The Commission notes that proposed § 43.3(e)(2) does add provisions that are not present in current § 43.3(e)(1) to address the situation where a non-reporting counterparty does not know the identity of the reporting counterparty. The Commission does not believe that these additions have PRA implications, as the amount of information the non-reporting counterparty must provide and the frequency with which it must be provided remain the same as the current requirement and are de minimis. The only change is the requirement that non-reporting counterparties inform the SEF or DCM of errors, instead of the reporting counterparty. SEFs and DCMs have correction responsibilities under current § 43.3(e)(1) and proposed § 43.3(e)(2) does not change these responsibilities.

§ 43.3(e)(1)(ii) once per year and that each instance would require 30 burden hours.<sup>230</sup> As there are approximately 1,729 SEFs, DCMs, and reporting counterparties that handle swaps, the Commission estimates an overall additional annual hours burden of 51,870 hours related to this requirement. This estimate is based on the Commission's experience with SEFs, DCMs, and reporting counterparties current practices regarding the reporting of errors and omissions, including the initial assessments and remediation plans that SEFs, DCMs, and reporting counterparties provide to the Commission under current practice. The Commission does not anticipate any one-time, initial burdens related to proposed § 43.3(e)(1)(ii).

The Commission is also proposing to remove paragraphs (f) and (g) from § 43.3 in order to move the requirements of these paragraphs to proposed § 49.28. Paragraphs (f) and (g) contain requirements for SDRs related to their operating hours. Proposed § 49.28 would include all of the current § 43.3(f) and (g) requirements, because this proposed deletion and move is intended to better organize regulations for SDRs by locating as many SDR requirements as possible in part 49 of the Commission's regulations. Moving the requirements would modify collections 3038–0070 and 3038–0086 because it will remove these recordkeeping requirements from part 43 of the Commission's regulations and add them to part 49 of the Commission's regulations. The Commission estimates that the public notice requirements of § 43.3(f) and (g) require SDRs to issue three notices per year and spend five hours creating and disseminating each notice, for a total of 15 hours annually for each SDR, for a total of 45 annual burden hours being moved across all three SDRs. As a result, the Commission estimates that moving these requirements would result in a total reduction of 45 annual burden hours for SDRs in collection 3038–0070.

The Commission therefore estimates that the total overall burdens for updated Information Collection 3038–0070 will be as follows:

*Estimated number of respondents affected:* 1,732 SEFs, DCMs, DCOs, SDRs, and reporting counterparties.

*Estimated annual number of responses per respondent:* 21,247.

*Estimated total annual responses:* 36,799,804.

*Estimated burden hours per response:* 0.033.

*Estimated total annual burden hours per respondent:* 701.

*Estimated aggregate total burden hours for all respondents:* 1,214,392.

### 3. Revisions to Collection 3038–0086 (SDR Registration and Regulatory Requirements)<sup>231</sup>

The Commission proposes to revise collection 3038–0086 to account for changes in certain SDR responsibilities under proposed amendments to §§ 49.3, 49.5, 49.6, 49.9, 49.10, 49.11, 49.13, and 49.26, and to the proposed addition of §§ 49.28, 49.29, and 49.30. The estimated hours burdens and costs provided below would be in addition to or subtracted from the existing hours burdens and costs in collection 3038–0086. The Commission also describes a number of proposed changes to sections that do not have PRA implications below, for clarity purposes.

The Commission will also reduce the estimated number of SDRs from four to three, as there are currently three SDRs provisionally registered with the Commission that would be subject to the proposed collection requirements.

#### i. Amended § 49.3

The proposed amendments to § 49.3(a)(5) would remove the requirement for each SDR to file an annual amendment to its Form SDR and, once an SDR's application for registration is granted, the requirement for SDRs to amend the Form SDR whenever any of the information in the Form SDR becomes inaccurate. The proposed amendments would reduce the PRA burden for SDRs by lowering the number of filings required for each SDR. The Commission estimates that the PRA burden for each SDR would remain at 15 hours per filing, but that the number of filings per year would be reduced from three to two, meaning that the proposed amendments to § 49.3(a)(5) would reduce the burden on SDRs by 15 hours per year, for a total reduction of 45 annual burden hours across all three SDRs. This estimate is based on the Commission's experience with current SDR practices and the original supporting statement for collection

3038–0086.<sup>232</sup> The Commission does not anticipate any one-time, initial burden changes related to proposed § 49.3(a)(5).

#### ii. Amended § 49.5

The proposed amendments to § 49.5 would require SDRs to file a notification with the Commission for each transaction involving the direct or indirect transfer of ten percent or more of the equity interest in the SDR within ten business days of the firm obligation to transfer the equity interest, to provide the Commission with supporting documentation for the transaction on request, and to file a certification with the Commission that the SDR will meet all of its obligations under the Act and the Commission's regulations within two business days of the completion of the equity interest transfer. The Commission estimates that the requirements of proposed § 49.5 would create a burden of 15 hours per SDR for each qualifying equity interest transfer. Equity interest transfers for SDR are rare, so the Commission conservatively estimates that each SDR would provide information pursuant to proposed § 49.5 no more often than once every three years. As a result, the estimated average annual PRA burden related to proposed § 49.5 would be 5 hours per SDR, or 15 hours total for all three SDRs. The Commission does not anticipate any one-time, initial burdens related to proposed § 49.5.

#### iii. Amended § 49.6

The proposed amendments to § 49.6 would require an SDR seeking to transfer its registration to another legal entity due to a corporate change to file a request for approval with the Commission before the anticipated corporate change, including the specific documents and information listed in proposed § 49.6(c). The Commission estimates that the requirements of proposed § 49.6 would create a burden of 15 hours per SDR for each transfer of registration. Transfers of registration for SDR are rare, so the Commission conservatively estimates that each SDR would provide information pursuant to proposed § 49.6 no more often than once every three years. As a result, the estimated average annual PRA burden related to proposed § 49.6 would be 5 hours per SDR, or 15 hours total for all three SDRs. The Commission does not anticipate any one-time, initial burdens related to proposed § 49.6.

<sup>230</sup> The Commission notes that, currently, it receives significantly less than one notice and initial assessment of reporting errors and omissions per SEF, DCM, or reporting counterparty per year, but is conservatively estimating one notice and initial assessment annually here, as the proposed requirements of § 45.14(a) may reveal more reporting errors to reporting counterparties that would then prompt corrections pursuant to proposed § 43.3(e).

<sup>231</sup> The Commission is also proposing to reduce the number of SDRs used in collection 3038–0086 to calculate burdens and costs from 4 to 3. There are currently three SDRs provisionally registered with the Commission. The Commission has not received any applications for SDR registration since 2012.

<sup>232</sup> The original supporting statement for collection 3038–0086 estimated that the requirements of current § 49.3(a)(5) would necessitate three filings per year and 15 hours per filing.

## iv. Amended § 49.9

The proposed amendments to § 49.9 would remove the current text of the section and replace it with requirements related to SDRs providing open swaps reports to the Commission. The new § 49.9 would require SDRs to provide reports to the Commission with swap data for every open swap an SDR maintains, as instructed by the Commission. The instructions may include the method, timing, frequency, and format of the open swaps reports.

The Commission estimates that SDRs would incur a one-time initial burden of 250 hours per SDR for SDRs to create or modify their systems to provide the open swaps reports to the Commission as instructed, for a total estimated hours burden of 750 hours. This burden may be mitigated by the fact that SDRs currently have systems in place to provide similar information to the Commission, which would reduce the effort needed to create or modify SDR systems. The Commission additionally estimates 30 hours per SDR annually to perform any needed maintenance or adjustments to SDR reporting systems.

The Commission expects that the process for providing the open swaps reports to the Commission would be largely automated and therefore estimates a burden on the SDRs of 2 hours per report. Though the Commission is not prescribing the frequency of the open swaps reports at this time, the Commission estimates, only for the purposes of this burden calculation, that the SDRs would provide the Commission with 365 open swaps reports per year, meaning that the estimated ongoing annual additional hours burden for generating the open swaps reports and providing the reports to the Commission is 730 hours per SDR.

The Commission therefore estimates a total ongoing additional annual hours burden related to proposed § 49.9 of 760 hours per SDR, for a total estimated ongoing annual burden of 2,280 hours.

## v. Amended § 49.10

Proposed § 49.10(e) would require SDRs to accept, process, and disseminate corrections to SDR data errors and omissions. Proposed § 49.10(e) would also require SDRs to have policies and procedures in place to accomplish the corrections.

The Commission estimates that SDRs would incur a one-time initial burden of 100 hours per SDR to update and implement the systems, policies, and procedures necessary to complete the corrections process, for a total increased initial hours burden of 300 hours across

all three SDRs. This burden may be mitigated by the fact that SDRs already have systems, policies, and procedures in place to accomplish corrections to SDR data and that the SDRs currently make such corrections on a regular basis. The Commission additionally estimates 30 hours per SDR annually to perform any needed maintenance on correction systems and to update corrections policies and procedures as needed.

The Commission anticipates that the process for SDRs to perform corrections would be largely automated, as this is the case with current SDR corrections. Based on swap data available to the Commission and discussions with the SDRs, the Commission estimates that an SDR would perform an average of approximately 2,652,000 data corrections per year. Based on the same information, the Commission estimates that performing each correction would require 2 seconds from an SDR. As a result, the Commission estimates that the ongoing burden of performing the actual corrections to SDR data would be approximately 1,473 hours per SDR annually, on average.

The Commission therefore estimates a total additional ongoing hours burden related to proposed § 49.10(e) of 1,503 hours per SDR annually, for a total estimated ongoing burden of 4,509 hours.

## vi. Amended § 49.11

The proposed amendments to § 49.11 modify the existing obligations on SDRs to confirm the accuracy and completeness of swap data. Proposed § 49.11(b) would require SDRs to distribute open swaps reports to reporting counterparties on a weekly or monthly basis, depending on the registration status of a reporting counterparty. Proposed § 49.11(c) would require SDRs to receive a verification of data accuracy or a notice of discrepancy from the reporting counterparties in order to complete the verification process. Proposed § 49.11(a) and § 49.11(d)<sup>233</sup> do not have PRA implications beyond the burdens discussed for paragraphs (b) and (c) below.

While SDRs are already required to confirm the accuracy and completeness

<sup>233</sup> The Commission notes that requirements of part 40 of the Commission's regulations would apply to SDRs amending their verification policies and procedures regardless of proposed § 49.11(d), because verification policies and procedures would fall under the part 40 definition of a "rule." See 17 CFR 40.1(i) (definition of rule for the purposes of part 40). PRA implications for proposed § 49.11(d) would be included under the existing approved PRA collection for part 40 of the Commission's regulations.

of swap data under current § 49.11, the Commission anticipates that the requirements in proposed § 49.11 would impose different burdens on the SDRs than the current regulation. The Commission estimates that each SDR would incur an initial, one-time burden of 500 hours to build, test, and implement updated verification systems that would generate and disseminate the open swaps reports and receive the verifications of data accuracy or notices of discrepancy, for a total of 1,500 initial burden hours across all SDRs. The Commission also estimates 50 hours per SDR annually for SDRs to maintain their verification systems and make any needed updates to verification policies and procedures required under proposed § 49.11(a) and (c).

Currently, SDRs are required to confirm swap data by contacting both counterparties for swaps that are not submitted by a SEF, DCM, DCO, or third-party service provider every time the SDR receives swap data related to the swap. For swaps reported by a SEF, DCM, DCO, or third-party service provider, the SDRs must currently assess the swap data to form a reasonable belief that the swap data is accurate every time swap data is submitted for a swap. Under proposed § 49.11(b) and (c), SDRs would only generate the open swaps reports at most once a week for any reporting counterparty, regardless of how often swap data is submitted for an open swap, and would only be required to provide the open swaps reports to the reporting counterparties, without needing to contact the non-reporting counterparty or evaluate the swap data. The Commission also anticipates, based on discussions with SDRs and other market participants, that the verification process would be largely automated once the processes are in place.

At maximum, the SDRs would be required to create open swaps reports for the 117 SD/MSP/DCO reporting counterparties every week (6,084 reports per year) and open swaps reports for the 1,585 non-SD/MSP/DCO reporting counterparties every month (19,020 reports per year) for a total of 25,104 reports per year overall. The Commission estimates that creating each report would require 2 hours, for a total of 50,208 hours per SDR per year or 150,624 hours overall across all SDRs.

## vii. Amended § 49.12

Proposed amendments to § 49.12(a) and (b) would incorporate existing SDR recordkeeping obligations from § 45.2(f) and (g) respectively, which are already applicable to SDRs under current § 49.12(a). As the recordkeeping

requirements being moved from § 45.2 already apply to SDRs under current § 49.12, the Commission does not believe that amended § 49.12(a) or (b) would require any revision to hours burden related to § 49.12 already included in collection 3038–0086. Proposed amendments to § 49.12(c) would require SDRs to maintain records of data validation errors and of data reporting errors, which would include records of data subsequently corrected by a SEF, DCM, or reporting counterparty pursuant to parts 43, 45, and 46. Proposed § 49.12(c) does not however add any new requirement to part 49, as all of the records to be kept would already be required to be kept by existing recordkeeping obligations as data submitted under parts 43, 45, or 46. As a result, the Commission does not believe that amended § 49.12(c) would require an additional PRA burden beyond that already included in collection 3038–0086.

#### viii. Amended § 49.13

Proposed § 49.13(a) would require SDRs to monitor, screen, and analyze SDR data in the form and manner determined by the Commission. This would involve generating reports and other information at the request of the Commission by calculating or compiling information and SDR data maintained by the SDR. Proposed § 49.13(b) would require SDRs to have sufficient resources to perform such obligations. The Commission proposes to amend existing collection 3038–0086 to account for any burdens associated with responding to Commission requests to monitor, screen, and analyze SDR data. While SDRs are currently required to perform monitoring, screening, and analyzing tasks as required by the Commission, the proposed amendments would facilitate more frequent requests from the Commission, which may increase the burden on SDRs. The Commission anticipates that requests would be both one-time requests and requests to establish periodic reports. The Commission estimates that it would make 10 new requests per SDR per year, and that each request would require an average of 40 hours to respond, for a total burden of 400 hours per SDR per year, or 1,200 hours per year overall. The Commission anticipates that the number of new requests would decrease over time as the Commission's resources for utilizing SDR data improve. The Commission does not anticipate any one-time, initial burdens related to proposed § 49.13(a).

Proposed § 49.13(c) would require SDRs to notify the Commission of any SDR data that the SDR receives that is

not reported in accordance with parts 43, 45, or 46, as applicable. Currently, under § 49.15(c), SDRs are only required to notify the Commission when swap transaction and pricing data is not reported in compliance with the obligations under part 43. Proposed § 49.13(c) would expand this obligation to also include SDRs notifying the Commission when a transaction is reported that is not in accordance with part 45 or part 46. The Commission anticipates that the notification provisions in proposed § 49.13(c) would create little or no PRA burden on SDRs beyond those existing under current § 49.15(c), as the SDRs would already have the necessary systems and procedures in place due to the existing requirements in current § 49.15(c).

#### ix. Amended § 49.26

Proposed new § 49.26(j) would require SDRs to provide their users and potential users with the SDR's policies and procedures on reporting SDR data, including SDR data validation procedures, swap data verification procedures, and SDR data correction procedures. The Commission anticipates that SDRs would incur a one-time burden of 20 burden hours to draft written documents that they would provide to their users and potential users, for a total increase of 60 one-time burden hours across SDRs. The Commission also anticipates that SDRs would update their policies once per year and incur a recurring burden of 10 hours annually from providing any updated reporting policies and procedures to their users and potential users, as needed, for a total increase of 30 ongoing burden hours across SDRs.

#### x. New § 49.28

Proposed new § 49.28 incorporates existing provisions of § 43.3(f) and (g) with respect to hours of operation with minor changes and clarifications. Proposed § 49.28 extends the provisions of current § 43.3(f) and (g) to include all SDR data and clarifies the different treatment of regular closing hours and special closing hours. SDRs currently have closing hours systems, policies, and procedures that apply to all SDR functions and all SDR data under the current requirements. The proposed requirements related to declaring regular closing hours and special closing hours would also effectively follow current requirements, without necessitating changes to current SDR systems or practices. The Commission does however anticipate that the SDRs would need to issue notices to the public related to closing hours under proposed § 49.28(a) and (c). The

Commission estimates that each SDR would issue three notices per year and spend five hours creating and disseminating each notice, for a total of 15 hours per year preparing and providing public notices per SDR, and a total of 45 hours per year across all SDRs.

#### xi. New § 49.29

Proposed new § 49.29 would require each SDR to provide, upon request by the Commission, information relating to its business as an SDR, and such other information that the Commission needs to perform its regulatory duties. This provision also requires each SDR, upon request by the Commission, to provide a written demonstration of compliance with the SDR core principles and other regulatory obligations. The PRA burden associated with such responses is dependent on the number of requests made and the complexity of such requests. Based on its experience with requests to DCMs, the Commission would estimate that each SDR would likely receive on average between three and five requests per year, considering that an SDR is a newer type of registered entity than a DCM. The Commission anticipates that the number of requests would decrease over time. The Commission also anticipates that each such request would require the SDR to spend 20 hours to gather information and formulate a response, and bases its estimate of burden hours assuming five such requests per year, for a total additional hours burden of 100 hours per SDR per year, or 300 hours per year across all SDRs. The Commission does not anticipate that SDRs would incur any one-time hours burden or costs in complying with this regulation.

The Commission therefore estimates that the total overall burdens for updated Information Collection 3038–0086 will be as follows:

*Estimated number of respondents affected:* 3 SDRs.

*Estimated annual number of responses per respondent:* 154,327,169.

*Estimated total annual responses:* 462,981,508.

*Estimated burden hours per response:* 0.0006.

*Estimated total annual burden hours per respondent:* 99,197.

*Estimated aggregate total burden hours for all respondents:* 297,526.

#### 4. Request for Comment

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



consider public comments on this proposed collection of information in:

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

(2) evaluating the accuracy of the estimated burden of the proposed collection of information, including the degree to which the methodology and the assumptions that the Commission employed were valid;

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

(4) minimizing the burden of the proposed information collection requirements on registered entities, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, *e.g.*, permitting electronic submission of responses.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418-5160 or from <http://RegInfo.gov>. Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to:

- The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Trading Commission;

- (202) 395-6566 (fax); or
- [OIRASubmissions@omb.eop.gov](mailto:OIRASubmissions@omb.eop.gov) (email).

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

### C. Cost-Benefit Considerations

#### 1. Introduction

Section 15(a)<sup>234</sup> of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

In this release, the Commission is proposing revisions to existing regulations in parts 23, 43, 45, and 49. The Commission also is proposing new regulations in part 49. Together, these proposed revisions and additions are intended to address swap data verification and to improve the quality of data reporting generally. Some of the proposed amendments are substantive. A number of amendments, however, are non-substantive or technical, and therefore would not have associated cost-benefits implications.<sup>235</sup>

To the extent costs are quantifiable, they have been discussed in two places: The PRA section in this release and in the PRA-related information collection requests filed with OMB. In general, however, given the small number of existing SDRs and their differences in size and operations, many of the costs associated with this proposed rulemaking were not readily quantifiable without relying on and potentially divulging confidential information. The Commission therefore specifically requests comments to help quantify the costs of this rulemaking.

#### 2. Background

In 2011, the Commission issued the Part 49 Adopting Release. The duties and requirements included in the Part 49 Adopting Release require SDRs to, among other requirements, accept and confirm data reported to the SDRs. The Commission also believed that the Commission would be better able to monitor the overall swaps market and individual market participants through SDR collection and maintenance of

swap data as required in parts 45 and 49. Before the adoption of the Dodd-Frank Act and its implementing regulations, the swaps market generally, and transactions and positions of individual market participants in particular, were not transparent to regulators or to the public.

Due to these requirements for SDRs to collect and maintain SDR data, the Commission has now had the opportunity to work directly with SDR data reported to, and held by, SDRs. Based on its experience working with SDR data, along with extensive feedback received from market participants, the Commission believes that improving data quality would help enhance the data's usefulness. In this release, the Commission has focused on the operation and implementation of CEA section 21,<sup>236</sup> which contains requirements related to SDRs, including the requirement to confirm data.<sup>237</sup> The Commission is also proposing to modify a number of other regulations for clarity and consistency and to enhance the Commission's ability to monitor and supervise the swaps market.

Prior to discussing the proposed rule changes, the Commission describes below the current environment that would be impacted by these changes. Three SDRs are currently provisionally registered with the Commission: CME, DRR, and ICE.

Each SDR has unique characteristics and structures that determine how the proposed rule changes would impact its operations. For example, SDRs affiliated with DCOs tend to receive a large proportion of their SDR data from swaps cleared through those affiliated DCOs, while independent SDRs tend to receive SDR data from a wider range of market participants.

The current reporting environment also involves third-party service providers. These entities assist market participants with fulfilling the applicable data reporting requirements, though the reporting requirements do not apply to third-party service providers directly.

Given that data quality depends on the underlying data reporting requirements, the proposed changes should be considered in context with other planned improvements to parts 43 and 45. As discussed in the Roadmap, the Commission is in the process of improving data reporting requirements, including modifying the requirements to be more clear and consistent with other regulators' requirements. The amendments proposed in this

<sup>234</sup> 7 U.S.C. 19(a).

<sup>235</sup> The Commission believes there are no cost-benefit implications for proposed §§ 49.2, 49.15, 49.16, 49.18, 49.20, 49.24, and 49.31.

<sup>236</sup> See 7 U.S.C. 24a.

<sup>237</sup> See 7 U.S.C. 24a(c)(2).

rulemaking are one part of this larger effort to ensure that better-quality data is available to market participants and the Commission.

Current regulations have not created results that meet the Commission's expectations for data quality. For example, current regulations do not include a specific affirmative obligation for swap counterparties to review reported swap data for errors, but instead require swap counterparties to correct errors and omissions only after the discovery of inaccurate data.<sup>238</sup> The result has been that market participants too often have not acted to review and correct reported swap data. It is not uncommon for Commission staff to find discrepancies between open swaps information available to the Commission and reported data for the same swaps. In the processing of swap data to generate the CFTC's Weekly Swaps Report,<sup>239</sup> for example, there are instances when the notional amount differs between the Commission's open swaps information and the swap data reported for the same swap. Other common examples of discrepancies include incorrect references to an underlying currency, such as a notional value incorrectly linked to U.S. dollars instead of Japanese Yen. These examples, among others, strongly suggest a need for better verification of reported swap data. Improved verification could lead to these errors being discovered and corrected in a timely manner.

SDR policies and procedures have also created additional challenges for swap data accuracy. As discussed above, certain SDR policies and procedures for swap data have been based on negative affirmation, *i.e.*, predicated on the concept that reported swap data is accurate and confirmed if a reporting counterparty does not inform the SDR of errors or omissions, or otherwise make subsequent modifications to data reported for a swap within a certain period of time.<sup>240</sup> As reporting counterparties are typically not reviewing their reported swap data maintained by the SDRs, the data is effectively assumed to be accurate and errors and omissions are not sufficiently discovered and corrected. As described in more detail in the section VII.C.8.iii discussion of price discovery below, the volume of inaccurate swap data that is discovered by market participants or the Commission shows that current

regulations are insufficient to produce the quality of swap data the Commission expects and needs to fulfill its regulatory responsibilities.

Based on its experience with data reporting, the Commission believes that certain regulations, particularly in parts 43, 45, and 49, should be amended to improve swap data accuracy and completeness. The regulatory changes being proposed to meet this objective include requiring SDRs and reporting counterparties to verify the accuracy and completeness of reported swap data. Many of the proposed regulations have costs and benefits that must be considered. These will be discussed individually below.

This release also includes amendments to part 49 to improve and streamline the Commission's oversight of SDRs. These proposed regulations include allowing the Commission to request demonstrations of compliance and other reports from SDRs.

For each proposed amendment discussed below, the Commission summarizes the changes,<sup>241</sup> and identifies and discusses the costs and benefits attributable to the proposed changes. The Commission then considers alternatives to the rules proposed in this release. Finally, the Commission considers the costs and benefits of all of the proposed rules jointly in light of the five public interest considerations in CEA section 15(a).

The Commission notes that this consideration of costs and benefits is based on the understanding that the swaps market functions internationally. Many swaps transactions involving U.S. firms occur across international borders and some Commission registrants are organized outside of the United States, with leading industry members often conducting operations both within and outside the United States, and with market participants commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits refers to the proposed rules' effects on all swaps activity, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under

CEA section 2(i).<sup>242</sup> The Commission contemplated this cross-border perspective in 2011 when it adopted § 49.7, which applies to trade repositories located in foreign jurisdictions.<sup>243</sup>

### 3. Baseline

There are separate baselines for the costs and benefits that might arise from the proposed regulations in this release. The Commission believes that for proposed paragraphs (c) added to §§ 23.204 and 23.205, the baseline is the current practice. The baseline for proposed § 45.14 is current § 45.14. The baseline for proposed amendments to current part 49 regulations is the existing part 49 and current practices. For proposed § 49.12, the baseline is current § 49.12, as well as § 45.2(f) and (g), which would be replaced by proposed § 49.12. For proposed § 49.17, the baseline is current §§ 49.17 and 45.13.

In this release, the Commission is proposing to adopt four new regulations: §§ 49.28, 49.29, 49.30, and 49.31. For proposed new § 49.28 the baseline is current § 43.3(f) and (g), because the requirements in § 43.3(f) and (g) are being moved to proposed § 49.28. For proposed new §§ 49.29 and 49.30, the baselines are current practices. Proposed new § 49.31 concerns internal Commission practices and is not subject to consideration of costs and benefits.

### 4. Costs and Benefits of Proposed Amendments to Part 49

#### i. § 49.3—Procedures for Registration

The Commission is proposing to amend § 49.3 to remove the requirements for SDRs to: (i) file an annual amendment to Form SDR; and (ii) amend Form SDR after the Commission grants the application for registration under § 49.3(a), as required in current § 49.3(a)(5). The Commission believes the annual filing requirement and the requirement to continuously update Form SDR once the application

<sup>242</sup> See 7 U.S.C. 2(i). CEA section 2(i) limits the applicability of the CEA provisions enacted by the Dodd-Frank Act, and Commission regulations promulgated under those provisions, to activities within the U.S., unless the activities have a direct and significant connection with activities in, or effect on, commerce of the U.S.; or contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of the CEA enacted by Dodd-Frank Act. Application of section 2(i)(1) to the existing regulations under part 45 with respect to SDs/MSPs and non-SD/MSP counterparties is discussed in the Commission's Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292 (July 26, 2013).

<sup>243</sup> See 17 CFR 49.7.

<sup>238</sup> See 17 CFR 43.3(e); 17 CFR 45.14.

<sup>239</sup> See CFTC's Weekly Swaps Report, <https://www.cftc.gov/MarketReports/SwapsReports/index.htm>.

<sup>240</sup> See 17 CFR 49.11(b)(1)(ii) and (b)(2)(iii).

<sup>241</sup> As described throughout this release, the Commission is also proposing a number of non-substantive, conforming rule amendments in this release, such as renumbering certain provisions and modifying the wording of existing provisions. Non-substantive amendments of this nature may be described in the cost-benefit portion of this release, but the Commission will note that there are no costs or benefits to consider.

for registration has been granted currently in § 49.3(a)(5) are unnecessary for the Commission to successfully perform its regulatory functions.

#### (A) Costs and Benefits

The proposed amendments to § 49.3(a)(5) would benefit SDRs by reducing the amount of information that SDRs must provide to the Commission and the frequency with which the SDRs must provide the information. By removing the annual Form SDR amendment requirement and the requirement to update Form SDR after registration is granted, SDRs would be required to expend fewer resources to provide this information to the Commission. The Commission believes that current § 49.3(a)(5) is unnecessary as SDRs already submit much of the information in Form SDR in rule filings under part 40 or as required per other SDR regulations. The Commission also believes that this requirement would be unnecessary with new proposed § 49.29, which would provide the Commission with the ability to request the same information on an as-needed basis.

The costs of proposed § 49.3(a)(5) would not be significant and would largely be associated with any needed adjustments to SDRs policies and procedures related to reducing the number of updates to Form SDR.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.3(a)(5). Are there additional costs or benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.3(a)(5). Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

#### ii. § 49.5—Equity Interest Transfers

Proposed § 49.5(a) would require that SDRs: (i) Notify the Commission of each transaction involving the direct or indirect transfer of ten percent or more of the equity interest in the SDR; and (ii) provide the Commission with supporting documentation upon request.

Proposed § 49.5(b) would require that the notice in § 49.5(a) be filed electronically with the Secretary of the Commission and DMO at the earliest possible time but in no event later than the open of business ten business days

following the date upon which a firm obligation is made for the equity interest transfer.

Proposed § 49.5(c) would require that upon the transfer, whether directly or indirectly, the SDR shall file electronically with the Secretary of the Commission and DMO a certification that the SDR meets all of the requirements of section 21 of the CEA and the Commission regulations, no later than two business days following the date on which the equity interest was acquired.

