

November 20, 2015

Submitted Electronically

Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Proposal to Amend the Definition of “Material Terms” for Purposes of Swap Portfolio Reconciliation; Notice of Proposed Rulemaking (RIN 3038-AE17)

Dear Mr. Kirkpatrick:

The International Swaps and Derivatives Association, Inc. (“**ISDA**”)¹ appreciates the opportunity to submit these comments with respect to the notice of proposed rulemaking published by the Commodity Futures Trading Commission (“**CFTC**”, or the “**Commission**”) regarding the proposed revision to the definition of material terms in Commission regulations in connection with the discrepancies counterparties must resolve when engaging in portfolio reconciliation (“**Proposed Rule**”)².

ISDA supports the Commission’s ongoing efforts to improve its regulations in a manner that promotes important Commission policy objectives while addressing challenges gleaned from our collective experience. To this end, ISDA is proposing an approach that promotes important policy objectives served by portfolio reconciliation while taking into account the lessons learned from the challenges presented by the current material terms reconciliation requirement. Specifically, ISDA suggests that the CFTC clarify that “material terms” shall not include certain data elements required to be reported under Part 45 attached to this letter as Appendix A

¹ Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 850 member institutions from 68 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 web site: www.isda.org.

² *Proposal To Amend the Definition of “Material Terms” for Purposes of Swap Portfolio Reconciliation*, 80 Fed. Reg. 57129, (September 22, 2015)

Separately, and consistent with ISDA's longstanding recommendation, we suggest that the CFTC should adopt one universal set of defined data fields which can be applied, as applicable and appropriate, across regulatory requirements (i.e., PET, material terms, Part 43 and confirmation data requirements). Such data fields should reflect the key terms of the swap agreed between the parties, and the relevant data should be represented in accordance with existing standards and market standard practices. A single set of data fields would facilitate the collection and analysis of trade data and would be consistent with global regulatory requirements. For example, many of the other large global jurisdictions (e.g., Canada and Singapore) rely on a streamlined set of defined data fields contained in one piece of legislation. Within a harmonized set of defined data fields, the requirement for a specified subset of data fields must be relevant to the purpose and intent of each regulation.

I. Recommended approach

Tailoring the definition of "material terms" for purposes of portfolio reconciliation to include terms that are relevant to the ongoing rights and obligations under swaps existing bilaterally between the parties promotes important Commission policy objectives while enhancing firms' ability to comply with the requirements

The Commission has described portfolio reconciliation as "a post-execution processing and risk management technique that is designed to: (i) identify and resolve discrepancies between the counterparties with regard to the terms of a swap either immediately after execution or during the life of the swap; (ii) ensure effective confirmation of all the terms of the swap; and (iii) identify and resolve discrepancies between the counterparties regarding the valuation of the swap."³ The objective of the portfolio reconciliation rule, as stated by the Commission, is to require "a process in which overall risk can be identified and reduced" by "identifying and managing mismatches in key economic terms and valuation for individual transactions across an entire portfolio."⁴

Rule 23.500(g) defines "material terms" as "all terms of a swap required to be reported in accordance with Part 45" of the Commission's regulations and the definition of "portfolio reconciliation" itself includes the directive to resolve "any discrepancy in material terms and valuations." However, based on experience, this definition has proven too broad to guide market participants in the construction of an effective materials term reconciliation process undermining the policy objective of identifying and reducing overall risk.

For the reasons that follow, ISDA recommends that, for purposes of Rule 23.502, the CFTC clarify that the "material terms" of a swap are certain primary economic terms ("PET") (as defined in Rule 45.1), except that the "material terms" shall not include the data elements required to be reported under Part 45 in the fields ("Excluded Data Fields") attached to this letter as Appendix A. Requiring reconciliation of these material terms

³ 80 Fed. Reg. at 57130

⁴ 80 Fed. Reg. at 57130

will enable firms to execute useful reconciliations and focus on resolving true discrepancies that if left unresolved may give rise to overall risk.

The Excluded Data Fields pertain to the circumstances surrounding entry into the transaction, static data fields pertaining to a party's status, data relevant to cleared transactions, and other data which is not agreed, exchanged or confirmed between the parties as terms of the swap or which is not relevant to its valuation. Consequently, they are not relevant to ongoing rights and obligations under swaps existing bilaterally between the parties (i.e., swaps that are part of the "swap portfolio" that is the subject of portfolio reconciliation). Reconciling irrelevant data, such as the Excluded Data Fields, will unnecessarily add to the costs and complexity associated with implementing and managing the portfolio reconciliation process.

