

Submitted Electronically: [https:// comments.cftc.gov](https://comments.cftc.gov)

March 8, 2021

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

RE: Comments on Part 23 Portfolio Reconciliation Requirements for Swap Dealers and Major Swap Participants—Revision of “Material Terms” Definition (RIN number RIN 3038–AF08)¹

Dear Mr. Kirkpatrick,

The International Swaps and Derivatives Association, Inc. (“ISDA”) appreciates the opportunity to provide comments to the U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”) in response to the Interim Final Rule and request for comment to the CFTC’s Part 23 (“P23”) Portfolio Reconciliation Requirements for Swap Dealers (“SDs”) and Major Swap Participants (“MSPs”) and revision of “Material Terms” Definition rule referenced above (“Interim Final Rule”).

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 925 member institutions from 75 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association’s website: www.isda.org.

¹ 86 Fed. Reg. 223 (January 5, 2021). https://www.cftc.gov/sites/default/files/2021/01/2020-26536.pdf?utm_source=govdelivery.

I. Interim Final Rule and Request for Comment

- To maintain the status quo for portfolio reconciliation requirements under § 23.502 and ensure that Swap Dealer and Major Swap Participants can continue to engage in their required portfolio reconciliation exercises without disruption, the Interim Final Rule copies existing appendix 1 of part 45 as a new appendix 1 to subpart I of part 23, and amends § 23.500(g) to reference appendix 1 to subpart I of part 23 instead of appendix 1 to part 45. The Interim Final Rule revises the §23.500(g) definition of “material terms” to reference the P23 appendix instead of revised P45.*

CFTC welcomes public comments about the changes made by the Interim Final Rule.

Broadly speaking, we are supportive of the Interim Final Rule which permits market participants to continue to do portfolio reconciliation as they do now, since it eliminates uncertainties and minimizes disruption while the Commission assesses any final updates to Part 23.

However, trade repository functionality for several current Primary Economic Terms (“PET”) fields was removed² in a systems re-architecture undertaken by a predominant swap data repository³ (“SDR”) in preparation for the new CFTC swap data reporting rules. The removed current Part 45 (“P45”) PET fields⁴ appear in the table below.

<u>Current PET</u>	<u>Current PET comment</u>	<u>Asset Class</u>	<u>Data element removed in DTCC re-architecture?</u>
Buyer pay averaging method	The averaging method used to calculate the index of the buyer pay index. For swaptions: applies to the underlying swap.	Commodities	Removed
Seller pay averaging method	The averaging method used to calculate the index of the seller pay index. For swaptions: applies to the underlying swap.	Commodities	Removed
Load type	For electric power, the load profile for the delivery of power.	Commodities	Removed
Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap.	Use as many fields as required to report each such term.	Credit, Equities, Rates, FX, Commodities	Removed

² See CFTC No-Action Letter 20-38, (November 19, 2020), <https://www.cftc.gov/csl/20-38/download>.

³ DTCC Data Repository LLC (“DTCC”).

⁴ An indication of whether the reporting counterparty is a U.S. person and an indication of whether the non-reporting counterparty is a U.S. person were also removed in the SDR re-architecture, however are not shown in the table since these data elements are not included in Appendix 1 of Subpart I of Part 23.

Since these fields are no longer required to be reported in line with the SDR re-architecture, and these fields are not required under the new Part 45 rule amendments, we believe these should be removed from the §23.500(g) definition of “material terms” or removed from Appendix 1 of Subpart I of Part 23.

In addition, although current Part 45 PET includes both “Day count convention” and “Fixed rate day count fraction” for Interest Rates, only one data element is available on the SDR trade state report as a result of the systems re-architecture. Therefore, we also request that only “Day count convention” be required as a “material term” in Appendix 1 of Subpart I of Part 23, and not “Fixed rate day count fraction”.

The points above clearly demonstrate the interconnectedness of the CFTC’s swap data reporting requirements in Part 45, repository functionality, and “material terms” reconciliations required by regulation §23.502. We therefore urge the Commission to request comment and consider any impact on “material terms” reconciliation requirements each time there are any amendments to the CFTC Technical Specifications and swap data reporting rules.