#### (A) Costs and Benefits

The Commission believes that the proposed amendments would benefit SDRs by lowering the burdens related to notifying the Commission of equity interest transfers and by extending the time SDRs have to file transfer-related materials with the Commission. The proposed changes lower the burdens by removing the obligations in current § 49.5(a) to update Form SDR for an SDR that has been granted registration under § 49.3(a) and in current § 49.5(b) to provide specific information to the Commission with the equity interest transfer notification and replacing them with the ability for the Commission to request supporting documentation for the transfer as needed under proposed § 49.5(a). This would likely result in SDRs only providing the information the Commission deems necessary for any particular equity interest transfer, which may not include all of the documents or information required by current § 49.5. The proposed amendments also lower the burdens on SDRs by extending the notification timing requirement under current § 49.5(a) from one business day to ten business days. More time would allow SDRs more flexibility in time and resources needed to file the required notice.

The costs of proposed § 49.5 would be lower than the current requirements and would largely be associated with any needed adjustments to SDRs policies and procedures related to notification of equity interest transfer and the resources needed to provide the Commission with requested documentation. The costs would also include any additional costs stemming from the inclusion of “indirect transfers” of equity ownership in proposed § 49.5. This could increase the costs to SDRs, if the inclusion of indirect transfers results in more frequent equity interest transfers and the associated need to provide information to the Commission, but the inclusion of indirect transfers would benefit the Commission by providing more insight

into equity interest transfers that could affect the business of an SDR, even though the equity interest transfer does not involve the SDR directly. As equity interest transfers are rare occurrences and the Commission does not anticipate that including indirect transfers would result in substantially more equity interest transfers, the Commission expects these potential additional costs to be small.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.5. Are there additional costs or benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these benefits.

The Commission requests comment on its consideration of alternatives to proposed § 49.5. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

#### iii. § 49.6—Request for Transfer of Registration

Proposed § 49.6(a) would require an SDR seeking to transfer its SDR registration following a corporate change to file a request for approval to transfer the registration with the Secretary of the Commission in the form and manner specified by the Commission.

Proposed § 49.6(b) would specify that an SDR file a request for transfer of registration as soon as practicable before the anticipated corporate change. Proposed § 49.6(c) would set forth the information that must be included in the request for transfer of registration, including the documentation underlying the corporate change, the impact of the change on the SDR, governance documents, updated rulebooks, and representations by the transferee entity, among other things.

Proposed § 49.6(d) would specify that upon review of a request for transfer of registration, the Commission, as soon as practicable, shall issue an order either approving or denying the request for transfer of registration.

#### (A) Costs and Benefits

The Commission believes that proposed § 49.6 would benefit SDRs by reducing the burdens on SDRs for successfully transferring an SDR registration to a successor entity. Proposed § 49.6 would require a more limited scope of information and representations from the transferor and

transferee entities than current § 49.6, which requires a full application for registration on Form SDR, including all Form SDR exhibits. This limited scope of information and representations would require less time and resources to prepare and submit than the current requirements.

The Commission does not believe that proposed § 49.6 would impose any additional costs on SDRs compared to the current requirement.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.6. Are there additional costs or benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.6. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

#### iv. § 49.9—Open Swaps Reports Provided to the Commission

Proposed § 49.9(a) would require SDRs to provide the Commission with open swaps reports that contain an accurate reflection of the swap data for every swap data field required to be reported under part 45 for every open swap maintained by the SDR. Proposed § 49.9(b) would require SDRs to transmit all open swaps reports to the Commission as instructed by the Commission.

#### (A) Costs and Benefits

The costs imposed by this proposed requirement would include the resources SDRs must use to develop the infrastructure to create and deliver the open swaps reports as instructed by the Commission. In practice, the costs are expected to be mitigated by the fact that SDRs currently send open swaps reports to the Commission on a regular basis, which would help limit the costs. The SDRs may incur some costs from needing to provide open swaps reports in the standardized format required by the Commission, but the Commission does not expect the format of these reports to change frequently.

The Commission believes the proposed amendments would standardize the reports SDRs already provide, which would ensure that the reports will be delivered in a usable format, which will assist the Commission's regulatory oversight

efforts. The Commission believes the largest cost imposed by these amendments would be the upfront costs to implement open swaps reporting systems, with incremental costs to maintain or modify SDR systems on an ongoing basis. The underlying information contained in the reports would also be similar to information SDRs would be required to send to reporting counterparties for verification purposes under proposed § 49.11(b).

The Commission currently uses open swaps reports to create and publish Commission papers and reports, including the weekly swaps report. These reports benefit market participants by analyzing SDR data sourced directly from the SDRs. This information on open swaps is unique because it is not available to the public until the Commission publishes its reports. The Commission also believes that market participants would indirectly benefit from the improved data quality of open swaps that would result from proposed § 49.9, as the information in the reports would help the Commission to better perform its regulatory functions.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.9. Are there additional costs or benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.9. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

#### v. § 49.10—Acceptance of Data

New § 49.10(e) would require SDRs to correct errors and omissions in SDR data that was previously reported, or erroneously not reported, to SDRs. Proposed § 49.10(e)(1)–(4) would set forth the specific requirements SDRs would need to meet to fulfill the general requirement in § 49.10(e): (i) Accept corrections for errors and omissions reported to, or erroneously not reported to, the SDR; (ii) correct errors and omissions as soon as technologically practicable after receiving a report of the errors or omissions; (iii) disseminate corrected SDR data to the public and the Commission, as applicable, as soon as technologically practicable after correcting the SDR data; and (iv) establish, maintain, and enforce policies

and procedures designed to fulfill its correction responsibilities under § 49.10(e)(1)–(3).

#### (A) Costs and Benefits

Proposed § 49.10(e) could impose some costs on SDRs, but the Commission believes that the costs would not be significant and largely related to any needed updates to their error and omission correction systems. SDRs are currently required to identify cancellations, corrections, and omissions under parts 43 and 45.<sup>244</sup> Proposed § 49.10(e) is largely clarifying the SDRs' existing duties, and, for organizational purposes, placing the obligations in part 49, which is the Commission's main regulations governing SDRs. The costs of the proposed paragraph would be mitigated by the fact that SDRs currently routinely correct data errors and omissions and disseminate the corrections as required.

The Commission also expects there would be costs associated with establishing, maintaining, and enforcing the policies and procedures required by the proposed paragraph, but believes that these costs would not be significant and would be limited to initial creation costs and update costs for the policies and procedures as needed.

The Commission believes that one of the benefits from proposed § 49.10(e) is improved data quality resulting from collecting and disseminating accurate swap data. Proposed § 49.10(e) is intended to work in concert with proposed § 45.14 and proposed § 49.11, along with the data correction requirements of § 43.3(e). The Commission believes that market participants and the public would benefit from more complete and accurate swap transaction and pricing data that enhances price discovery. In addition, the Commission uses swap transaction and pricing data to produce public information on the swaps markets, such as the weekly swaps reports. The Commission also believes that market participants would benefit from the Commission using more accurate data to inform swaps markets policy and perform its other regulatory functions. SDRs would also benefit from greater clarity in their requirements to correct errors and omissions in SDR data.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.10. Are there additional costs and benefits that the Commission should

<sup>244</sup> See 17 CFR 43.3(e)(1), (3), (4); 17 CFR 45.14(c).

consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.10. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

vi. § 49.11—Verification of Swap Data Accuracy

Proposed § 49.11(a) would generally require that SDRs: (i) Verify the accuracy and completeness of swap data that the SDRs receive from SEFs, DCMs, and reporting counterparties, or third-party service providers acting on their behalf; and (ii) establish, maintain, and enforce policies and procedures reasonably designed to verify the accuracy and completeness of that swap data.

Proposed § 49.11(b) would require SDRs to regularly distribute to each reporting counterparty an open swaps report detailing the swap data maintained by the SDR that contains the same information provided to the Commission in an open swaps report under proposed § 49.9. Proposed § 49.11(b)(1) would require SDRs to distribute open swaps reports that accurately reflect the swap data the SDR maintains for each of a particular reporting counterparty's open swaps, unless other Commission regulations prohibit the disclosure of certain swap data.

Proposed § 49.11(b)(2) would require SDRs to distribute the open swaps reports to SD/MSP/DCO reporting counterparties on a weekly basis, no later than 11:59 p.m. Eastern Time on the day of the week that the SDR chooses to regularly distribute the open swaps reports. Proposed § 49.11(b)(3) would require SDRs to distribute the open swaps reports to non-SD/MSP/DCO reporting counterparties on a monthly basis, no later than 11:59 p.m. Eastern Time on the day of the month that the SDR chooses to regularly distribute the open swaps reports.

Proposed § 49.11(c) would require SDRs to receive from each reporting counterparty to which it sends an open swaps report, in response to the open swaps report, either a verification of data accuracy signifying that the swap data contained in the distributed open swaps report is accurate and complete or a notice of discrepancy signifying that the swap data in the open swaps report contains one or more errors or omissions. Proposed § 49.11(c) would also require SDRs to establish, maintain,

and enforce policies and procedures reasonably designed for the SDR to receive the notices.

Proposed § 49.11(d) would require SDRs to comply with the requirements under part 40 of the Commission's regulations when creating and amending their verification policies and procedures.

(A) Costs and Benefits

The costs associated with the proposed amendments to § 49.11 would largely be borne by the three existing SDRs. The Commission expects that SDRs would incur initial costs from establishing systems to generate open swaps reports and to successfully distribute these reports to all reporting counterparties. The Commission also expects SDR to incur recurring costs related to any needed adjustments to their systems over time and to accommodate the arrival or departure of reporting counterparties. SDRs would also incur the cost of generating and distributing the particular open swaps reports, and receiving the responses from the reporting counterparties, but does not believe these changes would be significant because, based on discussions with the SDRs and other market participants, the Commission believes SDRs would largely automate the verification process.

The Commission believes that the benefits of the proposed amendments to § 49.11 would result from verification improving data accuracy and completeness. When paired with the proposed requirements of § 45.14 and the correction requirements of § 43.3(e), verification would alert reporting counterparties to errors and omission in SDR data for their open swaps. Reporting counterparties would be required to correct any errors or omissions discoverable in the open swaps reports the SDRs provide, including errors in trade-specific details, such as notional amounts and price. The Commission believes that SDRs and reporting counterparties would benefit from having clearer regulations.

The Commission also believes that the proposed verification requirements would improve the Commission's ability to monitor, measure, and regulate the swaps market, such as using more accurate data to improve monitoring for potential systemic risks and surveillance for potential threats to market integrity.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to

§ 49.11. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.11. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

vii. § 49.12—Swap Data Repository Recordkeeping Requirements

Proposed § 49.12(a) would require that SDRs keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the SDR, including, but not limited to, all SDR information and all SDR data reported to the SDR.

Proposed § 49.12(b)(1) would require that an SDR maintain all SDR information received by the SDR in the course of its business. Proposed § 49.12(b)(2) would require an SDR to maintain all SDR data and timestamps, and all messages to and from an SDR related to SDR data reported to the SDR throughout the existence of the swap to which the SDR data relates and for five years following final termination of the swap, during which time the records must be readily accessible by the SDR and available to the Commission via real-time electronic access, and then for an additional period of at least ten years in archival storage from which such records are retrievable by the SDR within three business days.

Proposed § 49.12(c) would require SDRs to create and maintain records of errors related to SDR data validations and errors related to SDR data reporting. Proposed § 49.12(c)(1) would require an SDR to create and maintain an accurate record of all SDR data that fails to satisfy the SDR's data validation procedures. Proposed § 49.12(c)(2) would require an SDR to create and maintain an accurate record of all SDR data errors and omissions reported to the SDR and all corrections disseminated by the SDR pursuant to parts 43, 45, and 46. SDRs must make the records available to the Commission on request.

Proposed § 49.12(d) would contain the requirements of current § 49.12(c) and would require that: (i) All records required to be kept pursuant to part 49 must be open to inspection upon request by any representative of the Commission or any representative of the U.S. Department of Justice; and (ii) an SDR must produce any record required

to be kept, created, or maintained by the SDR in accordance with § 1.31.

Finally, the Commission is proposing a non-substantive change to incorporate the current requirements of § 49.12(e) into the revised requirements of SDRs to monitor, screen, and analyze SDR data under § 49.13. This non-substantive change does not have any cost or benefit implications.

#### (A) Costs and Benefits

The costs of proposed amendments to § 49.12 would primarily be incurred by the three existing SDRs as they make any needed adjustments to create and maintain all required records. The Commission does not believe these costs would be significant, as the recordkeeping requirements in proposed § 49.12 are largely similar to the requirements in current § 49.12 and current § 45.2(f) and (g). The proposed § 49.12(c) requirements are intended to serve as specific examples of records required to be created and maintained pursuant to current requirements and proposed § 49.12, in order to emphasize the importance of retaining records related to reporting errors, and would include such information as all reported SDR data and reports of errors and omissions. Proposed § 49.12(d) further specifies that SDRs must make all records included in proposed § 49.12 available to the Commission on request, which is the current requirement applicable to SDR in current § 45.2(h) and current § 49.12(c).

Finally, the proposed amendments to § 49.12 related to SDR information would be substantially similar to the SEC's requirements for its SBSDRs.<sup>245</sup> The Commission expects that there would be substantial overlap in these requirements for SDRs that are also SBSDRs and these entities would be able to leverage resources to reduce any duplicative costs.

The Commission believes that the proposed amendments to § 49.12 would provide greater clarity to SDRs in regards to their recordkeeping responsibilities and would allow for improvements in tracking errors in data reporting and the collecting of records related to SDR information. Better recordkeeping related to SDR data should lead to increased awareness for the SDRs and the Commission of any reporting issues experienced by reporting counterparties. Data recordkeeping should lead to better quality data by allowing the SDRs and the Commission to look for patterns in records that may lead to adjustments to

SDR systems or future data reporting requirements. The availability of quality records is also crucial for the Commission to effectively perform its market surveillance and enforcement functions, which benefit the public by protecting market integrity and identifying risks within the swaps markets.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.12. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.12. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

#### viii. § 49.13—Monitoring, Screening, and Analyzing Data

Proposed § 49.13(a) would generally require: (i) SDRs to establish automated systems for monitoring, screening, and analyzing all relevant SDR data in their possession in the form and manner as directed by the Commission; and (ii) SDRs to routinely monitor, screen, and analyze relevant SDR data at the request of the Commission.

Proposed § 49.13(a)(1) would: (i) Specify that the requirements for monitoring, screening, and analyzing SDR data require SDRs to utilize relevant SDR data maintained by the SDR to provide information to the Commission concerning the SDR data; and (ii) state that monitoring, screening, and analyzing requests may require the SDRs to compile or calculate information within certain categories, or to compare information among categories, and lists the potential topic areas for requests. Proposed § 49.13(a)(1) also provides a list of topic areas for monitoring, screening, and analyzing tasks that the Commission may require.

Proposed § 49.13(a)(2) would specify that all monitoring, screening, and analyzing requests are at the discretion of the Commission and require that all information provided pursuant to a request conform to the form and manner requirements established for the request pursuant to proposed § 49.30. Proposed § 49.13(a)(3) would require that all monitoring, screening, and analyzing requests be fulfilled within a time specified by the Commission for the particular request.

Proposed § 49.13(b) would require SDRs to establish and at all times maintain sufficient technology, staff, and resources to fulfill the requirements in § 49.13 in the manner prescribed by the Commission.

Proposed § 49.13(c) would incorporate current § 49.15(c) but also expand it to require SDRs to promptly notify the Commission of any swap transaction for which the SDR is aware that it did not receive SDR data in accordance with the requirements of parts 43, 45, and 46.

#### (A) Costs and Benefits

The costs imposed by the proposed amendments to § 49.13 would largely be borne by the three SDRs. The Commission expects these SDRs to incur costs as they may need to develop or modify and maintain the requisite automated systems to monitor, screen, and analyze the reported SDR data to respond to requests from the Commission. Each requested task would need to be evaluated independently to determine the SDRs' ability to perform the task and then to determine the exact content of the report and the delivery requirements. The Commission is not prescribing any specific tasks with this proposal.

Section 21(c)(5) of the CEA currently requires SDRs to "at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing" the data maintained by the SDRs,<sup>246</sup> and current § 49.13(a) codifies this requirement by requiring the SDRs to monitor, screen, and analyze all data in their possession as the Commission may require for ongoing data surveillance activities or ad hoc requests.<sup>247</sup> Proposed § 49.13(a) retains this general requirement, but also provides broad topic areas for tasks that the Commission may request in order to provide SDRs with more information for the monitoring, screening, and analyzing requirement. The Commission expects that the costs for SDRs would vary depending on the scope and frequency of the data requested. The Commission also expects that the costs would be mitigated by the fact that SDRs currently perform monitoring, screening, and analyzing tasks at the request of Commission staff and therefore have systems and resources in place that may be leveraged for any new requests.

Current § 49.13(b) also requires SDRs to maintain sufficient information technology to carry out their duties to monitor, screen, and analyze the data

<sup>245</sup> See 17 CFR 240.13n-7 (detailing the SBSDR recordkeeping requirements).

<sup>246</sup> 7 U.S.C. 24a(c)(5).

<sup>247</sup> See 17 CFR 49.13(a).

they collect. SDRs also currently routinely perform monitoring, screening, and analyzing tasks at the request of Commission staff. While the Commission expects that the SDRs may incur costs to modify and maintain their systems to comply with the requirements of proposed § 49.13 and to respond to requests from the Commission, the Commission believes that the incremental costs would not be significant compared to the applicable baseline of the current requirements to perform monitoring, screening, and analyzing tasks. These costs would also be mitigated by the fact that SDRs are currently performing a variety of monitoring, screening, and analyzing tasks at the request of Commission staff, and therefore already have resources devoted to monitoring, screening, and analyzing SDR data that could be leveraged for any additional requests.

The Commission acknowledges that the cost burdens of the proposed changes for any specific SDR would depend on the current systems established and maintained by the SDR. While current § 49.13 includes requirements to monitor, screen, and analyze data and establish and maintain sufficient information technology, staff, and other resources, the resources expended by an SDR necessarily depends on the parameters of the specific requests. The Commission does not expect SDRs to expend resources without a pending request from the Commission. SDRs currently perform tasks, such as tracking the timeliness of swaps reporting, but costs from other tasks facilitated by the proposed rule may require new or modified systems to perform requested tasks.

The Commission further acknowledges that costs related to each task would likely vary with the complexity of the requested task. The costs associated with responding to each task would depend on the information requested and the frequency of the reports. The Commission expects the requests would be reasonable based on available SDR resources and would take into account an understanding of what is possible given the data maintained by the SDRs. The Commission understands that SDRs can only be expected to perform monitoring, screening, and analyzing tasks based on the SDR data available to each SDR and that the results of any task would be limited to the SDR data for swaps reported to each SDR. The Commission also expects that SDRs and Commission staff would work together to design each task before a task is prescribed, as is current practice.

This may also be a source of costs for SDRs, as each pending request may

require multiple conversations between SDRs and the Commission to design each task based on the Commission's needs and what is feasible given the SDRs' abilities and the available SDR data.

After the costs have been incurred for any initial development or updates to SDR automated systems related to any specific task, the Commission expects recurring costs as SDRs' systems would need to be monitored and adjusted as needed. Given that the Commission expects most requested tasks would be largely automated, the per-report production costs would not be substantial.

In addition, because the information submitted to the Commission must reflect and adhere to established form and manner specifications pursuant to proposed § 49.30, the Commission anticipates many of the reports resulting from the tasks would share a common form and manner, which would result in reduced incremental costs for additional reports.

Proposed § 49.13(c) would not create any costs other than those associated with the requirement to promptly notify the Commission. The Commission believes those costs would not be significant, because SDRs have already established systems to send electronic information to the Commission and the Commission is not requiring SDRs to actively search for reporting noncompliance as part of this proposed section.

The Commission expects amended § 49.13 would improve data quality and enhance the Commission's surveillance and other regulatory capabilities. Market participants and the public would benefit from these improvements. As SDRs analyze the SDR data to complete requested tasks, for example, inconsistencies and anomalies within the data would become more apparent, which may lead to improvements in market practices, data quality, and Commission regulations. The reports may also assist the Commission with timely analyses that would help the Commission perform its regulatory functions. To the extent that the tasks enable the Commission to act more quickly, or with greater accuracy, to identify abusive market practices, compliance issues, or systemic risks, and address these concerns more quickly and with greater precision, market participants and the public would benefit. These monitoring, screening, and analyzing tasks should lead to more robust, improved analyses performed by or available to the Commission staff, and the findings from such analyses should help the

Commission better perform its regulatory functions, improve its policy decisions, and allow the Commission to better inform the public about the swaps markets.

The Commission recognizes that not detailing specific tasks in the rule text may create certain costs for SDRs, as the tasks the Commission requests them to perform may change over time and therefore may not be perfectly predictable. At the same time, the Commission believes that not assigning tasks in the rule text itself would encourage the SDRs and the Commission to work together to devise the best approaches for any needed tasks. Adding specific tasks to the rule text would also curtail the Commission's ability to remove or modify the task in the future, as the Commission's needs and the SDRs' capabilities change. Allowing more flexibility by not including tasks in the proposed rulemaking would benefit both the SDRs and the Commission, and is the Commission's preferred approach. Additionally, the examples of the types of tasks the Commission envisions asking of SDRs provide above should help reduce any costs associated with uncertainty.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.13. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.13. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

Please describe the qualitative and quantitative costs (including, but not limited to, personnel costs, technological costs, and costs related to on-going discussions with Commission staff) that SDRs may incur in needing to make any updates to current systems related to the proposed changes to § 49.13.

Please describe (both qualitatively and quantitatively) how costs or benefits (including, but not limited to, personnel costs, technological costs, and costs related to on-going discussions with Commission staff) may change depending on whether more or fewer categories are included in § 49.13(a)(1). Are there additional categories that the Commission should include or are there



categories that the Commission should remove? If so, please explain in detail.

Please describe (both qualitatively and quantitatively) how costs and benefits (including, but not limited to, personnel costs, technological costs, and costs related to on-going discussions with Commission staff) may change depending on the length of time period to be analyzed for a task or the frequency of repetition for a task.

#### ix. § 49.17—Access to SDR Data

The Commission proposes to amend the § 49.17(b)(3) definition of “direct electronic access” to mean an electronic system, platform, framework, or other technology that provides internet-based or other form of access to real-time SDR data that is acceptable to the Commission and also provides scheduled data transfers to Commission electronic systems.

Proposed § 49.17(c) would require SDRs to provide access to the Commission for all SDR data maintained by the SDR pursuant to the Commission’s regulations. Proposed § 49.17(c)(1) would require that SDRs provide direct electronic access to the Commission or its designee in order for the Commission to carry out its legal and statutory responsibilities under the CEA and Commission regulations. Proposed § 49.17(c)(1) would also require that SDRs maintain all SDR data reported to the SDR in a format acceptable to the Commission, and transmit all SDR data requested by the Commission to the Commission as instructed by the Commission.

Proposed § 49.17(c)(1) would amend the requirements of current § 45.13(a) from maintaining and transmitting “swap data” to maintaining and transmitting “SDR data,” to make clear that the SDRs must maintain all SDR data reported to the SDRs in a format acceptable to the Commission and transmit all SDR data requested by the Commission, not just swap data.

Proposed § 49.17(c)(1) would also broaden the requirements of current § 45.13(a) from “transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission” to “transmit all SDR data requested by the Commission to the Commission as instructed by the Commission,” and explains what these instructions may include.

The Commission proposes to amend § 49.17(f) to correct the incorrect reference to “37.12(b)(7)” at the end of paragraph (f)(2) with a correct reference to “39.12(b)(7)” of the Commission’s regulations, as there is no § 37.12(b)(7) in the Commission’s regulations.

The Commission proposes to move the delegation of authority in current § 49.17(i) to proposed § 49.31(a)(7).

#### (A) Costs and Benefits

The costs imposed by the proposed changes to § 49.17(c) would fall mainly on SDRs, because the SDRs would incur costs to provide the Commission with direct electronic access to all SDR data and to provide access to SDR data as instructed. The costs associated with the use of the term “direct electronic access” in proposed § 49.17(c) are negligible, as the definition is being modified to allow the SDR’s more flexibility in providing the Commission with direct electronic access to SDR data, subject to the Commission’s approval. The other proposed amendments to § 49.17(c) grant the Commission greater flexibility to instruct SDRs on how to transfer SDR data to the Commission at the Commission’s request. The SDRs may experience some costs based on the need to update systems to be able to transfer SDR data to the Commission as instructed. These incremental costs would not be significant because SDRs are already required to provide scheduled data transfers to the Commission under current § 49.17(b)(3) and (c)(1) and are required to transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission under current § 45.13(a). It is also current market practice for SDRs to regularly provide SDR data to the Commission as instructed by Commission staff. The Commission expects that the SDRs would continue to work with Commission staff to devise the most efficient and effective ways to meet the Commission’s data needs.<sup>248</sup>

The Commission believes that the proposed amendments to § 49.17 would provide clarity and certainty to SDRs regarding their responsibilities to the Commission, by including the data access requirements in one section and by more clearly stating the Commission’s ability to instruct SDRs on all aspects of providing SDR data to the Commission. This clarity would help the SDRs work with Commission staff to devise the most efficient and effective ways for the SDRs to transfer data to the Commission, ensuring that the Commission would have the SDR data that it needs to perform its regulatory functions without undue burden on SDRs.

<sup>248</sup> The proposed changes to § 49.17(f)(2) and (i) are non-substantive and do not have cost-benefit implications.

The proposed changes to § 49.17(b)(3) that modify the definition of “direct electronic access” to allow for more technological flexibility would reduce future costs for SDRs because the amendment allows the Commission to consider any technology that may provide direct electronic access more efficiently than the current requirement. This would allow the Commission to adapt to changing technology more quickly and may allow the SDRs to save costs by having more efficient technology and processes approved in the future.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.17. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of the costs and benefits, as well as other information to support such assessments.

The Commission requests comments on its consideration of alternatives to proposed § 49.17. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

#### x. § 49.22—Chief Compliance Officer

The Commission proposes to amend § 49.22 to reduce regulatory compliance burdens on SDRs and to make a number of non-substantive organizational and conforming changes.

The Commission is proposing a non-substantive change to define “senior officer” in proposed § 49.22(a). Both current § 49.22 and the CEA<sup>249</sup> use the term “senior officer” in the context of CCO requirements. Proposed § 49.22(a) also makes non-substantive organizational changes to the paragraph.

Proposed § 49.22(b) removes an unnecessary reference establishing the position of CCO from § 49.22(b)(1) and adds in consultation with the board of directors or senior officer to § 49.22(b)(1)(i), along with other conforming changes to terminology.

Proposed § 49.22(c) rearranges some parts of the section and simplifies the wording of current § 49.22(c) in order to clarify the requirements related to the appointment, supervision, and removal of the CCO, but makes few substantive changes to the current requirements. Proposed § 49.22(c)(3)(i) clarifies that the senior officer can also remove a CCO, in addition to the board of

<sup>249</sup> See 7 U.S.C. 24a(e).

directors, in order to provide more flexibility to the SDRs.

Proposed § 49.22(d) rearranges some parts of the section and simplifies the wording of current § 49.22(d), while also making a few substantive changes related to CCO duties. Proposed § 49.22(d)(2) changes “any conflicts of interest that may arise” to “any material conflicts of interest” to contain a more practical requirement on SDRs than having CCOs resolve every potential conflict of interest, which would also reduce burdens. The proposed changes also remove the three examples of conflicts of interest from current § 49.22(d)(2) <sup>250</sup> in order to not imply a limit as to the types of material conflicts of interest that may arise. The Commission notes that material conflict of interest may still arise in the three areas listed in current § 49.22(d)(2), and the CCO would have to address such material conflicts, even with the examples removed from proposed § 49.22(d).

Proposed § 49.22(e) rearranges some parts of the section and simplifies the wording of current § 49.22(e), while making a few substantive changes related to the preparation of the annual compliance report. The Commission is proposing to curtail the line-by-line review of Commission regulations and the CEA requirements with SDR policies, as required by current § 49.22(e)(2), in order to streamline the SDRs’ preparation of the annual compliance report. The Commission notes, however, that proposed § 49.22(e)(1) and (e)(2) would focus on the most important and useful information in the annual compliance report based on the Commission’s experience. The Commission is also proposing to remove many of the examples of how material compliance issues can be identified from current § 49.22(e)(5) so as not to imply any limits on the material compliance matters that must be described. The Commission notes that removing the examples from current § 49.22(e)(5) in proposed § 49.22(e)(4) does not in any way limit the material compliance matters that must be described, regardless of how the matter are identified. Finally, the Commission proposes to add “in all material aspects” to the end of current § 49.22(e)(6) in proposed § 49.22(e)(5), in order to reduce CCOs’ concerns with certifying the annual compliance report’s accuracy.

The Commission is proposing to remove the requirement in current § 49.22(f)(1) that requires the

submission of the annual compliance report to the SDR’s board of directors or the senior officer and any subsequent discussion of the report to be recorded in the board minutes or other similar record as evidence of compliance with the submission requirement, as this requirement would be incorporated into the general recordkeeping requirement in proposed § 49.22(g).

The Commission is proposing to amend § 49.22(f)(2) by increasing the amount of time that SDRs have to submit the annual compliance report to the Commission from 60 days to 90 calendar days after the end of the SDR’s fiscal year. The Commission is also proposing to remove the annual Form SDR amendment requirement in § 49.3(a)(5) and is therefore proposing to remove the reference to § 49.3(a)(5) from § 49.22(f)(2).

