

## US Derivatives Regulation: Practical Guide to Over-the-Counter (OTC) Swap Data Reporting USA (National/Federal)

### Related Content

*A Practice Note providing a clear, step-by-step guide to compliance with applicable Dodd-Frank data reporting rules for uncleared, over-the-counter (OTC) derivatives.*

One of the primary goals of legislators in enacting the [Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010](#) (Dodd-Frank Act) was to create transparency in what many saw as an opaque [over-the-counter \(OTC\) derivatives](#) market. Toward that end, regulators have issued numerous proposed and final rules covering swap data reporting under Title VII of the Dodd-Frank Act.

Swap data reporting is the most broadly applicable of all Dodd-Frank swaps obligations. Even swaps entered into by commercial end users that are exempt from other Dodd-Frank swaps rules, such as mandatory clearing and exchange trading, must still be reported under Dodd-Frank swap data reporting rules. Therefore, all parties need to concern themselves with data reporting obligations for swaps they enter into with US persons (see [Practice Note, US Derivatives Regulation: Cross-Border Application of Swaps Rules: CFTC Definition of "US Person"](#)).

Specific swap data reporting obligations vary depending on several factors, including:

- Whether the swap is or is intended to be cleared through a CFTC-registered [derivatives clearing organization](#) (DCO).
- Whether the swap is executed on or under the rules of a CFTC-registered [swap execution facility](#) (SEF) or [designated contract market](#) (DCM). Swaps executed on SEF or a DCM are referred to as exchange-traded swaps; those that are not are called off-facility or off-exchange swaps.
- Whether the transaction involves a [non-security-based swap](#) (swap) or a [security-based swap](#) (SBS).
- Which swap or SBS counterparty is the reporting party under the applicable CFTC or SEC rules (see [Box, Which Is the Reporting Party?](#)).

([17 C.F.R. §§ 43.3, 45.3, 46.3, and 242.901](#); for definitions of relevant terms, see [17 C.F.R. §§ 43.2, 45.1, 46.1, and 242.900](#).)

This Note details OTC swap and SBS data reporting obligations – that is, reporting requirements for swaps and SBS that are not cleared and not exchange-traded. The details of reporting obligations for clearing swaps and exchange-traded swaps are generally handled by the applicable DCO, DCM, or SEF (see [Cleared and Exchange-Traded Swaps](#)) and are therefore not generally covered in this Note.

For information on which swaps are subject to mandatory clearing and exchange trading, see [Practice Note, US Derivatives Regulation: Swap Clearing and Exchange Trading](#).

### Brief Overview of Dodd-Frank Swap Data Reporting Rules

Compliance is currently required with the following final [Commodity Futures Trading Commission](#) (CFTC) and [Securities and Exchange Commission](#) (SEC) swap data reporting rules, all of which are effective for most parties to swap and SBS transactions:

- **CFTC regulatory swap data reporting rules (SDR rules):** CFTC Regulations Part 45 (17 C.F.R. §§ 45.1 to 45.14). Swap data reporting under Part 45 (SDR rules) is considered regulatory reporting because the data is collected by [swap data repositories](#) (SDRs) and then passed on to the CFTC for regulatory purposes. This data is not publicly disseminated. For details on these rules, see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules: Part 45 \(SDR\) Data Reporting Rules](#).
- **CFTC real-time swap reporting rules:** CFTC Regulations Part 43 (17 C.F.R. §§ 43.1 to 43.7). Swap data reported under Part 43 (the real-time reporting rules) is disseminated to the public. Therefore, unlike data reporting under Parts 45 and 46, this data is reported and disseminated anonymously to protect the confidentiality of market participants. For details on these rules, see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules: Part 43 CFTC Real-Time Public Swap Data Reporting Rules](#).
- **CFTC historical swap data reporting rules:** CFTC Regulations Part 46 (17 C.F.R. §§ 46.1 to 46.11). Reporting under Part 46 (historical swap reporting rules) is also regulatory reporting, as under the CFTC's SDR rules. The CFTC ultimately receives the data reported under these rules from SDRs to which it is reported. This data is not publicly disseminated. For details on these rules, see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules: Part 46 Data Reporting Rules for Historical Swaps](#).
- **CFTC large-trader reporting rules:** CFTC Regulations Part 20 (17 C.F.R. §§ 20.1 to 20.11). CFTC large-trader reporting rules were in place before the Dodd-Frank Act but have been modified under Title VII to include equivalent uncleared swaps positions. For details on large-trader ownership-and-control (OCR) reporting rules for physical commodities, see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules: Large-Trader Position Data Reporting for Physical Commodity Swaps](#).
- **SEC SBS data reporting rules:** SEC Regulation SBSR (Rules 900 to 909 under the Securities Exchange Act of 1934, 17 C.F.R. §§ 242.900 to 242.909) and SBSR rules on SBS data repositories (17 C.F.R. §§ 232.407, 240.13n-1 to 240.13n-12, 240.24b-2(h), and 249.1500). For details on these rules, see [Practice Note, US Derivatives Regulation: SEC Regulation SBSR Data Reporting for Security-Based Swaps](#).

## CFTC Reporting Compliance: Creation Data Reporting Under Part 45

Creation data reporting is required under the CFTC's Part 45 SDR reporting rules. Creation data refers to all terms of a swap agreed to by the counterparties on confirmation of the swap and consists of two categories of information:

- Primary economic terms (PET) data for a swap in the particular asset class. Appendix 1 to the SDR rules (17 C.F.R. Pt. 45, App. 1) specifies the minimum PET data required for swaps in each asset class (see [Minimum Required PET Data](#)).
- Confirmation data for the swap (see [Confirmation Data](#)).

(17 C.F.R. §§ 45.1 and 45.3.)

The CFTC's Part 43 real-time reporting rules also require the reporting of certain data upon execution of a swap (see [CFTC Reporting Compliance: Real-Time Reporting Under Part 43](#)).

