

## ISDA Reporting Counterparty Rules



## **Dodd Frank Act - Swap Transaction Reporting Party Requirements**

*This version includes a correction in “Reporting Party Rule Determination: status and description of the rule” within Commodities to reflect ‘reverse ASCII’ in line with the ISDA document “Asset Class Tie-breaker Logic” of the same date (12 March 2018). This corrected version supersedes the original one published on March 12, 2018.*

*Latest updates can be found on ISDA’s Data & Reporting website  
<http://www2.isda.org/functional-areas/technology-infrastructure/data-and-reporting/>*

### **1. Background to This Document and Status**

The generation of a Unique Swap Identifier (“USI”) can be linked to reporting counterparty (“RP”) responsibilities while the process of USI generation and determination of an RP are separate and distinct processes.

The ISDA USI Working Group was responsible for the USI generation and documentation of RP rules which are discussed with and agreed to by the various asset class implementation groups and steering committees. The ISDA Data and Reporting Compliance Working Group (“DWG”) will identify next steps and ongoing maintenance of this document.

### **2. Reporting Party Requirements**

The Commodity Futures Trading Commission (“CFTC” or “Commission”) specified in the final rules for Part 45 that complete data concerning swaps is available to regulators, including:

1. Creation data; and
2. Continuation data of all life cycle events affecting the terms of the swap until final termination or expiration.

The CFTC also specified in the final rules for Part 43 that certain anonymized data concerning swaps is publicly disseminated to enhance price discovery and increase transparency. Registered entities and swap counterparties must report swap creation data electronically to a Swap Data Repository (“SDR”). Required swap creation data includes all primary economic terms (“PET”) data and all confirmation data for a swap. Required swap continuation data must be reported to the SDR to ensure that all data concerning the swap remains current and accurate and includes any change to the primary economic terms of the swap. Continuation data generally must be reported by a swap dealer (“SD”) or major swap participant (“MSP”) to the SDR no later than the same day of such a change (non-SD/MSP RPs have longer timeframes). Additionally, regulations require SD and MSP reporting counterparties to report valuation data to fully describe the daily mark of the transaction (such as the daily “mark to market”) for each of their swaps on a transactional basis.

Registered entities and counterparties required to report swap creation data or swap continuation data may contract with third-party service providers to facilitate reporting. However, these entities remain fully responsible for reporting as required by the regulations.

### 3. Reporting Counterparty Responsibility

The RP is the party to a swap with the responsibility to report a swap<sup>1</sup> to an SDR as soon as technologically practicable after execution in accordance with the Dodd Frank Act.<sup>2</sup> Under the Dodd-Frank Act and CFTC regulations, one party must bear responsibility to ensure that the trade is reported. The CFTC has created a hierarchy whereby registered SDs always report when trading with MSPs or End Users and registered MSPs always report when trading with End Users. (See Annex 1)

#### For swaps executed on facility:

- For Parts 43 and 45 swaps executed on a SEF or DCM the SEF or DCM must report swap creation data to an SDR “as soon as technologically practicable.”
- For Part 45 swap continuation data reporting only, if neither party is a U.S. person but the swap is executed on a SEF or DCM or otherwise executed in the U.S. or cleared by a DCO, then the parties are required to agree which counterparty will be the RP.

#### For swaps executed off-facility: (both U.S. persons)

- For Parts 43 and 45, if only one party is an SD or MSP, the SD or MSP shall be the RP.
- For Parts 43 and 45, if one party is an SD and the other party is an MSP, the SD shall be the RP.
- For Parts 43 and 45, if both parties are SDs, the SDs shall designate which party shall be the RP (see section 5 - Same Level Determination of the Reporting Party).
- For Parts 43 and 45, if both parties are MSPs, the MSPs shall designate which party shall be the RP (see section 5 - Same Level Determination of the Reporting Party).
- For Part 45 only:
  - If both parties are non-SDs/MSPs, and only one party is a financial entity,<sup>3</sup> the party that is a financial entity is the RP.
  - If both parties are non-SDs/MSPs that are financial entities or non-SDs/MSPs that are not financial entities, the parties shall designate which party (or its agent) will be the RP.
- For Part 43 only:
  - If both parties are non-SDs/MSPs, the parties shall designate which party (or its agent) shall be the RP for the publicly reportable swap transaction (see section 5 - Same Level Determination of the Reporting Party).

<sup>1</sup> Under Part 45 all swaps must be reported; however the reporting requirements under Part 43 only require an RP to report a “publicly reportable swap transaction” which means:

(1) Any executed swap that is an arm's-length transaction between two parties that results in a corresponding change in the market risk position between the two parties; or

(2) Any termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of the swap.