The Commission proposes to amend § 49.22(f)(3) to include a requirement that, in the instance where an amendment to the annual compliance report must be submitted to the Commission, the CCO must also submit the amended annual compliance report to the SDR’s board of directors or the senior officer.

The Commission is proposing to amend § 49.22(f)(4) to allow the Commission to more easily grant requests for an extension of time to file the annual compliance report by removing the requirement that SDRs must show “substantial, undue” hardship. The Commission believes this current requirement is too strict and is instead proposing to allow the Commission to grant extensions based on “reasonable and valid requests.”

The Commission is proposing to amend § 49.22(g) to simplify the recordkeeping requirements for records related to the SDRs’ policies and records created related to the annual compliance report. The Commission is removing the specific examples of records listed in current § 49.22(g) from proposed § 49.22(g), but proposed § 49.22(g) still requires all of the same records to be maintained in accordance with proposed § 49.12. As a result, the proposed amendments to § 49.22(g) are non-substantive.

#### (A) Costs and Benefits

The proposed amendments to § 49.22(a), (b), and (g) are non-substantive and therefore do not have cost-benefit implications. Similarly, the conforming amendments related to the terms proposed in § 49.2, the rearranging of paragraphs within proposed § 49.22, and other changes to text that do not substantively change the

requirements of § 49.22 do not have cost-benefit implications.

The only substantive change in proposed § 49.22(c) is the addition of the senior officer’s ability to remove the CCO. The Commission believes that adding the senior officer to this provision would benefit SDRs by allowing more flexibility in how the SDRs manage their personnel and their compliance activities. The Commission believes that any costs associated with proposed § 49.22(c) would not be significant and consist of any resources needed to update SDR policies and procedures, if the SDRs choose to enable the senior officer to remove the CCO.

The Commission believes that the proposed change to the conflicts of interest provision in proposed § 49.22(d)(2) would benefit SDRs by including a more practical requirement while still requiring important conflicts of interest to be addressed. By changing the requirement from “resolving any conflicts of interest that may arise” to “taking reasonable steps . . . to resolve any material conflicts of interest that may arise,” an SDR’s CCO would not need to spend resources to address every conceivable conflict of interest and can instead concentrate resources on resolving conflicts of interest that have a material effect on an SDR’s operations. The Commission does not expect the SDRs to incur any significant costs as a result of these proposed changes.

The Commission believes that the changes to the requirements for the information to be included in the annual compliance report in proposed § 49.22(e)(1) would benefit SDRs by allowing SDRs to focus on the most important and useful information in the annual compliance report, which would also reduce their burdens. The Commission believes that the proposed removal of the assessment of all applicable Commission regulations and CEA requirements with SDR policies and replacement with a more general requirement to describe and assess the SDR’s policies and procedures would save SDRs effort without detrimental effects on the Commission’s ability to perform its oversight functions. The Commission does not believe there are any incremental costs associated with this proposed amendment. The remaining changes to § 49.22(e) are not substantive and do not have cost-benefit implications.

The Commission believes that the proposed amendments to § 49.22(f) would benefit SDRs by simplifying requirements or reducing the costs on SDRs to submit annual compliance reports to the Commission. By providing

<sup>250</sup> See 17 CFR 49.22(d)(2)(i)–(iii).

more time to submit the annual compliance report and by reducing the burden to request a further extension in time to file an annual compliance report, the amendments to § 49.22(f)(2) and (4) would reduce the cost of complying and submitting the report for SDRs. Requirements are also simplified by removing the board or meeting minutes requirement in proposed § 49.22(f)(1), as this requirement would be incorporated into the general recordkeeping requirement in proposed § 49.22(g). The requirement to submit an amended annual compliance report to the board of directors or senior officer may slightly increase costs for SDRs, but only in the sense of the time burden required to submit the amended report. This cost is further mitigated by the fact that CCOs are already capable of submitting the annual compliance reports to their board of directors or senior officer because of existing requirements.

The benefits of the proposed amendments for SDRs would result from the lower burdens related to annual compliance reports. The SDRs would have more time to complete the annual compliance reports and the Commission would be more able to grant requests for extensions of filing time, which should make complying and submitting annual compliance reports easier for SDRs. Removing the requirement to record the submission and discussions of the annual compliance reports from board of directors meeting minutes and similar documents would streamline the requirements as this requirement would be incorporated into the general recordkeeping requirement in proposed § 49.22(g). Overall, the amendments would make the submission process for annual compliance reports under § 49.22(f) easier for SDRs.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.22. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of the costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.22. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

#### xi. § 49.25—Financial Resources

The Commission proposes conforming changes to § 49.25 to remove the reference to § 49.9 and to core principle obligations identified in § 49.19. Proposed § 49.25(a) would instead refer to SDR obligations under “this chapter,” to be broadly interpreted as any regulatory or statutory obligation specified in part 49. The Commission considers these to be non-substantive changes that do not impact existing obligations on SDRs, and therefore have no cost-benefit implications.

The Commission is also proposing to amend § 49.25(f)(3) to extend the time SDRs have to submit their quarterly financial resources reports to 40 calendar days after the end of the SDR’s first three fiscal quarters, and 90 days after the end of the SDR’s fourth fiscal quarter, or a later time that the Commission permits upon request.

#### (A) Costs and Benefits

The Commission believes that giving SDRs more time to file their quarterly financial resources reports would benefit SDRs with little impact on the Commission’s oversight of SDRs. In addition, the Commission notes that the 90 calendar day deadline for fourth quarter financial reports would align with the amended timeframe for SDRs submitting annual compliance reports in proposed § 49.22(f)(2). The Commission believes that SDRs would benefit from extended, harmonized deadlines.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.25. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of the costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.25. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

#### xii. § 49.26—Disclosure Requirements of Swap Data Repositories

The Commission proposes to amend § 49.26 to make updates to the introductory paragraph of § 49.26 to reflect updates to the terms “SDR data,” “registered swap data repository,” and “reporting entity” in proposed § 49.2. The Commission also proposes to update other defined terms used in the section to conform to the proposed

amendments to § 49.2. These non-substantive amendments do not change the requirements of § 49.26 and do not have cost-benefit implications.

The Commission also proposes to add § 49.26(j) that would require that the SDR disclosure document set forth the SDR’s policies and procedures regarding the reporting of SDR data to the SDR, including the SDR data validation and swap data verification procedures implemented by the SDR and the SDR’s procedures for correcting SDR data errors and omissions (including the failure to report SDR data as required pursuant to the Commission’s regulations).

#### (A) Costs and Benefits

The Commission believes that costs of proposed § 49.26 would not be significant. The costs would entail the costs of adding the information required under proposed § 49.26(j) to the required SDR disclosure document and updating the document as needed.

The Commission expects that the proposed addition of § 49.26(j) would benefit market participants by providing clearer information regarding data reporting to SDR users, which should improve data reporting by providing SDR users with information that would allow them to align their data reporting systems with the SDRs’ data reporting systems before using the SDRs’ services, thereby reducing reporting errors and potential confusion.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.26. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of the costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.26. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

#### xiii. § 49.28—Operating Hours of Swap Data Repositories

The Commission is proposing to add new § 49.28 to provide more detail on the SDRs’ responsibilities with respect to hours of operation. Proposed § 49.28(a) would require an SDR to have systems in place to continuously accept, promptly record, and, as applicable pursuant to part 43, publicly disseminate all SDR data reported to the SDR. Proposed § 49.28(a)(1) would

allow an SDR to establish normal closing hours to perform system maintenance when, in the SDRs' reasonable estimation, the SDR typically receives the least amount of SDR data, as long as the SDR provides reasonable advance notice of its normal closing hours to market participants and the public.

Proposed § 49.28(a)(2) would allow an SDR to declare, on an ad hoc basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. Proposed § 49.28(a)(2) instructs SDRs to schedule special closing hours during periods when, in an SDR's reasonable estimation, the special closing hours would, to the extent possible, be least disruptive to the SDR's SDR data reporting responsibilities. Proposed § 49.28(a)(2) would also require the SDRs to provide reasonable advance notice of the special closing hours to market participants and the public whenever possible, and, if advance notice is not reasonably possible, to give notice to the public as soon as is reasonably possible after declaring special closing hours.

Proposed § 49.28(b) would require SDRs to comply with the requirements under part 40 of the Commission's regulations when adopting or amending normal closing hours or special closing hours.<sup>251</sup>

Proposed § 49.28(c) would require an SDR to have the capability to accept and hold in queue any and all SDR data reported to the SDR during normal closing hours and special closing hours.<sup>252</sup> Proposed § 49.28(c)(1) would require an SDR, on reopening from normal or special closing hours, to promptly process all SDR data received during the closing hours and, pursuant to part 43, publicly disseminate swap transaction and pricing data reported to the SDR that was held in queue during the closing hours.<sup>253</sup> Proposed § 49.28(c)(2) would require SDRs to immediately issue notice to all SEFs,

DCMs, reporting counterparties, and the public in the event that an SDR is unable to receive and hold in queue any SDR data reported during normal closing hours or special closing hours. Proposed § 49.28(c)(2) would also require SDRs to issue notice to all SEFs, DCMs, reporting counterparties, and the public that the SDR has resumed normal operations immediately on reopening. Proposed § 49.28(c)(2) would then require a SEF, DCM, or reporting counterparty that was not able to report SDR data to an SDR because of the SDR's inability to receive and hold in queue SDR data to immediately report the SDR data to the SDR.<sup>254</sup>

#### (A) Costs and Benefits

The Commission believes that the above requirements, which are largely based on existing rule text found in current § 43.3(f) and (g), would not have significant cost implications for SDRs. The costs would be those associated with any needed modification to SDR systems to accommodate all SDR data during closing hours, as opposed to only swap transaction and pricing data. These costs would not be significant because all SDRs currently have policies, procedures, and systems in place to accommodate all SDR data during closing hours because of the current requirements.

The SDRs, market participants, and the public benefit from proposed § 49.28 because the requirements for setting closing hours and handling SDR data during closing hours would be clearer. Proposed § 49.28 also removes discrepancies between current requirements for SDRs and SBSDRs related to closing hours, which would allow SDRs that are also registered as SBSDRs to comply with one requirement.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.28. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of the costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.28. Are there any other alternatives that may provide preferable costs or benefits than the costs and

benefits related to the proposed amendments?

#### xiv. § 49.29—Information Relating To Swap Data Repository Compliance

The Commission is proposing to add new § 49.29 to provide for information requests to SDRs regarding compliance with an SDR's regulatory duties and core principles.

Proposed § 49.29(a) would require SDRs, upon request of the Commission, to file certain information related to its business as an SDR or other such information as the Commission determines to be necessary or appropriate for the Commission to perform its regulatory duties. The SDRs would be required to provide the requested information in the form and manner and within the time specified by the Commission in its request.

Proposed § 49.29(b) would require SDRs, upon the request of the Commission, to demonstrate compliance with their obligations under the CEA and Commission regulations, as specified in the request. SDRs would be required to provide the requested information in the form and manner and within the time specified by the Commission in its request.

Proposed § 49.29 is based on existing Commission requirements applicable to SEFs and DCMs.<sup>255</sup>

#### (A) Costs and Benefits

The costs associated with responding to requests for information would include the staff hours required to prepare and submit materials related to the requests. These costs would vary among SDRs depending upon the nature and frequency of Commission inquiries. The Commission expects these requests to be limited in both size and scope, which would constrain the cost burden on SDRs. While proposed § 49.29 allows the Commission to make requests on an ad hoc basis, the Commission expects that the need for these requests would decrease over time as data quality and SDR compliance with Commission regulations improves.<sup>256</sup> The Commission acknowledges that there would be an incremental cost for each response, given the time required by the SDR to collect and/or summarize the requested information. The Commission believes that these costs would be mitigated by the fact that current practice is for SDRs to provide similar information to the Commission on

<sup>251</sup> This requirement already applies to SDRs pursuant to current § 43.3(f)(3). See 17 CFR 43.3(f)(3).

<sup>252</sup> Proposed § 49.28(c) would expand the similar existing requirements for swap transaction and pricing data in current § 43.3(g) to all SDR data and would largely follow the SBSDR requirements to receive and hold in queue information regarding security-based swaps.

<sup>253</sup> Proposed § 49.28(c)(1) would expand the similar existing requirements for the SDRs to disseminate swap transaction and pricing data pursuant to current § 43.3(g)(1) to also include the prompt processing of all other SDR data received and held in queue during closing hours. The proposed requirements would also largely follow the SBSDR requirements for disseminating transaction reports after reopening following closing hours.

<sup>254</sup> Proposed § 49.28(c)(2) would expand the similar existing requirements for swap transaction and pricing data in current § 43.3(g)(2) to all SDR data and would largely follow the SBSDR requirements to receive and hold in queue information regarding security-based swaps.

<sup>255</sup> See, e.g., 17 CFR 37.5 and 38.5.

<sup>256</sup> The Commission currently exercises similar authority fewer than ten times per year in total with other registered entities, such as SEFs, DCMs, and DCOs.

request and that the SDRs do so regularly.

Information submitted to the Commission would be required to reflect and adhere to form and manner specifications established pursuant to proposed § 49.30. The Commission expects that clearly defining the form and manner for each response would mitigate the cost burden to the SDRs from any uncertainty as to the information to be provided.

Benefits attributed to proposed § 49.29 would include improving the Commission's oversight of SDRs. The Commission expects that this oversight would lead to improved data quality and SDR compliance with Commission regulations due to Commission inquiries. Better data quality should improve the Commission's ability to fulfill its regulatory responsibilities and help to increase the Commission's understanding of the swaps market. These improvements are expected to benefit the public through more accurate and complete SDR data reporting, improved Commission analyses and oversight of the swaps markets, and increased market integrity due to the Commission's improved ability to detect and investigate noncompliance issues and oversee their correction.

Proposed § 49.29 would also help the Commission to obtain the information it needs to perform its regulatory functions as needed, as opposed to requiring the information on a set schedule, such as with the proposed removal of the requirement for annual Form SDR updates in proposed § 49.3(a)(5). Proposed § 49.29 would allow the Commission to request the same information that would be contained in Form SDR and its exhibits when the Commission needs the information, as opposed to requiring the SDRs to update Form SDR and the exhibits annually. This would reduce the burden on SDRs from annual filings for any information that the Commission requests less frequently than annually.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.29. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits, as well as other information to support such assessments.

The Commission requests comments on its consideration of alternatives to

proposed § 49.29. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

#### xv. § 49.30—Form and Manner of Reporting and Submitting Information to the Commission

The Commission is proposing to add new § 49.30 to address the form and manner of information the Commission requests from SDRs.

Proposed § 49.30 would establish the broad parameters of the “form and manner” requirements found throughout part 49 in different regulations. The “form and manner” requirement proposed in § 49.30 would not supplement or expand upon existing substantive provisions of part 49, but instead, would only allow the Commission to specify how existing information reported to, and maintained by, SDRs should be formatted and delivered to the Commission. Proposed § 49.30 would provide that the Commission would specify, in writing, the format, coding structure, and electronic data transmission procedures for various reports and submissions that are required to be provided to the Commission under part 49.

#### (A) Costs and Benefits

The Commission believes that the form and manner requirements would have costs associated with conforming reports and information to Commission specifications, including labor, time, and potentially technology costs for formatting reports. In practice, the incremental costs are not likely to be significant, because SDRs have extensive experience working with Commission staff to deliver data and reports in the form and manner requested by Commission staff. The Commission believes that, in practice, this experience would significantly mitigate the costs of this amendment.

The Commission believes that the Commission would benefit through increased standardization of information provided by SDRs, thereby aiding the Commission in the performance of its regulatory obligations by ensuring the provided information is useable by the Commission and allowing the Commission to alter the form and manner over time, as standards and technologies change. The ability to standardize the form and manner of information provided to the Commission would also help SDRs to efficiently fulfill their obligations to provide this information to the Commission.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.30. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of the costs and benefits, as well as other information to support such assessments.

The Commission requests comments on its consideration of alternatives to proposed § 49.30. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

### 5. Costs and Benefits of Proposed Amendments to Part 45

#### i. § 45.2—Swap Recordkeeping

The Commission is proposing to move current § 45.2(f) and (g) (SDR recordkeeping and SDR records retention, respectively) to proposed new § 49.12. As such, all costs and benefits associated with this change are discussed above in section 4.viii regarding proposed new § 49.12.

#### ii. § 45.14—Verification of Swap Data Accuracy and Correcting Errors and Omissions in Swap Data

Proposed § 45.14(a) would generally require that reporting counterparties verify the accuracy and completeness of swap data for swaps for which they are the reporting counterparty. Proposed § 45.14(a)(1) would require that a reporting counterparty reconcile its internal books and records for each open swap for which it is the reporting counterparty with every open swaps report provided to the reporting counterparty by an SDR pursuant to proposed § 49.11. Proposed § 45.14(a)(1) would further require that reporting counterparties conform to the verification policies and procedures created by an SDR pursuant to § 49.11 for swap data verification.

Proposed § 45.14(a)(2) would require that reporting counterparties submit either a verification of data accuracy or a notice of discrepancy in response to every open swaps report received from an SDR within the following timeframes: (i) 48 hours of the SDR providing the open swaps report if the reporting counterparty is an SD, MSP, or DCO; or (ii) 96 hours of the SDR providing the open swaps report for non-SD/MSP/DCO reporting counterparties.

Proposed § 45.14(a)(3) would require that when a reporting counterparty does

not find any discrepancies between the swap data it reported to an SDR according to its internal books and records for the swaps included in the open swaps report and the swap data provided by the SDR in the open swaps report, the reporting counterparty would submit a verification of data accuracy to the SDR indicating that the swap data is complete and accurate, within the timeframe applicable to the reporting counterparty under proposed § 45.14(a)(2).

Proposed § 45.14(a)(4) would require that when a reporting counterparty finds discrepancies between the swap data it reported to an SDR according to its internal books and records for the swap data included, or erroneously not included, in an open swaps report and the swap data provided by the SDR in the open swaps report, the reporting counterparty must submit a notice of discrepancy to the SDR in the form and manner required by the SDR's policies and procedures created pursuant to § 49.11, within the timeframe applicable to the reporting counterparty under proposed § 45.14(a)(2).

Proposed § 45.14(b)(1) would require any SEF, DCM, or reporting counterparty that by any means becomes aware of any errors or omissions in swap data previously reported to an SDR by the SEF, DCM, or reporting counterparty to submit corrected swap data to the SDR. Proposed § 45.14(b)(1) would also require any SEF, DCM, or reporting counterparty that by any means becomes aware of any swap data not reported to an SDR by the SEF, DCM, or reporting counterparty as required to submit the omitted swap data to the SDR. The error and omission correction requirements include, but are not limited to, errors or omissions present during the verification process specified in § 45.14(a). These error and omission correction requirements also apply regardless of the state of the swap.

Proposed § 45.14(b)(1)(i) would require that SEFs, DCMs, and reporting counterparties correct swap data as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days after discovery of the error or omission.

Proposed § 45.14(b)(1)(ii) would require that if a SEF, DCM, or reporting counterparty is unable to correct errors or omissions within three business days of discovery, the SEF, DCM, or reporting counterparty must immediately inform the Director of DMO, or such other Commission employees whom the Director of DMO may designate, in writing, of the errors or omissions and provide an initial assessment of the

scope of the errors or omissions and an initial remediation plan for correcting the errors or omissions.

Proposed § 45.14(b)(1)(iii) would require that a SEF, DCM, or reporting counterparty conform to the SDR's policies and procedures for corrections of errors and omissions.

Proposed § 45.14(b)(2) would require a non-reporting counterparty that by any means becomes aware of any error or omission in swap data previously reported to an SDR, or the omission of swap data for a swap that was not previously reported to an SDR as required, to notify the reporting counterparty for the swap of the errors or omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions.

Proposed § 45.14(b)(2) would also specify that a non-reporting counterparty that does not know the identity of the reporting counterparty for a swap must notify the SEF or DCM where the swap was executed of the errors or omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days after the discovery. Proposed § 45.14(b)(2) would also require that if the reporting counterparty and the non-reporting counterparty agree that the swap data for a swap is incorrect or incomplete, the reporting counterparty, SEF, or DCM must correct the swap data in accordance with proposed § 45.14(b)(1).

#### (A) Costs and Benefits

The proposed changes to § 45.14 would result in administrative and compliance costs for reporting counterparties to establish technological systems to review and reconcile open swaps reports provided by SDRs. To verify open swaps, the reporting counterparties would be required to maintain records of all data elements reported pursuant to part 45. This is already a requirement under parts 23 (for SD and MSP reporting counterparties) and 45 of the Commission's regulations and as such, the Commission does not believe maintaining such records would produce additional costs.<sup>257</sup>

The Commission is not proposing to require particular methods for reporting counterparties to complete the verification process, but based on

discussions with market participants, the Commission anticipates that the process would be largely automated. Reporting counterparties would incur costs in creating these automated systems to receive the open swaps reports and to complete the verification process in a timely fashion, but once the verification systems are in place, the additional costs stemming from the verification process would not be significant and would be confined to maintaining and updating the verification system as needed.

A few commenters to the Commission's Roadmap suggested that commercial end-users and other non-SD/MSP/DCO reporting counterparties would incur greater costs for reporting and verifying swap data because swaps are not their primary business.<sup>258</sup> The Commission has taken these comments into account and has proposed different requirements for non-SD/MSP/DCO reporting counterparties that would provide them with more time to complete the verification process than is permitted for SD or MSP reporting counterparties.

Reporting counterparties may also incur costs in meeting the requirements of proposed § 45.14(b)(1), which is largely similar to current § 45.14(a), but with more specific requirements related to timing. Additional costs may be incurred by SEFs, DCMs, or reporting counterparties from correcting errors and omissions within three business days of discovery and from informing the Director of DMO in writing with a remediation plan, if necessary. The Commission believes that these costs would not be significant, however, because the three business day requirement merely adds a timeframe to the current "as soon as technologically practicable after discovery" requirement,<sup>259</sup> and reporting counterparties already typically provide a remediation plan to the Commission for reporting errors and omissions as part of current practice, which would mitigate the costs of the proposed requirement, as many reporting counterparties will have experience with creating and providing remediation plans. SEFs, DCMs, and reporting counterparties may also incur costs from updating their error and omission reporting systems or practices in order to maintain consistency with SDR error and omission policies and procedures created pursuant to proposed § 49.10(e).

<sup>257</sup> See 17 CFR 23.201 (listing the recordkeeping requirements for SDs and MSPs, including transaction records); 17 CFR 45.2 (listing recordkeeping requirements for swaps, including requiring SDs and MSPs to keep all records required to be kept pursuant to part 23).

<sup>258</sup> See, e.g., NRECA/APPA Letter at 3, 5; IECA Letter at 3. These commenters did not provide details on the additional costs.

<sup>259</sup> See 17 CFR 45.14(a).

Non-reporting counterparties may also incur additional costs related to the requirements in proposed § 45.14(b)(2), which are effectively the same as current § 45.14(b), except for the inclusion of the three business day time limit for informing the reporting counterparty or SEF or DCM of discovered errors or omissions and the additional requirement to inform the SEF or DCM when the non-reporting counterparty does not know the identity of the reporting counterparty. The time limit merely adds a boundary to the current “promptly” requirement for informing the reporting counterparty of discovered errors and omissions.<sup>260</sup> The additional requirement to inform a SEF or DCM is intended to accommodate the non-reporting counterparties in fulfilling their role in the data correction process for swaps executed anonymously and the Commission expects that non-reporting counterparties would not incur many costs for notifying a SEF or DCM of errors and omissions beyond the cost currently incurred when notifying reporting counterparties.

The Commission believes verification of swap data accuracy helps ensure that the Commission has access to the most accurate and complete swap data possible to fulfill its various regulatory responsibilities. Accurate swap data enables the Commission to monitor and surveil market activity and risks within the swaps markets, as well as provide assessments of the swaps markets to the public. Additionally, the Commission believes that complete and accurate swap data is necessary for effective risk management for swap counterparties, and the proposed verification and correction requirements would assist swap counterparties with ensuring that the data they possess is accurate and complete. The Commission believes that complete and accurate swap data would benefit market participants and the public by improving the Commission’s ability to monitor the swaps markets and maintain market integrity through market oversight, analysis, and providing information to the public.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 45.14. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 45.14. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

#### 6. Costs and Benefits of Proposed Amendments to Part 43

##### i. § 43.3—Method and Timing for Real-Time Public Reporting

The Commission is proposing to amend the error and omission correction requirements of current § 43.3(e) to make the requirements consistent with the error and omissions correction requirements in proposed § 45.14(b). The Commission believes these amendments would create consistency between the error and omission correction requirements for swap data and swap transaction and pricing data, which would reduce confusion surrounding the error and omissions corrections process.

Proposed § 43.3(e)(1) would require any SEF, DCM, or reporting counterparty that by any means becomes aware of any errors or omissions in swap transaction and pricing data previously reported to an SDR by the SEF, DCM, or reporting counterparty to submit corrected swap transaction and pricing data to the SDR, regardless of the state of the swap. Proposed § 43.3(e)(1) would also require any SEF, DCM, or reporting counterparty that by any means becomes aware of the omission of swap transaction and pricing data previously not reported to an SDR by the SEF, DCM, or reporting counterparty as required, to submit corrected swap transaction and pricing data to the SDR regardless of the state of the swap.

Proposed § 43.3(e)(1)(i) would require SEFs, DCMs, and reporting counterparties to correct swap transaction and pricing data as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the error or omission.

Proposed § 43.3(e)(1)(ii) would provide that if a SEF, DCM, or reporting counterparty is unable to correct the errors or omissions within three business days following discovery of the errors or omissions, the SEF, DCM, or reporting counterparty must immediately inform the Director of DMO, or his or her designee, in writing, of such errors or omissions and provide an initial assessment of the scope of the errors or omissions and an initial

remediation plan for correcting the errors or omissions.

Proposed § 43.3(e)(1)(iii) would require that a SEF, DCM, or reporting counterparty conform to an SDR’s policies and procedures for corrections of errors and omissions in previously reported swap transaction and pricing data and reporting of omitted swap transaction and pricing data.

Proposed § 43.3(e)(2) would require a non-reporting counterparty that by any means becomes aware of any error or omission in swap transaction and pricing data previously reported to an SDR, or the omission of swap transaction and pricing data for a swap that was not previously reported to an SDR as required, to notify the reporting counterparty as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions.

Proposed § 43.3(e)(2) would also require that a non-reporting counterparty that does not know the identity of the reporting counterparty for a swap to notify the SEF or DCM where the swap was executed of the errors and omissions as soon as technologically practicable after discovery of the errors or omissions, but no later than three business days after the discovery. Proposed § 43.3(e)(2) would also require that, if the non-reporting counterparty and the reporting counterparty, SEF, or DCM, as applicable, agree that the swap transaction and pricing data for a swap is incorrect or incomplete, the reporting counterparty, SEF, or DCM, as applicable, must correct the swap transaction and pricing data in accordance with proposed § 43.3(e)(1).

The Commission is proposing to move all of the requirements of current § 43.3(f) and (g) to proposed new § 49.28. As such, all costs and benefits associated with this change are discussed above in section VII.C.4.xiii.

#### (A) Costs and Benefits

The costs and benefits for the proposed changes to § 43.3(e) are similar to the costs and benefits previously discussed for the proposed changes to § 45.14(b), as the proposed changes to each section are intended to be consistent in all respects, aside from the verification requirements. Therefore, the proposed changes to § 43.3(e) may also result in administrative and compliance costs for reporting counterparties. These costs would, however, be mitigated by the fact that the requirements of proposed § 43.3(e) are similar to the requirements of current § 43.3(e).

<sup>260</sup> See 17 CFR 45.14(b).



Additional costs may be incurred by SEFs, DCMs, or reporting counterparties from correcting errors and omissions within three business days of discovery and from informing the Director of DMO in writing with an initial assessment and initial remediation plan if necessary under proposed § 43.3(e)(1)(i) and (ii). The Commission believes that these costs would not be significant, however, because the three-day requirement merely adds a specific timeframe to the current “promptly” requirement,<sup>261</sup> and reporting counterparties typically provide a remediation plan to the Commission for reporting errors and omissions as part of current practice. SEFs, DCMs, and reporting counterparties may also incur costs from updating their error and omission reporting systems or practices in order to maintain consistency with SDR error and omission policies and procedures created pursuant to proposed § 49.10(e), as would be required under proposed § 43.3(e)(1)(iii).

Non-reporting counterparties may also incur additional costs related to the requirements in proposed § 43.3(e)(2), which are similar to the requirements of current § 43.3(e)(1)(i), except for the proposed inclusion of the three business day time limit for informing the reporting counterparty, SEF, or DCM of discovered errors or omissions and the additional requirement to inform the SEF or DCM when the non-reporting counterparty does not know the identity of the reporting counterparty. The time limit merely adds a boundary to the current “promptly” requirement for informing the reporting counterparty of discovered errors and omissions.<sup>262</sup> The additional requirement to inform a SEF or DCM is intended to accommodate the non-reporting counterparties in fulfilling their role in the data correction process for swaps executed anonymously and the Commission expects that non-reporting counterparties would not incur many costs for notifying a SEF or DCM of errors and omissions beyond the cost currently incurred when notifying reporting counterparties.

