ISDA Safe, Efficient Markets

October 30, 2015

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

Re: Comment Letter on Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps (RIN 3038-AE12)

The International Swaps and Derivatives Association, Inc. ("ISDA")[1] appreciates the opportunity to provide the Commodity Futures Trading Commission (the "CFTC" or the "Commission") with comments in response to *Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps* (the "Cleared Swap Rules") which amend and supplement the Commission's Part 45 regulations ("Part 45"). ISDA congratulates the Commission on the issuance of these amendments in response to its *Request for Comment on Part 45 and Related Provisions of the Commission's Swap Data Reporting Rules* ("Part 45 RFC"), and looks forward to additional amendments to clarify and simplify the requirements of Part 45. We thank the Commission for its consideration of ISDA's comments regarding the reporting of clearing transactions in response to the Part 45 RFC[2] ("ISDA RFC Response") as well as ISDA's comments[3] to the Securities and Exchange Commission ("SEC") in response to its Proposed Rules re: Regulation SBSR - Regulatory Reporting and Public Dissemination of Security-Based Swap Information ("Proposed SBSR").

I. Introduction

ISDA and our members are broadly supportive of the Cleared Swap Rules and appreciate the clarity these amendments bring to the obligations under Part 45 to report both alpha swaps and the related betas and gammas which result from acceptance to clearing, collectively referred to herein as cleared swaps. We also acknowledge the efforts of Commission staff to align to the extent possible with the cleared swap requirements in Proposed SBSR. We strongly support alignment between the CFTC and the SEC, as well as alignment with global regulators, with respect to the reporting of cleared swaps and cleared security-based swaps in order to facilitate consistent reporting requirements for clearing transactions both

[1] Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 68 countries. These members include a broad range of OTC 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 including exchanges, clearinghouses 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] http://www2.isda.org/attachment/NjY1NQ==/2014%20May%2023%20CFTC%20RFC-%20ISDA%20Response_FINAL.pdf

[3] http://www2.isda.org/attachment/NzU3NA==/ISDA_SBSRProposed_S7-03-15_FINAL_4May2015.pdf

domestically and internationally. A uniform global approach to reporting clearing transactions promotes efficiency and reduces the cost of reporting across jurisdictions. It is also instrumental to the accurate and meaningful global aggregation and analysis of data for clearing transactions.

II. Comments

A. Definitions – Proposed Amendments to Section 45.1

Derivatives clearing organization

The proposed amendment to the definition of derivatives clearing organization ("DCO") includes the condition that a DCO is "registered". Although we understand the intention to provide clarity with respect to the obligations of *registered* DCOs, the counter-effect is a lack of clarity with respect to the reporting obligations for swaps cleared via clearing organizations which are not registered with the Commission, including those which are in the process of registering and those which have been granted an exemption from the registration requirement ("unregistered DCOs").

We acknowledge that the exemptive letters issued by the CFTC in these cases[4] state as a condition of the relief the obligation for the relevant clearing organization to comply with certain Part 45 reporting obligations for cleared swaps. There are a couple of key issues with this approach. First, assigning these obligations via Commission letters necessitates that, for the long term, market participants will be required to consider ancillary documentation to determine their reporting obligations for cleared swaps rather than being able to rely solely on Part 45. Secondly, the exclusion of the obligations for unregistered DCOs in Part 45 does not provide certainty that as either part of exemptive relief or exemptive orders the Commission will always assign an unregistered DCO obligations for reporting cleared swaps that are consistent with those of registered DCOs. Further, additional action may be required by the Commission to amend these exemptive letters to compel the unregistered DCOs to report in accordance with Part 45 as amended by the Cleared Swap Rules.

Addressing Part 45 reporting obligations on a case-by-case basis (e.g., in CFTC orders or no-action letters issued to individual DCOs or requiring that Part 45 reporting be addressed in side letter arrangements between market participants or clearing house rules) technically does not discharge or amend the reporting obligations a non-DCO reporting counterparty may have under the Part 45 rule itself. As a result, these approaches to address Part 45 reporting obligations are flawed and may not lead to the desired results as different market participants may take a different view as to how they intend to comply with their reporting obligations under Part 45. To provide certainty around reporting obligations and to facilitate an orderly reporting process, reporting requirements (including who has the obligation to report) should be addressed in Part 45 itself.