All required swap data reporting for a given swap required under the Part 45 SDR rules and the Part 43 real-time reporting rules must be reported to the same swap data repository to which the first required creation data for the swap is reported (see [Single SDR Rule](#)). A registered entity or swap counterparty subject to Part 45 reporting requirements may use a third-party service provider to make the necessary reports, but will still be fully responsible for satisfying its reporting obligations (17 C.F.R. § 45.9).

### Creation Data Reporting Requirements

Registered entities and reporting counterparties must report all required creation data to the appropriate SDR electronically by the specified reporting deadlines (17 C.F.R. §§ 45.3 and 45.13(b); see [Single SDR Rule](#)). These deadlines vary, based in part on which registered entity or swap counterparty is the reporting party (see [Box, Which Is the Reporting Party?](#)) and the type of creation data (see [Creation Data: Confirmation Data and PET](#)) that must be reported.

### Cleared and Exchange-Traded Swaps

All creation data for cleared swaps and exchange-traded swaps is reported to the applicable SDR by the DCO that clears the swap or the SEF or DCM on which the swap is executed. Swap counterparties may therefore satisfy the reporting requirements for swap creation data under the SDR rules by either:

- **Clearing the swap through a DCO.** A DCO must report all creation data (PET and confirmation data) to the SDR as soon as technologically practicable after:

- execution of a clearing swap, defined as any swap created under the rules of a DCO to which the DCO is a counterparty (including any swap that replaces an original swap that was extinguished when accepted for clearing); and
- acceptance of an original swap for clearing. An original swap refers to any swap that is accepted for clearing by the DCO, including a swap executed on a SEF/DCM or off-facility, if accepted for clearing.

(17 C.F.R. §§ 45.1 and 45.3(e); see [CFTC Fact Sheet: Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps](#) and [Legal Update, CFTC Amends Cleared Swap Reporting Regulations](#).)

For reporting obligations in connection with swaps cleared on certain unregistered DCOs, see [Effect of No-Action Relief for Relief DCO Counterparties](#).

- **Executing the swap on a SEF or DCM.** The SEF or DCM on which the swap is executed must report the following creation data to the SDR at the time of execution:
  - all PET data for any swap; and
  - all confirmation data, but only if the swap is not intended to be submitted to a DCO for clearing at the time of execution.

(17 C.F.R. § 45.3(a).)

### Off-Facility Swaps

If the swap is not executed on a SEF or DCM, the reporting counterparty (see [Box, Which Is the Reporting Party?](#)) must report the following to the appropriate SDR to satisfy the reporting requirement for swap creation data under the SDR rules:

- All PET data for the swap (17 C.F.R. § 45.3(b), (c)(1)(i), (2)(i), (d)(1)).
- All confirmation data, but only if the swap is not intended to be submitted to a DCO for clearing at the time of execution (17 C.F.R. § 45.3(c)(1)(ii), (2)(ii), (d)(2)).

**Swaps subject to mandatory clearing.** The reporting counterparty must report all PET data for off-facility swaps subject to mandatory clearing as soon as technologically practicable, but no later than:

- 15 minutes after execution, if the reporting counterparty is a swap dealer (SD) or major swap participant (MSP) (SD/MSP).
- One business hour after execution, if the reporting counterparty is not an SD or MSP (non-SD/MSP).

(17 C.F.R. § 45.3(b)(1).)

**Swaps not subject to mandatory clearing (SD/MSP reporting counterparty).** For off-facility swaps that are not subject to mandatory clearing, an SD/MSP reporting counterparty must report:

- PET data as soon as technologically practicable after execution, but no later than:
  - 30 minutes after execution for credit, equity, foreign exchange, and interest rate swaps, if the non-reporting counterparty is an SD/MSP or a non-SD/MSP counterparty (regardless of whether the non-SD/MSP counterparty is a financial entity or whether verification of PET occurs electronically) (17 C.F.R. § 45.3(c)(1)(i)(A), (B)).
  - Two hours after execution for "other commodity" swaps, if the non-reporting counterparty is an SD/MSP or a non-SD/MSP (regardless of whether the non-SD/MSP counterparty is a financial entity or whether verification of PET occurs electronically) (17 C.F.R. § 45.3(c)(2)(i)(A), (B)).
- Confirmation data as soon as technologically practicable after confirmation if the swap is not intended to be submitted to a DCO for clearing at the time of execution, but no later than:
  - 30 minutes after confirmation, if confirmation occurs electronically, regardless of the asset class of the swap.
  - 24 business hours after confirmation, if confirmation does not occur electronically, regardless of the asset class of the swap.

(17 C.F.R. § 45.3(c)(1)(ii), (2)(ii).)

**Swaps not subject to mandatory clearing (non-SD/MSP reporting counterparty).** For off-facility swaps that are not subject to mandatory clearing, a non-SD/MSP reporting counterparty must report the following, regardless of the asset class of the swap:

- PET data as soon as technologically practicable, but no later than 24 business hours after execution.
- Confirmation data, if the swap is not intended to be submitted to a DCO for clearing at the time of execution, as soon as technologically practicable after confirmation, but no later than 24 business hours after confirmation.

(17 C.F.R. § 45.3(d).)

For details on CFTC swap data reporting obligations for parties to a non-SD/MSP swap, including an end-user swap entered into with a regional (non-SD) bank, see drafting notes in [Standard Document, The ISDA Master Agreement: Dodd-Frank Amendment for End-User Swaps](#)).

### Summary Chart of Creation Data Reporting Requirements for Off-Facility Swaps

The following chart summarizes the creation data reporting requirements for off-facility swaps under Part 45 of CFTC regulations, including swaps that must be (mandatory clearing under [7 U.S.C. § 2\(h\)](#)) or are intended to be cleared (ITBC), and those that are not. This summary does not include SDR reporting requirements for DCOs and SEF/DCMs.