As with the benefits described above in section 5.ii, the Commission believes consistent error and omission correction requirements for swap data and swap transaction and pricing data helps ensure that the Commission has access to the most accurate and complete swap transaction and pricing data possible to fulfill its various regulatory responsibilities. Accurate swap transaction and pricing data helps the

Commission to monitor and surveil market activity and risks within the swaps markets. Accurate and complete swap transaction and pricing data is also beneficial to market participants and the public who rely on the data in their swaps-related decision-making. Additionally, the Commission believes that complete and accurate swap transaction and pricing data is necessary for effective risk management for swap counterparties, and the proposed correction requirements would assist swap counterparties with ensuring that the swap transaction and pricing data they possess is accurate and complete.

SDRs and counterparties also benefit from proposed § 43.3(e) creating consistency between the error and omission correction requirements for swap data and for swap transaction and pricing data. Inconsistent requirements could lead to confusion, improper correction, and unnecessary effort for counterparties and SDRs. The consistency created by the proposed amendments to § 43.3(e) would help avoid those issues.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 43.3(e). Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 43.3(e). Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

#### 7. Costs and Benefits of Proposed Amendments to Part 23

##### i. §§ 23.204 and 23.205—Reports to Swap Data Repositories and Real-Time Public Reporting

Proposed amendments to §§ 23.204 and 23.205 add a paragraph (c) to each section requiring SDs and MSPs to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that SDs and MSPs comply with their swap reporting obligations pursuant to parts 45 and 43, respectively. The proposed amendments also require SDs and MSPs to perform annual reviews of these policies and procedures.

For proposed § 23.204, the policies and procedures related to reporting under part 45 of the Commission’s regulations would need to contain

details related to their responsibilities to verify swap data. This would include policies and procedures related to regularly accepting open swap reports from SDRs, cross-checking with internal records to ensure the swap data is accurate and complete, and responding to the SDR, as required. SDs and MSPs are already responsible for keeping up-to-date records on all swaps to which they are a counterparty under parts 23 and 45 of the Commission’s regulations.<sup>263</sup>

#### (A) Costs and Benefits

The Commission believes that the costs associated with the proposed amendment to §§ 23.204 and 23.205 for SDs and MSPs<sup>264</sup> would be associated with creating and enforcing the policies and procedures, and would consist mostly of administrative efforts to draft, review, implement, and update policies and procedures. The Commission expects that SDs and MSPs that are participants of more than one SDR may incur higher associated costs than those entities that are participants of only one SDR, as the SD and MSP policies and procedures would need to contemplate the reporting requirements for each SDR.<sup>265</sup>

Even though SDs and MSPs may incur upfront costs related to the proposed amendments, the Commission believes that these financial outlays would be mitigated for two reasons. First, SDs and MSPs have experience with establishing and enforcing policies and procedures related to other Commission regulations.<sup>266</sup> Second, the proposed amendments to §§ 23.204 and 23.205 are substantially similar to the SEC’s requirements for its security-based SDs/MSPs.<sup>267</sup> While not all SDs and MSPs covered by the proposed amendments would be subject to these SEC requirements, the Commission expects that there would be significant overlap.

<sup>263</sup> See 17 CFR 23.201–23.203 (detailing the recordkeeping requirements for SDs and MSPs); 17 CFR 45.2 (containing swap recordkeeping requirements for SDs and MSPs and referencing the part 23 recordkeeping requirements).

<sup>264</sup> There are 103 provisionally-registered SDs as of February 28, 2019, all of which are expected to be a participant on at least one of the three existing SDRs. See <https://www.nfa.futures.org/NFA-swaps-information/regulatory-info-sd-and-msp/SD-MSP-registry.HTML>.

<sup>265</sup> For additional discussion of the costs and benefits related to part 23, see generally Part 23 Adopting Release.

<sup>266</sup> See, e.g., 17 CFR 23.501 (confirmations with counterparty); 17 CFR 23.504 (counterparty onboarding documentation); 17 CFR 23.602 (supervision policies).

<sup>267</sup> See 17 CFR 242.906 (requiring security-based SDs and security-based MSPs to establish, maintain, and enforce policies and procedures reasonably designed to ensure compliance with reporting requirements).

<sup>261</sup> See generally 17 CFR 43.3(e).

<sup>262</sup> See 17 CFR 43.3(e)(i).

Consequently, these SDs and MSPs should be able to leverage resources and reduce duplicative costs.

The Commission believes the proposed amendments would also provide important benefits. SD and MSP policies and procedures reasonably designed to ensure compliance with the reporting requirements of parts 43 and 45 would help improve compliance with the reporting rules. For example, policies and procedures designating the responsibility for reporting swap transactions should reduce confusion as to who within the organizations is responsible for reporting the required SDR data, according to the reporting procedures of the different SDRs. The Commission expects that there would also likely be fewer reporting errors (and less subsequent ad hoc work, with its associated costs, by SD/MSP staff to correct these errors) because SD/MSP employees would be able to follow the policies and procedures to perform their functions correctly.

The Commission also expects that the proposed amendments would help lead to enhanced communication between reporting counterparties and SDRs. Increased communication that is focused on improving the accuracy of SDR data would help to identify areas that require special attention that might not be specifically addressed in these proposed regulations. Hence, this enhanced working relationship between market participants and SDRs may lead to improved data reporting beyond that specifically contemplated by the regulations.

The Commission also believes that, because SDs and MSPs submit the large majority of the reported SDR data, the requirements for policies and procedures related to reporting would improve the overall quality of reported data. SDs and MSPs generate a considerable majority of the total number of transactions reported to SDRs and serve as the reporting counterparty for the overwhelming majority of swaps.<sup>268</sup> A Commission analysis of SDR data indicates that from January 1, 2017 through December 31, 2017, almost all swap transactions involved at least one registered SD as a counterparty—greater than 99 percent for interest rate, credit default, foreign exchange, and equity swaps. For non-financial commodity swaps, approximately 86 percent of transactions involved at least one

registered SD as a counterparty. Overall, approximately 98 percent of transactions involved at least one registered SD.<sup>269</sup> The Commission expects that these additional requirements for SDs and MSPs, and the attendant benefits to data quality, would have a substantial impact on the overall quality of the data reported to SDRs because of the important role these reporting counterparties perform in the swaps market.

The Commission also expects that the requirement for SDs and MSPs to have policies and procedures relating to real-time reporting under part 43 would improve swap transaction and pricing information that SDRs would then provide the public. Hence, the Commission believes the proposed amendments would also improve transparency in the swaps markets and provide benefits to market participants and the public in general.

#### (B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to §§ 23.204(c) and 23.205(c). Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed §§ 23.204(c) and 23.205(c). Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

#### 8. Section 15(a) Factors

The Dodd-Frank Act sought to promote the financial stability of the United States, in part, by improving financial system accountability and transparency. More specifically, Title VII of the Dodd-Frank Act directs the Commission to promulgate regulations to increase swaps markets' transparency and thereby reduce the potential for counterparty and systemic risk.<sup>270</sup> Transaction-based reporting is a fundamental component of the legislation's objectives to increase transparency, reduce risk, and promote market integrity within the financial system generally, and the swaps market

in particular. The SDRs and the SEFs, DCMs, and reporting counterparties that submit data to SDRs are central to achieving the legislation's objectives related to swap reporting.

Section 15(a) of the Act requires the Commission to consider the costs and benefits of the proposed amendments to parts 23, 43, 45, and 49 with respect to the following factors:

- Protection of market participants and the public;
  - Efficiency, competitiveness, and financial integrity of markets;
  - Price discovery;
  - Sound risk management practices;
- and
- Other public interest considerations.

A discussion of these proposed amendments in light of section 15(a) factors is set out immediately below.

#### i. Protection of Market Participants and the Public

In the Part 49 Adopting Release, the Commission noted that it believed that the registration and regulation of SDRs would serve to better protect market participants by providing the Commission and other regulators with important oversight tools to monitor, measure, and comprehend the swaps markets. Inaccurate and incomplete data reporting hinders the Commission's ability to oversee the swaps market. The Commission believes that the adoption of all the proposed amendments to parts 23, 43, 45, and 49 would improve the quality of the data reported, increase transparency, and enhance the Commission's ability to fulfill its regulatory responsibilities, including its market surveillance and enforcement capabilities. In addition, the Commission believes that monitoring of potential risks to financial stability would be more effective with more accurate data. More accurate data would therefore lead to improved protection of market participants and the public.

#### ii. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission believes that the adoption of the proposed amendments to parts 23, 43, 45, and 49, together with the swap data recordkeeping and reporting requirements in parts 43 and 45, would provide a robust source of information on the swaps market that is expected to promote increased efficiency and competition. The Commission believes that more accurate swap transaction and pricing data would lead to greater efficiencies for market participants executing swap transactions due to a better understanding of their overall positions

<sup>268</sup> Based on the requirements of § 45.8, any swap with at least one SD or MSP counterparty will have an SD or MSP serving as the reporting counterparty. See 17 CFR 45.8 (detailing the requirements for determining which counterparty must report swap data).

<sup>269</sup> 83 FR at 56674.

<sup>270</sup> See Congressional Research Service Report for Congress, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title VII, Derivatives*, by Mark Jickling and Kathleen Ann Ruane (August 30, 2010); Dep't of the Treasury, *Financial Regulatory Reform: A New Foundation: Rebuilding Financial Supervision and Regulation 1* (June 17, 2009) at 47–48.

within the context of the broader market. This improved understanding would be facilitated by two distinct channels. First, amendments that result in improved part 43 swap transaction and pricing data being made available to the public would improve the ability of market participants to monitor real-time activity by other participants and to respond appropriately. Second, amendments that result in improved swap data would improve the Commission's ability to monitor the swaps markets for abusive practices and improve the Commission's ability to create policies that ensure the integrity of the swaps markets. This improvement would be facilitated by the Commission's oversight and enforcement capabilities and the reports and studies published by the Commission's research and information programs.

In particular, the proposed amendments to §§ 23.204, 45.14, 49.2, 49.10, 49.11, 49.12, 49.13, and 49.26 would help improve the financial integrity of markets. For example, the verification and correction of swap data would improve the accuracy and completeness of swap data available to the Commission and would assist the Commission with, among other things, improving monitoring of risk exposures of individual counterparties, monitoring concentrations of risk exposure, and evaluating systemic risk. In addition, the SDRs' requirement to perform monitoring, screening, and analyzing tasks, as proposed in the amendments to § 49.13, would support the Commission's other regulatory functions, including market surveillance. The efficient oversight and accurate data reporting enabled by these proposed amendments would improve the financial integrity of the swaps markets.

In the Part 49 Adopting Release, the Commission expected that the introduction of SDRs would further automate the reporting of swap data. The Commission expected that automation would benefit market participants and reduce transactional risks through the SDRs and other service providers offering important ancillary services, such as confirmation and matching services, valuations, pricing, reconciliation functions, position limits management, and dispute resolution. These benefits to market participants and related service providers also enhance the efficiency, competitiveness, and financial integrity of markets.<sup>271</sup>

The proposed amendments would help to further enhance these benefits.

### iii. Price Discovery

The CEA requires that swap transaction and pricing data be made publicly available. The CEA and its existing implementing regulations in part 43 also require swap transaction and pricing data to be available to the public in real-time. Combined, parts 23, 43, and 49 achieve the statutory objective of providing transparency and enhanced price discovery to swap markets in a timely manner. The proposed amendments to §§ 23.205, 43.3, 49.2, 49.10, 49.11, 49.12, 49.13, and 49.26 improve the fulfillment of these objectives. The proposed amendments would both directly and indirectly upgrade the quality of real-time public reporting of swap transaction and pricing data by improving the quality of information that is reported to the SDRs and disseminated to the public.

As with the swap data reported for use by regulators, the Commission believes that inaccurate and incomplete swap transaction and pricing data hinders the public's use of the data, which harms transparency and price discovery. The Commission is aware of at least three publicly available studies that support this point. The studies examined data and remarked on incomplete, inaccurate, and unreliable data. The first study analyzed the potential impact of the Dodd-Frank Act on OTC transaction costs and liquidity using real-time CDS trade data and stated that more than 5,000 reports had missing prices and more than 15,000 reports included a price of zero, leaving a usable sample of 180,149 reports.<sup>272</sup> The second study reported a number of fields that were routinely null or missing making it difficult to analyze swap market volumes.<sup>273</sup> The third study assessed the size of the agricultural swaps market and described problems identifying the underlying commodity as well as other errors in the reported data that made some data unusable, including, for example, swaps with a reported notional quantity roughly equal to the size of the entire U.S. soybean crop.<sup>274</sup> Market

participants would be better able to analyze swap transaction and pricing data because it is more accurate and complete due to the proposed amendments, and as a result, transparency and price discovery should improve.

### iv. Sound Risk Management Practices

In the Part 49 Adopting Release, the Commission stated that part 49 and part 45 would greatly strengthen the risk management practices of the swaps market.<sup>275</sup> Prior to the adoption of the Dodd-Frank Act, participants in the swaps markets operated without obligations to disclose transactions to regulators or to the public. The Dodd-Frank Act specifically changed the transparency of the swaps market with the adoption of CEA section 21 and the establishment of SDRs as the entities to which swap data and swap transaction and pricing data is reported and maintained for use by regulators or disseminated to the public. The Commission believes that the improved reporting of SDR data to SDRs would serve to improve risk management practices by market participants. To the extent that better swap transaction and pricing data improves the ability of market participants to gauge their risks in the context of the overall market, risk management practices should improve. Earlier and more informed discussions between relevant market participants and regulators regarding systemic risk facilitated by accurate swap data would also lead to improved risk management outcomes. Market participants should also see improvements in their risk management practices, as improved swap data allows for more accurate and timely market analyses that are publicly disseminated by the Commission.

The Commission believes that the proposed amendments to parts 23, 43, 45, and 49 would improve the quality of SDR data reported to SDRs and, hence, improve the Commission's ability to monitor the swaps market, react to potential market emergencies, and fulfill its regulatory responsibilities generally. The Commission believes that regulator access to high-quality SDR data is essential for appropriate risk management and is especially important for regulators' ability to monitor the swaps market for systemic risk. Moreover, the Commission expects that efforts to improve data quality would increase market participants' confidence in the SDR data and therefore their

<sup>272</sup> Y.C. Loon, Z. (Ken) Zhong, "Does Dodd-Frank affect OTC transaction costs and liquidity? Evidence from real-time trade reports," *Journal of Financial Economics* (2016), available at <http://dx.doi.org/10.1016/j.jfineco.2016.01.019>.

<sup>273</sup> See Financial Stability Report, Office of Financial Research (Dec. 15, 2015) at 84–85, available at [https://financialresearch.gov/financial-stability-reports/files/OFR\\_2015-Financial-Stability-Report\\_12-15-2015.pdf](https://financialresearch.gov/financial-stability-reports/files/OFR_2015-Financial-Stability-Report_12-15-2015.pdf).

<sup>274</sup> Peterson, P.E. 2014. "How Large is the Agricultural Swaps Market?" Proceedings of the

NCCC–134 Conference on Applied Commodity Price Analysis, Forecasting, and Market Risk Management. St. Louis, MO, available at <http://www.farmdoc.illinois.edu/nccc134>.

<sup>275</sup> See Part 49 Adopting Release at 54574.

<sup>271</sup> See Part 49 Adopting Release at 54573.

confidence in any subsequent analyses based on the data.

#### v. Other Public Interest Considerations

The Commission believes that the increased transparency resulting from improvements to the SDR data collected by SDRs via the proposed amendments to parts 23, 43, 45, and 49 has other public interest considerations including:

- Creating greater understanding for the public, market participants, and the Commission of the interaction between the swaps market, other financial markets, and the overall economy;
- Improved regulatory oversight and enforcement capabilities; and
- More information for regulators so that they may establish more effective public policies to reduce overall systemic risk.

#### 9. Request for Comment

The Commission requests comment on all aspects of the proposed rules. Beyond specific questions interspersed throughout this discussion, the Commission generally requests comment on all aspects of its consideration of costs and benefits, including: identification and assessment of any costs and benefits not discussed herein; the potential costs and benefits of the alternatives that the Commission discussed in this release; data and any other information to assist or otherwise inform the Commission's ability to

quantify or qualitatively describe the benefits and costs of the proposed rules; and substantiating data, statistics, and any other information to support statements by commenters with respect to the Commission's consideration of costs and benefits. Commenters also may suggest other alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA and provide a superior cost-benefit profile.

#### D. Anti-trust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA, in issuing any order or adopting any Commission rule or regulation.

The Commission does not anticipate that the proposed amendments to parts 23, 43, 45, and 49 would result in anti-competitive behavior. However, the Commission encourages comments from the public on any aspect of the proposal that may have the potential to be inconsistent with the anti-trust laws or anti-competitive in nature.

#### List of Subjects

##### 17 CFR Part 23

Swap dealers and major swap participants.

##### 17 CFR Part 43

Real-time public swap reporting.

##### 17 CFR Part 45

Swaps; data recordkeeping requirements; data reporting requirements.

##### 17 CFR Part 49

Swap data repositories; registration and regulatory requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR parts 23, 43, 45, and 49 as set forth below:

### PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

- 1. The authority citation for part 23 is revised to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b-1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 24a as amended by Pub. L. 111–203, 124 Stat. 1376 (2010)

#### PART 23 [AMENDED]

- 2. In the table below, for each section indicated in the left column, remove the term indicated in the middle column from wherever it appears in the section, and add in its place the term indicated in the right column:

Section	Remove	Add
23.204(a) .....	swap transaction data .....	swap data.
23.204(a) .....	information and data .....	swap data.
23.204(b) .....	swap transaction data .....	swap data.
23.204(b) .....	information and data .....	swap data.
23.205(a) .....	information and swap transaction and pricing data .....	swap transaction and pricing data.
23.205(a) .....	public recording .....	public reporting.
23.205(b) .....	swap transaction data .....	swap transaction and pricing data.
23.205(b) .....	information and data .....	swap transaction and pricing data.

- 3. In § 23.204, add paragraph (c) to read as follows:

#### § 23.204 Reports to swap data repositories.

\* \* \* \* \*

(c) Each swap dealer and major swap participant shall establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with all obligations to report swap data to a swap data repository in accordance with part 45 of this chapter. Each such swap dealer and major swap participant shall review its policies and procedures at least annually and update the policies and procedures to reflect the

requirements of part 45 of this chapter as needed.

- 4. In § 23.205, add paragraph (c) to read as follows:

#### § 23.205 Real-time public reporting.

\* \* \* \* \*

(c) Each swap dealer and major swap participant shall establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with all obligations to report swap transaction and pricing data to a swap data repository in accordance with part 43 of this chapter. Each such swap dealer and major swap participant shall review its policies and procedures at least annually and update the policies and

procedures to reflect the requirements of part 43 of this chapter as needed.

### PART 43—REAL-TIME PUBLIC REPORTING

- 5. The authority citation for Part 43 continues to read as follows:

**Authority:** 7 U.S.C. 2(a), 12a(5), and 24a, as amended by Pub. L. 111–203, 124 Stat. 1376 (2010).

- 6. In § 43.3 revise paragraph (e) and remove and reserve paragraphs (f) and (g) to read as follows:

#### § 43.3 Method and timing for real-time public reporting.

\* \* \* \* \*

(e) *Correction of errors and omissions in swap transaction and pricing data.*

(1) Any swap execution facility, designated contract market, or reporting counterparty that by any means becomes aware of any error or omission in swap transaction and pricing data previously reported to a swap data repository by the swap execution facility, designated contract market, or reporting counterparty, or of the omission of swap transaction and pricing data for a swap that was not previously reported to a swap data repository as required under this part by the swap execution facility, designated contract market, or reporting counterparty, shall, as applicable, submit corrected swap transaction and pricing data to the swap data repository that maintains the swap transaction and pricing data for the relevant swap or correctly report swap transaction and pricing data for a swap that was not previously reported to a swap data repository as required under this part, regardless of the state of the swap that is the subject of the swap transaction and pricing data.

(i) The swap execution facility, designated contract market, or reporting counterparty shall submit the corrections for errors or submit the omitted swap transaction and pricing data to the swap data repository as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions.

(ii) If the swap execution facility, designated contract market, or reporting counterparty is unable to correct the errors or omissions within three business days following discovery of the errors or omissions, the swap execution facility, designated contract market, or reporting counterparty shall immediately inform the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the Director may designate from time to time, in writing, of such errors or omissions and provide an initial assessment of the scope of the errors or omissions and an initial remediation plan for correcting the errors or omissions.

(iii) In order to satisfy the requirements of this section, a swap execution facility, designated contract market, or reporting counterparty shall conform to a swap data repository's policies and procedures created pursuant to § 49.10 of this chapter for correction of errors and omissions in previously-reported swap transaction and pricing data and reporting of omitted swap transaction and pricing data.

(2) Any non-reporting counterparty that by any means becomes aware of any error or omission in swap transaction and pricing data previously reported to a swap data repository, or of the omission of swap transaction and pricing data for a swap that was not previously reported to a swap data repository as required under this part, for a swap to which it is the non-reporting counterparty shall notify the reporting counterparty for the swap of the errors or omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions. If the non-reporting counterparty does not know the identity of the reporting counterparty, the non-reporting counterparty shall notify the swap execution facility or designated contract market where the swap was executed of the errors or omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions. If, as applicable, the reporting counterparty and non-reporting counterparty, or the swap execution facility or designated contract market and non-reporting counterparty, agree that the swap transaction and pricing data for a swap is incorrect or incomplete, the reporting counterparty, swap execution facility, or designated contract market, as applicable, shall correct the swap transaction and pricing data in accordance with paragraph (e)(1) of this section.

\* \* \* \* \*

## PART 45—SWAP DATA RECORDKEEPING AND REPORTING REQUIREMENTS

■ 7. The authority citation for Part 45 continues to read as follows:

**Authority:** 7 U.S.C. 6r, 7, 7a-1, 7b-3, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203, 124 Stat. 1376 (2010), unless otherwise noted.

### § 45.2 [Amended].

■ 8. In § 45.2, remove and reserve paragraphs (f) and (g)

■ 9. Revise § 45.14 to read as follows:

### § 45.14 Verification of swap data accuracy and correcting errors and omissions in swap data.

(a) *Verification of swap data accuracy to a swap data repository.* A reporting counterparty shall verify the accuracy and completeness of swap data for swaps for which it is the reporting counterparty in accordance with this paragraph (a).

(1) In order to verify the accuracy and completeness of swap data for swaps for which it is the reporting counterparty as required by this section, a reporting counterparty shall reconcile its internal books and records for each open swap for which it is the reporting counterparty with every open swaps report provided to the reporting counterparty by a swap data repository pursuant to § 49.11 of this chapter. In order to satisfy the requirements of this section, a reporting counterparty shall conform to a swap data repository's policies and procedures created pursuant to § 49.11 of this chapter for verification of swap data.

(2) For every open swaps report provided to a reporting counterparty by a swap data repository pursuant to § 49.11 of this chapter, the reporting counterparty shall submit to the swap data repository either a verification of data accuracy in accordance with paragraph (3) of this section or a notice of discrepancy in accordance with paragraph (4) of this section within:

(i) 48 hours of the swap data repository providing the open swaps report to the reporting counterparty pursuant to § 49.11 of this chapter, if the reporting counterparty is a swap dealer, major swap participant, or a derivatives clearing organization; or

(ii) 96 hours of the swap data repository providing the open swaps report to the reporting counterparty pursuant to § 49.11 of this chapter, if the reporting counterparty is not a swap dealer, major swap participant, or a derivatives clearing organization.

(3) If a reporting counterparty finds no discrepancies between the accurate and current swap data for a swap according to the reporting counterparty's internal books and records and the swap data for the swap contained in the open swaps report provided by the swap data repository, the reporting counterparty shall submit a verification of data accuracy indicating that the swap data is complete and accurate to the swap data repository in the form and manner required by the swap data repository's policies and procedures created pursuant to § 49.11 of this chapter.

(4) If the reporting counterparty finds any discrepancy between the accurate and current swap data for a swap according to the reporting counterparty's internal books and records and the swap data for the swap contained in the open swaps report provided by the swap data repository, including, but not limited to, any over-reporting or under-reporting of swap data for any swap, the reporting counterparty shall submit a notice of discrepancy to the swap data repository

in the form and manner required by the swap data repository's policies and procedures created pursuant to § 49.11 of this chapter.

(b) *Correction of errors and omissions in swap data.* (1) Any swap execution facility, designated contract market, or reporting counterparty that by any means becomes aware of any error or omission in swap data previously reported to a swap data repository by the swap execution facility, designated contract market, or reporting counterparty, or of the omission of swap data for a swap that was not previously reported to a swap data repository as required under this part by the swap execution facility, designated contract market, or reporting counterparty, including, but not limited to, errors or omissions present during the verification process specified in paragraph (a) of this section, shall, as applicable, submit corrected swap data to the swap data repository that maintains the swap data for the relevant swap or correctly report swap data for a swap that was not previously reported to a swap data repository as required under this part, regardless of the state of the swap that is the subject of the swap data.

(i) The swap execution facility, designated contract market, or reporting counterparty shall submit the corrections for errors or submit the omitted swap data to the swap data repository as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions.

(ii) If the swap execution facility, designated contract market, or reporting counterparty is unable to correct the errors or omissions within three business days following discovery of the

errors or omissions, the swap execution facility, designated contract market, or reporting counterparty shall immediately inform the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the Director may designate from time to time, in writing, of such errors or omissions and provide an initial assessment of the scope of the errors or omissions and an initial remediation plan for correcting the errors or omissions.

(iii) In order to satisfy the requirements of this section, a swap execution facility, designated contract market, or reporting counterparty shall conform to a swap data repository's policies and procedures created pursuant to § 49.10 of this chapter for correction of errors or omissions in previously-reported swap data and reporting of omitted swap data.

(2) Any non-reporting counterparty that by any means becomes aware of any error or omission in swap data previously reported to a swap data repository, or of the omission of swap data for a swap that was not previously reported to a swap data repository as required under this part, for a swap to which it is the non-reporting counterparty, shall notify the reporting counterparty for the swap of the errors or omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions. If the non-reporting counterparty does not know the identity of the reporting counterparty, the non-reporting counterparty shall notify the swap execution facility or designated contract market where the swap was executed of the errors or omissions as soon as

technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions. If, as applicable, the reporting counterparty and non-reporting counterparty, or the swap execution facility or designated contract market and non-reporting counterparty, agree that the swap data for a swap is incorrect or incomplete, the reporting counterparty, swap execution facility, or designated contract market, as applicable, shall correct the swap data in accordance with paragraph (b)(1) of this section.

## PART 49—SWAP DATA REPOSITORIES

■ 10. The authority citation for Part 49 is revised to read as follows:

**Authority:** 7 U.S.C. 1a, 2(a), 6r, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203, 124 Stat. 1376 (Jul. 21, 2010), unless otherwise noted.

## PART 49 [AMENDED]

■ 11. In part 49:

■ a. Remove the phrase to “registered swap data repository” and add in its place “swap data repository”;

■ b. Remove the phrase “Registered Swap Data Repository” and add in its place “Swap Data Repository”; and

■ c. Remove the phrase “registered swap data repositories” and add in its place “swap data repositories.”