The operational implication of a lack of certainty and consistency is that market participants to cleared swaps against unregistered DCOs need to have the technological capacity to report them in the event an unregistered DCO is not obligated to do so and maintain bifurcated reporting logic based on whether the DCO is (i) either registered *or* unregistered and obligated to report or (ii) unregistered and not obligated to report. Will the Commission uniformly require unregistered DCOs report cleared swaps in accordance with the Part 45 as amended by the Cleared Swap Rules? If not, does the obligation fall to the party facing the DCO (which may be a non-U.S. Person or a buy-side market participant)? Moreover, if an unregistered DCO fails to report the cleared swaps as required under an exemptive order is the non-DCO

[4] We refer, for example, to the Orders of Exemption from Registration announced on October 26, 2015, which were issued to Korea Exchange, Inc. and Japan Securities Clearing Corporation.

counterparty responsible for reporting? Part 45 should be explicit on these obligations rather than relying on ancillary documentation to provide clarification on an ad hoc basis, resulting in uncertainty with respect to the obligation to report cleared swaps against unregistered DCOs and the need to maintain bifurcated reporting processes which may be unnecessary.

For the sake of consistency, simplicity and clarity, we request that Part 45 explicitly assign the same obligations for the reporting of cleared swaps to an unregistered DCO that is either in the process of registering or is exempted by the Commission from registration as are required by a registered DCO. This could be accomplished via amending the proposed definition of DCO to the following:

> Derivatives clearing organization means a derivatives clearing organization, as defined by §1.3(d) of this chapter, that is registered by the Commission, is in the process of registering with the Commission, or is exempted from registration by the Commission.

Original swap

We agree with the proposed definition for original swap and concur that a swap submitted for clearing should be equally classified as an original swap regardless of the timing of submission to clearing and the execution method. We support the recognition in the Cleared Swap Rules that not all clearing swaps involve the replacement of an original swap, and in such cases there is therefore no obligation to report either creation or continuation data with respect to an original swap.

We appreciate CFTC Letter No. 15-51 ("Letter 15-51") which provides guidance that the DCO is responsible for reporting "firm or forced trades" entered into as a result of the DCO pricing process for credit derivatives ("CDS Clearing-Related Swaps"). However, Letter 15-51 does not make clear whether the Division of Market Oversight ("DMO") accepts that there is no original swap associated with a CDS Clearing-Related Swaps (and therefore the DCO is only responsible for reporting clearing swaps) or whether the DCO is expected to report both an original swap and clearing swaps under Part 45. In the event it is the former, then it is also unclear as to whether the clearing swaps are considered to be publicly reportable swap transactions and whether the DCO is responsible for reporting them under the Part 43 regulations.

Despite the prolonged history of this issue, the Cleared Swap Rules make no reference to CDS Clearing-Related Swaps, the lack of clarity regarding the related responsibilities and the series of No-Action letters issued by DMO on this topic. We believe that CDS Clearing-Related Swaps are entered into directly with the DCO, and therefore an original swap should not be required to be reported under Part 45. In order to ensure the expectations regarding any reporting obligations are clear in the Part 45 and Part 43 regulations, we ask that both regulations explicitly acknowledge that CDS Clearing-Related Swaps do not have associated original swaps. In addition, if the Commission considers CDS Clearing-Related Swaps to be clearing swaps that are publicly reportable swap transactions, then it should make the obligation for the DCO to report these explicit under Part 43.

Clearing swap

Since the definition of derivatives clearing organization in the Cleared Swap Rules proposes to only include registered DCOs, then the proposed definition of clearing swaps would only include swaps cleared through a registered DCO, thereby excluding transactions cleared via an unregistered DCO. It is then unclear what definition applies to swaps which face an unregistered DCO, creating ambiguity in the rules with respect to the relevant reporting obligations. In accordance with our comments pertaining to the definition of derivatives clearing organization above, we believe that Part 45 should clearly assign the same obligations to both registered and unregistered DCOs.

B. Swap Data Reporting: Creation Data – Proposed Amendments to Section 45.3

Reporting Counterparty designation

We agree with the designation to the DCO of the sole responsibility to report creation data, including primary economic terms ("PET") and confirmation data, for clearing swaps regardless of the execution method. We agree the obligation to report an original swap should remain with the reporting counterparty, Swap Execution Facility ("SEF") or Derivatives Clearing Merchant ("DCM"), as applicable.