Reporting Party	Off-Facility Swaps Subject to Mandatory Clearing (PET ONLY)	Off-Facility Swaps ITBC (PET ONLY)	Off-Facility Swaps Not ITBC (PET and Confirmation Data)
SD or MSP	PET data: <ul style="list-style-type: none"> <li>• 15 minutes</li> </ul>	PET data: <ul style="list-style-type: none"> <li>• 2 hours for "other commodities"</li> <li>• 30 minutes for all other asset classes</li> </ul>	PET data: <ul style="list-style-type: none"> <li>• 2 hours for "other commodities"</li> <li>• 30 minutes for all other asset classes</li> </ul>
	Confirmation data: Not Required	Confirmation data: Not Required	Confirmation data: <ul style="list-style-type: none"> <li>• 30 minutes, if confirmation is electronic</li> <li>• 24 business hours, if confirmation is not electronic</li> </ul>
Non-SD or Non-MSP	PET data: <ul style="list-style-type: none"> <li>• 1 hour</li> </ul> Confirmation data: <ul style="list-style-type: none"> <li>• Not Required</li> </ul>	PET data: <ul style="list-style-type: none"> <li>• 24 hours</li> </ul> Confirmation data: <ul style="list-style-type: none"> <li>• Not Required</li> </ul>	PET data: <ul style="list-style-type: none"> <li>• 24 hours</li> </ul> Confirmation data: <ul style="list-style-type: none"> <li>• 24 hours</li> </ul>

### Transition Swaps

The CFTC's [Q&A](#) on the start of swap data reporting clarifies that swaps entered into on or after October 12, 2012, but before the applicable compliance date for data reporting under the SDR rules are classified as "transition swaps" subject to the historical reporting rules (see [CFTC Reporting Compliance: Historical Swap Data Reporting](#)). For compliance dates for the SDR rules, see [US Derivatives Regulation: Compliance Calendar](#).

### Creation Data: Confirmation Data and PET

#### Confirmation Data

Confirmation data is defined as all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap ([17 C.F.R. § 45.1](#)). Confirmation data is found in the [transaction confirmation](#).

The swap counterparty (other than a DCO counterparty) that is the reporting party (see [Box, Which Is the Reporting Party?](#)) must report confirmation data to the SDR only if the swap is both:

- Not submitted or intended to be submitted to a DCO for clearing at the time of execution.
- Not executed on a SEF or DCM.

(See [Creation Data Reporting Requirements](#).)

A DCO that is a counterparty to a clearing swap must always report both PET data and confirmation data for the swap (see [Cleared and Exchange-Traded Swaps](#)).

### Minimum Required PET Data

The swap counterparty (other than a DCO counterparty) that is the reporting party (see [Box, Which Is the Reporting Party?](#)) must report PET data to the SDR for any swap that is not executed on a SEF or DCM, regardless of whether it is intended to be submitted to a DCO for clearing at the time of execution (see [Creation Data Reporting Requirements](#)).

A party required to report PET data for a swap must, at a minimum, provide the information listed in Appendix 1 of the SDR rules for the swap's asset class to satisfy the PET reporting obligation. The asset classes are [interest rate](#), [credit](#), equity, foreign exchange (FX), and other commodities ([17 C.F.R. § 45.1](#) and [Pt. 45, App. 1](#)).

The reporting party must provide PET ([Appendix 1](#)) data to a registered SDR that accepts data for that asset class of swap, or if there is none, to the CFTC ([17 C.F.R. § 45.11](#)). For details on the PET ([Appendix 1](#)) data required under the SDR rules for each swap asset class, see [US Derivatives Regulation: CFTC Swap Data Reporting Required Data Fields Checklist: Primary Economic Terms \(PET\) to Be Reported Under Final Swap Data Reporting \(SDR\) Rules \(17 CFR Part 45\)](#). The minimum PET data specified in [Appendix 1](#) includes, among other things, the following information necessary to identify the particular swap transaction and relevant parties:

- **USI.** The unique swap identifier (USI) for the swap ([17 C.F.R. § 45.5](#)). USIs are created using the "name space" method, under which the first character of each USI consists of a unique code that identifies the registered entity (SD, MSP, SEF, DCM, SDR, or DCO) creating the USI (for more on which entity creates the USI in a particular transaction, see [Responsible Entity and Timing for Creation of USI](#)). The CFTC assigns this unique code to a registered entity during its registration. The remaining characters of the USI consist of a code created by the registered entity, which must be unique with respect to all other USIs created by that registered entity. The CFTC does not prescribe the means for ensuring the uniqueness of each USI created by a registered entity, but it may work with registered entities to identify random number generators sufficiently capable for this purpose. For information on an [International Swaps and Derivatives Association, Inc.](#) (ISDA®) initiative designed to assist with USI registration, see [Legal Update, ISDA Releases Unique Swap Identifier \(USI\) Overview Document](#).
- **LEI.** Each counterparty's [legal entity identifier](#) (LEI) ([17 C.F.R. § 45.6](#)). Parties may apply for an LEI:
  - by contacting any LEI issuer on the list maintained by the [Global Legal Entity Identifier Foundation](#) (GLEIF);
  - by using the [Global Markets Entity Identifier \(GMEI\) Utility](#), operated by a subsidiary of the [Depository Trust & Clearing Corporation](#) (DTCC); or
  - by contacting the sales or relationship contact at a counterparty firm (see [Legal Update, ISDA/GIFMA: Get an LEI Now](#)).
- **UPI.** The unique product identifier or product classification, which identifies the swap's asset class (and sub-type within that asset class) ([17 C.F.R. § 45.7](#)).
- **Internal identifiers.** If no UPI or CFTC classification has been assigned, the counterparty's internal product identifier or product description used by the automated systems of the reporting party ([17 C.F.R. § 45.7\(c\)\(2\)](#)).

For more on PET data reporting for swaps cleared on certain unregistered DCOs, see [Effect of No-Action Relief for Relief DCO Counterparties](#).

### Responsible Entity and Timing for Creation of USI

The USI for an off-facility swap is created by either:

- An SD/MSP reporting party, if there is one, as soon as technologically practicable after execution of the swap and before both:
  - the reporting of required swap creation data to the SDR; and
  - the transmission of data to a DCO, if the swap is to be cleared.
- The SDR to which PET data is reported, if the reporting party is a non-SD/MSP, as soon as technologically practicable after receipt of the first reported creation data for the swap.

([17 C.F.R. § 45.5\(b\)](#), ([c](#)).)