The requested interpretation would facilitate portfolio reconciliation by relevantly defining the information to be exchanged and reconciled, and allowing market participants to focus their efforts accordingly. Reconciliation of the "material terms", interpreted as described above, is fully consistent with the policy objectives of Rule 23.502 and promotes the risk reduction benefits of materials terms reconciliation.

The Proposed Rule is not the most efficient way to improve SDR data

The Commission proposes to retain certain data fields that were previously included in the No-Action Excluded Data Fields because it believes that a "discrepancy in this information in the records of the counterparties could mean that the related information is erroneous in the records of an SDR, which could have an impact on the Commission's regulatory mission." However, we believe that the material terms reconciliation process is not an effective tool for improving SDR data since the material terms reconciliation process typically is handled as part of collateral management via data from separate systems that has not been tailored by both parties into the format required to comply with the Part 45 regulations. Moreover, based on experience, reconciling these terms creates unnecessary noise in the reconciliation process, which negatively impacts its effectiveness and firms' ability to focus on resolving true discrepancies that may implicate overall risk. There are other efforts underway by the Commission, the SDRs, and reporting entities related to the Part 45 regulations that we believe is more likely to be effective at improving SDR data. ISDA and its members are committed to work with the Commission on these efforts.

The requirement to reconcile all data fields required to be reported under Part 45 has the perverse effect of imposing a dual-sided reporting regime

Part 45 regulations require only one side of the swap to report the swap data. ISDA strongly supports the CFTC's single sided reporting approach, and has consistently highlighted to global regulators the challenges created when both sides of a transaction are required to report (e.g., under EMIR). However, based on the current final rule, the Part 23 material terms requirement to reconcile all data fields required to be reported under Part 45 mimics a dual-sided reporting requirement. Although both parties may not

be required to send the data to an SDR, they are mandated to exchange and reconcile the same SDR data fields despite the fact that they already engage in bilateral processes to agree and confirm the terms of their swaps. However, as currently mandated, the definition of material terms goes far beyond the terms of the swap that are agreed and matched between the parties for the swap and includes terms that are not relevant to the valuation of the swap. This creates an enormous cost and challenge to reconcile data that is not pertinent to the objectives of portfolio reconciliation, and instead seems to be a regulatory tool intended to improve SDR data rather than resolve collateral disputes. As noted, ISDA strongly supports the CFTC's existing single-sided reporting approach and believes that it, coupled with the Commission's ongoing efforts to improve data quality, is the best way to facilitate the collection of complete and accurate data.

II. Questions

Q: Should the Commission amend its regulations to provide relief identical to that granted in CFTC Letter No. 13–31? Alternatively, should the Commission amend § 23.500(i)(1) so that counterparties only have to exchange the “material terms” (which would not include the Proposed Excluded Data Fields) of swaps? Or, lastly, should the Commission adopt its current proposal which is to only remove the Proposed Excluded Data Fields from the definition of “material terms” that counterparties must resolve for discrepancies pursuant to § 23.500(i)(3)?

- A: The Commission should amend § 23.500(i)(1) so that counterparties only have to exchange and reconcile the “material terms” (which would not include the Proposed Excluded Data Fields) of swaps. The data fields that need to be exchanged and those which need to be reconciled should be the same. These should only include data fields which were agreed between the parties as a term of the swap and are relevant to the mutual obligations of the swap. Exchanging and reconciling data that does not assist in reducing overall risk or is otherwise inappropriate for reconciliation, including data independently determined by each party (e.g., execution timestamp), data that is only determined by the reporting counterparty for purposes of Part 45 (e.g., timestamp of submission to an SDR, multi-asset or mixed swap designation), party static data rather than transactional data (e.g., swap dealer or U.S. Person status) or data that applies to transactions which are not subject to ongoing material terms requirements (e.g., cleared swaps and pre-allocation swaps), is not only impractical but also leads to ineffective reconciliations (e.g., high number of “false positives”). In addition, this inclusion of irrelevant terms, from a portfolio reconciliation perspective, greatly increases costs, with no corresponding benefit to firms or the Commission.

Ineffective reconciliations undermine the Commission's policy objectives because it makes it difficult for firms to identify and work to resolve true discrepancies. Lastly, for the reasons articulated above, we do not believe that the material terms reconciliation is a useful tool for improving the data quality of SDR records and are committed to working with the Commission to identify and develop additional processes to advance this critical Commission objective.

Q: Should the Commission's Proposed Excluded Data Fields not include the execution and SDR submission timestamps for uncleared swaps? Please explain why or why not.

- A: The Excluded Data Fields should include execution and SDR submission timestamp; such exclusion should not be limited to cleared swaps. These are not reconcilable fields as they are not agreed terms of the swap that are matched or confirmed between the parties.