We agree with the removal of the provision excusing a reporting counterparty from reporting creation data for a swap accepted for clearing before the PET reporting deadline. In practice reporting counterparties have not taken advantage of this exclusion since a bifurcated approach based on the timing of clearing acceptance complicates reporting logic and creates a risk that reporting will be late if clearing does not complete by the relevant deadline. We support instead the proposed elimination of the requirement to report confirmation data for swaps intended to be submitted to clearing at the time of execution.

Choice of SDR

We accept the Commission's proposal to allow the DCO to select the swap data repository ("SDR") for clearing swaps since the Cleared Swap Rules assign the DCO sole obligation for reporting the clearing swaps.

However, we disagree that a SEF or DCM should select the SDR for *all* swaps executed on its facility or pursuant to its rules, and that a party other than the reporting counterparty should be responsible for reporting such swaps. Rather, in accordance with Proposed SBSR, we propose that a SEF/DCM should be the designated reporting counterparty for swaps executed on or pursuant to its facility that are intended for clearing at time of execution, while retaining the right to select the SDR and the obligations to create the USI and report the creation data as well as meet the Part 43 reporting obligation, if applicable. For swaps executed on or pursuant to a SEF or DCM which are not intended for clearing at the time of execution, one of the counterparties should retain the role of reporting counterparty, but also bear the obligation to create the USI and the sole responsibility to report creation data and continuation data for the swap and meet any Part 43 reporting obligation.

The approach described above aligns with the Commission's methodology in the Cleared Swap Rules to officially designate the party responsible for reporting creation data as the reporting counterparty and allow such reporting counterparty to select the SDR. It would also create consistency between the reporting obligations for swaps and security-based swaps.

In the event the Commission retains the obligation for the SEF/ DCM to report creation data for all swaps executed on or pursuant to the rules of its platform, we feel strongly that the SEF or DCM should only choose the SDR for swaps executed on its facility or pursuant to its rules which are intended for clearing at the time of execution. The SEF/DCM is only responsible for a single creation data report for an uncleared swap, whereas as the reporting counterparty is responsible for continuation data reporting for that swap for the remainder of its life. As the reporting counterparty bears the ongoing responsibility to report, including potentially a daily obligation to report valuation data, then the reporting counterparty has a much greater obligation under Part 45 for uncleared swaps and should therefore have the right to choose the SDR.

Currently certain SEFs have bifurcated their reporting streams to send creation data for uncleared swaps to an SDR to which the reporting counterparty is connected. However, this could change at any time, forcing reporting parties to assume great expense and effort to build to additional SDRs and potentially disrupting their ability to comply with their continuation data reporting obligations. Decisions regarding the SEF through which a swap is executed are made by front office personnel, and the operational challenges associated with the SDR which may be specified in the relevant rulebook are not a factor in trade execution. Because of the division between pre and post-trade processes, the decision to execute via a certain SEF does not ratify its choice of SDR. Rather due to execution mandates, a party may have no choice but to execute via a SEF that offers certain Required or Permitted Transactions[5].

In the Cleared Swap Rules, DMO states its support for assigning the obligation to select the SDR to the "entity that has the first obligation to report". We believe there is a much stronger case to assign the obligation to select the SDR to the entity that has the longest, recurring, or most frequent obligation to report. We acknowledge that a change to the reporting obligation, reporting counterparty designation or obligation to assign USI and select SDR for swaps not intended for clearing which are executed pursuant to a SEF/DCM may require a further proposed amendment to Part 45. But we believe that such approach is worth pursuing in the interest of furthering the efforts of DMO to improve and clarify Part 45 while streamlining the ability of swap counterparties and their execution platforms to comply in a more efficient and cost effective manner that facilitates better data quality.

C. Swap Data Reporting: Continuation Data – Proposed Amendments to Section 45.4

Valuation Data

We support and appreciate the Commission's proposal to eliminate §45.4(b)(2)(ii) which requires Swap Dealers ("SD") and Major Swap Participants ("MSP") to report valuation data for clearing swaps. We concur that the DCO should bear the sole obligation for reporting valuation data for clearing swaps. We believe the valuation data reported by the DCO pursuant to section 45.4(b)(2)(i) provides sufficient and accurate data for understanding the swap valuation. The DCO's valuations are based on an average of the valuations submitted to the clearing house by its members, so reflect a fair industry view. Further, the DCO's valuations drive the collateral requirements for clearing swaps and would be the only valuation used in the event of a default. The addition of a daily valuation submission by the SD or MSP does not provide a material benefit and the costs and effort of complying far out-weigh any perceived benefit.