The creating entity must also transmit the USI electronically as follows:

- To each swap counterparty, as soon as technologically practicable after execution of the swap (or acceptance of the swap for clearing, if applicable).
- To the SDR, as part of its required creation data report, if the USI is created by a DCO, SEF/DCM, or SD/MSP.
- To the DCO, if any, as part of the required swap creation data transmitted for clearing purposes, if the swap will be submitted for clearing and if the USI is created by an SEF/DCM, SD/MSP, or SDR.

([17 C.F.R. § 45.5.](#))

The USI for a cleared or exchange-traded swap is created and assigned by the same DCO, SEF, or DCM that first reports required creation data and chooses the SDR (see [Single SDR Rule](#)). The DCO, SEF, or DCM must assign the USI at, or as soon as technologically practicable after, execution (or acceptance for clearing) of the swap and before any required creation data is reported. ([17 C.F.R. § 45.5\(a\), \(d\)](#); see [Single SDR Rule](#).)

## Single SDR Rule

All required swap data reporting for a given swap required under the SDR rules (Part 45) and the real-time reporting rules (Part 43) must be reported to the same swap data repository to which the first required swap creation data is reported or, if the original SDR ceases to exist, to its successor. This is known as the single SDR rule, and applies to all:

- Creation data reporting under Part 45 (see [CFTC Reporting Compliance: Creation Data Reporting Under Part 45](#));
- Continuation data reporting under Part 45 (see [CFTC Reporting Compliance: Continuation Data Under Parts 45 and 46](#)); and
- Real-time reporting under Part 43 (see [CFTC Reporting Compliance: Real-Time Reporting Under Part 43](#)).

([17 C.F.R. § 45.10.](#))

This means that the party responsible for reporting the first required creation data for a swap chooses the SDR for all swap data reporting for that swap ([17 C.F.R. § 45.3\(j\)](#)). The first-reporting party must provide all other parties to the swap with certain information to ensure that the single SDR rule is followed, specifically:

- For an off-facility swap, the reporting party must provide the identity of the SDR to which the data was reported and, if the reporting party is an SD or MSP, the USI for the swap, to:
  - the swap counterparty, as soon as technologically practicable after execution, but not later than the deadline for reporting PET data (see [Off-Facility Swaps](#)); and
  - to the DCO (if the swap will be cleared), when the swap is submitted for clearing.
- For a clearing swap, the DCO must provide each clearing swap counterparty with the LEI of the SDR to which the data was reported and the USI for the swap as soon as technologically practicable after acceptance of an original swap for clearing or execution of a clearing swap not replacing an original swap (see [Cleared and Exchange-Traded Swaps](#).)
- For an exchange-executed swap, the SEF or DCM must provide the identity of the SDR to which the data was reported and the USI for the swap to the swap counterparties and the DCO (if any) as soon as technologically practicable after execution of the swap.

([17 C.F.R. § 45.10.](#))

## Effect of No-Action Relief for Relief DCO Counterparties

For purposes of Part 45 reporting obligations for original and clearing swaps and USI creation, a DCO is defined to include only a DCO that is registered with the CFTC ([17 C.F.R. § 45.1](#)). If there is no registered DCO in the transaction, the regulations determine the reporting party (see [Box, Which Is the Reporting Party?](#)).

Relief DCOs are certain unregistered DCOs that operate under CFTC-issued exemptive orders or no-action relief. Since Relief DCOs do not fall within the Part 45 definition, they are not subject to Part 45 reporting and USI obligations, which then typically fall to the swap counterparties. Relief DCOs, however, are subject to similar reporting obligations under the terms of their governing exemptive orders.

Under CFTC [No-Action Letter 18-03](#) (NAL 18-03), counterparties to a swap cleared by a Relief DCO are relieved of the following obligations under Part 45:



- Reporting creation data ([17 C.F.R. § 45.3](#); see [Creation Data Reporting Requirements](#)) for Relief DCO clearing swaps (any swap created under Relief DCO rules and to which the Relief DCO is a counterparty).
- Reporting continuation data ([17 C.F.R. § 45.4](#); see [CFTC Reporting Compliance: Continuation Data Under Parts 45 and 46](#)) for:
  - Relief DCO clearing swaps; and
  - Relief DCO original swaps (any swap accepted for clearing by a Relief DCO), including termination.
- Generating USIs ([17 C.F.R. § 45.5](#); see [Responsible Entity and Timing for Creation of USI](#)) for Relief DCO Clearing Swaps.

NAL 18-03 also relieves counterparties to Relief DCO swaps from certain restrictions on PET data for specific fields in both Part 43 and Part 45 reporting (see [Minimum Required PET Data](#) and [CFTC Reporting Compliance: Real-Time Reporting Under Part 43](#)).

For further details on NAL 18-03, see [Legal Update, CFTC Further Extends Cleared Swap Data Reporting Relief](#).

## CFTC Reporting Compliance: Real-Time Reporting Under Part 43

Under the CFTC Part 43 real-time reporting rules, the reporting party (see [Box, Which Is the Reporting Party?](#)) to a swap entered into with a US person must also file one or both of the following real-time data reports, as applicable, depending on the type of swap or derivative contract being entered into, as soon as technologically practicable upon the execution of the swap, or shortly thereafter for certain large notional swaps:

- The report listed in Appendix A ([17 C.F.R. Pt. 43, App. A](#)) to the CFTC real-time reporting rules, Table A1 (see [US Derivatives Regulation: CFTC Swap Data Reporting Required Data Fields Checklist: Data Fields and Suggested Form and Order for Real-Time Public Reporting of Swap Transaction and Pricing Data \(Appendix A to Final CFTC Real-Time Rules, Table A1\)](#)).
- The report listed in Appendix A ([17 C.F.R. Pt. 43, App. A](#)) to the CFTC real-time reporting rules, Table A2 (see [US Derivatives Regulation: CFTC Swap Data Reporting Required Data Fields Checklist: Additional Real-Time Public Reporting Data Fields for Options, Swaptions, and Swaps with Embedded Options \(Appendix A to Final CFTC Real-Time Rules, Table A2\)](#)).

