



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Data

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### **Staff Advisory on Reporting of Errors and Omissions in Previously Reported Data**

The Division of Data (“DOD”) of the Commodity Futures Trading Commission (“Commission”) is issuing this staff advisory (“Advisory”) to set forth instructions for notifying staff when a swap execution facility (“SEF”), designated contract market (“DCM”), or reporting counterparty determines that it is unable to timely correct an error. In this Advisory, staff is also highlighting a specific type of error concerning swaps that remain erroneously open at swap data repositories (“SDRs”) despite having been terminated.<sup>1</sup>

#### **Background**

In November 2020, the Commission amended Parts 43 and 45 to require a SEF, DCM, or reporting counterparty to notify staff if it will not timely correct a swap data error or errors.<sup>2</sup> Error corrections must be made as soon as technologically practicable following discovery of the error and, in all cases, within seven business days after discovery.<sup>3</sup> Any error that a reporting counterparty discovers or could have discovered during the verification process is required to be corrected.<sup>4</sup> If a SEF, DCM, or reporting counterparty determines that it will “fail to timely correct an error” “for any reason,” it shall notify staff within 12 hours of its determination that it will fail to timely correct the error. That notification shall include “an initial assessment of the scope of the error or errors” discovered and “any initial remediation plan for correcting the error or errors, if an initial remediation plan exists.”<sup>5</sup>

The compliance date for the November 2020 amendments to Parts 43 and 45 is May 25, 2022. On January 31, 2022, DOD issued a letter taking a no-action position with respect to the November 2020 amendments to Parts 43 and 45, among other provisions.<sup>6</sup> DOD stated that the

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<sup>1</sup> See 17 C.F.R. § 43.3(e); 17 C.F.R. § 45.14(a).

<sup>2</sup> See Final Rule, Certain Swap Data Repository and Data Reporting Requirements, 85 Fed. Reg. 75601, 75626-75631 (Nov. 25, 2020).

<sup>3</sup> 17 C.F.R. § 43.3(e)(1)(i); 17 C.F.R. § 45.14(a)(1)(i).

<sup>4</sup> 17 C.F.R. § 43.3(e)(1)(i); 17 C.F.R. § 45.14(a)(1)(i).

<sup>5</sup> 17 C.F.R. § 43.3(e)(1)(ii); 17 C.F.R. § 45.14(a)(1)(ii).

<sup>6</sup> See CFTC Letter 22-03 (Jan. 31, 2022).

Division will not recommend that the Commission commence an enforcement action against an entity for failing to comply with the amendments to Parts 43 and 45 before December 5, 2022.<sup>7</sup>

After December 5, 2022, a SEF, DCM, or reporting counterparty that discovers data errors that it cannot timely correct must notify staff as required by the regulations. This Advisory, including the appended Swap Data Error Correction Notification Form, sets out the form and manner by which such notifications shall be made.

### **Instructions for Notifications**

Notifications made pursuant to regulations 45.14(a)(1)(ii) and/or 43.3(e)(1)(ii) shall be sent to [swapserrornotification@cftc.gov](mailto:swapserrornotification@cftc.gov) and shall include in the subject line of the email the name of the SEF, DCM, or reporting counterparty making the notification. Notifications shall include a completed Swap Data Error Correction Notification Form, appended below, and separately published on the Commission's website at [https://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF\\_17\\_Recordkeeping/index.htm](https://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_17_Recordkeeping/index.htm).

The Swap Data Error Correction Notification Form enumerates information sufficient to provide an "initial assessment of the scope of the error" and provides a SEF, DCM, or reporting counterparty an opportunity to present an initial remediation plan.

### **Specific Type of Error Concerning Erroneously Open Swaps**

Swaps that erroneously appear in SDRs as open swaps, despite having been terminated,<sup>8</sup> account for a significant number of existing swap data errors that staff have identified. This type of error results in the accumulation of erroneously open swaps at the SDRs over time, which impedes staff's use of the swap data.