Execution timestamp is captured independently in internal trade capture systems by each party. The execution timestamp is not exchanged, matched or confirmed between the parties as a term of the transaction. The execution timestamp reported under Parts 43 and 45 is the value captured by the reporting counterparty. It is neither practicable nor necessary for the parties to match the execution timestamp to the nearest second. Rather, the date on which the obligations of the parties to the swap commence is determined by the trade date or effective date of the swap. In the limited cases where a time is relevant (e.g., for credit event determination), the time and time-zone are specified in the product definitions and not negotiated as a term of the swap.

In the proposed amendments, the Commission mentions regulatory use of the execution timestamp to monitor swap dealer compliance with the deadlines for confirmation of the swap. As the execution timestamp is not agreed between the parties, including it in portfolio reconciliation does not improve the Commission's ability to determine compliance with such deadlines under § 23.501. Rather, the trade date is more appropriate for this purpose.

SDR submission timestamp is a value which is only relevant to one side of the swap since only the reporting counterparty has an obligation to report. The SDR timestamp may be used by the Commission to monitor the timeliness of reporting by the reporting counterparty, but has absolutely no meaning or application to the non-reporting counterparty. Part 45 does not require the reporting counterparty to provide its SDR submission timestamp to the non-reporting counterparty, nor would there be any value for a non-reporting counterparty to receive or retain the SDR timestamp of its counterparty. Though taken together the execution timestamp and SDR submission timestamp may be useful to the Commission to monitor the timeliness of Part 45 reporting, that applies to the obligation of the reporting counterparty only and has no bearing on the non-reporting counterparty. An attempt to exchange or reconcile this information would in no way improve the ability of a swap dealer or major swap participant to comply with Part 45, nor for the Commission to monitor such compliance.

Q: Should the Commission's Proposed Excluded Data Fields include an indication of the election of the clearing exception in CEA Section 2(h)(7) and/or the identity of the counterparty electing such clearing requirement exception? Please explain why or why not.

- A: The Excluded Data Fields should include both an indication of the election of the clearing exception and the identity of the party electing such exception. These data fields are determined for purposes of complying with the Part 45 obligation of the reporting counterparty and may be beneficial to the Commission's monitoring of compliance with the clearing mandate. However, this information is not a material term of the swap itself and is not relevant to the ongoing rights and obligations between the parties or the valuation of the swap. Rather these are values pertinent to the circumstances surrounding entry into the transaction and not suitable to the stated intentions of § 23.500(i)(1).

Q: Are there other items in the Proposed Excluded Data Fields that may have material regulatory value to the Commission or that may be relevant to the ongoing rights and obligations of the parties and the valuation of the swap and, thus, should not be included in the Proposed Excluded Data Fields? Please explain why or why not.

- A: There are no items in the Proposed Excluded Data Fields which may have material regulatory value to the Commission for purposes of § 23.500(i)(1) or which are relevant to the ongoing rights and obligations of the parties and the valuation of the swap. The list of Excluded Data Fields should include the items proposed by the Commission as well as the additional fields specified in the Appendix which also do not have regulatory value for the purposes of § 23.500(i)(1).

Q: Is each of the Proposed Excluded Data Fields actually required to be included in any ongoing portfolio reconciliation exercise, and, if not, should any such term be removed from the list of Proposed Excluded Data Fields? Please explain why or why not.

- A: The USI of a post-allocation swap does not need to be included in the list of Excluded Data Fields. Since 45.5 requires both the creation and the transmission of a USI to the parties to the swap, then USIs should be available to facilitate portfolio reconciliation between SDs or MSPs and their non-SD/MSP counterparties to such post-allocation swaps.

Otherwise, the Proposed Excluded Data Fields are not required to be included in any ongoing portfolio reconciliation exercise; thus, they should not be removed.

Q: Should any other “material term” as defined in § 23.500(g) be included in the list of Proposed Excluded Data Fields? Please explain why or why not.

- A: Yes, the list of Proposed Excluded Data Fields should be amended and expanded in accordance with the Appendix to this letter. Only terms of the swap which are agreed and matched between the parties with respect to a specific swap and which are relevant to its valuation should be defined as “material terms.” Despite the way that Primary Economic Terms is defined in § 45.1, the Tables of Minimum Primary Economic Terms Data in Appendix 1 to Part 45 include many

terms which are not “matched or affirmed by the counterparties in verifying the swap.”