([17 C.F.R. §§ 43.3 and 43.4](#).)

All swap data reporting for any given swap required under the Part 43 real-time reporting rules must be reported to the same SDR to which the first required creation data for the swap was reported under Part 45 SDR rules (see [Single SDR Rule](#)).

A party subject to real-time swap data reporting obligations may obtain some additional time to comply if the swap qualifies for a real-time reporting delay available for certain block trades and large notional off-facility swaps ([17 C.F.R. § 43.5](#); see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules: CFTC Block Trade Rules](#)).

Despite indications to the contrary during the rulemaking process, the CFTC did not align the data fields that must be reported under the its Part 43 real-time reporting rules with the data fields required to be reported under its Part 45 SDR rules. Though much of the required swap creation data under the two sets of rules is similar, it is not identical. As a result, the reporting party must report two sets of somewhat duplicative data for the same swap.

The CFTC has stated that it is working to substantially align the minimum PET data fields required by the SDR rules with the required real-time reporting data fields to reduce reporting burdens, it has not yet done so. For details on both sets of required data, see [US Derivatives Regulation: CFTC Swap Data Reporting Required Data Fields Checklist](#).

Regardless of whether the parties must report under the SDR rules (which, as noted, they do not if they clear the swap through a DCO or execute it on a SEF or DCM), the reporting party still must complete one or both of these real-time data reports, as applicable.

For further details on the real-time reporting rules, see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules: Part 43 CFTC Real-Time Public Swap Data Reporting Rules](#). For information on PET data reporting for swaps cleared on certain unregistered DCOs, see [Effect of No-Action Relief for Relief DCO Counterparties](#).

Parties may view the real-time public dissemination of swaps and derivatives data at DTCC DDR's [real-time dissemination dashboard](#).

## CFTC Reporting Compliance: Continuation Data Under Parts 45 and 46

Continuation data consists of material events occurring during the life of a swap, including its expiration or termination. Continuation data reporting is required under:

- Part 45 SDR rules.
- Part 46 historical reporting rules (see [Continuation Data Reporting for Historical Swaps](#)).

The CFTC real-time reporting rules do not require continuation data reporting. Although required for historical swaps, continuation data reporting under the historical reporting rules follows the same continuation data reporting requirement as under the SDR rules ([17 C.F.R. § 46.3\(a\)\(2\)](#)). Therefore, for all continuation data reporting, the reporting party must follow only the SDR rules.

Continuation data reporting includes two required components:

- All life-cycle event data or all state data for the swap, depending on the reporting method selected (see [Life-Cycle Event Data or State Data \(Snapshot\) Reporting](#)).
- All valuation data for the swap (see [Valuation Data Reporting](#)).

([17 C.F.R. § 45.1](#).)

All required swap continuation data reporting for a given swap required under the Part 45 SDR rules must be reported to the same swap data repository to which the first required creation data for the swap was reported (see [Single SDR Rule](#)). A registered entity or swap counterparty that is required to report swap continuation data under Part 45 may use a third-party service provider to make the necessary reports, but will still be fully responsible for satisfying its reporting obligations ([17 C.F.R. § 45.9](#)).

### Life-Cycle Event Data or State Data (Snapshot) Reporting

For the first component of continuation data, the reporting party (or SEF/DCM or DCO) may select either of the following reporting methods, so long as the information reported to the SDR is current and accurate and includes all changes to the swap's PET:

- **The life-cycle approach.** The life-cycle approach calls for reporting life-cycle events, meaning any event resulting in a change to PET (or PET data previously reported) for the swap, such as an [assignment](#) or [novation](#), a partial or full termination of the swap, or a change in the cash flows originally reported ([17 C.F.R. § 45.1](#)).
- **The snapshot approach.** The snapshot approach calls for daily reporting of so-called "state data," meaning all data necessary to provide a daily snapshot view of the PET of the swap, including any changes since the last snapshot. State data reporting must include all minimum PET data listed in Appendix 1 of the SDR rules for the swap's asset class. ([17 C.F.R. § 45.1](#) and [Pt. 45, App. 1.](#)).

([17 C.F.R. § 45.4\(a\)](#).)

**Continuation data reporting for uncleared swaps.** For all uncleared swaps, including those executed on a SEF/DCM, the reporting counterparty must report continuation data as follows:

- If using the life-cycle reporting method:
  - SDs/MSPs must report life-cycle event data for swaps to which they are a party on the same day that the relevant life-cycle event occurs (except for corporate event data of the non-reporting party); and
  - non-SDs/MSPs must report life-cycle data no later than the end of the first business day after the date of a relevant life-cycle event (except for corporate event data of the non-reporting party).

([17 C.F.R. § 45.4\(d\)\(1\)](#); see [Corporate Event Reporting](#).)

- If using the snapshot reporting method, SDs/MSPs and non-SDs/MSPs must report state data daily ([17 C.F.R. § 45.4\(d\)\(1\)](#)).

Reporting counterparties are not required to report state data on a daily basis if the applicable SDR accepts life-cycle reporting. However, daily state data reporting (snapshot reporting), may be used to cover all continuation data reporting requirements.

**Continuation data reporting by DCOs (clearing swaps and original swaps).** DCOs are responsible for reporting continuation for all clearing swaps (swaps to which the DCO is a counterparty, including swaps replacing an original swap upon acceptance for clearing) and all original swaps accepted for clearing (whether executed on a SEF/DCM or off-facility), including either:

- All life-cycle event data, reported on the same date as any life-cycle event occurs, if using the life-cycle reporting method.
- All state data for the swap, reported daily, if using the snapshot reporting method.



(17 C.F.R. § 45.4(b)(1), (c).)

The DCO that accepts an original swap for clearing must also report additional information about the original swap, the clearing swap that replaces the original swap, and the SDR to which the clearing swap creation data was reported (17 C.F.R. § 45.4(c); see [Legal Update, CFTC Amends Cleared Swap Reporting Regulations](#)). For continuation data reporting for swaps cleared on certain unregistered DCOs, see [Effect of No-Action Relief for Relief DCO Counterparties](#).