Regulation 45.4 requires reporting swap terminations as an element of continuation data, thereby providing SDRs with the information needed for them to change a swap's status from open to closed. For example, in the case of cleared swaps, the obligation to report the termination of an original swap at the SDR is on the derivatives clearing organization.<sup>9</sup> In

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<sup>7</sup> *Id.* DOD also stated that it will not recommend the Commission commence an enforcement action for failure to comply with regulations 43.4(h) and 43.6, which concern post-initial cap sizes, block trades, and large notional off-facility swaps (collectively, "Block and Cap Amendments"), before December 4, 2023. CFTC Letter 22-03, at 3. That no-action position with respect to the Block and Cap Amendments does not impact SEFs, DCMs, and reporting counterparties' obligations to correct swap data errors for swaps subject to treatment as block trades or large notional off-facility swaps.

<sup>8</sup> See 17 C.F.R. § 45.14(c)(1)(iv) (defining "error" to include the circumstance where any of the swap data for a swap that is no longer an open swap is maintained by the SDR as if the swap is still an open swap); 17 C.F.R. § 43.3(e)(4)(i)(D) (defining "error" with the same definition in § 45.14(c)(1)(iv) with the exception that "swap transaction and pricing data" is used instead of "swap data").

<sup>9</sup> See Final Rule, Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, 81 Fed. Reg. 41736, 41748-9 (Jun. 27, 2016).

addition to this continuation data reporting obligation, counterparties to the original swap have an independent obligation to correct errors of this nature.<sup>10</sup>

Given the volume of swap data for erroneously open swaps, it appears that derivatives clearing organizations and reporting counterparties have not reported required swap continuation data to reflect the termination of a significant number of swaps. These failures have resulted in swap data errors that are accumulating over time and decrease staff's ability to efficiently use the swap data. Staff is highlighting this particular swap data error in order to notify market participants of the scope of this specific swap data reporting error, remind market participants of certain obligations under the Commission's regulations, and announce the importance and attention that staff is giving to this matter.

## Conclusion

SEFs, DCMs, and reporting counterparties have had notice of error correction requirements since the Commission unanimously approved such requirements on September 17, 2020. Although the error notification requirement was promulgated on November 25, 2020, the requirement that a reporting counterparty report swap continuation data "in a manner sufficient to ensure that all data in the [SDR] concerning the swap remains current and accurate" dates to the original swap data reporting rules promulgated in 2012;<sup>11</sup> as does the requirement that each registered entity and swap counterparty "report any errors and omissions in the data so reported."<sup>12</sup> Accordingly, SEFs, DCMs, and reporting counterparties should review, as early as possible, their open swaps data in order to identify and correct any errors. Correcting outstanding errors in swap data, including swap data for swaps that are no longer open swaps but are maintained by an SDR as if the swaps were still open swaps,<sup>13</sup> in advance of December 5, 2022, may reduce the number of Swap Data Error Correction Notification Forms that SEFs, DCMs, and reporting counterparties will be required to submit to self-report swap data errors.

This Advisory is intended to remind the affected parties of their obligations under the CEA and Commission regulations. It is not intended to create any enforceable rights, any new binding rules or regulations, or to amend existing rules or regulations. This Advisory represents only the views of DOD and does not necessarily represent the views of the Commission or of any other division or office of the Commission. If you have any questions concerning this Advisory, please contact Tom Guerin, Special Counsel, Division of Data, at (202) 836-1933 or [tguerin@cftc.gov](mailto:tguerin@cftc.gov), Paul Chaffin, Special Counsel, Division of Data, at (202) 418-5185 or [pchaffin@cftc.gov](mailto:pchaffin@cftc.gov), or Owen Kopon, Associate Director, Division of Data, at (202) 418-5360 or [okopon@cftc.gov](mailto:okopon@cftc.gov).

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<sup>10</sup> See Final Rule, Certain Swap Data Repository and Data Reporting Requirements, 85 Fed. Reg. 75601, 75628 n.252 (Nov. 25, 2020) ("SEFs, DCMs, and reporting counterparties have the responsibility to correct errors . . . even if the SEF, DCM, or reporting counterparty is not at fault for the error....").