<sup>2</sup> Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> As defined in Section 2(h)(7)(C) of the Commodity Exchange Act.

For swaps executed off-facility: (one U.S. person only)

- For Part 45 only, if both parties are non-SDs/MSPs, the U.S. person is the RP.
- For Part 43 only, if both parties are non-SDs/MSPs the parties shall designate which party (or its agent) shall be the RP for the publicly reportable swap transaction.
- For Parts 43 and 45, the Commission generally agrees that if a registered SD or MSP is a party to a swap, regardless of whether it is non-U.S. person, it should be the RP in accordance with the hierarchy described above for swaps with two U.S. persons.

For swaps accepted for clearing:

The determination of the RP under § 45.8 of the Commission's Regulations applies to all swaps, both cleared and non-cleared. The general hierarchy for determining the RP for swaps accepted for clearing is the same as that detailed above for swaps executed off-facility.

However, it should be noted that with respect to the definition of non-SD/MSP set forth in § 45.1 of the Commission's Regulations, the CFTC Staff interpret the regulations such that DCOs will have reporting obligations for cleared swaps that are not dependent on whether the DCO is deemed to be an RP.

Further details on the reporting of cleared swaps transactions can be found in the CFTC Division of Market Oversight publication entitled "Frequently Asked Questions (FAQ) on the Reporting of Cleared Swaps".<sup>4</sup>

#### **4. Designation of reporting responsibilities:**

Parties required to report pursuant to Part 43 or Part 45 may contract with third parties to facilitate reporting. In this context, third parties may include, but are not limited to, the other counterparty to the swap, a third party service provider as well as the DCO in the case of a cleared swap. As a result, the RP may delegate the actual process of reporting data to the SDR to the other counterparty as well as to a third party. However, the party that is required to report remains fully responsible for compliance with the reporting obligations under Part 43 and Part 45.

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<sup>4</sup> Available at:

[http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/clearedswapreportingredline\\_fa.pdf](http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/clearedswapreportingredline_fa.pdf)

## 5. Same Level Determination of the Reporting Party

In situations where both counterparties have the same hierarchical status in executing a swap transaction, the regulations established a mechanism for the parties to the swap transaction to follow in choosing the RP.

In such situations (e.g., both counterparties are SDs) the regulations require the counterparties to agree, as either one term of their swap transaction for off-facility swaps or as a post-execution side agreement for swaps executed on an SEF or DCM, which counterparty will fulfill the reporting obligations with respect to the swap. Therefore SDs and MSPs are establishing a set of rules (“Reporting Party Rules”) for each swap transaction to determine which counterparty has the RP responsibility for real-time, creation and continuation data for situations where the CFTC Regulations indicate that the parties shall agree on the RP as a term of the swap transaction.

### Prime Brokerage Intermediation

Notwithstanding the reporting hierarchy in Parts 43 and 45 and the Reporting Party Rules provided below, an alternative approach to RP determination applies to transactions intermediated by a Prime Broker (“PB”). In brief and in very general terms, under customary PB arrangements, a client of a PB agrees on the terms of a PB intermediated trade with an Executing Broker (“EB”) and then the client and/or the EB gives up the trade to a PB for its acceptance. If the trade terms are within certain pre-agreed parameters and the PB thus accepts the trade, the result is two off-setting transactions, one between the EB and PB and the second between the PB and the client. In these cases, reporting eligibility for each trade is determined independently based on the status of the two parties to the transaction, and the reporting responsibilities are as follows:

EB is the RP for the EB-PB trade

PB is the RP for the PB-Client trade

For the avoidance of doubt, there is no separate transaction between the EB and client to report.

*Please note:* The above approach to determine the RP to a PB Intermediated swap was acknowledged by the CFTC in No Action Letter No. 12-53<sup>1</sup>. Although the relief under NAL 12-53 has expired, the RP approach is still industry best practice, and ISDA continues to work with the CFTC to permanently adopt the approach in revisions to Part 43 and Part 45. Included in those discussions are outstanding questions regarding cross-border treatment for PB Intermediated transactions (e.g. if EB and/or PB is not a SD, MSP or U.S. Person).

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<sup>1</sup> <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/12-53>

## **6. Reporting Party Rule Determination: status and description of the rule**

The ISDA Unique Swap Identifier (USI)/(UTI) Trade Identifier Working Group proposed that each asset class Steering Committee would determine the “Reporting Party Rules” for the asset class where two parties to a swap transaction are on the same hierarchical level. This proposal was approved and ratified by the DWG.