### Corporate Event Reporting

A reporting party using the life-cycle reporting method must report the occurrence of any corporate event with respect to either of the parties that affects the swap's PET. Although not defined in the final SDR rules (or elsewhere in the [Commodity Exchange Act](#) (CEA) or CFTC regulations), corporate events are considered reportable life-cycle events. (17 C.F.R. §§ 45.1 and 45.4.)

Because the term is not defined, the parties must determine whether an event should be reported as a corporate event. The rule implies that the term relates to M&A activity, such as a merger or succession event involving a party to the swap. This activity has implications for LEIs and other data, as well as the PET that must be reported for the swap and entity status (such as swap dealer or financial entity), as well as jurisdiction (US person), possibly even party name and other factors.

A reporting counterparty (see [Box, Which Is the Reporting Party?](#)) electing to use the life-cycle method to report required continuation data for uncleared swaps must report life-cycle event data on the same day (DCOs, SEFs/DCMs, and SDs/MSPs), or within one business day after (non-SDs/MSPs), the relevant event. This includes data related to corporate events of the reporting party. (17 C.F.R. § 45.4(b)(1)(i), (c)(1)(i), (d)(1).)

Life-cycle event data relating to a corporate event of the non-reporting party to an uncleared swap, however, must be reported no later than the second business day after the corporate event (17 C.F.R. § 45.4(d)(1)). The parties therefore must use due diligence to ensure that the non-reporting counterparty notifies the reporting counterparty promptly of any corporate event that occurs with respect to the counterparty that affects any PET of the swap.

Note that a party need not disclose material non-public information in undertaking this obligation.

### Valuation Data Reporting

Valuation data is the second component of required continuation data reporting (17 C.F.R. § 45.1). Valuation data reflects daily movements in the value of the parties' positions under the swap.

Under the SDR rules, valuation data must be reported as follows, regardless of the reporting method (life-cycle or snapshot) elected by the reporting party:

- DCOs must report valuation data daily for all clearing swaps (17 C.F.R. § 45.4(b)(2)).
- SD/MSP reporting counterparties must report valuation data daily for uncleared swaps (17 C.F.R. § 45.4(d)(2)(i)).
- Non-SD/MSP reporting parties must report the current daily mark of the transaction as of the last day of each fiscal quarter to the SDR within 30 days after the end of the fiscal quarter for uncleared swaps. If a daily mark is not available for the swap, the reporting counterparty satisfies this requirement by reporting the current valuation of the swap recorded on its books. (17 C.F.R. § 45.4(d)(2)(ii).)

## CFTC Reporting Compliance: Historical Swap Data Reporting

Under Part 46 of the CFTC Regulations, the reporting party (see [Box, Which Is the Reporting Party?](#)) to each swap that was outstanding as of April 25, 2011 was required, on the applicable compliance date, to file an initial data report (IDR) for each such swap (17 C.F.R. § 46.3(a)). Compliance dates have passed for US parties; however, compliance for non-US SDs has been delayed (see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules: Effective Dates and Compliance](#)). A reporting counterparty subject to Part 46 historical swap data reporting requirements may use a third-party service provider to make the necessary reports, but will still be fully responsible for satisfying its reporting obligations (17 C.F.R. § 46.6).

The IDR must be submitted either:

- Electronically to an SDR that accepts data for swaps of that asset class (interest rate, credit, equity, FX, or other commodity).
- To the CFTC, if there is no SDR accepting data for swaps of that asset class available.

(17 C.F.R. §§ 46.3(a) and 46.8)

The IDR must include:

- **Minimum PET.** All of the minimum PET data specified in Appendix 1 to Part 46 ([17 C.F.R. Pt. 46, App. 1](#)) that was in the possession of the reporting party on or after April 25, 2011. For a complete list of all of the required data fields required to be reported under these rules for each asset class of swap (interest rate, credit, equity, FX, and other commodity), see [US Derivatives Regulation: CFTC Swap Data Reporting Required Data Fields Checklist: Primary Economic Terms \(PET\) to Be Reported Under Final Historical \(Pre-Enactment and Transition\) Swap Data Reporting Rules \(17 CFR Part 46\)](#). This information is similar, though not identical, to the PET that must be reported under Part 45, as Part 45 has been amended, whereas Part 46 has not ([17 C.F.R. Pt. 45, App. 1](#)).
- **Reporting party LEI.** The reporting counterparty's LEI.
- **Other counterparty identifiers.** The following additional identifiers:
  - the internal counterparty identifier used by the reporting party to identify the non-reporting party; and
  - the internal transaction identifier used by the reporting party to identify the swap.

([17 C.F.R. § 46.3\(a\)\(1\)](#).)

The USI and UPI requirements of Part 45 do not apply to historical swap data reporting.

Historical swap creation data reporting for multi-asset swaps and mixed swaps (combination of swaps and security-based swaps) is the same as under the SDR rules (see [Data Reporting for Multi-Asset Swaps and Mixed SBS/Swaps](#)).

The CFTC's [Q&A](#) on the start of swap data reporting clarified that swaps entered into on or after October 12, 2012, but before the applicable compliance date for data reporting under the final SDR rules (see [US Derivatives Regulation: Compliance Calendar](#)), are classified as transition swaps, and are subject to final historical reporting rules under Part 46.

## Continuation Data Reporting for Historical Swaps

Data reporting requirements for uncleared historical swaps that have not expired or been terminated continue throughout the term of the swap in accordance with the Part 45 SDR rules (see [CFTC Reporting Compliance: Continuation Data Under Parts 45 and 46](#)), except that when a counterparty reports changes to minimum PET, it must report only changes to the minimum PET required by the historical reporting rules, rather than the minimum PET required under the SDR rules ([17 C.F.R. § 46.3\(a\)\(2\)\(i\)](#); see [US Derivatives Regulation: CFTC Swap Data Reporting Required Data Fields Checklist: Primary Economic Terms \(PET\) to Be Reported Under Final Historical \(Pre-Enactment and Transition\) Swap Data Reporting Rules \(17 CFR Part 46\)](#); [CFTC Reporting Compliance: Continuation Data Under Parts 45 and 46](#)). Continuation data reporting is not required for any historical swap in existence on or after April 25, 2011 that has been cleared by a DCO ([17 C.F.R. § 46.3\(a\)\(2\)\(ii\)](#).)