■ 12. In the table below, for each section and paragraph indicated in the left column, remove the term indicated in the middle column from wherever it appears in the section or paragraph, and add in its place the term indicated in the right column:

Section	Remove	Add
49.3(d) .....	swap transaction data	SDR data
49.3(d) .....	§ 40.1(e)	§ 40.1
49.4(c) (heading) .....	<i>Revocation of Registration for False Application.</i>	<i>Revocation of registration for false application.</i>
49.16(a)(2)(i) .....	Section 8 Material	section 8 material
49.16(a)(2)(ii) .....	Other SDR Information	other SDR information or SDR data
49.16(a)(2)(iii) .....	Intellectual	intellectual
49.16(a)(2)(iii) .....	person associated with the swap data repository	person associated with a swap data repository
49.16(a)(2)(iii)(A) .....	Section 8 Material	section 8 material
49.16(a)(2)(iii)(A) .....	other SDR Information	SDR information or SDR data
49.16(a)(2)(iii)(B) .....	persons associated with the swap data repository	persons associated with a swap data repository
49.17(a) .....	swap data	SDR data
49.17(a) .....	Section 8 of the Act	section 8 of the Act
49.17(b)(1)(heading) .....	<i>Appropriate Domestic Regulator.</i>	<i>Appropriate domestic regulator.</i>
49.17(b)(1) .....	The term “ <i>Appropriate Domestic Regulator</i> ” shall mean:	The term “ <i>appropriate domestic regulator</i> ” shall mean:
49.17(b)(2)(heading) .....	<i>Appropriate Foreign Regulator.</i>	<i>Appropriate foreign regulator.</i>
49.17(b)(2) .....	The term “ <i>Appropriate Foreign Regulator</i> ” shall mean	The term “ <i>appropriate foreign regulator</i> ” shall mean
49.17(b)(2) .....	those Foreign Regulators	those foreign regulators
49.17(c)(2) .....	analyzing of swap data	analyzing of SDR data
49.17(c)(2) .....	transfer of data	transfer of SDR data
49.17(c)(3) .....	swap data provided	SDR data provided
49.17(c)(3) .....	authorized users	authorized users

Section	Remove	Add
49.17(d)(1)(heading) .....	<i>General Procedure for Gaining Access to Registered Swap Data Repository Data.</i>	<i>General procedure for gaining access to swap data repository swap data.</i>
49.17(d)(1)(i) .....	Appropriate Domestic Regulator	appropriate domestic regulator
49.17(d)(1)(i) .....	Appropriate Foreign Regulator	appropriate foreign regulator
49.17(d)(1)(ii) .....	Appropriate Domestic Regulators and Appropriate Foreign Regulators seeking	Appropriate domestic regulators and appropriate foreign regulators seeking
49.17(d)(1)(ii) .....	applicable to Appropriate Domestic Regulators and Appropriate Foreign Regulators	applicable to appropriate domestic regulators and appropriate foreign regulators
49.17(d)(3)(heading) .....	<i>Foreign Regulator</i>	<i>Foreign regulator</i>
49.17(d)(3) .....	Foreign Regulator	foreign regulator
49.17(d)(3) .....	Foreign Regulator's	foreign regulator's
49.17(d)(4)(heading) .....	<i>requests for data access</i>	<i>requests for swap data access</i>
49.17(d)(4)(i) .....	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
49.17(d)(4)(i) .....	Appropriate Domestic Regulator's or Appropriate Foreign Regulator's	appropriate domestic regulator's or appropriate foreign regulator's
49.17(d)(4)(iii) .....	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
49.17(d)(4)(iii) .....	Appropriate Domestic Regulator's or Appropriate Foreign Regulator's	appropriate domestic regulator's or appropriate foreign regulator's
49.17(d)(5)(heading) .....	<i>Timing; Limitation, Suspension or Revocation of Swap Data Access.</i>	<i>Timing, limitation, suspension, or revocation of swap data access.</i>
49.17(d)(5) .....	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
49.17(d)(6)(heading) .....	<i>Confidentiality Arrangement.</i>	<i>Confidentiality arrangement.</i>
49.17(d)(6) .....	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
49.17(e) .....	swap data and SDR Information	SDR data and SDR information
49.17(e)(1) .....	swap data and SDR Information	SDR data and SDR information
49.17(e)(2) .....	swap data or SDR Information	SDR data or SDR information
49.17(e)(2) .....	swap data and SDR Information	SDR data and SDR information
49.17(f)(1) .....	swap data maintained	SDR data maintained
49.17(g) (heading) .....	Commercial uses of data	Commercial uses of SDR data
49.17(g) .....	Swap data accepted	SDR data accepted
49.17(g)(1) .....	swap data required	SDR data required
49.17(g)(2)(A) .....	The swap dealer, counterparty, or any other registered entity	The swap execution facility, designated contract market, or reporting counterparty
49.17(g)(2)(A) .....	swap data maintained	SDR data maintained
49.17(g)(2)(B) .....	swap transaction data	SDR data
49.17(g)(2)(B) .....	reporting party	swap execution facility, designated contract market, or reporting counterparty
49.17(g)(2)(B) .....	any reported data	any reported SDR data
49.17(g)(3) .....	real-time swap data	swap transaction and pricing data
49.17(h)(3) .....	CEA section 21(c)(7)	section 21(c)(7) of the Act
49.17(h)(4) .....	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
49.18(a)(heading) .....	<i>Appropriate Domestic Regulator or Appropriate Foreign Regulator.</i>	<i>appropriate domestic regulator or appropriate foreign regulator.</i>
49.18(a) .....	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
49.18(a) .....	Appropriate Domestic Regulator's or Appropriate Foreign Regulator's	appropriate domestic regulator's or appropriate foreign regulator's
49.18(d) .....	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
49.18(d) .....	Appropriate Domestic Regulator's or Appropriate Foreign Regulator's	appropriate domestic regulator's or appropriate foreign regulator's
49.19(a) .....	paragraph	section
49.20(b)(heading) .....	<i>Transparency of Governance Arrangements.</i>	<i>Transparency of governance arrangements.</i>
49.20(c)(1)(i) .....	Regulation	section
49.20(c)(1)(i)(A)(2) .....	Independent Perspective	independent perspective
49.20(c)(1)(i)(B) .....	Independent Perspective	independent perspective
49.20(c)(5) .....	Regulation	section
49.23(a) .....	swap transaction data	SDR data
49.23(e)(heading) .....	commission	Commission
49.24(a) .....	all swap data in its custody	all SDR data in its custody
49.24(e)(3)(i) .....	dissemination of swap data	dissemination of SDR data
49.24(e)(3)(ii) .....	normal swap data reporting,	normal SDR data reporting,
49.24(f)(2) .....	all swap data contained	all SDR data contained
49.24(j)(1) Definition of "Controls".	data and information	SDR data and SDR information
49.24(j)(1) Definition of "Enterprise technology risk assessment".	data and information	SDR data and SDR information



Section	Remove	Add
49.24(j)(1) Definition of "Security incident".	integrity of data	integrity of SDR data
49.24(k)(1) .....	report swap data	report SDR data
49.24(k)(2) .....	report swap data	report SDR data
49.24(l)(3) .....	any data related to	any SDR data related to
49.24(m) .....	Board of Directors	board of directors
49.26(a) .....	swap data maintained	SDR data maintained
49.26(c) .....	safeguarding of swap data	safeguarding of SDR data
49.26(d) .....	any and all swap data	any and all SDR data
49.26(d) .....	reporting entity	swap execution facility, designated contract market, or reporting counterparty
49.26(e) .....	swap data that it receives	SDR data that it receives
49.26(e) .....	market participant, any registered entity, or any other person;	swap execution facility, designated contract market, or reporting counterparty;
49.26(h) .....	rebates; and	rebates;
49.26(i) .....	arrangements.	arrangements; and
49.27(a)(2) .....	Regulation	section
49.27(b) .....	reporting of swap data	reporting of SDR data
Part 49, App. B (heading) ...	Registered Swap Data Repositories	Swap Data Repositories

■ 13. Revise § 49.2 to read as follows:

#### § 49.2 Definitions.

(a) As used in this part:

**Affiliate.** The term “affiliate” means a person that directly, or indirectly, controls, is controlled by, or is under common control with, the swap data repository.

**As soon as technologically practicable.** The term “as soon as technologically practicable” means as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants.

**Asset class.** The term “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.

**Commercial use.** The term “commercial use” means the use of SDR data held and maintained by a swap data repository for a profit or business purposes. A swap data repository’s use of SDR data for regulatory purposes and/or to perform its regulatory responsibilities would not be considered a commercial use regardless of whether the swap data repository charges a fee for reporting such SDR data.

**Control.** The term “control” (including the terms “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through

the ownership of voting securities, by contract, or otherwise.

**Foreign regulator.** The term “foreign regulator” means a foreign futures authority as defined in section 1a(26) of the Act, foreign financial supervisors, foreign central banks, foreign ministries, and other foreign authorities.

**Independent perspective.** The term “independent perspective” means a viewpoint that is impartial regarding competitive, commercial, or industry concerns and contemplates the effect of a decision on all constituencies involved.

**Market participant.** The term “market participant” means any person participating in the swap market, including, but not limited to, designated contract markets, derivatives clearing organizations, swap execution facilities, swap dealers, major swap participants, and any other counterparty to a swap transaction.

**Non-affiliated third party.** The term “non-affiliated third party” means any person except:

- (1) The swap data repository;
- (2) The swap data repository’s affiliate; or

(3) A person jointly employed by a swap data repository and any entity that is not the swap data repository’s affiliate (the term “non-affiliated third party” includes such entity that jointly employs the person).

**Non-swap dealer/major swap participant/derivatives clearing organization reporting counterparty.** The term “non-swap dealer/major swap participant/derivatives clearing organization reporting counterparty” means a reporting counterparty that is not a swap dealer, major swap participant, derivatives clearing organization, or exempt derivatives clearing organization.

**Open swap.** The term “open swap” means an executed swap transaction that has not reached maturity or the final contractual settlement date, and has not been exercised, closed out, or terminated.

**Person associated with a swap data repository.** The term “person associated with a swap data repository” means:

(1) Any partner, officer, or director of such swap data repository (or any person occupying a similar status or performing similar functions);

(2) Any person directly or indirectly controlling, controlled by, or under common control with such swap data repository; or

(3) Any person employed by such swap data repository, including a jointly employed person.

**Position.** The term “position” means the gross and net notional amounts of open swap transactions aggregated by one or more attributes, including, but not limited to, the:

- (1) Underlying instrument;
- (2) Index, or reference entity;
- (3) Counterparty;
- (4) Asset class;
- (5) Long risk of the underlying instrument, index, or reference entity; and
- (6) Short risk of the underlying instrument, index, or reference entity.

**Reporting counterparty.** The term “reporting counterparty” means the counterparty responsible for reporting SDR data to a swap data repository pursuant to parts 43, 45, or 46 of this chapter.

**SDR data.** The term “SDR data” means the specific data elements and information required to be reported to a swap data repository or disseminated by a swap data repository pursuant to two or more of parts 43, 45, 46, and/or 49

of this chapter, as applicable in the context.

**SDR information.** The term “*SDR information*” means any information that the swap data repository receives or maintains related to the business of the swap data repository that is not SDR data.

**Section 8 material.** The term “*section 8 material*” means the business transactions, SDR data, or market positions of any person and trade secrets or names of customers.

**Swap data.** The term “*swap data*” means the specific data elements and information required to be reported to a swap data repository pursuant to part 45 of this chapter or made available to the Commission pursuant to this part, as applicable.

**Swap transaction and pricing data.** The term “*swap transaction and pricing data*” means the specific data elements and information required to be reported to a swap data repository or publicly disseminated by a swap data repository pursuant to part 43 of this chapter, as applicable.

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

■ 14. In § 49.3, revise paragraph (a)(5) to read as follows:

**§ 49.3 Procedures for registration.**

(a) \* \* \*

(5) *Amendments.* If any information reported on Form SDR or in any amendment thereto is or becomes inaccurate for any reason before the application for registration has been granted under this paragraph (a), the swap data repository shall promptly file an amendment on Form SDR updating such information.

\* \* \* \* \*

■ 15. Revise § 49.5 to read as follows:

**§ 49.5 Equity interest transfers.**

(a) *Equity interest transfer notification.* A swap data repository shall file with the Commission a notification of each transaction involving the direct or indirect transfer of ten percent or more of the equity interest in the swap data repository. The Commission may, upon receiving such notification, request that the swap data repository provide supporting documentation of the transaction.

(b) *Timing of notification.* The equity interest transfer notice described in paragraph (a) of this section shall be filed electronically with the Secretary of the Commission at its Washington, DC headquarters at [submissions@cftc.gov](mailto:submissions@cftc.gov) and the Division of Market Oversight at [DMOSubmissions@cftc.gov](mailto:DMOSubmissions@cftc.gov), at the

earliest possible time but in no event later than the open of business ten business days following the date upon which a firm obligation is made to transfer, directly or indirectly, ten percent or more of the equity interest in the swap data repository.

(c) *Certification.* Upon a transfer, whether directly or indirectly, of an equity interest of ten percent or more in a swap data repository, the swap data repository shall file electronically with the Secretary of the Commission at its Washington, DC headquarters at [submissions@cftc.gov](mailto:submissions@cftc.gov) and the Division of Market Oversight at [DMOSubmissions@cftc.gov](mailto:DMOSubmissions@cftc.gov), a certification that the swap data repository meets all of the requirements of section 21 of the Act and the Commission regulations adopted thereunder, no later than two business days following the date on which the equity interest of ten percent or more was acquired.

■ 16. Revise § 49.6 to read as follows:

**§ 49.6 Request for transfer of registration.**

(a) *Request for approval.* A swap data repository seeking to transfer its registration from its current legal entity to a new legal entity as a result of a corporate change shall file a request for approval to transfer such registration with the Secretary of the Commission in the form and manner specified by the Commission.

(b) *Timing for filing a request for transfer of registration.* A swap data repository shall file a request for transfer of registration as soon as practicable prior to the anticipated corporate change.

(c) *Required information.* The request for transfer of registration shall include the following:

(1) The underlying documentation that governs the corporate change;

(2) A description of the corporate change, including the reason for the change and its impact on the swap data repository, including the swap data repository's governance and operations, and its impact on the rights and obligations of market participants;

(3) A discussion of the transferee's ability to comply with the Act, including the core principles applicable to swap data repositories and the Commission's regulations;

(4) The governance documents adopted by the transferee, including a copy of any constitution; articles or certificate of incorporation, organization, formation, or association with all amendments thereto; partnership or limited liability agreements; and any existing bylaws,

operating agreement, or rules or instruments corresponding thereto;

(5) The transferee's rules marked to show changes from the current rules of the swap data repository; and

(6) A representation by the transferee that it:

(i) Will be the surviving entity and successor-in-interest to the transferor swap data repository and will retain and assume the assets and liabilities of the transferor, except if otherwise indicated in the request;

(ii) Will assume responsibility for complying with all applicable provisions of the Act and the Commission's regulations; and

(iii) Will notify market participants of all changes to the transferor's rulebook prior to the transfer, including those changes that may affect the rights and obligations of market participants, and will further notify market participants of the concurrent transfer of the registration to the transferee upon Commission approval and issuance of an order permitting the transfer.

(d) *Commission determination.* Upon review of a request for transfer of registration, the Commission, as soon as practicable, shall issue an order either approving or denying the request for transfer of registration.

■ 17. Revise § 49.9 to read as follows:

**§ 49.9 Open swaps reports provided to the Commission.**

Each swap data repository shall provide reports of open swaps to the Commission in accordance with this section.

(a) *Content of the open swaps report.* In order to satisfy the requirements of this section, each swap data repository shall provide the Commission with open swaps reports that contain an accurate reflection of the swap data for every swap data field required to be reported for swaps pursuant to part 45 of this chapter for every open swap maintained by the swap data repository, organized by the unique identifier created pursuant to § 45.5 of this chapter associated with each open swap, as of the time the swap data repository compiles the open swaps report.

(b) *Transmission of the open swaps report.* A swap data repository shall transmit all open swaps reports to the Commission as instructed by the Commission. Such instructions may include, but are not limited to, the method, timing, and frequency of transmission as well as the format of the swap data to be transmitted.

■ 18. In § 49.10, add paragraph (e) to read as follows:

**§ 49.10 Acceptance of data.**

\* \* \* \* \*

(e) *Errors and omissions.* In accordance with this paragraph (e), a swap data repository shall correct errors and omissions in SDR data previously reported to the swap data repository pursuant to parts 43, 45, and 46 of this chapter and shall correct omissions in reporting SDR data for swaps that were not previously reported to the swap data repository as required under parts 43, 45, or 46 of this chapter, regardless of the state of the swap that is the subject of the SDR data.

(1) A swap data repository shall accept corrections for errors and omissions reported to the swap data repository pursuant to parts 43, 45, or 46 of this chapter.

(2) A swap data repository shall correct the reported errors and omissions as soon as technologically practicable after the swap data repository receives a report of errors or omissions.

(3) A swap data repository shall disseminate corrected SDR data to the public and the Commission, as applicable, in accordance with this chapter, as soon as technologically practicable after the swap data repository corrects the SDR data.

(4) A swap data repository shall establish, maintain, and enforce policies and procedures designed for the swap data repository to accept corrections for errors and omissions, to correct the errors and omissions as soon as technologically practicable after the swap data repository receives a report of errors or omissions, and to disseminate such corrected SDR data to the public and to the Commission, as applicable, in accordance with this chapter.

■ 19. Revise § 49.11 to read as follows:

**§ 49.11 Verification of swap data accuracy.**

(a) *General requirement.* Each swap data repository shall verify the accuracy and completeness of swap data that it receives from swap execution facilities, designated contract markets, or reporting counterparties, or third-party service providers acting on their behalf, in accordance with paragraph (b) of this section. A swap data repository shall also establish, maintain, and enforce policies and procedures reasonably designed to verify the accuracy and completeness of swap data that it receives from swap execution facilities, designated contract markets, or reporting counterparties, or third-party service providers acting on their behalf.

(b) *Distribution of open swaps reports.* In order to verify the accuracy and completeness of swap data as required by this section, a swap data repository

shall, on a regular basis, distribute to each reporting counterparty an open swaps report detailing the swap data maintained by the swap data repository for all open swaps as of the time the swap data repository compiles the open swaps report for which the recipient of the open swaps report is the reporting counterparty.

(1) *Content of open swaps reports.* In order to satisfy the requirements of this section, the swap data repository shall distribute an open swaps report that contains an accurate reflection of the swap data for every swap data field required to be reported for swaps pursuant to part 45 of this chapter, unless access to a particular data field is prohibited by other Commission regulations, for every open swap maintained by the swap data repository for which the recipient of the report is the reporting counterparty, organized by the unique identifier created pursuant to § 45.5 of this chapter associated with every open swap, as of the time the swap data repository compiles the open swaps report.

(2) *Frequency of open swaps reports for swap dealer, major swap participant, and derivatives clearing organization reporting counterparties.* In order to satisfy the requirements of this section, the swap data repository shall distribute an open swaps report to all reporting counterparties that are swap dealers, major swap participants, or derivatives clearing organizations on a weekly basis, no later than 11:59 p.m. Eastern time on the day of the week that the swap data repository chooses to regularly distribute the open swaps reports. The swap data repository shall distribute all open swaps reports on the same day of the week.

(3) *Frequency of open swaps reports for non-swap dealer/major swap participant/derivatives clearing organization reporting counterparties.* In order to satisfy the requirements of this section, the swap data repository shall distribute an open swaps report to all non-swap dealer/major swap participant/derivatives clearing organization reporting counterparties on a monthly basis, no later than 11:59 p.m. Eastern time on the day of the month that the swap data repository chooses to regularly distribute the open swaps report. The swap data repository shall distribute all open swaps reports on the same day of the month.

(c) *Receipt of verification of data accuracy or notice of discrepancy.* In order to satisfy the requirements of this section, the swap data repository shall receive from each reporting counterparty for each open swaps report (i) a verification of data accuracy

indicating that the swap data contained in an open swaps report distributed pursuant to paragraph (b) of this section is accurate and complete or (ii) a notice of discrepancy indicating that the swap data contained in an open swaps report contains one or more discrepancies, in accordance with § 45.14 of this chapter. The swap data repository shall establish, maintain, and enforce policies and procedures reasonably designed for the swap data repository to successfully receive the verification of data accuracy or notice of discrepancy.

(d) *Amending verification policies and procedures.* A swap data repository shall comply with the requirements under part 40 of this chapter in adopting or amending the policies and procedures required by this section.

■ 20. Revise § 49.12 to read as follows:

**§ 49.12 Swap data repository recordkeeping requirements.**

(a) *General requirement.* A swap data repository shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the swap data repository, including, but not limited to, all SDR information and all SDR data that is reported to the swap data repository pursuant to this chapter.

(b) *Maintenance of records.* A swap data repository shall maintain all records required to be kept by this section in accordance with this paragraph (b).

(1) A swap data repository shall maintain all SDR information, including, but not limited to, all documents, policies, and procedures required by the Act and the Commission's regulations, correspondence, memoranda, papers, books, notices, accounts, and other such records made or received by the swap data repository in the course of its business. All SDR information shall be maintained in accordance with § 1.31 of this chapter.

(2) A swap data repository shall maintain all SDR data and timestamps reported to or created by the swap data repository pursuant to this chapter, and all messages related to such reporting, throughout the existence of the swap that is the subject of the SDR data and for five years following final termination of the swap, during which time the records shall be readily accessible by the swap data repository and available to the Commission via real-time electronic access, and for a period of at least ten additional years in archival storage from which such records are retrievable by the swap data repository within three business days.

(c) *Records of data errors and omissions.* A swap data repository shall create and maintain records of data validation errors and SDR data reporting errors and omissions in accordance with this paragraph (c).

(1) A swap data repository shall create and maintain an accurate record of all reported SDR data that fails to satisfy the swap data repository's data validation procedures including, but not limited to, all SDR data reported to the swap data repository that fails to satisfy the data validation procedures, all data validation errors, and all related messages and timestamps. A swap data repository shall make these records available to the Commission on request.

(2) A swap data repository shall create and maintain an accurate record of all SDR data errors and omissions reported to the swap data repository and all corrections disseminated by the swap data repository pursuant to parts 43, 45, and 46 of this chapter. A swap data repository shall make these records available to the Commission on request.

(d) *Availability of records.* All records required to be kept pursuant to this part shall be open to inspection upon request by any representative of the Commission or the United States Department of Justice in accordance with the provisions of § 1.31 of this chapter. A swap data repository required to keep, create, or maintain records pursuant to this section shall provide such records in accordance with the provisions of § 1.31 of this chapter, unless otherwise provided in this part.

■ 21. Revise § 49.13 to read as follows:

**§ 49.13 Monitoring, screening, and analyzing data.**

(a) *Duty to monitor, screen, and analyze data.* A swap data repository shall establish automated systems for monitoring, screening, and analyzing all relevant SDR data in its possession in the form and manner as may be directed by the Commission. A swap data repository shall routinely monitor, screen, and analyze relevant SDR data at the request of the Commission.

(1) *Monitoring, screening, and analyzing.* Monitoring, screening, and analyzing requirements shall include utilizing relevant SDR data maintained by the swap data repository to provide information to the Commission concerning such relevant SDR data. Monitoring, screening, and analyzing requests may require the compiling and/or calculation of requested information within discrete categories and/or over periods of time, including the comparison of information from different categories and/or over multiple

periods of time. Requests for monitoring, screening, and analyzing may require swap data repositories to provide information to the Commission related to:

(i) The accuracy, timeliness, and quality of SDR data reported pursuant to this chapter;

(ii) Updates and corrections to, and verification of the accuracy of, SDR data reported pursuant to this chapter;

(iii) Currently open swaps and the consistency of SDR data related to individual swaps;

(iv) The calculation of market participant swap positions, including for purposes of position limit compliance, risk assessment, and compliance with other regulatory requirements;

(v) Swap counterparty exposure to other counterparties and standard market risk metrics;

(vi) Swap valuations and margining activities;

(vii) Audit trails for individual swaps, including post-transaction events such as allocation, novation, and compression, and all related messages;

(viii) Compliance with Commission regulations;

(ix) Market surveillance;

(x) The use of clearing exemptions and exceptions; and/or

(xi) Statistics on swaps market activity.

(2) *Discretion of the Commission.* All monitoring, screening, and analyzing requests shall be at the discretion of the Commission. Such discretion includes, but is not limited to, the content, scope, and frequency of each required response. All information provided by a swap data repository pursuant to this section shall conform to the form and manner requirements established pursuant to § 49.30 for a particular request.

(3) *Timing.* All monitoring, screening, and analyzing requests shall be fulfilled within the time specified by the Commission for the particular request.

(b) *Capacity to monitor, screen, and analyze SDR data.* A swap data repository shall establish and at all times maintain sufficient information technology, staff, and other resources to fulfill the requirements in this section in the manner prescribed by the Commission.

(c) *Duty to notify the Commission of noncompliance.* A swap data repository shall promptly notify the Commission of any swap transaction for which the swap data repository is aware that:

(1) The swap transaction and pricing data was not received by the swap data repository in accordance with part 43 of this chapter;

(2) The swap data was not received by the swap data repository in accordance with part 45 of this chapter; or

(3) Data was not received by the swap data repository in accordance with part 46 of this chapter.

■ 22. Revise § 49.15 to read as follows:

**§ 49.15 Real-time public reporting by swap data repositories.**

(a) *Scope.* The provisions of this section apply to the real-time public reporting of swap transaction and pricing data submitted to a swap data repository pursuant to part 43 of this chapter.

(b) *Systems to accept and disseminate data in connection with real-time public reporting.* A swap data repository shall establish such electronic systems as are necessary to accept and publicly disseminate swap transaction and pricing data submitted to the swap data repository pursuant to part 43 of this chapter in order to meet the real-time public reporting obligations of part 43 of this chapter. Any electronic system established for this purpose shall be capable of accepting and ensuring the public dissemination of all data fields required by part 43 this chapter.

■ 23. Amend § 49.16 by revising paragraphs (a)(1), (b), and (c) to read as follows:

**§ 49.16 Privacy and confidentiality requirements of swap data repositories.**

(a) \* \* \*

(1) Establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy and confidentiality of any and all SDR information and all SDR data that is not swap transaction and pricing data disseminated under part 43 of this chapter. Such policies and procedures shall include, but are not limited to, policies and procedures to protect the privacy and confidentiality of any and all SDR information and all SDR data (except for swap transaction and pricing data disseminated under part 43 of this chapter) that the swap data repository shares with affiliates and non-affiliated third parties; and

\* \* \* \* \*

(b) A swap data repository shall not, as a condition of accepting SDR data from any swap execution facility, designated contract market, or reporting counterparty, require the waiver of any privacy rights by such swap execution facility, designated contract market, or reporting counterparty.

(c) Subject to section 8 of the Act, a swap data repository may disclose aggregated SDR data on a voluntary basis or as requested, in the form and manner prescribed by the Commission.

■ 24. In § 49.17, revise paragraph (b)(3), the introductory text of paragraph (c), paragraphs (c)(1) and (f)(2) to read as follows and remove paragraph (i).

**§ 49.17 Access to SDR data.**

\* \* \* \* \*

(b) \* \* \*

(3) *Direct electronic access.* For the purposes of this section, the term “*direct electronic access*” shall mean an electronic system, platform, framework, or other technology that provides internet-based or other form of access to real-time SDR data that is acceptable to the Commission and also provides scheduled data transfers to Commission electronic systems.

(c) *Commission access.* A swap data repository shall provide access to the Commission for all SDR data maintained by the swap data repository pursuant to this chapter in accordance with this paragraph (c).

(1) *Direct electronic access requirements.* A swap data repository shall provide direct electronic access to the Commission or the Commission’s designee, including another registered entity, in order for the Commission to carry out its legal and statutory responsibilities under the Act and the Commission’s regulations thereunder. A swap data repository shall maintain all SDR data reported to the swap data repository in a format acceptable to the Commission, and shall transmit all SDR data requested by the Commission to the Commission as instructed by the Commission. Such instructions may include, but are not limited to, the method, timing, and frequency of transmission, as well as the format and scope of the SDR data to be transmitted.

\* \* \* \* \*

(f) \* \* \*

(2) *Exception.* SDR data and SDR information related to a particular swap transaction that is maintained by the swap data repository may be accessed by either counterparty to that particular swap. However, the SDR data and SDR information maintained by the swap data repository that may be accessed by either counterparty to a particular swap shall not include the identity or the legal entity identifier (as such term is used in part 45 of this chapter) of the other counterparty to the swap, or the other counterparty’s clearing member for the swap, if the swap is executed anonymously on a swap execution facility or designated contract market, and cleared in accordance with §§ 1.74, 23.610, and 39.12(b)(7) of this chapter.

\* \* \* \* \*

**§ 49.18 [Amended]**

■ 25. Amend § 49.18 by removing paragraph (e).

■ 26. In § 49.20, revise paragraphs (b)(2)(v), (b)(2)(vii), and (c)(1)(ii)(B) to read as follows:

**§ 49.20 Governance arrangements (Core Principle 2).**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(v) A description of the manner in which the board of directors, as well as any committee referenced in paragraph (b)(2)(ii) of this section, considers an independent perspective in its decision-making process, as § 49.2(a) defines such term;

\* \* \* \* \*

(vii) Summaries of significant decisions impacting the public interest, the rationale for such decisions, and the process for reaching such decisions. Such significant decisions shall include decisions relating to pricing of repository services, offering of ancillary services, access to SDR data, and use of section 8 material, SDR information, and intellectual property (as referenced in § 49.16). Such summaries of significant decisions shall not require the swap data repository to disclose section 8 material or, where appropriate, information that the swap data repository received on a confidential basis from a swap execution facility, designated contract market, or reporting counterparty.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) A description of the relationship, if any, between such members and the swap data repository or any swap execution facility, designated contract market, or reporting counterparty user thereof (or, in each case, affiliates thereof, as § 49.2(a) defines such term); and

\* \* \* \* \*

■ 27. In § 49.22 revise paragraph (a), (b)(1) introductory text, paragraphs (b)(1)(i), (c), (d)(2) through (6), (e), (f), and (g) to read as follows and remove paragraph (d)(7).

**§ 49.22 Chief compliance officer.**

(a) *Definitions.* For purposes of this section, the term—

*Board of directors* means the board of directors of a swap data repository, or for those swap data repositories whose organizational structure does not include a board of directors, a body performing a function similar to a board of directors.

*Senior officer* means the chief executive officer or other equivalent officer of the swap data repository.

(b) \* \* \*

(1) *Chief compliance officer required.* Each swap data repository shall designate an individual to serve as a chief compliance officer.

(i) The position of chief compliance officer shall carry with it the authority and resources to develop, in consultation with the board of directors or senior officer, the policies and procedures of the swap data repository and enforce such policies and procedures to fulfill the duties set forth for chief compliance officers in the Act and Commission regulations.