Because of the different characteristics and workflows of the various asset classes: Rates, Credit, Equity, Commodity and FX, each asset class is required to analyze in detail the specific trade workflows in formulating a “Reporting Party Rule” convention unique to that asset class.

Regardless of asset class, each set of reporting party rules provided below assumes that both parties have a reporting obligation under the Commission’s requirements. In the event only one party has a reporting obligation, that party is the RP.

### **6.1 Reporting Party Rules**

#### **1. Credit**

Where both parties are the same hierarchy level (e.g., MSP vs. MSP, SD vs. SD, or non- SD/MSP vs. non-SD/MSP), the RP is the Floating Rate Payer (a/k/a ‘seller’). For Swaptions, the RP is the Floating Rate Payer of the underlying swap.

For Real Time Reporting of step-in novations, the RP should be determined between the Transferor and Transferee based on the above and the position of the Transferee. So, if both parties are of the same classification and the Transferee is the Seller (Floating Rate Payer) in the novated transaction, the Transferee is the RP. If the Transferee is the Buyer (Fixed Rate Payer), then the Transferor is the RP.

For novated transactions, the RP should be reassessed between the Transferee and Remaining Party based on the above.

## 2. Rates

### Product Attribute Determination

RP Tiebreaker Logic - Rates		
Trade Type	Explanation	Reporting Party
Cap/Floor	When a single Fixed Rates Payer exists	Fixed Rate Payer. Otherwise Reverse ASCII sort, first LEI/pre-LEI
Debt Option	All	Option Buyer
Exotic <sup>1</sup>	All	Reverse ASCII sort, first LEI/pre-LEI
FRA	All	Fixed Rate Payer
IRS Basis	All	Reverse ASCII sort, first LEI/pre-LEI
IRS Fix-Fix	All	Reverse ASCII sort, first LEI/pre-LEI
IRS Fix-Float	All	Fixed Rate Payer
IRSwap: Inflation	When a single Fixed Rates Payer exists	Fixed Rate Payer. Otherwise Reverse ASCII sort, first LEI/pre-LEI
IRSwap: OIS	All	Fixed Rate Payer
Swaption	All	Option Buyer
XCCY Basis	All	Reverse ASCII sort, first LEI/pre-LEI
XCCY Fix-Fix	All	Reverse ASCII sort, first LEI/pre-LEI
XCCY Fix-Float	All	Fixed Rate Payer

### Tiebreaker Logic

When the LEI/pre-LEI tiebreaker is invoked the following processes will be used:

1. Identifier Tiebreaker Logic Scenarios
  - i. When only one firm has an LEI/pre-LEI then the party with the LEI/pre-LEI is the RP.
  - ii. When both firms have an LEI/pre-LEI then determine based on comparison of the two LEI/pre-LEIs in accordance with the below.
2. Determining sort order of identifiers
  - LEI/pre-LEI are comprised of characters from the following set {0-9, A-Z}.
  - For avoidance of doubt, before comparing IDs convert all IDs to UPPER CASE only.

<sup>1</sup> Cancellable Swaps are categorized as 'Exotic' in line with the work completed in partnership with several supervisory authorities in March 2010 - G14 firms committed to drive a high level of product, processing and legal standardization in each asset class with a goal of securing operational efficiency, and mitigating operational risk. The resulting standardization documents are located on ISDA's website at

<http://www2.isda.org/attachment/Mzk3Mg==/Standardization%20Legend%20for%20Rates%20Final.pdf>

- For comparison basis the sort order will be reverse ASCII sort order. For avoidance of doubt the following are sort order of precedence:
  - Z, Y, X, W, V, U, T, S, R, Q, P, O, N, M, L, K, J, I, H, G, F, E, D, C, B, A, 9, 8, 7, 6, 5, 4, 3, 2, 1, 0.

3. When comparing two IDs the RP will be the firm with the first ID in the list when sorted in reverse ASCII sort order.



### 3. Equity

When both parties are of the same hierarchy level, the RP will be the:

- Seller of performance on any product in the taxonomy.<sup>5</sup>
- Seller of product on all other (exotic) products in the taxonomy.
- If seller cannot be identified the fall back would be for the parties to agree amongst themselves.
- For Portfolio Swaps Agreements (PSA's) the seller will remain the seller regardless of the underlying's performance.

For the avoidance of doubt, if the trade is confirmed via negative affirmation, the provider of the negative affirmation agreement is the RP.