Any required continuation data reports must be made to the same SDR to which the IDR was made or to its successor in the event that SDR has ceased operations ([17 C.F.R. § 46.7](#)). Reporting counterparties subject to Part 46 historical swap data reporting requirements may use third-party service providers to make the necessary continuation data reports, but remain fully responsible for satisfying their reporting obligations ([17 C.F.R. § 46.6](#)).

## Data Reporting for Expired or Terminated Historical Swaps

If a historical swap expired or was terminated before April 25, 2011:

- **Expired pre-enactment swaps.** Reporting counterparties to pre-enactment swaps (swaps that were entered into before July 21, 2010, the enactment date of the Dodd-Frank Act) that expired or were terminated before April 25, 2011 were required to provide to the applicable SDR (or to the CFTC if no SDR for swaps in that asset class was available) on the applicable compliance date, the information related to the transaction terms possessed by the party as of October 14, 2010, in any format selected by the reporting party.
- **Expired transition swaps.** Reporting counterparties to transition swaps that expired or were terminated before April 25, 2011 were required to provide to the applicable SDR (or to the CFTC if no SDR for swaps in that asset class was available) on the applicable compliance date, the information related to the transaction terms possessed by the party as of December 17, 2010, in any format selected by the reporting party.

([17 C.F.R. § 46.3\(b\)](#).)

## SEC Reporting Compliance: Security-Based Swap Data Reporting Under Regulation SBSR

The SEC's rules under Title VII of the Dodd-Frank Act on data reporting for SBS (known as Regulation SBSR) prescribe reporting and public dissemination requirements for SBS transaction data ([17 C.F.R. §§ 242.900 to 242.909](#)).

Under Regulation SBSR, the reporting party to the SBS (see [Box, SEC Regulation SBSR: Reporting Party](#)) must report the following three broad categories of SBS information:

- Information that would be required to be reported to, and publicly disseminated by, a SBS data repository (SBSDR) in real time under real-time SBS data reporting rules ([17 C.F.R. § 242.901\(c\)](#)).
- Additional information that is required to be reported to a registered SBSDR (or to the SEC if no registered SBSDR will accept the information) within specified timeframes, but which is not publicly disseminated ([17 C.F.R. § 242.901\(d\)](#); see [Practice Note, US Derivatives Regulation: SEC Regulation SBSR Data Reporting for Security-Based Swaps: Secondary Trade Information Not Publicly Disseminated \(Regulatory Reporting\)](#)).
- Information about life-cycle events, and any adjustment due to a life-cycle event that results in a change to information previously reported for the SBS ([17 C.F.R. § 242.901\(e\)](#); see [Practice Note, US Derivatives Regulation: SEC Regulation SBSR Data Reporting for Security-Based Swaps: Life-Cycle Events \(Continuation Reporting\)](#)).

([17 C.F.R. § 242.901](#).)

The reporting party must report the information required under the SBS reporting rules to a registered SBSDR, or if there is no registered SBSDR that will accept the data, to the SEC ([17 C.F.R. § 242.901\(a\), \(b\)](#)).

For further information and instructions on compliance with Regulation SBSR and related rules, see [Practice Note, US Derivatives Regulation: SEC Regulation SBSR Data Reporting for Security-Based Swaps](#).

## Duplicative Reporting Obligations for SBS Under CFTC Rules

It is important to note that while the CFTC is charged under Title VII with regulating only non-security-based swaps, CFTC swap data reporting rules require data to be reported for all swaps regardless of whether they are designated as non-security-based swaps or SBS. The CFTC notes in its real-time reporting rules that it has substantially aligned its data requirements in those asset classes with the data sought by the SEC for these SBS under Regulation SBSR. However, the CFTC and SEC rules do require duplicative compliance obligations for SBS data reporting. Data reporting for SBS is therefore more cumbersome than for non-security-based swaps.

Regulation SBSR does not require data reporting to the SEC for non-security-based swaps.

## Data Reporting for Multi-Asset Swaps and Mixed SBS/Swaps

**Data reporting for multi-asset swaps.** A multi-asset swap is a swap that combines more than one asset class (interest rate, credit, FX, equity, or other commodity). Parties to multi-asset swaps must report all required data to a single SDR that accepts swaps in the primary asset class of the swap. This requirement also applies to continuation data reporting and to all data reporting for historical swaps. ([17 C.F.R. §§ 45.3\(g\), 45.10, 46.3\(a\)\(3\)](#), and [46.7](#).)

**Data reporting for mixed swaps.** Parties to each mixed swap must report all required data to an SDR registered with the CFTC and to a SBSDR registered with the SEC. This requirement may be satisfied by reporting the mixed swap to an SDR or SBSDR registered with both the CFTC and the SEC. A mixed swap is a swap that contains elements of both an SBS and a non-security-based swap (swap). This requirement also applies to continuation data reporting under the SDR rules and to data reporting for all historical swaps. ([17 C.F.R. §§ 45.3\(h\), 45.10, 46.3\(a\)\(3\)](#), and [46.7](#); see also, [17 C.F.R. § 240.3a68-4](#).)

## Compliance Dates for Swap Data Reporting Rules

Most of these rules are already in effect and compliance is required for parties to US swaps (see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules: Effective Dates and Compliance](#) and [US Derivatives Regulation: Compliance Calendar](#)). The SEC's swap data reporting requirements for SBS became effective on May 18, 2015 (see [Legal Update, SEC Adopts Security-Based Swap Reporting and Recordkeeping Regime Under Dodd-Frank](#)).

## The ISDA Swap Data Reporting Protocol

The ISDA 2013 Reporting Protocol and related documents are intended to facilitate compliance with global swap data reporting requirements, including the Dodd-Frank swap data reporting requirements discussed in this Note, by addressing certain confidential swap data disclosure issues. For more information, see [Legal Update, Swap Data Reporting Disclosure Protocol Launched by ISDA](#).