Appendix 1 to Part 45 also includes a catch-all requirement to report “Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap” (“any other terms...”). As put forth in ISDA’s response to the Commission’s *Request for Comment on Part 45 and Related Provisions of the Commission’s Swap Data Reporting Rules*⁵, we feel strongly that all required data fields should be explicitly defined by the regulation. No other global regulator requires parties to report unspecified data, as such an obligation is ambiguous, cannot be clearly and uniformly supported by SDRs, creates inconsistency and uncertainty with respect to compliance, and is unsuitable for global aggregation and reconciliation. The same concerns transfer to the material terms reconciliation requirement: parties cannot consistently exchange and reconcile data fields that are not explicitly defined by the regulator. Because different methods may be applied to verify the same swap, the parties may have a different interpretation of which data qualifies as “any other terms...” data. In addition, parties do not have the technological capability to flag data elements that may be part of a verification process to determine which fall outside of the specified PET data fields and may be additionally subject to reporting or reconciliation. Like the challenges an SDR faces for reported data, portfolio reconciliation services used by parties cannot build technological capabilities to consume and reconcile unspecified data elements. The Commission must explicitly exclude the “any other terms...” field from the material terms reconciliation requirements.

Q: Should the Commission amend § 23.500(g) so that the term, “material terms,” is defined as all terms of a swap required to be reported in accordance with part 45 of the Commission regulations other than the Proposed Excluded Data Fields, as proposed? Please explain why or why not.

- A: No. Instead, the Commission should amend § 23.500(g) so that the term, “material terms,” is defined as all primary economic terms required to be reported in accordance with Part 45 other than the Excluded Data Fields (provided in the Appendix to this letter). Defining “material terms” by reference to “primary economic terms” rather than solely referring to Part 45 is extremely important since the Part 45 regulations contain an obligation to report confirmation data which, like the “any other terms...” field in Appendix 1, is an unspecified set of data. For the same reasons provided above describing the challenges with, and limited benefit of, reconciling the “any other terms...” data, we believe confirmation data that is not explicitly defined as PET data cannot be practically reconciled and should not be subject to material terms reconciliation.

⁵ http://www2.isda.org/attachment/NjY1NQ==/2014%20May%2023%20CFTC%20RFC-%20ISDA%20Response_FINAL.pdf at page 38

Q: To what extent does the proposed amendment facilitate (or fail to facilitate) the policy objectives of portfolio reconciliation? Feel free to reference specific terms listed in the Proposed Excluded Data Fields in your answer.

- A: The list of Proposed Excluded Data Fields does not sufficiently carve out all the PET data which is not relevant to the objectives of portfolio reconciliation. We ask that the Commission revise its list of Excluded Data Fields as proposed by ISDA in the Appendix to this letter. Despite the relief provided under NAL 13-31, the current material terms definition includes many fields that in practical application are not reconcilable since the data is not known by or reportable by both parties.

The Commission proposes to require the Excluded Data Fields to be exchanged, but not reconciled. There is no value to exchanging these data fields. Although they may be pertinent to the Commission's analysis of Part 45 data, they are not material to the ongoing rights and obligations of the parties to the swap or its valuation. Many of them are party-specific as opposed to swap-specific, and others are only determined by the reporting counterparty in the discharge of its Part 45 obligations such that a value cannot be provided by the non-reporting counterparty to exchange.

In addition, it is unclear what obligations a party may incur under Part 23 if a discrepancy was discovered as part of an exchange of the Excluded Data Fields. Even if Part 23 may not require the resolution of a discrepancy for Excluded Data Fields, Part 45.14 requires that a reporting counterparty corrects any errors and omissions regarding data reported by it under Part 45. Clarification would be needed that discrepancies discovered for Excluded Data Fields do not trigger a reporting requirement under Part 45.14 (per se) but that rather the reporting counterparty is allowed to report under Part 45 what it considers the correct data for the Excluded Data Fields. Absent this clarification, the idea and proposal that the parties to the trade do not need to resolve discrepancies for the Excluded Data Fields would have no real meaning or practical implication for the parties to the trade.

Finally, the proposed definition of materials terms fails to limit the definition to a subset of "primary economic terms" data, thus perhaps inadvertently pulling into scope unspecified confirmation data which is unsuitable for automated reconciliation processes.

Q: Where are the cost savings realized by not having to resolve discrepancies in the Proposed Excluded Data Fields? If any other alternative approach should be considered, what cost savings would be realized by such alternative approach? Commenters are encouraged to quantify these cost savings.

- A: Portfolio reconciliation is a resource intensive bilateral process, typically performed by staff which is primarily responsible for collateral management.