2. *Should the Commission propose modifying Appendix 1 to subpart I of P23 to make it consistent with appendix 1 to part 45 (as amended by the SDR Rule) or make other changes? Why or Why not?*

The fields in Appendix 1 to subpart I of P23 should be limited to fields that relate to the ongoing rights and obligations of the parties and the valuation of a swap. Appendix 1 to subpart I of P23 should not include the full list of data elements from new Part 45 appendix 1 for the reasons below:

Adopting new P45 appendix 1 as Appendix 1 to subpart I of P23 would effectuate dual-sided reporting:

- Current and new Part 45 rules require only one side of the swap to report the swap data. ISDA continues to support single-sided reporting for CFTC, and has previously highlighted to global regulators the challenges created when both sides of a transaction are required to report.

Modifying Appendix 1 to subpart I of P23 to include all the data elements from Appendix 1 of the new Part 45 rules would in practice replicate a dual-sided reporting requirement. Both parties would be required to reconcile all fields reported to a swap data repository, making both counterparties responsible for reporting, despite the fact that counterparties already agree and confirm all terms of a swap.

Adopting new P45 appendix 1 as Appendix 1 to subpart I of P23 would go beyond the swap terms agreed and matched:

- If Appendix 1 of the new P45 rules, which has 128 data elements, were adopted as Appendix 1 to subpart I of P23, the P23 definition of “material terms” would go far beyond the terms of the swap that are agreed and matched between the parties for the swap. If Appendix 1 of the new P45 rules were adopted as Appendix 1 to subpart I of

- P23, the data elements in Appendix 1 to subpart I of P23 should be limited to those fields required to be reported under new P45 that are confirmed and are relevant for the ongoing rights and obligations of the parties and valuation of the swap, similar to the list of fields in the prior version of 23.500(g)⁵.
- Reconciling data elements which are outside the objectives of portfolio reconciliation creates unnecessary noise in the portfolio reconciliation process, and mandating reconciliation of data irrelevant for the ongoing rights and obligations of the parties and valuation of the swap would create additional costs and complicates the portfolio reconciliation process to reconcile data that do not achieve the core objectives of portfolio reconciliation.
 - The Commission would be mandating reconciliation of data which is not agreed, exchanged or confirmed between the parties as terms of the swap, and data which is not relevant to the swap's valuation. Examples of these types of fields include the 24 fields previously excluded from the definition of "material terms" in 23.500(g),⁶ and static data fields such as "federal entity indicator" and "prime brokerage transaction indicator." Not all of the new P45 data elements would be relevant to ongoing rights and obligations of the swaps existing bilaterally between the parties.

If yes, what specific modifications should the Commission propose and why?

We applaud the Commission's finalization of the new swap data reporting rules Parts 43, 45, and 49, which establish an enumerated set of data fields, provide clear definitions and allowable values, and convey transparent trade repository validations to be clear about what is expected to be reported and how. We believe that the approach taken in the new requirements will result in a substantive improvement of data quality over what is reported under current swap data reporting rules.

Reporting counterparties already proactively reconcile their transaction reporting data against their internal records to maintain data accuracy, and are required to submit swap reporting in accordance with the specifications of the relevant trade repository. The combination of these two factors is a compelling reason not to also require new Part 45 appendix 1 to be a requirement under Appendix 1 to subpart I of P23.

Further, although 23.502 provides for regular opportunities for non-SD and non-MSP counterparties to engage in portfolio reconciliation, there has historically been limited engagement by non-SD and non-MSP counterparties in the portfolio reconciliation process, resulting in exercises where SDs send data to non-SD counterparties without non-SD counterparties engaging in meaningful reconciliation. We believe that non-SD counterparties are provided a means to understand the current valuation of their swaps through the daily marks provided by each SD and through the exchange of collateral for those non-SDs that exchange margin with SDs whether under regulation or voluntarily.

⁵ 81 Fed. Reg. 27309 (May 6, 2016).

⁶ Ibid.

Moreover, the Commission’s and Prudential Regulators’ uncleared margin rules provide a framework for portfolio reconciliation and dispute resolution for the types of counterparties that could most benefit from such reconciliations (e.g., dealers and financial end users).

Therefore, ISDA’s members continue to support the views expressed in the ISDA comments⁷ to Project KISS⁸ that there is no policy reason to retain a separate duplicative framework in CFTC Rule 23.502. Overlapping requirements⁹ increases regulatory burdens and operational and compliance costs without achieving any risk-reducing benefits.