## Which Is the Reporting Party?

The SDR rules (CFTC Regulations Part 45), real-time public reporting rules (CFTC Regulations Part 43), and historical swap data reporting rules (CFTC Regulations Part 46) use the same general framework for determining which party to a swap is responsible for reporting data for that swap.

### CFTC SDR Rules: Reporting Party

The reporting party under the CFTC Part 45 SDR rules is determined as follows:

- If the swap is a clearing swap (executed on or under the rules of a DCO and to which the DCO is a party), the DCO is the reporting party ([17 C.F.R. §§ 45.4\(b\), \(c\) and 45.8\(i\)](#)).
- If one of the parties to the swap is an SD, the SD is the reporting party ([17 C.F.R. § 45.8\(a\)](#)).
- If neither party is an SD, and only one party is an MSP, the MSP is the reporting party ([17 C.F.R. § 45.8\(b\)](#)).
- If neither of the parties is an SD or MSP, but one party is a "financial entity" as defined under the CEA, the financial entity is the reporting party ([17 C.F.R. § 45.8\(c\)](#)).
- If both parties are SDs or both parties are MSPs, or if both parties are non-SDs/MSPs and are either both financial entities or both not financial entities, then
  - if the swap is executed on a SEF/DCM, the parties must agree which of them will be the reporting party; and
  - if the swap is executed off-facility, the parties must agree as a term of the swap which party is the reporting party.([17 C.F.R. § 45.8\(d\)](#).)
- Except that:
  - if both parties are non-SDs/MSPs, only one of which is a US person, the US person is the reporting party ([17 C.F.R. § 45.8\(e\)](#));
  - if neither party is a US person, but the swap is executed on a SEF/DCM or cleared by a DCO, the parties must agree which of them will be the reporting party ([17 C.F.R. § 45.8\(f\)\(1\)](#)); and
  - if neither party is a US person, but the swap is executed in the US off-facility or is cleared by a DCO, the parties must agree as a term of the swap which party is the reporting party ([17 C.F.R. § 45.8\(f\)\(2\)](#)).

For more information on swap reporting and other obligations of non-US persons in particular circumstances, see [Practice Note, US Derivatives Regulation: Cross-Border Application of Swaps Rules](#).

### CFTC Historical Swap Data Reporting Rules: Reporting Party

The reporting party under the CFTC Part 46 historical swap data reporting rules is determined as follows:

- If one of the parties to the swap is an SD, the SD is the reporting party ([17 C.F.R. § 46.5\(a\)\(1\)](#)).
- If neither party is an SD, and only one party is an MSP, the MSP is the reporting party ([17 C.F.R. § 46.5\(a\)\(2\)](#)).
- If neither of the parties is an SD or MSP, but one party is a "financial entity" as defined under the CEA, the financial entity is the reporting party ([17 C.F.R. § 46.5\(a\)\(3\)](#)).
- If both parties are SDs or both parties are MSPs, or both parties are non-SDs/MSPs and are either both financial entities or both not financial entities, then the parties must agree which of them will be the reporting party ([17 C.F.R. § 46.5\(a\)\(4\)](#)).
- Except that if both parties are non-SDs/MSPs, only one of which is a US person, the US person is the reporting party ([17 C.F.R. § 46.5\(a\)\(5\)](#)).

The reporting party for pre-enactment and transition swaps is determined based on the parties on the compliance date, even if one or both of them was not an original party to the swap. If a pre-enactment or transition swap subject to the reporting requirement expired or was terminated before the compliance date, the reporting party is determined based on the parties on the date of expiration or termination. (17 C.F.R. § 46.5(b), (c).)

### CFTC Real-Time Reporting Rules: Reporting Party

The CFTC Part 43 real-time reporting rules specify the following reporting obligations:

- SEFs and DCMs must report swap data to the appropriate SDR on swaps that are executed on or by their trading systems or platforms (17 C.F.R. § 43.3(a)(2)).
- The parties to a swap that is not executed on a registered SEF or DCM must report data to the appropriate SDR as follows:
  - if one of the parties is an SD or MSP and the other is not, the SD/MSP party is the reporting party;
  - if one of the parties is an SD and the other is an MSP, the SD is the reporting party; and
  - if both parties are SDs, both parties are MSPs, or neither party is an SD or MSP, the parties must designate among themselves which will be the reporting party.

(17 C.F.R. § 43.3(a)(3).)

### SEC Regulation SBSR: Reporting Party

Under the SBS data reporting rules, SBS data must be reported by:

- The platform (defined as the national securities exchange or security-based SEF on which the SBS is executed), if the SBS is platform-executed and will be submitted for clearing (17 C.F.R. §§ 242.900(v) and 242.901(a)(1)).
- The registered clearing agency that is counterparty to a cleared SBS transaction, referred to in the rules as a "clearing transaction" (17 C.F.R. §§ 242.900(g) and 242.901(a)(2)(i)).
- The security-based swap dealer (SBSD) or major security-based swap participant (MSBSP) party to the SBS, if only one counterparty is an SBSD or MSBSP and the SBS is not a clearing transaction (17 C.F.R. § 242.901(a)(2)(ii)(B), (D)).
- The SBSD, if one counterparty is an SBSD and one is a MSBSP and the SBS is not a clearing transaction (17 C.F.R. § 242.901(a)(2)(ii)(B)).
- The party that is a US person, if only one party to the SBS (which is not a clearing swap) is a US person and neither party is an SBSD or MSBSP (17 C.F.R. § 242.901(a)(2)(ii)(E)).
- Either counterparty (as elected by the counterparties), if the SBS is not a clearing transaction and both counterparties to the SBS are:
  - SBSDs (17 C.F.R. § 242.901(a)(2)(ii)(A));
  - MSBSPs (17 C.F.R. § 242.901(a)(2)(ii)(C)); or
  - Non-SBSD/MSBSP US persons (17 C.F.R. § 242.901(a)(2)(ii)(E)).

For more information on swap reporting and other obligations of non-US persons in particular circumstances, see [Practice Note, US Derivatives Regulation: Cross-Border Application of Swaps Rules](#).

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