<sup>11</sup> 17 C.F.R. § 45.4(a) (2012).

<sup>12</sup> 17 C.F.R. § 45.14(a) (2012); Final Rule, Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136, 2170 (Jan. 13, 2012).

<sup>13</sup> See 17 C.F.R. § 45.14(c)(1)(iv).

Sincerely,

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Tamara Roust  
Chief Data Officer  
Division of Data

**Swap Data Error Correction Notification Form**  
**Regulations 45.14 and 43.3 Notification of Failure to Timely Correct: Required Form and Manner**

Notifications made pursuant to regulations 45.14(a)(1)(ii) and/or 43.3(e)(1)(ii) shall be sent to [swaperrornotification@cftc.gov](mailto:swaperrornotification@cftc.gov) and shall include in the subject line of the email the name of the swap execution facility, designated contract market, or reporting counterparty making the notification (“Notifying Entity”). Each notification shall include an initial assessment of the scope of the error(s) that were discovered and any initial remediation plan for correcting the error(s). In providing the initial assessment of the scope and any initial remediation plan, the notification shall include the following information:

1(a). Date of notification

1(b). Name(s) of entity making the notification

1(c). Legal Entity Identifier(s) (“LEIs”) of Notifying Entity

1(d). Contact person(s) regarding notification

1(e). Contact person(s) email and phone number

2. Statement clarifying whether the notification concerns error(s) relating to:

- (i) swap data previously reported to a swap data repository (“SDR”);
- (ii) swap data that was not previously reported to an SDR; or
- (iii) both swap data previously reported *and* swap data not previously reported to an SDR

3. If the notification concerns error(s) relating to data previously reported to an SDR, a listing of the Unique Swap Identifiers and/or Unique Transaction Identifiers (“USIs” and/or “UTIs”) associated with swap reports that are representative of the error(s)

4. Swap asset class(es) to which the error(s) pertain

5. SDR(s) to which the swap data was/should have been reported

6. Other parties, if any, that the Notifying Entity has alerted to the error(s) (e.g., SDR(s), National Futures Association, swap counterparties, etc.)

7(a). Number of transactions impacted by the error(s)

7(b). Number of swap reports impacted by the error(s)

7(c). Time period during which error(s) occurred (“Relevant Time Period”)

7(d). The percent of the Notifying Entity's reportable transactions impacted during the Relevant Time Period (e.g., (number of transactions impacted by the error(s) / number of transactions reported by Notifying Entity during the Relevant Time Period) \* 100)

7(e). The percent of the Notifying Entity's reportable transactions impacted during the Relevant Time Period *for each impacted asset class* (e.g., (number of interest rate swap ("IRS") transactions impacted by the error(s) / number of IRS transactions reported by Notifying Entity during the Relevant Time Period) \* 100)

8. Date the Notifying Entity discovered the error(s)<sup>1</sup>

9. Description of how the Notifying Entity discovered the error(s)

10. Brief narrative description of the error(s)

11. Clarification regarding whether the issues underlying the error(s) are still producing new error(s) as of the date of the notification

12 (a). Any initial or other remediation plan, including the estimated date(s) when the error(s) will be corrected

12 (b). If no initial or other remediation plan exists, the date when the Notifying Entity expects to have a remediation plan to correct the error(s)

13. An indication regarding whether the Notifying Entity has reviewed its swaps reporting processes to identify other potential reporting issues similar to that underlying the error(s)

14. Clarification regarding whether the error(s) impacted the Notifying Entity's reporting obligations under Part 45, Part 43, or both Parts 45 and 43

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<sup>1</sup> See 17 C.F.R. § 45.14(a)(1)(i) ("Any error that a reporting counterparty discovers or could have discovered during the verification process required under [17 C.F.R. § 45.14(b)] is considered discovered . . . as of the moment the reporting counterparty began the verification process during which the error was first discovered or discoverable.").