However, if the Commission retains portions of CFTC Rule 23.502, we propose that the Commission:

- require that only SDs and MSPs reconcile their swap portfolios with one another
- retain only the portions of the rule related to valuation reporting (i.e., CFTC Rule 23.502(c)), and
- adopt a more principles-based approach in setting out such requirements, similar to other jurisdictions such as EMIR¹⁰ and the SEC¹¹.

3. *In addition, should the Commission provide that the reconciliation of a Unique Product Identifier (“UPI”) constitutes the reconciliation of each other material term that is included in the UPI?*

Why or why not?

Before May 25, 2022, the Compliance Date for the CFTC swap data reporting rules, we support continued use of the current “material terms” in Appendix 1 to subpart I of P23 of the Interim Final Rule¹².

After May 25, 2022, and when the UPI has been designated by the Commission pursuant to 45.7(b) and the relevant SDRs are able to support reporting of the global UPI for CFTC, we believe the Commission should provide that the reconciliation of a UPI code¹³ constitutes the reconciliation of each other material term that is included in the UPI, for the reasons below:

⁷ See ISDA letter from Steve Kennedy, Global Head of Public Policy, dated September 29, 2017,

https://www.isda.org/a/nVKDE/ISDA-KISS-Response_29-September-2017_Appendix_Links_version_FINAL.pdf.

⁸ 82 Fed. Reg. 23765 (May 24, 2017) <https://www.govinfo.gov/content/pkg/FR-2017-05-24/pdf/2017-10622.pdf>.

⁹ There are 108 Registered Swap Dealers, according to National Futures Association (NFA),

<https://www.nfa.futures.org/registration-membership/membership-and-directories.html> (accessed March 5, 2021). Out of the 108, 50 perform inter-dealer “material terms” reconciliation, using TriOptima’s portfolio reconciliation platform (triResolve). 49 of the 108 are non US-domiciled dealers that take advantage of substituted compliance, complying with EMIR portfolio reconciliation requirements and opting out of “material terms” reconciliation requirements with other SDs, including when reconciling with U.S. SDs under no-action letter 13-45.

¹⁰ See EMIR 149/2013 Article 13 Portfolio Reconciliation <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0149&from=EN>

¹¹ See §242.15Fi-3 SBS Portfolio Reconciliation, <https://www.law.cornell.edu/cfr/text/17/240.15Fi-3>.

¹² Except the data fields explained in the response to Question 1.

¹³ When the global UPI has been designated by the Commission pursuant to 45.7(b).

- The Derivatives Service Bureau (DSB) was designated by the Financial Stability Board (FSB) as the sole UPI Services Provider¹⁴ for the UPI system. When the UPI system is fully established and goes live, the DSB, in its capacity as UPI Service Provider, will assign a UPI code to identify a product in transaction reporting data. DSB will also operate and maintain a UPI code's corresponding reference data in its reference data library. The UPI code and the UPI reference data elements are being established as international data standards under the International Organization for Standardization (ISO).
- Because the DSB as UPI Service Provider will maintain a UPI code and a UPI code's corresponding reference data in its reference data library, and both parties to the swap will have access to the UPI data, we believe it would be duplicative to require the UPI code and those UPI reference data elements which are "material terms" to both be required as "material terms".

Therefore, we propose that after May 25, 2022, when the global UPI has been designated by the Commission pursuant to 45.7(b) and the relevant SDRs are able to support reporting of the global UPI for CFTC swap data reporting, the Commission should be able to provide that the reconciliation of a UPI code (e.g. one data element) constitutes the reconciliation of each other "material term" that is included in the UPI. We appreciate that this may streamline material economic terms reconciliation. However, since the UPI system is currently in development, there may be unforeseen challenges that may arise, so ISDA and its members may have further feedback or questions on this point after the compliance date of the swap data reporting rules.

ISDA appreciates the opportunity to provide industry feedback on the Interim Final Rule and request for comment to the Portfolio Reconciliation Requirements for Swap Dealers and Major Swap Participants - Revision of "Material Terms" Definition. Please feel free to contact me if you have any questions.

Sincerely,



Eleanor Hsu
Director, Data and Reporting
International Swaps and Derivatives Association, Inc. (ISDA)

¹⁴ <https://www.fsb.org/wp-content/uploads/R020519.pdf>.