Termination of original swaps

We strongly support the proposed addition of §45.4(c) which requires the DCO to report continuation data (i.e. the termination) for an original swap to the SDR to which it was originally reported ("the alpha SDR"). This would eliminate the "orphaned" alpha issue that is negatively impacting data quality. The DCO should be allowed to submit the original swap terminations either via lifecycle event data or as state data. Since DCOs may be required to build to the specifications of multiple SDRs, they should be allowed to implement continuation data reporting in accordance with the approach that is easiest and most cost-effective for them. In practice, it would make most sense for the DCO to report at the end of day in order to allow the creation data report for the original swap to fully process, thus preventing SDRs from having to build exceptional mechanisms to process a termination message ahead of the creation of a record for the swap in the SDR.

[5]As defined in 78 Fed Reg. at 33586

Based on existing data flows, DCOs may not have all the data they need to report the termination of an original swap upon submission to clearing. In preparation for compliance, market participants will need to review any gaps and implement changes to ensure the USI of the original swap is provided to the DCO in all cases. With respect to identification of the alpha SDR, most reporting parties use the same SDR for all swaps or a particular SDR based on the asset class of the swaps. It would be more efficient for DCOs to collect once from their participants their designated alpha SDR(s) and retain as static data rather than obtaining it for each swap.

We would like to stress the importance of DCOs reporting such terminations in the manner prescribed by the alpha SDR per the requirement of §45.13(b). Currently, some DCOs send a duplicate message for the clearing swaps to the alpha SDR in a format that does not align with its prescribed method. As a result, the data cannot be consumed and used to update the original swap in order to prevent an orphaned alpha. An SDR should not be expected to accept and include in the data it provides to the Commission data from a party that is not a participant to its platform or that is not sent in accordance with its technical specifications.

We agree that a DCO should not incur an obligation to report continuation data for a swap that is submitted but not accepted to clearing. In our comments to Proposed SBSR, we disagreed with the SEC's proposal that a DCO should have to report whether or not a transaction was accepted for clearing. Such an obligation would be very onerous for DCOs, difficult for SDRs to implement and may impede the ability of the reporting counterparty to comply with its continuation data requirements.

Successor USI

We recognize the potential value of linking the original swap and clearing swaps that make up a clearing flow. But, we do not support the requirement for a DCO to include the successor Unique Swap Identifiers ("USIs") for the clearing swaps related to an original swap as part of the termination message it sends to the alpha SDR. Successor USIs are not currently required by any global regulator, thus potentially requiring significant build effort by DCOs, market infrastructure providers and SDRs to accommodate them. Instead we support inclusion of the USI for the original swap as the "prior USI" in reporting for the clearing swaps in accordance with current market practice. A requirement to separately report both successor USIs against the original swap and a predecessor USI against the clearing swaps is redundant. In the event it needs to do so, the Commission can trace the origins of the clearing swaps by use of the prior USI reported for the original swap.

Lifecycle events for an original swap

Question 16 of the Cleared Swap Rules seeks input on other lifecycle events which may be associated with an original swap. In response, we note that bunched orders may be submitted to clearing either before or after allocation. As such, a clearing transaction may have multiple associated original swaps or clearing swaps for the allocations that result from the bunched order. If allocation occurs prior to submission to clearing, then either the SEF, DCM or the relevant reporting counterparty to the uncleared swaps would report the pre-allocation swap and associated allocations, linking them via specifying the USI of the bunched order as the prior USI on any allocations that result in new transactions. If allocation occurs after clearing, then the DCO would be the reporting counterparty for both the cleared pre-allocation swap and the associated cleared allocations, and should report the USI of the pre-allocation clearing swap as the prior USI when reporting the clearing swap allocations.

D. Unique Swap Identifiers – Proposed Amendments to Section 45.5

We agree with proposed §45.5(d) which assigns the DCO the obligation to generate the USI for each clearing swap and transmit it to the relevant party. The actual counterparty facing the DCO in the clearing swaps will vary depending on the clearing model, but in either case the DCO should be required to ensure that both the clearing member ("CM") (if applicable) and the counterparty (if not the CM) receive the USI.