Including data fields that are relevant to the objectives of the SDR reporting requirements instead of the objectives of portfolio reconciliation, creates an enormous cost, burden and challenge for firms while undermining the Commission's objectives for portfolio reconciliation processes. Streamlining the "material terms" subject to reconciliation by limiting them to the PET data that is capable of being reconciled between the parties and which are relevant to the objectives of the § 23.500(i)(1) will significantly reduce the current cost and effort of compliance while significantly improve the results by facilitating reconciliations that expose true discrepancies in key material terms. Reducing the burden of these requirements and improving the reconciliation output will allow firms to more rapidly resolve discrepancies that actually have mutual impact on the parties, helping them to more efficiently achieve the objections of Part 23.

Lastly, we note that global regulators are in the process of finalizing their margin requirements for uncleared swaps in advance of the September 1, 2016 deadline established by BCBS-ISOCO. Market participants are investing tremendous resources to prepare for these requirements and collateral management staff has increasing responsibilities. As such, it is important that firms be able to focus resources on preparing for and complying with the uncleared margin requirements and the portfolio reconciliation of data that may complement those requirements, rather than reconciling data that is not pertinent to collateral management.

* * * *

ISDA appreciates the opportunity to provide these comments. If we may provide further information, please do not hesitate to contact the undersigned or ISDA staff.

Sincerely,



Steven Kennedy
Global Head of Public Policy

Appendix A

Excluded Data Fields	Reason PET Field not Relevant to Material Terms Reconciliation Objectives
An indication of whether the reporting counterparty is a swap dealer with respect to the swap	Party static data; not a confirmable term of the swap or relevant to swap valuation
An indication of whether the reporting counterparty is a major swap participant with respect to the swap	Party static data; not a confirmable term of the swap or relevant to swap valuation
If the reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(c)	Party static data; not a confirmable term of the swap or relevant to swap valuation
An indication of whether the reporting counterparty is a U.S. person	Party static data; not a confirmable term of the swap or relevant to swap valuation
An indication that the swap will be allocated	Data pertains to bunched orders; related swap not subject to material terms reconciliation
If the swap will be allocated, or is a post-allocation swap, the Legal Entity Identifier of the agent	Data pertains to circumstances of swap execution; not relevant to swap valuation
An indication of whether the swap is a post-allocation swap	Data pertains to circumstances of swap execution; not relevant to swap valuation
If the swap is a post-allocation swap, the unique swap identifier of the original transaction between the reporting counterparty and the agent	Data pertains to circumstances of swap execution; not relevant to swap valuation
An indication of whether the non-reporting counterparty is a swap dealer with respect to the swap	Party static data; not a confirmable term of the swap or relevant to swap valuation

An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap	Party static data; not a confirmable term of the swap or relevant to swap valuation
If the non-reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(c)	Party static data; not a confirmable term of the swap or relevant to swap valuation
An indication of whether the non-reporting counterparty is a U.S. person	Party static data; not a confirmable term of the swap or relevant to swap valuation
An indication that the swap is a multi-asset swap	Part 45-specific classification; not a confirmable term of the swap and not relevant to swap valuation
For a multi-asset swap, an indication of the primary asset class	Part 45-specific classification; not a confirmable term of the swap and not relevant to swap valuation
For a multi-asset swap, an indication of the secondary asset class(es)	Part 45-specific classification; not a confirmable term of the swap and not relevant to swap valuation
An indication that the swap is a mixed swap	Part 45-specific classification; not a confirmable term of the swap and not relevant to swap valuation
For a mixed swap reported to two non-dually-registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported	Data only applicable to the reporting counterparty; not agreed, exchanged or confirmed between the parties as a term of the swap; not relevant to swap valuation
Block trade indicator	Part 43-event specific classification; not a confirmable term of the swap and not relevant to swap valuation
Execution timestamp	Data not agreed, exchanged or confirmed between the parties as a term of the swap; not relevant to swap valuation
Timestamp for submission to swap data repository	Data only applicable to the reporting counterparty; not agreed, exchanged or confirmed between the parties as a term of the swap; not relevant to swap valuation

Clearing indicator	Only uncleared swaps subject to material terms reconciliation, so value will always be "No"; data not useful to either swap data reconciliation or valuation.
Clearing venue	Only uncleared swaps subject to material terms reconciliation, so field is not relevant.
If the swap will not be cleared, an indication of whether the clearing requirement exception in CEA section (2)(h)(7) was elected	Not a confirmable term of the swap; not relevant to swap valuation
The identity of the counterparty electing the clearing requirement exception in CEA section 2(h)(7)	Not a confirmable term of the swap; not relevant to swap valuation
Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap	Not suitable for materials terms reconciliation. Undefined data fields cannot be reconciled between parties or supported by portfolio reconciliation services.