\* \* \* \* \*

(c) *Appointment, supervision, and removal of chief compliance officer.* (1) *Appointment and compensation of chief compliance officer.* (i) Only the board of directors or senior officer may appoint the chief compliance officer.

(ii) The board of directors or senior officer shall approve the compensation of the chief compliance officer.

(iii) The swap data repository shall notify the Commission within two business days of the appointment, whether interim or permanent, of a chief compliance officer.

(2) *Supervision of chief compliance officer.* The chief compliance officer shall report directly to the board of directors or the senior officer of the swap data repository.

(3) *Removal of chief compliance officer.* (i) Only the board of directors or the senior officer may remove the chief compliance officer.

(ii) The swap data repository shall notify the Commission within two business days of the removal, whether interim or permanent, of a chief compliance officer.

(4) *Annual meeting with the chief compliance officer.* The chief compliance officer shall meet with the board of directors or senior officer of the swap data repository at least annually.

(d) \* \* \*

(2) Taking reasonable steps, in consultation with the board of directors or the senior officer of the swap data repository, to resolve any material conflicts of interest that may arise;

(3) Establishing and administering written policies and procedures reasonably designed to prevent violations of the Act and the rules of the Commission;

(4) Taking reasonable steps to ensure compliance with the Act and Commission regulations relating to agreements, contracts, or transactions, and with Commission regulations

created pursuant to section 21 of the Act;

(5) Establish procedures reasonably designed to handle, respond, remediate, retest, and resolve noncompliance issues identified by the chief compliance officer through any means, including any compliance office review, look-back, internal or external audit finding, self-reported error, or validated compliant; and

(6) Establishing and administering a compliance manual designed to promote compliance with the applicable laws, rules, and regulations and a written code of ethics for the swap data repository designed to prevent ethical violations and to promote honesty and ethical conduct by swap data repository personnel.

(e) *Preparation of annual compliance report.* The chief compliance officer shall, not less than annually, prepare and sign an annual compliance report that covers the prior fiscal year. The report shall, at a minimum, contain:

(1) A description and self-assessment of the effectiveness of the written policies and procedures of the swap data repository, including the code of ethics and conflict of interest policies, designed to reasonably ensure compliance with the Act and applicable Commission regulations;

(2) A list of any material changes made to compliance policies and procedures during the coverage period for the report and any areas of improvement or recommended changes to the compliance program;

(3) A description of the financial, managerial, and operational resources set aside for compliance with the Act and applicable Commission regulations;

(4) A description of any material non-compliance matters identified and an explanation of the corresponding action taken to resolve such non-compliance matters; and

(5) A certification by the chief compliance officer that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the annual compliance report is accurate and complete in all material respects.

(f) *Submission of annual compliance report and related matters—(1) Furnishing the annual compliance report prior to submission to the Commission.* Prior to submission to the Commission, the chief compliance officer shall provide the annual compliance report for review to the board of directors of the swap data repository or, in the absence of a board of directors, to the senior officer of the swap data repository. Members of the board of directors and the senior officer shall not require the chief compliance

officer to make any changes to the annual compliance report.

(2) *Submission of annual compliance report to the Commission.* The annual compliance report shall be submitted electronically to the Commission not later than 90 calendar days after the end of the swap data repository's fiscal year. The swap data repository shall concurrently file the annual compliance report with the fourth quarter financial report pursuant to § 49.25(f)(3).

(3) *Amendments to annual compliance report.* Promptly upon discovery of any material error or omission made in a previously filed annual compliance report, the chief compliance officer shall file an amendment with the Commission to correct the material error or omission. The chief compliance officer shall submit the amended annual compliance report to the board of directors, or in the absence of a board of directors, to the senior officer of the swap data repository, pursuant to paragraph (f)(1) of this section. An amendment shall contain the certification required under paragraph (e)(5) of this section.

(4) *Requests for extension.* A swap data repository may request an extension of time to file its annual compliance report from the Commission. Reasonable and valid requests for extensions of the filing deadline may be granted at the discretion of the Commission.

(g) *Recordkeeping.* The swap data repository shall maintain all records demonstrating compliance with the duties of the chief compliance officer and the preparation and submission of annual compliance reports consistent with § 49.12(b)(1).

■ 28. In § 49.24, revise paragraphs (d), the introductory text of (i), and (i)(5) to read as follows:

**§ 49.24 System safeguards.**

\* \* \* \* \*

(d) A swap data repository shall maintain a business continuity-disaster recovery plan and business continuity-disaster recovery resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its duties and obligations as a swap data repository following any disruption of its operations. Such duties and obligations include, without limitation, the duties set forth in §§ 49.10 to 49.18, § 49.23, and the core principles set forth in §§ 49.19 to 49.21 and 49.25 to 49.27, and maintenance of a comprehensive audit trail. The swap data repository's business continuity-disaster recovery plan and resources generally should

enable resumption of the swap data repository's operations and resumption of ongoing fulfillment of the swap data repository's duties and obligation during the next business day following the disruption. A swap data repository shall update its business continuity-disaster recovery plan and emergency procedures at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than annually.

\* \* \* \* \*

(i) As part of a swap data repository's obligation to produce books and records in accordance with § 1.31 of this chapter and § 49.12, a swap data repository shall provide to the Commission the following system safeguards-related books and records, promptly upon the request of any Commission representative:

\* \* \*

(5) Nothing in paragraph (i) of this section shall be interpreted as reducing or limiting in any way a swap data repository's obligation to comply with § 1.31 of this chapter or with § 49.12.

\* \* \* \* \*

■ 29. In § 49.25, revise paragraphs (a)(1) and (f)(3) to read as follows:

**§ 49.25 Financial resources.**

(a) \* \* \*

(1) A swap data repository shall maintain sufficient financial resources to perform its statutory and regulatory duties set forth in this chapter.

\* \* \* \* \*

(f) \* \* \*

(3) The reports and any supporting documentation required by this section shall be filed not later than 40 calendar days after the end of the swap data repository's first three fiscal quarters, and not later than 90 calendar days after the end of the swap data repository's fourth fiscal quarter, or at such later time as the Commission may permit, in its discretion, upon request by the swap data repository.

■ 30. In § 49.26,

■ a. Revise the introductory text; and

■ b. Add paragraph (j).

The revisions and additions read as follows:

**§ 49.26 Disclosure requirements of swap data repositories.**

Before accepting any SDR data from a swap execution facility, designated contract market, or reporting counterparty; or upon a swap execution facility's, designated contract market's, or reporting counterparty's request; a swap data repository shall furnish to the swap execution facility, designated contract market, or reporting counterparty a disclosure document that

contains the following written information, which shall reasonably enable the swap execution facility, designated contract market, or reporting counterparty to identify and evaluate accurately the risks and costs associated with using the services of the swap data repository:

\* \* \* \* \*

(j) The swap data repository's policies and procedures regarding the reporting of SDR data to the swap data repository, including the swap data repository's SDR data validation procedures, swap data verification procedures, and procedures for correcting SDR data errors and omissions.

■ 31. Add § 49.28 to read as follows:

**§ 49.28 Operating hours of swap data repositories.**

(a) Except as otherwise provided in this paragraph (a), a swap data repository shall have systems in place to continuously accept and promptly record all SDR data reported to the swap data repository as required in this chapter and, as applicable, publicly disseminate all swap transaction and pricing data reported to the swap data repository as required in part 43 of this chapter.

(1) A swap data repository may establish normal closing hours to perform system maintenance during periods when, in the reasonable estimation of the swap data repository, the swap data repository typically receives the least amount of SDR data. A swap data repository shall provide reasonable advance notice of its normal closing hours to market participants and to the public.

(2) A swap data repository may declare, on an ad hoc basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. A swap data repository shall schedule special closing hours during periods when, in the reasonable estimation of the swap data repository in the context of the circumstances prompting the special closing hours, the special closing hours will be the least disruptive to the swap data repository's SDR data reporting responsibilities. A swap data repository shall provide reasonable advance notice of its special closing hours to market participants and to the public whenever possible, and, if advance notice is not reasonably possible, shall provide notice of its special closing hours to market participants and to the public as soon as reasonably possible after declaring special closing hours.

(b) A swap data repository shall comply with the requirements under part 40 of this chapter in adopting or

amending normal closing hours and special closing hours.

(c) During normal closing hours and special closing hours, a swap data repository shall have the capability to accept and hold in queue any and all SDR data reported to the swap data repository during the normal closing hours or special closing hours.

(1) Upon reopening after normal closing hours or special closing hours, a swap data repository shall promptly process all SDR data received during normal closing hours or special closing hours, as required pursuant to this chapter, and, pursuant to part 43 of this chapter, publicly disseminate all swap transaction and pricing data reported to the swap data repository that was held in queue during the normal closing hours or special closing hours.

(2) If at any time during normal closing hours or special closing hours a swap data repository is unable to receive and hold in queue any SDR data reported pursuant to this chapter, then the swap data repository shall immediately issue notice to all swap execution facilities, designated contract markets, reporting counterparties, and the public that it is unable to receive and hold in queue SDR data. Immediately upon reopening, the swap data repository shall issue notice to all swap execution facilities, designated contract markets, reporting counterparties, and the public that it has resumed normal operations. Any swap execution facility, designated contract market, or reporting counterparty that was obligated to report SDR data pursuant to this chapter to the swap data repository, but could not do so because of the swap data repository's inability to receive and hold in queue SDR data, shall report the SDR data to the swap data repository immediately after receiving such notice.

■ 32. Add § 49.29 to read as follows:

**§ 49.29 Information relating to swap data repository compliance.**

(a) *Requests for information.* Upon the Commission's request, a swap data repository shall file with the Commission information related to its business as a swap data repository and such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under the Act and regulations thereunder. The swap data repository shall file the information requested in the form and manner and within the time period the Commission specifies in the request.

(b) *Demonstration of compliance.* Upon the Commission's request, a swap

data repository shall file with the Commission a written demonstration, containing supporting data, information, and documents, that it is in compliance with its obligations under the Act and the Commission's regulations thereunder, as the Commission specifies in the request. The swap data repository shall file the written demonstration in the form and manner and within the time period the Commission specifies in the request.

■ 33. Add § 49.30 to read as follows:

**§ 49.30 Form and manner of reporting and submitting information to the Commission.**

Unless otherwise instructed by the Commission, a swap data repository shall submit SDR data reports and any other information required under this part to the Commission, within the time specified, using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission.

■ 34. Add § 49.31 to read as follows:

**§ 49.31 Delegation of authority to the Director of the Division of Market Oversight relating to certain part 49 matters.**

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Market Oversight and to such members of the Commission staff acting under his or her direction as he or she may designate from time to time:

(1) All functions reserved to the Commission in § 49.5.

(2) All functions reserved to the Commission in § 49.9.

(3) All functions reserved to the Commission in § 49.10.

(4) All functions reserved to the Commission in § 49.12.

(5) All functions reserved to the Commission in § 49.13.

(6) All functions reserved to the Commission in § 49.16.

(7) All functions reserved to the Commission in § 49.17.

(8) All functions reserved to the Commission in § 49.18.

(9) All functions reserved to the Commission in § 49.22.

(10) All functions reserved to the Commission in § 49.23.

(11) All functions reserved to the Commission in § 49.24.

(12) All functions reserved to the Commission in § 49.25.

(13) All functions reserved to the Commission in § 49.29.

(14) All functions reserved to the Commission in § 49.30.

(b) The Director of the Division of Market Oversight may submit to the Commission for its consideration any



matter that has been delegated under paragraph (a) of this section.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated in this section.

■ 35. Revise Appendix A to Part 49 to read as follows:

#### **Appendix A to Part 49—Form SDR**

#### **COMMODITY FUTURES TRADING COMMISSION**

#### **FORM SDR**

SWAP DATA REPOSITORY APPLICATION OR AMENDMENT TO APPLICATION FOR REGISTRATION

#### **REGISTRATION INSTRUCTIONS**

***Intentional misstatements or omissions of material fact may constitute federal criminal violations (7 U.S.C. 13 and 18 U.S.C. 1001) or grounds for disqualification from registration.***

#### **DEFINITIONS**

Unless the context requires otherwise, all terms used in this Form SDR have the same meaning as in the Commodity Exchange Act, as amended (“Act”), and in the General Rules and Regulations of the Commodity Futures Trading Commission (“Commission”) thereunder (17 CFR chapter I).

For the purposes of this Form SDR, the term “Applicant” shall include any applicant for registration as a swap data repository or any applicant amending a pending application.

#### **GENERAL INSTRUCTIONS**

1. This Form SDR, which includes instructions, a Cover Sheet, and required Exhibits (together “Form SDR”), is to be filed with the Commission by all Applicants, pursuant to section 21 of the Act and the Commission’s regulations thereunder. Upon the filing of an application for registration in accordance with the instructions provided herein, the Commission will publish notice of the filing and afford interested persons an opportunity to submit written comments concerning such application.

No application for registration shall be effective unless the Commission, by order, grants such registration.

2. Individuals’ names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).
3. Signatures on all copies of the Form SDR filed with the Commission can be executed electronically. If this Form SDR is filed by a corporation, it shall be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it shall be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company’s behalf; if filed by a partnership, it shall be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association that is not a partnership, it shall be signed in the name of such organization or association by the managing agent, *i.e.*, a duly authorized person who directs manages or who participates in the directing or managing of its affairs.
4. If this Form SDR is being filed as an application for registration, all applicable items must be answered in full. If any item is inapplicable, indicate by “none,” “not applicable,” or “N/A,” as appropriate.
5. Under section 21 of the Act and the Commission’s regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Form SDR from any Applicant seeking registration as a swap data repository. Disclosure by the Applicant of the information specified in this Form SDR is mandatory prior to the start of the processing of an application for registration as a swap data repository. The information provided in this Form SDR will be used for the principal purpose of determining whether the Commission should grant or deny registration to an Applicant. The Commission may determine that additional information is required from an Applicant in order to process its application. A Form SDR that is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Form SDR, however, shall not constitute a finding that the Form SDR has been filed as required or that the information submitted is true, current, or complete.
6. Except in cases where confidential treatment is requested by the Applicant and granted by the Commission pursuant to the Freedom of Information Act and Commission Regulation § 145.9, information supplied on this Form SDR will be included in the public files of the Commission and will be available for inspection by any interested person. The Applicant must identify with particularity the information in these exhibits that will be subject to a request for confidential treatment and supporting documentation for such request pursuant to Commission Regulations § 40.8 and § 145.9.

#### **APPLICATION AMENDMENTS**

1. An Applicant amending a pending application for registration as a swap data repository shall file an amended Form SDR electronically with the Secretary of the Commission in the manner specified by the Commission.
2. When filing this Form SDR for purposes of amending a pending application, an Applicant must re-file the entire Cover Sheet, amended if necessary, include an executing signature, and attach thereto revised Exhibits or other materials marked to show any amendments. The submission of an amendment to a pending application represents that all unamended items and Exhibits remain true, current, and complete as previously filed.

#### **WHERE TO FILE**

This Form SDR shall be filed electronically with the Secretary of the Commission in the manner specified by the Commission.

**BILLING CODE 6351-01-P**

## COMMODITY FUTURES TRADING COMMISSION

**FORM SDR**SWAP DATA REPOSITORY  
APPLICATION OR AMENDMENT TO APPLICATION FOR REGISTRATION**COVER SHEET**

---

**Exact name of Applicant as specified in charter**

---

**Address of principal executive offices**

- ☐ If this is an **APPLICATION** for registration, complete in full and check here.
- ☐ If this is an **AMENDMENT** to a pending application, complete in full, list all items that are amended and check here.

**GENERAL INFORMATION**

1. Name under which business is or will be conducted, if different than name specified above:

---

2. If name of business is being amended, state previous business name:

---

3. Contact information, including mailing address if different than address specified above:

---

Number and Street

---

City State Country Zip Code

---

Main Phone Number Fax

---

Website URL E-mail Address

4. List of principal office(s) and address(es) where swap data repositories activities are or will be conducted:

<u>Office</u>	<u>Address</u>

5. If the Applicant is a successor to a previously registered swap data repository, please complete the following:

- a. Date of succession

\_\_\_\_\_

- b. Full name and address of predecessor registrant

\_\_\_\_\_ Name

\_\_\_\_\_ Number and Street

\_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Country \_\_\_\_\_ Zip Code

\_\_\_\_\_ Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_ E-mail Address

6. Furnish a description of the function(s) that the Applicant performs or proposes to perform:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Please indicate which asset class(es) the Applicant intends to serve:

- ☐ Interest Rate
- ☐ Equity
- ☐ Credit
- ☐ Foreign Currency
- ☐ Commodity (Specify) \_\_\_\_\_
- ☐ Other (Specify) \_\_\_\_\_

#### **BUSINESS ORGANIZATION**

7. Applicant is a:

- ☐ Corporation
- ☐ Partnership
- ☐ Limited Liability Company

☐ Other (Specify) \_\_\_\_\_

8. Date of incorporation or formation: \_\_\_\_\_

9. State of incorporation or jurisdiction of organization: \_\_\_\_\_

List all other jurisdictions in which Applicant is qualified to do business (including non-US jurisdictions):

\_\_\_\_\_  
\_\_\_\_\_

10. List all other regulatory licenses or registrations of Applicant (or exemptions from any licensing requirement) including with non-US regulators:

\_\_\_\_\_  
\_\_\_\_\_

11. Date of fiscal year end: \_\_\_\_\_

12. Applicant agrees and consents that the notice of any proceeding before the Commission in connection with its application may be given by sending such notice by certified mail to the person named below at the address given.

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Number and Street

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Phone Number Fax Number E-mail Address

#### **SIGNATURES**

13. The Applicant had duly caused this application or amendment to be signed on its behalf by the undersigned, hereunto duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The Applicant and the undersigned represent hereby that all information contained herein is true, current, and complete. It is understood that all required items and Exhibits are considered integral parts of this Form SDR and that the submission of any amendment represents that all unamended items and Exhibits remain true, current, and complete as previously filed.

\_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
Signature of Duly Authorized Person

\_\_\_\_\_  
Print Name and Title of Signatory

## EXHIBITS INSTRUCTIONS

The following Exhibits must be included as part of Form SDR and filed with the Commission by each Applicant seeking registration as a swap data repository pursuant to section 21 of the Act and the Commission's regulations thereunder. Such Exhibits must be labeled according to the items specified in this Form SDR. If any Exhibit is inapplicable, please specify the Exhibit letter and indicate by "none," "not applicable," or "N/A," as appropriate. The Applicant must identify with particularity the information in these Exhibits that will be subject to a request for confidential treatment and supporting documentation for such request pursuant to Commission Regulations § 40.8 and § 145.9.

If the Applicant is a newly formed enterprise and does not have the financial statements required pursuant to Items 27 and 28 of this form, the Applicant should provide *pro forma* financial statements for the most recent six months or since inception, whichever is less.

### EXHIBITS I – BUSINESS ORGANIZATION

14. Attach as **Exhibit A**, any person who owns ten (10) percent or more of Applicant's equity or possesses voting power of any class, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of Applicant. "Control" for this purpose is defined in Commission Regulation § 49.2(a).

State in Exhibit A the full name and address of each such person and attach a copy of the agreement or, if there is none written, describe the agreement or basis upon which such person exercises or may exercise such control or direction.

15. Attach as **Exhibit B**, a narrative that sets forth the fitness standards for the board of directors and its composition including the number or percentage of public directors.

Attach a list of the present officers, directors (including an identification of the public directors), governors (and, in the case of an Applicant not a corporation, the members of all standing committees grouped by committee), or persons performing functions similar to any of the foregoing, of the swap data repository or of the entity identified in Item 16 that performs the swap data repository activities of the Applicant, indicating for each:

- a. Name
- b. Title
- c. Date of commencement and, if appropriate, termination of present term of position
- d. Length of time each present officer, director, or governor has held the same position
- e. Brief account of the business experience of each officer and director over the last five (5) years
- f. Any other business affiliations in the securities industry or OTC derivatives industry
- g. A description of:
  - (1) any order of the Commission with respect to such person pursuant to section 5e of the Act;
  - (2) any conviction or injunction within the past 10 years;
  - (3) any disciplinary action with respect to such person within the last five (5) years;
  - (4) any disqualification under sections 8b and 8d of the Act;
  - (5) any disciplinary action under section 8c of the Act; and
  - (6) any violation pursuant to section 9 of the Act.
- h. For directors, list any committees on which they serve and any compensation received by virtue of their directorship.

16. Attach as **Exhibit C**, the following information about the chief compliance officer who has been appointed by the board of directors of the swap data repository or a person or group performing a function similar to such board of directors:
- a. Name
  - b. Title

- c. Dates of commencement and termination of present term of office or position
  - d. Length of time the chief compliance officer has held the same office or position
  - e. Brief account of the business experience of the chief compliance officer over the last five (5) years
  - f. Any other business affiliations in the derivatives/securities industry or swap data repository industry
  - g. A description of:
    - (1) any order of the Commission with respect to such person pursuant to section 5e of the Act;
    - (2) any conviction or injunction within the past 10 years;
    - (3) any disciplinary action with respect to such person within the last five (5) years;
    - (4) any disqualification under sections 8b, and 8d of the Act;
    - (5) any disciplinary action under section 8c of the Act; and
    - (6) any violation pursuant to section 9 of the Act.
17. Attach as **Exhibit D**, a copy of documents relating to the governance arrangements of the Applicant, including, but not limited to:
- a. the nomination and selection process of the members on the Applicant's board of directors, a person or group performing a function similar to a board of directors (collectively, "board"), or any committee that has the authority to act on behalf of the board, the responsibilities of each of the board and such committee, and the composition of each board and such committee;
  - b. a description of the manner in which the composition of the board allows the Applicant comply with applicable core principles, regulations, as well as the rules of the Applicant; and
  - c. a description of the procedures to remove a member of the board of directors, where the conduct of such member is likely to be prejudicial to the sound and prudent management of the swap data repository.
18. Attach as **Exhibit E**, a narrative or graphic description of the organizational structure of the Applicant. Note: If the swap data repository activities are conducted primarily by a division, subdivision, or other segregable entity within the Applicant's corporation or organization, describe the relationship of such entity within the overall organizational structure and attach as Exhibit E only such description as applies to the segregable entity. Additionally, provide any relevant jurisdictional information, including any and all jurisdictions in which the Applicant or any affiliated entity is doing business and registration status, including pending application (e.g., country, regulator, registration category, date of registration). In addition, include a description of the lines of responsibility and accountability for each operational unit of the Applicant to (i) any committee thereof and/or (ii) the board.
19. Attach as **Exhibit F**, a copy of the conflicts of interest policies and procedures implemented by the Applicant to minimize conflicts of interest in the decision-making process of the swap data repository and to establish a process for the resolution of any such conflicts of interest.
20. Attach as **Exhibit G**, a list of all affiliates of the swap data repository and indicate the general nature of the affiliation. Provide a copy of any agreements entered into or to be entered by the swap data repository, including partnerships or joint ventures, or its participants, that will enable the Applicant to comply with the registration requirements and core principles specified in section 21 of the Act. With regard to an affiliate that is a parent company of the Applicant, if such parent controls the Applicant, an Applicant must provide (i) the board composition of the parent, including public directors, and (ii) all ownership information requested in Exhibit A for the parent. "Control" for this purpose is defined in Commission Regulation § 49.2(a).
21. Attach as **Exhibit H**, a copy of the constitution, articles of incorporation or association with all amendments thereto, and existing by-laws, rules or instruments corresponding thereto, of the Applicant. A certificate of good standing dated within one week of the date of the application shall be provided.
22. Where the Applicant is a foreign entity seeking registration or filing an amendment to an existing registration, attach as **Exhibit I**, an opinion of counsel that the swap data repository, as a matter of law,

- is able to provide the Commission with prompt access to the books and records of such swap data repository and that the swap data repository can submit to onsite inspection and examination by the Commission.
23. Where the Applicant is a foreign entity seeking registration, attach as **Exhibit I-1**, a form that designates and authorizes an agent in the United States, other than a Commission official, to accept any notice or service of process, pleadings, or other documents in any action or proceedings brought against the swap data repository to enforce the Act and the regulations thereunder.
  24. Attach as **Exhibit J**, a current copy of the Applicant's rules as defined in Commission Regulation § 40.1, consisting of all the rules necessary to carry out the duties as a swap data repository.
  25. Attach as **Exhibit K**, a description of the Applicant's internal disciplinary and enforcement protocols, tools, and procedures. Include the procedures for dispute resolution.
  26. Attach as **Exhibit L**, a brief description of any material pending legal proceeding(s), other than ordinary and routine litigation incidental to the business, to which the Applicant or any of its affiliates is a party or to which any of its or their property is the subject. Include the name of the court or agency in which the proceeding(s) are pending, the date(s) instituted, and the principal parties thereto, a description of the factual basis alleged to underlie the proceeding(s) and the relief sought. Include similar information as to any such proceeding(s) known to be contemplated by the governmental agencies.

## EXHIBITS II — FINANCIAL INFORMATION

27. Attach as **Exhibit M**, a balance sheet, statement of income and expenses, statement of sources and application of revenues and all notes or schedules thereto, as of the most recent fiscal year of the Applicant. If a balance sheet and statements certified by an independent public accountant are available, such balance sheet and statement shall be submitted as Exhibit M.
28. Attach as **Exhibit N**, a balance sheet and an income and expense statement for each affiliate of the swap data repository that also engages in swap data repository activities as of the end of the most recent fiscal year of each such affiliate.
29. Attach as **Exhibit O**, the following:
  - a. A complete list of all dues, fees, and other charges imposed, or to be imposed, by or on behalf of Applicant for its swap data repository services and identify the service or services provided for each such due, fee, or other charge.
  - b. Furnish a description of the basis and methods used in determining the level and structure of the dues, fees, and other charges listed in paragraph a of this item.
  - c. If the Applicant differentiates, or proposes to differentiate, among its customers, or classes of customers in the amount of any dues, fees, or other charges imposed for the same or similar services, so state and indicate the amount of each differential. In addition, identify and describe any differences in the cost of providing such services, and any other factors, that account for such differentiations.

## EXHIBITS III — OPERATIONAL CAPABILITY

30. Attach as **Exhibit P**, copies of all material contracts with any swap execution facility, designated contract market, clearing agency, central counterparty, or third party service provider. To the extent that form contracts are used by the Applicant, submit a sample of each type of form contract used. In addition, include a list of swap execution facilities, designated contract markets, clearing agencies, central counterparties, and third party service providers with whom the Applicant has entered into material contracts. Where swap data repository functions are performed by a third-party, attach any agreements between or among the Applicant and such third party, and identify the services that will be provided.



31. Attach as **Exhibit Q**, any technical manuals, other guides or instructions for users of, or participants in, the market.
32. Attach as **Exhibit R**, a description of system test procedures, test conducted or test results that will enable the Applicant to comply, or demonstrate the Applicant's ability to comply, with the core principles for swap data repositories.
33. Attach as **Exhibit S**, a description in narrative form or by the inclusion of functional specifications, of each service or function performed as a swap data repository. Include in Exhibit S a description of all procedures utilized for the collection, processing, distribution, publication and retention (e.g., magnetic tape) of information with respect to transactions or positions in, or the terms and conditions of, swaps entered into by market participants.
34. Attach as **Exhibit T**, a list of all computer hardware utilized by the Applicant to perform swap data repository functions, indicating where such equipment (terminals and other access devices) is physically located.
35. Attach as **Exhibit U**, a description of the personnel qualifications for each category of professional employees employed by the swap data repository or the division, subdivision, or other segregable entity within the swap data repository as described in Item 16.
36. Attach as **Exhibit V**, a description of the measures or procedures implemented by Applicant to provide for the security of any system employed to perform the functions of a swap data repository. Include a general description of any physical and operational safeguards designed to prevent unauthorized access (whether by input or retrieval) to the system. Describe any circumstances within the past year in which the described security measures or safeguards failed to prevent any such unauthorized access to the system and any measures taken to prevent a reoccurrence. Describe any measures used to verify the accuracy of information received or disseminated by the system.
37. Attach as **Exhibit W**, copies of emergency policies and procedures and Applicant's business continuity-disaster recovery plan. Include a general description of any business continuity-disaster recovery resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its duties and obligations as a swap data repository following any disruption of its operations.
38. Where swap data repository functions are performed by automated facilities or systems, attach as **Exhibit X**, a description of all backup systems or subsystems that are designed to prevent interruptions in the performance of any swap data repository function as a result of technical malfunctions or otherwise in the system itself, in any permitted input or output system connection, or as a result of any independent source. Include a narrative description of each type of interruption that has lasted for more than two minutes and has occurred within the six (6) months preceding the date of the filing, including the date of each interruption, the cause and duration. Also state the total number of interruptions that have lasted two minutes or less.
39. Attach as **Exhibit Y**, the following:
  - a. For each of the swap data repository functions:
    - (1) quantify in appropriate units of measure the limits on the swap data repository's capacity to receive (or collect), process, store or display (or disseminate for display or other use) the data elements included within each function (e.g., number of inquiries from remote terminals);
    - (2) identify the factors (mechanical, electronic or other) that account for the current limitations reported in answer to (1) on the swap data repository's capacity to receive (or collect), process, store or display (or disseminate for display or other use) the data elements included within each function;
  - b. If the Applicant is able to employ, or presently employs, the central processing units of its system(s) for any use other than for performing the functions of a swap data repository, state the

priorities of assignment of capacity between such functions and such other uses, and state the methods used or able to be used to divert capacity between such functions and such other uses.