We support the intention to assign a namespace for the generation of USI to both registered and unregistered DCOs. We note that Orders of Exemption for Registration provided to clearing agencies[6] are not explicit that such unregistered DCOs have an obligation to create the USI nor that they will be assigned a USI namespace in order to meet such obligation. The Commission should make these USI namespaces for all DCOs publicly available so it is clear to market participants which DCOs are capable of creating a compliant USI.

E. Determination of which Counterparty Must Report – Proposed Amendments to Section 45.8

We agree with the proposed amendment to §45.8 to designate the DCO as the reporting counterparty for all clearing swaps. As the Commission notes, DCOs have assumed this role so the change codifies market practice.

However, we note that the modification of §45.8 to include the DCO as the reporting counterparty for clearing swaps will create a situation wherein two different reporting counterparties may be designated for the same transaction in some instances, as the reporting party hierarchy included in §43.3 does not include the DCO. While the Part 43 reporting party may utilize a third-party service provider, such as the DCO, to report on its behalf, the regulatory obligation to report remains with the non-DCO counterparty. We anticipate that the scope of transactions wherein this dual-reporting counterparty-designation would occur is limited to those clearing swaps created in the DCO for which there are no alpha swaps, i.e., CDS Clearing-Related Swaps and open offers. However, we recommend that the Commission modify the Part 43 reporting party hierarchy to reflect the amendments to §45.8 to ensure consistency and certainty in reporting.

We accept the proposal to remove §45.8(h) which requires the SEF/DCM to notify the parties if it cannot determine the reporting counterparty. We believe that in practice, SEFs have not been sending such notifications and instead rely on the method prescribed in their rulebooks to determine the reporting counterparty. However, we believe that it is extremely important that SEFs provide in their rulebooks and in practice, determine the reporting counterparty in accordance with the industry standard asset class tie-breaker logic[7] (the "ISDA RCP logic"), as applicable. If a SEF establishes a proprietary approach, its reporting counterparty determination on a swap may differ from the reporting counterparty determined by the counterparties. If this happens there may be a gap or duplication in continuation data reporting. Most SEFs have adopted the ISDA RCP logic, but we ask that the Commission recognize the value of an aligned industry approach to determining reporting counterparty and encourage SEFs to adopt or maintain their use of the ISDA RCP logic. If, however, the Commission follows our recommendation in section B above to designate the SEF/DCM as the reporting counterparty for original swaps only, this would

[6] See fn. 4

[7] http://www2.isda.org/attachment/NzUyOA==/CFTC%20Reporting%20Party%20Requirements%20updated%20%20Apr%202%202015_FINALDRAFT_clean.pdf

eliminate the need for these platforms to determine the reporting counterparty and the potential for any impact to data quality that would result from a mismatched determination.

F. Reporting to a Single Swap Data Repository – Proposed Amendments to Section 45.10

We agree with the proposed amendment to §45.10 to clarify that the requirement to report all data for a swap to the same SDR includes both Part 43 and Part 45 data.

We do not understand the purpose of adding proposed §45.10(d)(1), requiring the DCO to transmit the LEI of the SDR to which a clearing swap was reported (the "Clearing Swap SDR") to the counterparty. Since the counterparty does not have a separate reporting obligation with respect to the clearing swap, it is unclear what the value of this information is to the counterparty. Counterparties are unlikely to build mechanisms to retain such information on a transactional basis. Also, a particular DCO can be expected to report all clearing swaps for a particular asset class to the same SDR, so a counterparty would not need to be notified on a swap by swap basis. In addition, the Cleared Swap Rules propose to require the DCO to report the identity of the Clearing Swap SDR as part of the termination of the original swap. A separate requirement to notify the counterparty seems redundant and of unsubstantiated value.

H. Primary Economic Terms Data – Proposed Amendments to Appendix 1 to Part 45 – Tables of Minimum Primary Economic Terms

Proposed Modifications to existing PET data fields

Removal of internal counterparty identifier. We recognize the value of Legal Entity Identifiers ("LEIs") to identify the participants to a swap and support global adoption of LEIs. We note, however, that not all global regulators require parties to obtain and maintain an LEI, resulting in cases where a non-reporting counterparty cannot be identified by an LEI. We encourage the CFTC to continue to work with global regulators to ensure uniform adoption of the LEI standard across jurisdictions for parties engaging in derivatives transactions.

Execution venue and Clearing venue. We agree with the modifications to require an LEI to identify either an execution venue or clearing venue.

Block trade indicator. The proposed modification to acknowledge the final rules for block sizes seems to substantiate the inclusion of the block trade indicator as a Part 45 data field. As conveyed in the ISDA RFC Response[8], we continue to believe strongly that block trade indicator should be reportable under Part 43 only. The application of the block trade indicator is to allow the SDR to determine whether a delay in public dissemination applies to a publicly reportable swap transaction. Since such determination is made separately with respect to a swap and any lifecycle events on that swap, a particular swap may have more than one block trade indicator value applied during its life and such values may not be consistent. Appendix A contains no guidance with respect to how this field value should be treated for Part 45 vs. Part 43, and therefore the consistency and quality of the block trade indicator in Part 45 is unreliable. It is unclear what value this field contributes to Commission analysis of SDR data, therefore rather than modify the description associated with this field, we ask that the Commission remove it.

[8]ISDA RFC Response at page 35

Clearing indicator. The description for this field limits its application to alphas and trades not intended for clearing. We believe a more strategic approach that aligns with global recommendations is more appropriate. Please see our response below to the proposed new "Origin" field for our suggestions.

Proposed addition of new PET data fields applicable to all reporting entities for all swaps

Asset class. We accept the addition of the asset class to Appendix A. Reporting parties submit data to SDRs via asset class specific templates, so an associated asset class designation should be available.

Clearing exception or exemption type. The Cleared Swap Rules propose to change the clearing exception field from a Yes/No indicator to one that instead indicates the specific type of exception or exemption. Determining at point of trade whether an end-user exemption[9] or cooperative exemption applies would be very challenging and costly for firms to implement while providing no new information to the Commission since under the Part 50 regulations details regarding a party's exemption are already provided to SDRs. Reporting parties may facilitate the submission of an annual notice of clearing exemption on behalf of their counterparties, but this process is manual and the relevant information cannot be easily implemented for reporting on a swap by swap basis. Since reporting counterparties and reporting standards, like FpML, are currently capable of distinguishing inter-affiliate swaps we recommend that the values for the clearing exemption field be limited to "inter-affiliate" and "other". Since the data regarding end-user and cooperative exemptions is already available to the Commission under Part 50, the challenge, cost and effort of implementing a more granular set of values for Part 45 cannot be justified.

Proposed addition of new PET data fields applicable to DCOs for cleared swaps

Clearing Swap USIs/Original Swap USI. As stated in section C, we believe that it is redundant to require the reporting of successor USIs on the termination for an original swap report. Prior USIs are already supported by SDRs and industry reporting architectures. A requirement for the DCO to report the USI of the original swap as the prior USI when reporting the clearing swaps would allow the Commission to trace the transactions across SDRs, if needed.

Origin (house or customer). We support a mechanism to distinguish in reported data, transactions entered into via the principal model versus those transacted via the agency model. It would be more straightforward and in alignment with industry standard terminology for this to be a "Clearing Model" field with a description of "An indication whether the transaction was entered into via the agency or principal model". Though looking at this more strategically, we believe this field requirement ought to be combined with the Clearing indicator field.

The CPMI-IOSCO consultation *Harmonisation of key OTC Derivatives data elements*[10] suggests use of a single "Cleared" field that would support multiple values to distinguish transactions intended for clearing and those accepted for clearing. As stated in our response to that consultation[11], we support that approach and provided a recommendation for values that would provide additional clarity without overcomplicating compliance. Rather than requiring a separate "Clearing indicator" field for uncleared swaps/original

[9] We interpret the proposal for a value of "end-user" to cover any entity making use of the clearing exemption other than an inter-affiliate or cooperative entity.