#### EXHIBITS IV — ACCESS TO SERVICES

40. Attach as **Exhibit Z**, the following:
  - a. As to each swap data repository service that the Applicant provides, state the number of persons who presently utilize, or who have notified the Applicant of their intention to utilize, the services of the swap data repository.
  - b. For each instance during the past year in which any person has been prohibited or limited in respect of access to services offered by the Applicant as a swap data repository, indicate the name of each such person and the reason for the prohibition or limitation.
  - c. Define the data elements for purposes of the swap data repository's real-time public reporting obligation. Appendix A to Part 43 of the Commission's Regulations (Data Elements and Form for Real-Time Reporting for Particular Markets and Contracts) sets forth the specific data elements for real-time public reporting.
41. Attach as **Exhibit AA**, copies of any agreements governing the terms by which information may be shared by the swap data repository, including with market participants. To the extent that form contracts are used by the Applicant, submit a sample of each type of form contract used.
42. Attach as **Exhibit BB**, a description of any specifications, qualifications or other criteria that limit, are interpreted to limit, or have the effect of limiting access to or use of any swap data repository services furnished by the Applicant and state the reasons for imposing such specifications, qualifications, or other criteria, including whether such specifications, qualifications, or other criteria are imposed.
43. Attach as **Exhibit CC**, any specifications, qualifications, or other criteria required of participants who utilize the services of the Applicant for collection, processing, preparing for distribution, or public dissemination by the Applicant.
44. Attach as **Exhibit DD**, any specifications, qualifications, or other criteria required of any person, including, but not limited to, regulators, market participants, market infrastructures, venues from which data could be submitted to the Applicant, and third party service providers who request access to data maintained by the Applicant.
45. Attach as **Exhibit EE**, policies and procedures implemented by the Applicant to review any prohibition or limitation of any person with respect to access to services offered or data maintained by the Applicant and to grant such person access to such services or data if such person has been discriminated against unfairly.

#### EXHIBITS — OTHER POLICIES AND PROCEDURES

46. Attach as **Exhibit FF**, a narrative and supporting documents that may be provided under other Exhibits herein, that describe the manner in which the Applicant is able to comply with each core principle and other requirements pursuant to Commission Regulation § 49.19.
47. Attach as **Exhibit GG**, policies and procedures implemented by the Applicant to protect the privacy of any and all swap information that the swap data repository receives from reporting entities.
48. Attach as **Exhibit HH**, a description of safeguards, policies, and procedures implemented by the Applicant to prevent the misappropriation or misuse of (a) any confidential information received by the Applicant, including, but not limited to "section 8 material" and "SDR information," as those terms are defined in Commission Regulation § 49.2, about a market participant or any of its customers; and/or (c) intellectual property by Applicant or any person associated with the Applicant for their personal benefit or the benefit of others.

49. Attach **Exhibit II**, policies and procedures implemented by the Applicant regarding its use of the SDR data and SDR information that it receives from a market participant, any registered entity, or any person for non-commercial and/or commercial purposes.
50. Attach as **Exhibit JJ**, procedures and a description of facilities of the Applicant for effectively resolving disputes over the accuracy of the transaction data and positions that are recorded in the swap data repository.
51. Attach as **Exhibit KK**, policies and procedures relating to the Applicant's calculation of positions.
52. Attach as **Exhibit LL**, policies and procedures that are reasonably designed to prevent any provision in a valid swap from being invalidated or modified through the procedures or operations of the Applicant.
53. Attach as **Exhibit MM**, a plan to ensure that the transaction data and position data that are recorded in the Applicant continue to be maintained after the Applicant withdraws from registration as a swap data repository, which shall include procedures for transferring the transaction data and position data to the Commission or its designee (including another swap data repository).

**BILLING CODE 6351-01-C**

Issued in Washington, DC, on April 25, 2019, by the Commission.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

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

**Appendices to Proposed Amendments to the Commission's Regulations Relating to Certain Swap Data Repository and Data Reporting Requirements**

**Appendix 1—Commission Voting Summary**

On this matter, Chairman Giancarlo and Commissioners Quintenz and Berkovitz voted in the affirmative. Commissioners Behnam and Stump voted to concur. No Commissioner voted in the negative.

**Appendix 2—Statement of Chairman J. Christopher Giancarlo**

A critical component of the 2008 financial crisis was the inability of regulators to assess and quantify the counterparty credit risk of large banks and swaps dealers. To address this shortcoming, the Dodd-Frank Act gave the CFTC broad responsibility to enhance regulatory transparency and price discovery for market participants through trade reporting to swap data repositories (SDRs).

In 2011 and 2012, the CFTC adopted rules for swap data reporting, recordkeeping and SDRs. Unfortunately, these initial rules lacked technological detail and specification. Under my direction in 2017, CFTC staff began the process of assessing the effectiveness of the swap reporting rules in Parts 43, 45, and 49 of the CFTC's regulations. The 2017 Roadmap to Achieve High Quality Swaps Data (Roadmap) outlined a series of steps to improve data reporting requirements. The CFTC received a wide range of feedback on the Roadmap, via written comments and discussions with SDRs and market participants.

I am pleased to see the first part of the Roadmap, the proposed changes to Part 49, issued today. These proposed changes update the requirements for SDRs and swap counterparties to verify the accuracy and completeness of swap data reported to SDRs.

Completion of these and the other changes proposed by the Roadmap will result in more complete, more accurate, and higher-quality data available to the CFTC and to the public; streamline data reporting; and help the CFTC perform its regulatory responsibilities. The time has come to revisit this important post-crisis reform and ensure the CFTC is fulfilling its commitments.

**Appendix 3—Statement of Concurrence of Commissioner Rostin Behnam**

I respectfully concur with the Commodity Futures Trading Commission's (the "Commission" or "CFTC") approval of its proposed rule regarding amendments to the Commission's Regulations Relating to Certain Swap Data Repository and Swap Data Reporting Requirements (the "Proposal"). In 2011, the Commission adopted part 49 of the Commission's Regulations<sup>1</sup> to implement the requirements of section 21 of the Commodity Exchange Act (the "Act" or "CEA").<sup>2</sup> Section 21 describes the registration regime for and operation of swap data repositories ("SDRs") by setting out applicable registration rules, data standards, duties, core principles, and requirements regarding confidentiality and chief compliance officers as envisioned by Congress in the Dodd-Frank Act to implement the key trade reporting provisions laid out at the 2009 G20 Pittsburgh Summit.<sup>3</sup> Similarly, part 49 builds out a regulatory framework aimed at ensuring the legal and operational stability and soundness of SDRs in support of post-trade transparency in the swaps market. The Proposal aims to improve upon the quality, accuracy, and completeness of swap data reported to the Commission via SDRs and generally follows a plan laid out in the Commission's 2017 Roadmap to Achieve High Quality Swap Data.<sup>4</sup> This Proposal purports to be the first step in following that Roadmap. While true, I prefer

<sup>1</sup> Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011).

<sup>2</sup> 7 U.S.C. 24a.

<sup>3</sup> *Id.*

<sup>4</sup> Roadmap to Achieve High Quality Swap Data, available at [http://www.cftc.gov/ido/groups/public/newsroom/documents/file/dmo\\_swapdataplan071017.pdf](http://www.cftc.gov/ido/groups/public/newsroom/documents/file/dmo_swapdataplan071017.pdf).

to view this as a part of the Commission's ongoing duties to regularly review its Regulations to increase efficiencies and avoid unintended consequences, and to be certain that our SDR rules further the goals of increasing transparency and identifying risk.

As I have stated several times during my tenure as a Commissioner, as we engage in strategic regulatory decisions, our policy goals from 2010 remain unchanged. As we endeavor to provide surgical flexibility and a more principles-based approach, I will continue to oppose any roll backs of Dodd-Frank initiatives.<sup>5</sup> While I do not believe that today's Proposal would be considered a rollback per se, I would like to call attention to a section of the Proposal where we deviate from the language of section 21 regarding the role of the chief compliance officer ("CCO") at an SDR.

Section 21(e)(2)(C) affirmatively requires an SDR's CCO, in consultation with the board of directors or similar body, to "resolve any conflicts of interest that may arise." The Commission's current part 49 rules mirror the language of the CEA exactly. Regulation 49.22(d)(2) affirmatively requires an SDR's CCO to "resolve any conflicts of interest that may arise," using precisely the same language as the Act.

However, today's Proposal would amend 49.22(d)(2) in a way that deviates from the plain language of the statute. While the statute requires that CCOs actually resolve any conflicts of interest, today's Proposal would simply require a CCO to take "reasonable steps" to resolve any conflict of interest. In addition, the Proposal would only apply to "material" conflicts of interest. Neither this new reasonableness standard nor this new materiality standard appear in the language of the statute. My concern is that adding these new standards may deviate from Congressional intent. This potentially dilutes the CCO's obligation to address conflicts of interest, but perhaps more importantly, it dilutes the CCO's ability to do

<sup>5</sup> Rostin Behnam, Commissioner, U.S. Comm. Fut. Trading Comm'n, Remarks of Rostin Behnam before FIA/SIFMA Asset Management Group, Asset Management Derivatives Forum 2018, Dana Point, California (Feb. 8, 2018), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam2>.

so. Under the language of the Act and the current Regulation, a CCO can point to their statutory obligation in working to resolve conflicts of interest. Imposing a new reasonableness standard may have the real world impact of making it more difficult for a CCO to actually resolve conflicts of interest.

I note that the same statutory language appears elsewhere in the Act regarding CCO resolution of conflicts of interest at other types of Commission registrants, and the Commission has issued a final rule implementing the same new reasonableness and materiality standards regarding CCOs of futures commission merchants, swap dealers and major swap participants.<sup>6</sup> The Commission also has recently proposed adding these new standards for CCOs of swap execution facilities.<sup>7</sup> However, in contrast, this week the Commission is issuing amendments to the Part 39 regulations for Derivatives Clearing Organizations (“DCO”) (the “Part 39 Proposal”). Current regulation 39.10(c)(2)(ii) requires a DCO’s CCO to resolve conflicts of interest. Regulation 39.10(c)(2)(ii) exactly follows the language of Section 5b(i)(2)(C). While the Part 39 Proposal makes amendments to 39.10, the Commission does not alter the CCO’s current duty to resolve conflicts of interest. In other words, for DCOs the Commission is choosing to maintain the statutory language. I believe that this may be the more appropriate approach for CCOs generally.

The Commission has, of late, begun a practice of re-interpreting statutory provisions with a somewhat flippant regard for their underlying purpose and rationales in order to lessen the burdens that are rarely substantiated by anything more than a call for change. While it is not out of the ordinary for an independent agency to reexamine whether its regulatory approach remains fit for purpose, I believe that we should be mindful that our role is not to bend too easily to unsupported claims of burden or complexity. This is particularly true when the re-interpretation seems to be at odds with the express language of the statute itself. I look forward to reading the comments on this CCO issue. I am particularly interested to learn whether various stakeholders believe that the statute itself is diluted by the addition of the reasonableness and materiality standards to CCO obligations in this and other rulemakings.

#### Appendix 4—Statement of Concurrence of Commissioner Dawn D. Stump

The Commission is publishing for public comment “Proposed Amendments to the Commission’s Regulations Relating to Certain Swap Data Repository and Swap Data Reporting Requirements” (Proposal). Accurate swap data reporting is vital to our ability to make appropriate policy choices. I very much look forward to receiving feedback from all parties impacted by this Proposal to assure that the Commission has

robust and accurate data, which is a lynchpin of future Commission decision-making.

However, a Latin proverb reads: *Qui tacet consentire videtur, ubi loqui debuit ac potuit* (he who is silent, when he ought to have spoken and was able to, is taken to agree). While I share the Commission’s desire for accurate swap data, I do not agree with all the policy and procedural choices in this Proposal. I question certain of the underlying assumptions driving these policy changes, and the promulgation of this rulemaking in isolation and without corresponding changes to other swap data reporting rules. I am uncomfortable with the lack of details and nebulous description of certain obligations in many parts of the Proposal, which I believe will make it difficult for the public to comment in an informed fashion. And I disagree with imposing immense additional burdens on swap data repositories (SDRs) and all types of reporting counterparties (RCPs), particularly without commensurate streamlining of regulatory obligations in the rest of the Commission’s swap data reporting rule set.

Because I share the Commission’s ultimate goal of accurate swaps data, I support the Proposal going out for comment, with the caveat that the other aspects of the swaps data “Roadmap”<sup>1</sup> are published in quick succession. I look forward to feedback from all interested parties as to how that goal can best be achieved in light of my concerns about the Proposal discussed below and other options that may be at the Commission’s disposal to enhance data accuracy while appropriately balancing costs and benefits.

#### I. Verification: Solution in Search of a Problem?

This Proposal is predicated upon a view that new verification procedures are needed because the swap data currently being reported to SDRs is substantially wrong and inaccurate. Yet, the Commission has recently proffered positive reviews of the role of SDR data in enhancing its understanding of swaps markets, citing the “more complete information now available regarding certain portions of the swap market, [and] the data analytical capabilities developed since the [swap dealer] regulations were adopted”<sup>2</sup> as supporting its policy decision making. Specifically, the Commission cited analysis based upon a year of SDR data sourced from data reported to the registered SDRs in its recent rulemaking concerning the *de minimis* exception to the swap dealer definition relating to insured depository institutions

(IDIs).<sup>3</sup> Given that the Commission has not voiced concern about widespread discrepancies or inaccuracies in swaps data reported to SDRs in relying upon that data in our rulemakings, I am not convinced that it is necessary to add new layers of complexity to swaps data reporting and create new burdens on market participants via the steps outlined in the Proposal.

Taken in isolation, asking RCPs to verify the accuracy of data reported to SDRs is appealing. But how does the Commission know that a substantial portion of that data is actually incorrect? The Proposal attempts to depict a data accuracy problem by referencing that it is not uncommon for discrepancies to be found in SDR data. However, from the universe of reported swap data that contains millions of swap transactions and exponentially more messages sent to SDRs over the course of the last five years, the Proposal mentions only two examples of errors: “In the processing of swap data to generate the CFTC’s Weekly Swaps Report, for example, there are instances when the notional amount differs between the Commission’s open swaps information and the swap data reported for the same swap. Other common examples of discrepancies include incorrect references to an underlying currency, such as a notional value incorrectly linked to U.S. dollars instead of Japanese Yen.”<sup>4</sup> I would expect a much more extensive and egregious list of systemic, recurring errors in reported swaps data to warrant the expansive new obligations contained in the Proposal.

The Proposal strains to quantify the number of inaccuracies in reported SDR data by opining that, “[b]ased on swap data available to the Commission and discussions with the SDRs, the Commission estimates that an SDR would perform an average of approximately 2,652,000 data corrections per year.”<sup>5</sup> The Proposal does not explain exactly how this figure was derived, identify the interaction between SDRs and RCPs referenced in its corrections estimate, indicate whether the “correction” refers to incomplete or inaccurate data,<sup>6</sup> or provide critical context as to the percentage of messages that this number represents. Indeed, it is impossible to know for certain that an RCP was intending to correct erroneously reported data based on the data schema utilized by SDRs to address changes in swaps data—which include actions such as “snapshot,” “amendment,” and

<sup>3</sup> *Id.* at 12454 and n.59 (“The Commission believes that end-users would primarily benefit from the IDI De Minimis Provision by entering into [interest rate swaps, or ‘IRS’], [foreign exchange, or ‘FX’] swaps, and [non-financial commodity, or ‘NFC’] swaps with IDIs to hedge loan-related risks. SDR data indicates that IDIs that have between \$1 billion and \$50 billion in [aggregate gross notional amount, or ‘AGNA’] of swaps activity primarily enter into IRS, FX swaps, and NFC swaps, as measured by AGNA and transaction count.

<sup>4</sup> Proposal, text accompanying n.239.

<sup>5</sup> *Id.*, at section VII.B.3.v.

<sup>6</sup> *Incomplete* data is not the same things as *inaccurate* data. Thus, “corrections” of incomplete data would not be relevant to the verification with respect to inaccurate data that is the subject of this Proposal.

<sup>6</sup> Chief Compliance Officer Duties and Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants, 83 FR 43510 (Aug. 27, 2018).

<sup>7</sup> Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946 (Nov. 30, 2018).

<sup>1</sup> See Roadmap to Achieve High Quality Swaps Data (DMO July 10, 2017), available at [https://www.cftc.gov/sites/default/files/ids/groups/public/@newsroom/documents/file/dmo\\_swapdataplan071017.pdf](https://www.cftc.gov/sites/default/files/ids/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf), published with CFTC Letter 17–33, Division of Market Oversight Announces Review of Swap Reporting Rules in Parts 43, 45, and 49 of Commission Regulations (DMO July 10, 2017), available at <https://www.cftc.gov/sites/default/files/ids/groups/public/@rlrlettergeneral/documents/letter/17-33.pdf>.

<sup>2</sup> De Minimis Exception to the Swap Dealer Definition—Swaps Entered Into by Insured Depository Institutions in Connection With Loans to Customers, 81 FR 12450, 12452 (April 1, 2019) (IDI *De Minimis* Rulemaking).

“modify,”<sup>7</sup> but may not actually include a category of “correction” messages.

While the Proposal posits the annual number of corrections across all SDRs to be about 8 million “corrections” (3 provisionally registered SDRs \* 2,652,000 annual data corrections per SDR), it lacks the total number of data submissions that are received by the SDRs. The Paperwork Reduction Act portion of the Proposal does provide one potentially related data point, as it includes an estimate of 462,981,508 total annual responses across all SDRs for the relevant information collection.<sup>8</sup> Without the benefit of further clarity, the corrections could apply to the entire universe of the collections associated with the Proposal. If the figures are roughly rounded for the sake of simplicity, and it is stipulated for the sake of argument that all the corrections cited by the Proposal reveal data inaccuracies, then does this suggest that only approximately 2% (400 million responses/8 million corrections) of all messages might be inaccurate? In my opinion, the burdens that this Proposal would impose on SDRs and RCPs (including commercial end users) may be difficult to justify if the problem the Commission is attempting to rectify may equate to 2% of all messages delivered to SDRs.

I share the view that has been stated by some of my colleagues recently that the Commission should strive to make data-driven policy determinations and should avoid relying on assumptions or anecdotes when engaged in rulemaking activity.<sup>9</sup> Yet, the same is true when it comes to imposing costs and burdens on market participants that are already heavily encumbered by a broad swath of regulatory obligations that continue to shift and expand. Our recent rulemakings have referenced data driven policy making, learning from experience with Dodd-Frank implementation, and demonstrating supporting evidence for regulatory change, but the verification provisions of this Proposal deviate from that approach. The Commission should delay this rulemaking until the other aspects of the Roadmap critical to improving swaps data reporting and lessening unnecessary regulatory

burdens were ready to be proposed. But, short of that, I welcome public comment and data evaluating the breadth and depth of inaccuracies in SDR data.<sup>10</sup> Such information would help to determine how much reported SDR data is actually incorrect before the Commission requires SDRs and RCPs to build additional systems and undertake significant new compliance burdens and obligations to address an accuracy problem that, at this point, has not been proved. I look forward to comments and data that demonstrate the actual need for the proposed changes.

## II. Insufficient Level of Detail for Appropriate Public Comment and Cost-Benefit Consideration

The Administrative Procedure Act (APA) requires that, in issuing its rules, the Commission “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choices made.”<sup>11</sup> Section 15(a) of the Commodity Exchange Act (CEA) further requires that in doing so, the Commission must consider the costs and benefits of its proposed action.<sup>12</sup> A notice of proposed rulemaking affords the Commission the opportunity to gather information and build a record that will provide the reasons for the conclusions that it ultimately draws when final rules are issued. If the Commission fails to properly exercise this responsibility, we risk having our rules set aside as arbitrary and capricious agency action.<sup>13</sup>

While I support the purposes and intent underlying the Proposal, I am concerned that some of the proposed rules are too vague to enable the public to provide the Commission with information necessary to adopt a sound final rule set. For RCPs, the Proposal informs them of their general obligations, but leaves a tremendous amount of the details to future action by the Commission (often delegated to staff) and the SDRs to dictate the operational work flows that RCPs will have to adhere to in order to comply with the Commission’s rules. RCPs reading the proposed rules still would not know what changes are being proposed in what they have to report, when

they must report by, and how they are to deliver that information to SDRs. The proposed rules are often amorphous, lacking specificity as to the actual processes and procedures to be imposed, with RCPs left to comment without really knowing what much of this would actually require of them in the future.

The same is true for SDRs. For example, proposed § 49.9 covering open swaps reports to be provided to the Commission is quite opaque, and provides no detail as to any potential future instructions from the Commission that “may include, but are not limited to, the method, timing, and frequency of transmission as well as the format of the swap data to be transmitted.” Similarly, proposed § 49.17(c)(1) would require an SDR to transmit all swap data requested by the Commission, but provides that the SDR will receive instructions that may include, but are not limited to, the method, timing, and frequency of transmission, and the format and scope of the SDR data to be transmitted, at a later time.

How can RCPs and SDRs prepare for, budget, build, test, and implement systems to comply with these requirements without ample information ahead of time as to what these requirements entail? Indeed, it is not clear to me how RCPs and SDRs can even meaningfully comment on either the merits or the costs and benefits of the proposed rules when these critical elements of the requirements are left for future determination.

But the proposed rule that troubles me most in this regard is proposed § 49.13, which addresses an SDR’s duty to monitor, screen, and analyze data upon the request of the Commission. The Proposal explains that in its original consideration of current Regulation 49.13,<sup>14</sup> the Commission received comments that the rule does not sufficiently describe the specific tasks that SDRs are expected to perform. The Commission decided to later establish specific monitoring, screening, and analyzing duties when its knowledge was more fully developed, and that is where we find ourselves presently. Yet, despite the Commission’s experience with swaps data over the last five plus years, this Proposal still fails to delineate specific duties that would enable an SDR to provide appropriate budget, technological development, and staff resources to assure an ability to comply with the demands that may be made upon it.

Proposed § 49.13(a)(1) requires SDRs to be prepared to comply with Commission requests for monitoring, screening, and analyzing of data. Several of the tasks alluded to in the proposal rule could impose significant, albeit wholly undefined, obligations on SDRs. For example, proposed § 49.13(a)(1)(iv) contemplates assessments of risk, which is not particularly an SDR function and which can be a very complicated exercise that is defined and calculated differently by different market participants. Proposed § 49.13(a)(1)(viii) would appear to render SDRs an arm of the Commission’s enforcement program, as it would require them to provide information

<sup>7</sup> DTCC SDR templates, for instance, include the following message and action types. The modify action type allows for the valid modification or correction to an existing trade that has previously been reported by the submitting party. However, firms could reflect a correction using other methods. The snapshot message allows participants to report the current state of the swap in their portfolio as a “point-in-time” view of the position. The reported position should reflect all post-trade events and non-position forming amendments that the submitter may wish to reflect on their trade record. The amendment transaction type could be utilized as an indication of a confirmable amendment, via a negotiated agreement, to a previously confirmed and reported trade. As a result, it would be difficult to conclude with any certainty the actual number of corrections without a critical review of contrasting terms related to a particular trade on each type of action, message, or transaction type submission.

<sup>8</sup> Proposal at section VII.B.3.xi.

<sup>9</sup> See, e.g., *IDI De Minimis Rulemaking* at 12467 (Statement of Chairman J. Christopher Giancarlo) (“As I have said many times before, I believe that CFTC policy is best when it is driven by data and not assumptions.”).

<sup>10</sup> The cost-benefit consideration in the Proposal loosely references and mischaracterizes information contained in three public studies that allude to challenges in SDR data. Unfortunately, these studies are from 2015 or earlier and are based upon data from the initial roll-out of SDR reporting. These studies address incomplete rather than inaccurate data and do not belong in this Proposal that focuses on verification of data. See fn. 6, *supra*. The Roadmap explained that validations should be utilized to reject swap data reports with missing data fields, and these issues would be better served by a holistic implementation of the Roadmap and do not require the onerous verification aspects of the Proposal. Furthermore, some of these identified issues also would be resolved by the technical specification detailed in the Roadmap and, again, if proposed in unison, would provide RCPs with clear definition, form and manner, and allowable values. The reference to the third study also fails to mention that the two soybean swaps referred to were removed from a universe of 39,622 agricultural swaps.

<sup>11</sup> *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

<sup>12</sup> 7 U.S.C. 19(a).

<sup>13</sup> See APA, 7 U.S.C. 706(2)(A).

<sup>14</sup> 17 CFR 49.13.

about compliance with Commission regulations without clarifying how SDRs could do so, and despite the fact that SDRs are not self-regulatory organizations.

Proposed § 49.13(b), in turn, requires SDRs to “establish and at all times maintain sufficient information technology, staff, and other resources to fulfill” these Commission requests. Yet, proposed § 49.13(a)(2) provides that the content, scope, and frequency of all monitoring, screening, and analyzing requests shall be at the discretion of the Commission (to be exercised by staff pursuant to delegated authority); further, in addition to the 11 types of potential Commission requests identified in the proposal, SDRs also would have to be prepared to comply with other, unspecified, types of requests for monitoring, screening, and analyzing as well. How can an SDR be expected to efficiently allocate capital and meet the standards of proposed § 49.13(b) with respect to information technology, staff, and “other” (undefined) resources when it does not know what the actual requirements will be, when it will be expected to deliver, at what frequency, and the exact form and manner of the deliverable?

Finally, proposed § 49.30 would mandate that “a swap data repository shall submit SDR data reports and any other information required under this part to the Commission, within the time specified, using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission.” I cannot begin to fathom the uncomfortable (and unenviable) position of an SDR under rules whereby the Commission can ask for almost anything under proposed § 49.13, and then demand its submission whenever and however it wishes under proposed § 49.30.

The Proposal states, somewhat incredibly, that it “expects specifying these topic areas [in proposed § 49.13] would not impose substantial new fixed costs on SDRs. . . .”<sup>15</sup> It is wishful thinking to claim that the extensive list of undefined, open-ended tasks hypothesized in proposed § 49.13(a)(1) that SDRs must prepare to build and deliver will not represent a meaningful burden. Although it is not clear how SDRs could quantify the costs of compliance with such vague obligations, it is likely that the costs incurred by SDRs will be significant—and that their clients, including commercial end-users, ultimately will pay the price.

I appreciate that it is not possible to foresee all future circumstances when proposing a rulemaking, and I recognize the need for flexibility in aspects of the Commission’s day-to-day administration of the Dodd-Frank swap regulatory regime. Nevertheless, I am concerned that the Proposal fails to inform the public as to the full nature of the responsibilities that the Commission intends to impose upon RCPs and SDRs so that they can provide appropriate comment and feedback to drive the best final rule outcome possible. I wonder how the Commission can produce a complete cost-benefit consideration without specifying the actual scope and technical details of the requirements it is proposing to impose,

particularly with respect to requests to SDRs to be made via proposed § 49.13. In sum, I fear that in proposing several rules where critical elements are left for future specification (often by staff), the Commission will not receive informed and meaningful public comments (including comments on costs and benefits) that are necessary to provide the foundation on which our rules ultimately must rest.

### III. Suboptimal Policy Choices

Certain elements of the Proposal rest on questionable policy choices that I wish to highlight in order to garner public input as part of the comment process.

First, the Proposal would remove a longstanding market practice of trusted sources when it comes to verification of data accuracy without demonstrating why such a change is necessary, or appropriate. The Proposal states: “The Commission provided an exception to the requirement that SDRs ‘confirm with both counterparties to the swap the accuracy of the data that was submitted’ in § 49.11(b)(1)(ii) for swap creation data and § 49.11(b)(2)(ii) for swap continuation data when swap data is received from a [swap execution facility, or ‘SEF’], [designated contract market, or ‘DCM’], derivatives clearing organization (‘DCO’), or from a third-party service provider acting on behalf of the swap counterparty, under certain conditions.”<sup>16</sup> The Proposal’s departure from this policy means that SDRs would no longer be able to rely on an exception from the requirement to affirmatively confirm with both counterparties where (1) the SDR forms a reasonable belief that the data is accurate, (2) the reporting identifies that both counterparties agreed to the data submitted, and (3) the SDR provides both counterparties with a 48-hour correction window.

The Proposal argues, without citing any evidence, that, “based on the Commission’s experience with swap data submitted by SEFs, DCMs, DCOs, and third-party service providers since the rule was adopted, the Commission believes that such swap data has not been consistently complete and accurate in some instances, and the swap data accuracy is not sufficient to justify the exception to the requirement that SDRs confirm the reported swap data’s accuracy with swap counterparties. The current requirements have had a negative effect on swap data accuracy and consistency, which has hampered the Commission’s ability to carry out its regulatory responsibilities.”<sup>17</sup> I do not believe that trading venues, which value execution certainty and must deliver accurate trade details to clients, or clearing organizations, which must have verified trade details available for risk management purposes, would report systematically or consistently inaccurate swaps data to SDRs, given their level of technological expertise and concern for reputational risk. At a minimum, I would not eliminate the existing exception absent evidence establishing that this is the case.