[10] http://www.iosco.org/library/pubdocs/pdf/IOSCOPD503.pdf

[11] http://www2.isda.org/attachment/NzkzNA==/CPMI-IOSCO%20Response_ODE_9%20Oct%202015_FINAL.pdf , pages 7-9

swaps and a separate field pertaining to the model applied for clearing swaps, we suggest the Commission expand use of the existing Clearing indicator field. Instead of "Yes/No", the reportable values should be as follows:

- Not cleared
- Intent to clear
- Cleared (Principal)
- Cleared (Agency)

The associated guidance should make clear the following consistent application of the above values:

- "Not cleared" applies to a transaction that is not intended for clearing whether because it is ineligible for clearing, is not subject to a clearing mandate, or at the time of reporting the parties do not intend to voluntarily submit the transaction to clearing.
- "Intent to clear" would apply to any transaction for which, at the point of reporting, the parties intend to submit such transaction for clearing, regardless of whether the trade is subject to mandatory clearing or submitted voluntarily. This may apply to a single trade in a clearing transaction or multiple in the event of allocation prior to clearing submission. The reported value for an original swap would not be updated to either "Cleared (Principal)" or "Cleared (Agency)" upon clearing acceptance, but would persist as originally reported. If a transaction was reported as "Intent to clear" but was not accepted for clearing and will remain a bilateral transaction, then the value should be updated in reporting to "Not cleared".
- "Cleared (Principal)" should be the reported value for any component transaction of a clearing transaction enacted via the principal model, besides the original swap(s), regardless of whether the DCO is a counterparty to such transaction.
- "Cleared (Agency)" should be the reported value for any component transaction of an agency style clearing transaction, besides any original swap(s), regardless of whether the DCO is a counterparty to such transaction.

We know the Commission is actively involved in the efforts of the CPMI-IOSCO data harmonization group and assume the Commission will align with its recommendations. Therefore it would be more efficient and cost effective for the industry to implement an approach to this field that aligns with the global recommendations, rather than supporting an interim CFTC requirement and then being required to shift to a globally aligned approach at a later point.

I. Extraterritoriality and Clearing Models

In the Cost-Benefit Considerations, the Commission raises questions regarding the extraterritorial application of the Cleared Swap Rules, anticipating the minimization of compliance costs due to a potential for the satisfaction of SDR requirements across more than one jurisdiction by means of a single data submission. We agree that multi-jurisdictional reporting ought to be the global standard, but the current Part 45 regulations and the Cleared Swaps Rules do not facilitate this streamlined approach since there are still jurisdictional differences between regulatory expectations of how clearing transactions must be reported.

As discussed above, the Cleared Swap Rules introduce a new data field of "Origin" that does not align with the existing requirement in other jurisdictions, nor does it align with the proposed CPMI-IOSCO approach. In addition, the CFTC's explicit requirement for a USI means Unique Transaction Identifiers ("UTIs") created for global reporting for original swaps or clearing swaps that are not in the USI format cannot be used to report to the CFTC. An SDR would have to be able to accept both a USI and a UTI for the original swap and each clearing swap in a single report, otherwise the clearing agency would need to send a separate report to meet its CFTC obligations. Once the CFTC adopts use of a global UTI, a single report would be more realistic.

However, a further impediment to both multi-jurisdictional reporting and global data aggregation is regulatory differences with respect to how clearing transactions are reported based on the applicable clearing model. The inclusion of a field to identify the role of the CM is not sufficient guidance to remedy the inconsistent approach to reporting clearing transactions. The Commission does not include any explicit guidance with respect to the reporting of transactions subject to the principal model, rather the Cleared Swap Rules imply the status quo – meaning DCOs report to the CFTC in accordance with the agency model, regardless of whether the swap is entered into via the principal model. Following that approach misrepresents the parties to the relevant cleared swaps that make up the principal clearing transaction and contradicts the requirements to report that set of transactions in the European Union.

Under the principal model the CM will be the DCO's counterparty. The DCO should be required to report its transaction with the CM and then the CM would be responsible to report the corresponding transaction with its client. There may be multiple betas and gammas and each should be reported by the relevant reporting counterparty[12]. Under our proposed approach to a global "Cleared" field, each beta and gamma would be reported as "Cleared (Principal)", so that the risk of the associated transactions is apparent and regulators can observe from SDR data whether clearing mandates have been followed.

We have stated consistently to regulators, including in the ISDA RFC Response, our response to Proposed SBSR and our response[13] to the CPMI-IOSCO consultation on *Harmonisation of the Unique Transaction Identifier*, that the reported data for cleared swaps will only accurately reflect market risk if each trade that is part of a group of clearing transactions has its own USI/UTI and reflects the actual legal parties to such transaction in accordance with the relevant clearing model. Any other approach has implications on a global scale – as a single report cannot be used in multiple jurisdictions and data reported separately to jurisdictions will be not be reconcilable. In addition, the reported data will not tie out with the books and records of the counterparties when reporting is conducted contrary to the clearing model.

The Commission should provide explicit guidance in Part 45 that each transaction that is party of an associated group of clearing transactions (including those that do not include a DCO as a counterparty) be assigned its own USI, be reported and identified in reported data as a cleared swap, and reflect the accurate legal counterparties to such cleared swap. Although the agency model is predominant in the U.S., as the CFTC and other regulators look to expand cross-border reporting obligations, more transactions transacted under the principal model would become reportable under Part 45. The Commission should proactively address the requirements for reporting principal model trades that respects their distinctions in accordance with our comments above.

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[12] Diagrams of principal model clearing flows on pages 17-20 of ISDA's *Unique Trade Identifier (UTI): Generation, Communication and Matching*: http://www2.isda.org/attachment/NzMzMQ==/2015%20Mar%2020%20UTI%20Best%20Practice%20v11.0_clean.pdf

[13] http://www2.isda.org/attachment/NzkxMQ==/CPMI-IOSCO_UTI_Response_Sep%2030%202015_FINAL.pdf, pages 11, 12.

J. Clearing member affiliates

In the ISDA RFC Response[14], we raised the reporting issues associated with the Part 39 requirement that affiliates of a clearing member must use a house account of the CM to clear swaps. We advised that not all DCOs report the resulting clearing swaps in a consistent manner under Part 45. In some cases, where an affiliate of a CM enters into a swap that is subsequently submitted for clearing through its affiliated CM, the DCO reports the CM (and not the affiliate of the CM) as the counterparty to the clearing swap. This causes issues for the affiliate and its CM, because the affiliate (and not the CM) entered into the original swap and should end-up with a clearing swap. Books and records of the CM and its affiliate will reflect that the affiliate (and not the CM) has a clearing swap with the DCO. Additionally, for purposes of compression exercises the relevant DCOs commingle swaps of the CM with those of the CM affiliate. The end result is a discrepancy between what a DCO reports to the SDR and what the CM and its affiliates reflect on their books. The submission of the swap for clearing should not result in a change in the name of the counterparty that is reported to an SDR.

Since with the Cleared Swap Rules the Commission is attempting to rectify existing ambiguities regarding the reporting of cleared swaps, we ask that all known issues be resolved. We reiterate our prior request that as long as affiliates of a CM have to clear their trades through a house account of the CM, Part 45 provides explicit guidance that the Part 45 report submitted by the DCO for the clearing swap has to reflect the relevant affiliate (and not the CM) as the legal counterparty to the clearing swap with the DCO. Unless this is explicitly required by the Commission and consistently adhered to by DCOs, the data reported by the SDR will not be reconcilable against the books and records of the counterparty and may inaccurately reflect counterparty positions and risk.

K. Implementation

ISDA and its members broadly embrace the changes proposed in the Cleared Swap Rules and the clarity and improvement they should yield for the reporting of cleared swaps. Although we support the concept of a timely implementation for the relevant changes in order to realize such benefits, practically speaking it will be essential to provide sufficient time for reporting counterparties, DCOs, SDRs and market infrastructure providers to prepare and transition. Once the proposed amendments are finalized, it will be labor intensive for SDs and MSPs to analyze, build and test the requisite changes to both reportable data and reporting flows. An even greater burden is anticipated for DCOs and SDRs, whose timelines will impact when SDs and MSPs that are reporting counterparties can commence reporting in accordance with the new requirements. As such, we will defer to the SDRs and DCOs as to the timeframe that is ultimately feasible to comply with the final version of the Cleared Swap Rules. For all market participants such timeframes will be impacted by the deadlines for the build or alteration of other regulatory reporting requirements both domestically (e.g. SBSR) and internationally (e.g. MIFID II).

[14]ISDA RFC Response at page 46

ISDA Safe, Efficient Markets

III. Conclusion

ISDA and its members thank the Commission for its consideration of the comments on the Cleared Swap Rules provided herein. We welcome any questions you may have with respect to our recommendations and are happy to provide any additional feedback or information as may be helpful to the Commission's important task of clarifying and improving the Part 45 regulations.

Please contact me if you have any questions or require further input.

Sincerely,

Tara Kruse
Director; Co-Head of Data, Reporting & FpML
International Swaps and Derivatives Association, Inc.