Second, the Proposal would mandate in proposed §§ 43.3(e) and 45.14(b) that

corrections of errors and omissions be performed by SEFs, DCMs, and RCPs “regardless of the state of the swap that is the subject of the swap data.” The Proposal defines an “open swap” as “an executed swap transaction that has not reached maturity or the final contractual settlement date, and has not been exercised, closed out, or terminated.” Thus, the Proposal is requiring additional reporting for “dead” swaps without demonstrating a relevant use-case to warrant such a requirement.

It is more difficult for RCPs to correct dead/expired swaps that are no longer on their books and records. SDRs also face additional challenges and complexity in modifying swaps that are no longer what the Proposal defines as an “open swap.” The Proposal does not identify a Commission or public use-case that justifies the increased burden and challenge associated with correcting data on dead/expired swaps. The financial crisis that precipitated Dodd-Frank was not caused by, nor could it have been prevented by, regulatory oversight of dead swaps, but rather was the result of active risk. Again, absent an identified justification with evidentiary support, I do not support imposing additional regulatory burdens that force market participants to shift resources from the management of active risks to the reporting of dead swaps.

Third, I would prefer a more sensible approach to the duration of the recordkeeping requirements for SDRs. Proposed § 49.12(b)(2) would require SDR records—including SDR data, timestamps, and messages—to be readily accessible following final termination of the swap for five years, and then for a period of ten additional years in archival storage, which, of course, has an associated cost. Unless the Commission can clearly articulate the use-case and regulatory purpose that would justify requiring archival storage up to 15 years after the expiration of the swap, I believe the Commission should consider reducing the recordkeeping time frame for SDRs.

### IV. Process Foul To Address Only One Aspect of the Complex Swap Data Reporting Puzzle

I also am uncomfortable with the sequencing of this Proposal and the rush to publication on a stand-alone basis rather than as part of the contemplated overhaul of all the swaps data reporting rules.

I expressed a similar view about the application of a holistic approach to interrelated regulations during last November’s Open Meeting concerning SEFs when I noted that “I would prefer that the Commission be able to opine on a final SEF rule and a final rule on name give-up at the same time. Acting on all aspects impacting SEF trading contemporaneously would benefit all entities involved.”<sup>18</sup> The same principles apply to swap data reporting, as both the public and the Commission would benefit from holistically addressing the

<sup>18</sup> See Opening Statement of Commissioner Dawn D. Stump before the CFTC Open Meeting, November 5, 2018, available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement110518>.

<sup>15</sup> Proposal at section III.I.

<sup>16</sup> *Id.*, text accompanying n.70.

<sup>17</sup> *Id.*, text immediately following n.73.

entirety of the swap data reporting universe. Unfortunately, the Commission continues to propose regulations that are interrelated and that would govern the same activity in an inefficient, piecemeal manner.

Swap data reporting is a complex web of interrelated processes and systems that must all work in sync in order to generate complete and accurate data in a timely and cost effective manner. Many tasks in reporting are sequential in nature, and it takes all participants in the reporting ecosystem to coordinate and cooperate with a complete understanding of all the swap data reporting regulations from the Commission. For example, SDRs have to scope out and create policies and procedures and build systems/templates for any new requirement. RCPs cannot adequately prepare for, much less build and test, systems on how to comply until they receive final feedback and instructions from the SDR. For this reason, implementing reporting changes—which invariably is quite costly to both SDRs and RCPs in terms of the expenditure of time, energy, and money—must be orchestrated and timed very carefully.

SDRs and RCPs have previously expressed to the Commission the importance of being made aware of anticipated future modifications to reporting so that they can understand the expected end-game that the Commission has in mind.<sup>19</sup> Market participants also have commented on the need to understand the entire policy idea and all the associated pieces before committing time and energy to provide the Commission with meaningful comments and input.<sup>20</sup>

<sup>19</sup> In late 2015, CFTC staff issued a request for comment on draft technical specifications for certain prioritized swap data elements and sought input on 80 enumerated questions addressing 120 data elements for several swap data reporting topics. See Draft Technical Specifications for Certain Swap Data Elements (December 22, 2015), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/specificationsswapdata122215.pdf> and <https://www.cftc.gov/PressRoom/PressReleases/pr7298-15>. In responding to staff's request for comment, SIFMA stated that it "view[s] the Draft Technical Specifications as one component of a broader initiative to enhance swap data reporting" and that the "interrelationships among the Draft Technical Specifications and these other workstreams, as well as their shared dependencies on the same technology and human resources, necessitate a well-planned and sequenced approach to enhancing swap data reporting requirements. Prioritizing among the various enhancements under consideration will help to avoid inadvertent inconsistencies and associated potential for erroneous data and unnecessary infrastructure costs." Letter from Kyle Brandon, SIFMA, at 2 (March 7, 2016), available at <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60702&SearchText=>.

<sup>20</sup> SIFMA and ISDA jointly commented on the swaps data Roadmap and suggested that the Commission align the anticipated timeframes for swaps data reporting changes: "[G]iven the interconnection between SDR functions and the counterparties' reporting workflows, we believe that any proposed rule amendments and final rules associated with Tranche 1 and Tranche 2 should be issued at the same time." Their letter then went on to comment: "Alternatively, should the Commission decide to publish the proposed rule amendments to the SDR rules first in Tranche 1,

I appreciate that the Proposal states that "[w]hen the Commission proposes the next two rulemakings, the Commission anticipates re-opening the comment period for this proposal to provide market participants with an opportunity to comment collectively on the three rulemakings together, because the proposals address interconnected issues."<sup>21</sup> But I do not see the benefit of proceeding in such an inefficient manner. Issuing the Proposal now does provide notice of the Commission's intentions with respect to one piece of the swaps data Roadmap, but no notice of what else from the Roadmap might come to pass. Such "partial notice" does not enable parties to evaluate, and comment upon, the full picture of their new compliance obligations, including their costs and burdens.<sup>22</sup> Under these circumstances, I would not be surprised if market participants simply waited for all of the reporting rules to be proposed before providing feedback to the Commission on the whole of what is being proposed.

In addition, if, as the Proposal suggests, there actually is a significant problem with inaccurate swap data being reported to SDRs, the piecemeal issuance of these rulemakings makes it more difficult for the Commission to evaluate whether that problem can be rectified by allowing other facets of the swaps data Roadmap to gain traction. Query whether the Commission generating a technical specification removing uncertainty as to what must be reported and how, harmonizing with other regulators and implementing unique identifiers (Unique Transaction Identifiers and Unique Product Identifiers) and critical data elements from CPMI-IOSCO work streams, minimizing the number of fields required to be reported, and affording RCPs more time to report would organically resolve a large proportion of any inaccurate data reporting problem that may exist. The manner in which the Commission

then we recommend that the public comment period for this release remain open for at least 90 days following publication of the proposed rule amendments to the reporting workflow rules in Tranche 2. This extended comment period would provide market participants with a comprehensive and holistic understanding of whether the two proposals achieve the desired policy outcomes and account for operational costs and possible additional builds to comply with a modified reporting regime." Letter from Steven Kennedy, ISDA, and Kyle Brandon, SIFMA, at 3–4 (August 21, 2017) (footnote omitted), available at <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61288&SearchText=>.

<sup>21</sup> Proposal, text immediately following n.23.

<sup>22</sup> The Commission's disjointed delivery of proposed changes to its swap data reporting rules also raises questions as to its consideration of relevant costs and benefits. Cost-benefit considerations, by their very nature, must evaluate the proposed changes in comparison to the status quo—including the present state of other relevant regulations. As a result, the cost-benefit portion of the Proposal could be deemed obsolete to the extent it does not incorporate any of the modifications to other swap data reporting requirements in parts 43 and 45 of the Commission's regulations that the Commission intends to propose and act upon. The failure to propose all the swaps data reporting rule amendments in unison would seem to necessitate a refresh of the accompanying cost-benefit portion of this Proposal, and further public comment.

has elected to proceed will make it challenging for SDRs and RCPs to comment appropriately on these questions, and I fear will place the Commission in a predicament as it attempts to make informed policy decisions on how best to proceed.

## V. Lack of Harmonization With the SEC

Market participants of all shapes-and-sizes—even those that are often on opposing sides of most regulatory debates—all agree on a common theme that has been repeatedly urged upon the Commission via every imaginable medium since the enactment of Dodd-Frank: The Commission and the Securities and Exchange Commission (SEC) should coordinate and harmonize their respective derivatives regulations to the maximum extent possible, and especially concerning entities that have already incurred systems and compliance costs in connection with the corresponding requirements of the related agency. All types of market participants have implored both the Commission and the SEC to minimize compliance burdens on potential dual registrants in connection with the derivatives rules, such as swap data reporting. And yet, notwithstanding the current emphasis on CFTC-SEC harmonization,<sup>23</sup> the Commission is proposing a swap data reporting rule that appears to take an approach that is the opposite of, and in direct contrast to, the SEC's thinking on the same issue.

The SEC published a proposed rulemaking in December 2018<sup>24</sup> that specifically discusses, among other things, verification of the terms of reported security-based swaps—as does the Proposal. Yet, while the Proposal would increase regulatory burdens on all entities in its amended regulatory reporting scheme, the SEC is considering a more pragmatic approach. The SEC, in its proposal, "believes it to be an appropriate time to revisit and request comment on an issue previously identified in connection with the rules . . . [that] require[] each registered SDR to 'confirm with both counterparties to the security-based swap the accuracy of the data that was submitted.'"<sup>25</sup>

Specifically, the SEC in its proposal states that "SDRs may be able to reasonably rely on certain third parties to address the accuracy of the transaction data. For example, the Commission previously stated that if an SDR develops reasonable policies and procedures that rely on confirmations completed by another entity, such as a third-party confirmation provider, as long as such reliance is reasonable the SDR could use such confirmation to fulfill its obligations under certain SDR rules. Because the two

<sup>23</sup> See, e.g., Memorandum of Understanding Between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission Regarding Coordination in Areas of Common Regulatory Interest and Information Sharing (July 11, 2018) (specifically addressing the regulatory regime for swaps and security-based swaps), available at [https://www.cftc.gov/sites/default/files/2018-07/CFTC\\_MOU\\_InformationSharing062818.pdf](https://www.cftc.gov/sites/default/files/2018-07/CFTC_MOU_InformationSharing062818.pdf) and <https://www.cftc.gov/PressRoom/PressReleases/7745-18>.

<sup>24</sup> Risk Mitigation Techniques for Uncleared Security-Based Swaps, 84 FR 4614 (February 15, 2019) (proposed rules).

<sup>25</sup> *Id.* at 4633–4634 (footnote omitted).



relevant provisions that we are proposing today generally relate to the obligation of [Security-Based Swap, or ‘SBS’] Entities to take certain steps in the reconciliation and documentation processes related specifically to the reporting of the relevant security-based swap data to an SDR. . . . the Commission believes that . . . these measures, taken together, could provide an SDR with a set of factors to assess the reasonableness of relying on an SBS Entity’s ability to independently provide the definitive report of a given security-based swap position, thereby providing a basis for the SDR to satisfy its statutory and regulatory obligations to verify the accuracy of the reported data when the SBS Entity’s counterparty is not a member of the SDR.”<sup>26</sup>

In other words, the SEC is considering whether the reconciliation process undertaken by security-based swap dealers of their swaps portfolios could satisfy the statutory obligation to confirm the accuracy of data reported to SDRs. This sensible approach being considered demonstrates deference to trusted sources for swap data accuracy when a third-party service provider is employed to address the confirmation of swaps data, similar to the exceptions in Regulations 49.11(b)(1)(ii) and 49.11(b)(2)(ii) that the Proposal would eliminate.

As discussed more fully in Section VI below, based on the Commission’s reporting hierarchy in Regulation 45.8,<sup>27</sup> swap dealers (SDs) are the RCP and transmit required swap data elements to an SDR for the vast preponderance of swap transactions. These same SDs are already subject to another regulatory obligation relating to verification of the terms of their swap transactions, as they must conduct a portfolio reconciliation exercise on a regularly recurring basis via Regulation 23.502.<sup>28</sup> Portfolio reconciliation forces the “[e]xchange [of] the material terms of all swaps in the swap portfolio between the counterparties” and requires the parties to “[r]esolve any discrepancy in material terms and valuations.”<sup>29</sup> Since SDs already must check the accuracy of their portfolios through a reconciliation exercise, and since SDs report almost all swaps, then the Commission, like the SEC, should consider leveraging this existing process and afford SDs that undertake such an exercise enough time for it to run its course and then submit that same accurate and verified data set for SDR reporting purposes. Leveraging this existing regulatory process, rather than creating yet another process that compliance officers and operations staff must adhere to, may offer a “good government” solution, assuming the existence of a systemic problem with SDR data accuracy. If SDs represent that the same data reconciled with counterparties per Rule 23.502 is reported to SDRs, then the Commission might not need to impose the burdensome new requirements set out in the Proposal.

It is unfortunate that the Commission did not propose—or even request comment on—the less burdensome approach to verification

that the SEC is considering in light of our stated commitment to harmonizing the agencies’ derivatives rules. And it is even more mystifying to me why we are proposing these rule amendments in the inefficient, piecemeal manner described above when delaying the issuance of this Proposal would not only enable us to issue the various proposed amendments to our swap data reporting rules as a unified package, but also to learn from comments on the SEC’s data verification discussion (the comment period closed on April 16) whether the SEC may have identified a better option for fostering accurate reported swaps data.

## VI. Outsized Burden Placed Upon SDRs and RCPs, Including End-Users

Swap market participants have repeatedly emphasized to the Commission that the swap data reporting rules are overly complicated, difficult to implement, and a significant operational burden and compliance challenge for all concerned, including end-users.<sup>30</sup> Yet, the Proposal would add more layers of complexity to reporting workflows, and require SDRs and RCPs to commit more time and money to submit more reports and undertake additional obligations.

In particular, the Commission has heard from many end-users about the immense nature of their reporting burdens, how regulatory capture on end-users has impacted their business models and their ability to hedge via derivatives markets, and the unintended consequences of the initial implementation of the Dodd-Frank swap reporting regime. In response, the Commission, commendably, has made considerable progress in addressing reporting issues and limiting burdens on end-users via the various tools at our disposal when consistent with our regulatory responsibilities. It is not clear to me why this

<sup>30</sup> In responding to staff’s request for comment on the Draft Technical Specifications, *see* fn. 19, *supra*, ISDA stated: “End-users which either have reporting obligations or which would be compelled to provide data to the reporting counterparty necessitated by the proposed fields would be particularly burdened by the requirements and many will lack the technological capability to capture, transform and report or provide data as required. The small to mid-sized commodity producers, processors, merchants and other end-users that use swaps to mitigate commodity, interest rates, foreign exchange or other price risks will require additional technology, compliance and legal support in order to accommodate additional reporting requirements. This will impose significant, unjustified costs to end-users . . . . ISDA, on behalf of commercial end-users, requests the CFTC to avoid imposing changes and additional reporting requirements on end-users by maintaining their obligations under the current Reporting Regulations to the greatest extent possible.” Letter from Tara Kruse, ISDA, at 7–8 (March 7, 2016), available at <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60713&SearchText=>. ISDA continued to advocate against placing additional burdens on end-users through its joint comment letter with SIFMA to the Swap Data Roadmap and suggested the Commission “should not require non-reporting counterparties, end-users, and smaller firms to perform reconciliations because these entities generally do not have the resources to effectively validate their swap transactions.” *See* fn. 20, *supra*, at 6.

Proposal would break from those efforts and go in the opposite direction by placing new and burdensome swap data reporting obligations on end-users.

End-user RCPs would bear several onerous obligations under this Proposal. End-user RCPs would have to commit considerable resources to create more sophisticated and elaborate reporting systems in order to be compliant. The Proposal estimates that 1,585 RCPs are neither SDs, major swap participants (MSPs), nor DCOs.<sup>31</sup> As a result of the Proposal, all of these end-user RCPs would have to acquire or build additional processes and hire more staff to comply with these new reporting regulations, regardless of the number, notional amount, asset class, or risk profile of the swaps for which they are the RCP. To provide some perspective, staff has indicated that of new transactions in January 2019, trades with at least one SD counterparty (which would serve as the RCP) per asset class represented 99.6183% of the 22,446 CDS trades; 98.2466% of the 137,499 IRS trades; 97.0540% of the 603,696 FX trades; 99.9998% of the 471,657 Equity trades; and 85.3056% of the 60,021 Commodity trades. In other words, the 1,585 RCPs that are not SDs, MSPs, or DCOs reported, at most, 86 CDS, 2,454 IRS, 18,325 FX, 1 Equity, and 10,339 Commodity swaps during this time period. Given the limited number of swaps for which end-users are RCPs compared to the overall swaps market, I question whether imposing on all end-users that may serve as an RCP the additional burdens of preparing for compliance with the requirements of this Proposal reflects an appropriate consideration of costs and benefits.

The Commission has made strides post the initial roll-out of its Dodd-Frank rulemakings to fix unintended consequences of its swap data reporting rules and minimize the burdens on end-users where appropriate. This Proposal, unfortunately, errs in the other direction. I welcome suggestions via the public comment process on the appropriate role for end-user RCPs to play in assuring the accuracy of reported swap data short of imposing the burdens set out in the Proposal.

## VII. Alternate Approaches for Further Consideration

To be clear, my concern with the Proposal is not simply that it would impose costs on market participants; all necessary regulatory requirements do so. Rather, my concern is with the extent of the burdens that the Proposal would impose on market participants, including end-users, in light of the prospects that the Proposal will meaningfully improve the quality of reported swap data. As discussed above, the Proposal does not establish that there actually is a systemic problem in that regard. But assuming that to be the case, consider the following fact pattern and whether any errors would be found and rectified under the Proposal:

- RCP submits data to an SDR from its regulatory reporting databases;
- SDR creates Open Swaps reports based upon the data received;

<sup>31</sup> Proposal, text accompanying n.226.

<sup>26</sup> *Id.* at 4634 (footnotes omitted).

<sup>27</sup> 17 CFR 45.8.

<sup>28</sup> 17 CFR 23.502.

<sup>29</sup> 17 CFR 23.500(i)(1), (3).

- SDR provides a mechanism for the RCP to verify the accuracy of the Open Swaps report; and

- RCP checks the Open Swaps report against the data that it submitted to the SDR.

In other words, if the original data set utilized by the RCP contains an inaccuracy, the Proposal could simply impose a futile exercise based on circular logic. The end result of the new burdens placed upon RCPs and SDRs would merely be a false positive in this scenario. If the RCP's data is inaccurate in the first place, then the Proposal would be successful only in making swap data reporting more complicated and expensive, without actually improving the accuracy of the data reported to the SDR.<sup>32</sup>

Accurately reported swap data is, of course, crucial to the Commission's performance of its regulatory responsibilities and the effective operation of the Dodd-Frank swap regime. That is why I am concurring in the issuance of the Proposal—because I support the Commission's efforts to determine whether appropriate improvements can be made to its swap data reporting rule set.

This Proposal provides an opportunity for the public to suggest other, perhaps better, solutions to more efficiently produce the desired outcome of accurate swap data for purposes of conducting the Commission's work, facilitating risk oversight and management, and fostering robust swaps markets. I strongly encourage SDRs, SDs, DCOs, end-users, and the public in general to take advantage of this opportunity and provide not only feedback on the Proposal, but also their ideas on how to appropriately balance the need for accurately reported swap data with the costs and burdens associated with obtaining it. The Commission should consider any alternate approaches that can satisfy the policy goal of improving the quality of SDR data while limiting the impact on market participants already saturated with complex and repetitive reporting obligations.

I would like to offer, and invite comment on, a few alternatives with respect to RCPs. CEA Section 21(c)(2) provides that SDRs shall “confirm with both counterparties to the swap the accuracy of the data that was submitted.”<sup>33</sup> As a result, a clear obligation exists as to what SDRs must do. The statute is less clear on what RCPs must do, if anything.

Under the Commission's current regulations, all RCPs must submit hundreds of fields per transaction to their respective SDRs. Some RCPs have thousands of open swaps that would be captured under this

Proposal and require recurring verification. I hope that commenters will address whether a smaller number of swaps and/or a limited subset of essential fields that must be verified would enable the Commission to conduct its regulatory functions without indiscriminately requiring verification of all swap data elements.

Another option on which public comment would be helpful is requiring RCPs to verify only the accuracy of a statistically significant portion of their Open Swaps report and then decide, based on the level of accuracy, whether the entirety of Open Swaps must be analyzed. Still another option might be to require verification of only a limited set of the most important fields required to understand the basic terms of plain-vanilla swap transactions. Finally, commenters could address a possible *de minimis* level that must be exceeded before the new reporting obligations in this Proposal would apply. For example, if an RCP has less than X swaps per year, or less than Y notional transacted per year, then it would not have to perform these verification functions.

With respect to end-user RCPs in particular, where the ability to build reporting systems and the cost of doing so on a per swap basis is much different than for SDs, MSPs, and DCOs, comment would be beneficial on whether end-user RCPs should have more time than proposed, both for replying to Open Swaps reports with a “verification” or “notification of discrepancy” message and correcting errors and omissions. Also, commenters may wish to address the frequency of how often end-user RCPs should be required to participate in this labor-intensive process. I recognize that the Proposal includes less stringent obligations on end-user RCPs in comparison to SDs, MSPs, and DCOs that are RCPs, but I welcome comment on whether the Commission should strive to do more in this regard.

As written, the Proposal would impose a number of new, often undefined, obligations with respect to swap data reporting. The potential alternatives noted above, together with others that commenters may suggest, could represent a common sense approach to addressing concerns regarding swap data accuracy while appropriately calibrating the costs and burdens associated with verification of SDR data.

## Appendix 5—Statement of Commissioner Dan. M. Berkovitz

I am pleased to support the Commission's notice of proposed rulemaking (“NPRM”) to amend its rules for swap data repositories (“SDRs”) and data reporting requirements.<sup>1</sup>

<sup>1</sup> The NPRM notes that it is the first of three rulemakings anticipated pursuant to the Commission's 2017 “Roadmap to Achieve High Quality Swaps Data” (“Roadmap”). See NPRM section I(C). Information regarding the Roadmap is available in CFTC Letter 17–33 (Division of Market Oversight Announces Review of Swap Reporting Rules in Parts 43, 45, and 49 of Commission Regulations) (July 10, 2017), available at <http://www.cftc.gov/idx/groups/public/@lrllettergeneral/documents/letter/17-33.pdf>. The Roadmap itself is available at [http://www.cftc.gov/idx/groups/public/@newsroom/documents/file/dmo\\_swapdataplan/071017.pdf](http://www.cftc.gov/idx/groups/public/@newsroom/documents/file/dmo_swapdataplan/071017.pdf).

The proposed amendments reflect the Commission's commitment to accurate, detailed, and timely swaps data for regulators, market participants, and the public through enhanced data verification and error correction procedures, among other amendments. They are an important step in achieving the Dodd-Frank Act's mandate of swap data reporting as an integral part of OTC derivatives reform and financial market stability.<sup>2</sup>

The Dodd-Frank Act codified important new swap data reporting obligations,<sup>3</sup> and established SDRs as the vehicles for reporting and retaining swaps data.<sup>4</sup> It recognized the role of regulatory reporting and real-time public reporting in enhancing transparency and reducing systemic risk in the U.S. financial system. Consistent with these foundational principles, the Commission has focused on swap data reporting since the very inception of its Dodd-Frank efforts. In 2011, it began finalizing a series of coordinated reporting rules that provide for both regulatory and real-time public reporting of swap transaction and pricing data (Parts 45 and 43);<sup>5</sup> establish SDRs to receive data and make it available to regulators and the public (Part 49);<sup>6</sup> and define certain swap dealer and major swap participant reporting obligations (Part 23).<sup>7</sup>

The Commission's regulations leverage real-time public reporting to help increase transparency, fairness, and efficiency in swaps markets,<sup>8</sup> while regulatory reporting assists the Commission and other financial regulators in market oversight and systemic risk mitigation.<sup>9</sup> In this regard, SDRs provide a more consolidated view<sup>10</sup> of market

<sup>2</sup> See also G20, Leaders' Statement: The Pittsburgh Summit (Sept. 24–25, 2009), paragraph 13, available at [https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh\\_summit\\_leaders\\_statement\\_250909.pdf](https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf).

<sup>3</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, section 727, Public Law 111–203, 124 Stat. 1376 (2010) (the “Dodd-Frank Act”), available at <https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>.

<sup>4</sup> See Dodd-Frank Act, section 728.

<sup>5</sup> Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012) (“Part 45 Adopting Release”) and Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (“Part 43 Adopting Release”).

<sup>6</sup> Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011).

<sup>7</sup> Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128 (Apr. 3, 2012).

<sup>8</sup> See Part 43 Adopting Release, 77 FR 1182, 1183.

<sup>9</sup> See Part 45 Adopting Release, 77 FR 2136, 2138.

<sup>10</sup> However, in a jurisdiction with multiple SDRs, such as the United States, regulators' view into market participants' swap positions is not fully consolidated. The presence of different SDRs in jurisdictions across the globe also impinges on full consolidation. These limitations give added import to standardizing data reporting, data fields, and regulators' access to data. Aggregation by regulators in a jurisdiction with multiple SDRs, for example, is greatly facilitated by agreed reporting conventions.

<sup>32</sup> To be sure, the Proposal might identify situations in which the SDR inexplicably alters the data that it receives from an RCP. But current Regulation 49.10(c), 17 CFR 49.10(c), already prohibits such activity since an SDR “shall establish policies and procedures reasonably designed to prevent any provision in a valid swap from being invalidated or modified through the confirmation or recording process of the swap data repository. The policies and procedures must ensure that the swap data repository's user agreements are designed to prevent any such invalidation or modification.”

<sup>33</sup> 7 U.S.C. 24a(c)(2).

participants' exposures across their swaps portfolios, and can help to identify concentrations and other potential risks that are dispersed across individual portfolios, trading platforms, and clearinghouses. Accurate, complete, and timely information is therefore vital to any successful swaps data reporting regime. These objectives were central to post-crisis reform efforts, and they must remain the primary considerations as the Commission moves to enhance its reporting rules.

It is important to note that the existing reporting rules have already achieved important successes. Currently, three provisionally registered SDRs<sup>11</sup> facilitate regulatory reporting and real-time public reporting, and CFTC staff estimates that SDRs processed approximately 13 million unique swaps in 2018. SDRs provide online systems where any member of the public can track transaction-by-transaction information as swaps are executed and publicly reported. SDRs have also designed portals and other resources to provide CFTC staff with more complete regulatory access.

While building on this solid foundation, the NPRM and the proposed amendments acknowledge areas where the Commission's existing swap data reporting rules are not working as effectively as they might. Registered swap dealers began reporting swap data on December 31, 2012, and the proposed amendments are therefore based on over six years of Commission experience with SDRs and swap data reporting. In this

regard, the NPRM addresses several areas that the Commission identified for improvement in its 2017 Roadmap. For example, the NPRM addresses swap data verification and the prompt correction of errors or omissions in previously reported data. It proposes to clarify and strengthen the obligations of SDRs and reporting counterparties by requiring SDRs to provide reporting counterparties with regular reports on open swaps to "verify the accuracy and completeness of swap data reported to SDRs."<sup>12</sup> In turn, reporting counterparties must respond affirmatively by indicating that the records in the reports they receive are accurate, or otherwise correcting any errors or omissions.<sup>13</sup> Reporting counterparties must respond within timeframes specified in the NPRM, and they must do so pursuant to standards established by SDRs.

The NPRM also proposes that SDRs provide open swap reports to the Commission. SDRs must provide such reports pursuant to timing, method, frequency, content, and other instructions that the Commission may issue.<sup>14</sup> While working with SDRs, open swaps reports will help the Commission to perform its regulatory functions more effectively and efficiently through reports that SDRs standardize in content, format, calculation methods, and other variables.

<sup>12</sup> See NPRM section II(G) (discussing proposed section 49.11).

<sup>13</sup> See NPRM section III(B) (discussing proposed section 45.14).

<sup>14</sup> See NPRM section II(E) (discussing proposed section 49.9).

In addition to these important data-focused amendments, the NPRM also proposes amendments to rules in Part 49 of the Commission's regulations that govern the internal operations of SDRs, particularly as they pertain to an SDR's chief compliance officer ("CCO"), conflicts of interest, and annual compliance reports. I am interested in receiving comments regarding these proposed amendments, including areas where the Commission's existing CCO-related rules for SDRs are working well and where they could be improved. In this regard, the Commission should be vigilant that changes to compliance or other requirements made in the name of efficiency do not diminish the self-regulatory foundation of the Commission's oversight of derivatives markets.

I thank the staff of the Division of Market Oversight for their dedicated work on both this NPRM and potential future proposals related to swaps data reporting. I also thank staff for their responsiveness to questions and comments from my office, including their willingness to consider changes that have improved the NPRM before the Commission today. While swap data reporting is not always the most glamorous area of the Commission's work, it is vitally important that we get it right. I look forward to public comments on the NPRM, and to continued efforts by market participants and the Commission to achieve the most effective swap data reporting possible.

[FR Doc. 2019-08788 Filed 5-10-19; 8:45 am]

**BILLING CODE 6351-01-P**

<sup>11</sup> Chicago Mercantile Exchange Inc. Swap Data Repository; DTCC Data Repository (U.S.); and ICE Trade Vault.