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<sup>5</sup><http://www2.isda.org/otc-taxonomies-and-upi/>

#### 4. Commodities

A seller convention applies if the executed trade is one of the trade types enumerated in the table below. Otherwise, the LEIs of the parties should be compared in reverse ASCII sort order and the party with the first ID in the list will be the RP.

RP Tiebreaker Logic - Commodities		
Trade Type	Explanation	Reporting Party
<b>Fixed Floating Swap</b>	Seller of the Fixed leg = Reporting Party	Fixed leg seller (Receiver of Cash on the fixed leg)
<b>Option</b>	Receiver of premium payment or Option writer	Seller
<b>Swaption</b>	Receiver of premium payment or Swaption writer	Seller
<b>Option Strategies (Collars, Corridors, Multi-leg)</b>	Premium receiver is the Seller = Reporting Party	Premium Receiver
	If no premium, use Reverse ASCII sort logic	Use Reverse ASCII sort logic
<b>For trade types not listed above</b>	Any trade that falls outside of that list will have the reverse ASCII convention applied based on the LEI. The LEI selected as the RP will be the LEI at the top of that sort order. As an example, ASCII is the same sort logic that MS Excel applies.	

## 5. FX

When asset class tie-breaker logic needs to be applied:

- For Cash trades: The RP is the counterparty selling the currency that occurs first in the 26-letter English alphabet.
- For Options: The RP is the seller of the option.

RP Tie Breaker Logic - FX		
Taxonomy	Rule	Comment
<b>Forward</b>	FX Cash Rule	For FX Swaps, the Reporting Party of both legs of the swap would be determined by applying the Cash Rule to the far-leg of the Swap
<b>NDF</b>	FX Cash Rule	n/a
<b>Option</b>	Option Seller Rule	n/a
<b>NDO</b>	Option Seller Rule	n/a
<b>Simple Exotic</b>	Option Seller Rule	n/a
<b>Complex Exotic</b>	See comment	For a complex exotic product where there is an unambiguous seller of the product, then Option Seller Rule would apply. The seller determination would be driven by the seller as agreed in the standard FpML representation of the product. IF there is no clear seller, then the FX Cash Rule would apply.

For more information see:

[http://www.gfma.org/uploadedfiles/initiatives/foreign\\_exchange\\_\(fx\)/determiningreportingpartyunderdoddfrank.pdf](http://www.gfma.org/uploadedfiles/initiatives/foreign_exchange_(fx)/determiningreportingpartyunderdoddfrank.pdf)

## 7. Change in Registration Status

On October 16, 2012, the ISDA DWG participants were polled to determine what should happen to the RP obligations on a trade executed between, for instance, an SD and a non-MSP/SD, where at a later date, the non-MSP/SD becomes an SD. Determination of RP may equally be impacted by a party's deregistration as an SD/MSP.

Industry consensus was reached that the RP obligation remains unchanged through the remaining life of the USI until it is matured / terminated / novated away / compressed into a new transaction. The RP is reassessed only when a new USI is created. (In summary if an event does not result in a new USI, the RP remains unchanged. If the event results in a new USI, the RP is calculated a fresh for the new USI using the statuses effective at that date).

In general, a contract intrinsic event would not result in a new USI, nor would a bilaterally negotiated event that does not change the parties to the swap. Events that change the parties to the swap and/or result in a new swap(s) would prompt the creation of a new USI(s). The following table indicates which lifecycle events would result in a new USI at the point the event occurs or is executed:

Event Type		Triggers new USI Generation?
New Trade		Y
Amendment (correction to the trade for any trade attribute or fee)		N
Cancel (trade booked in error)		N
Trade Allocated	Original Unallocated "Block" Trade	Y
	Allocated Trades	Y (each allocation)
Cleared Positions	Original Bilateral Trade ("alpha")	Y
	Cleared Positions ("beta" and "gamma")	Y
	Original Unallocated "Block" Trade	Y
	Block cleared pre-allocation	Y
	Post-clearing allocations	Y (each allocation)
Termination / Unwind		N
Partial Termination / Partial Unwind / Partial Decrease		N
Increase / Decrease		N
Full or Partial Novation	Original Trade (b/t Transferor and Remaining Party)	Y
	Novated Trade (b/t Transferee and Remaining Party)	Y
	Fee trade (b/t Transferor and Transferee) (For Part 43 reporting <u>only</u> )	Y

Event Type		Triggers new USI Generation?
Full or Partial Novation – 4 way	Original Trade (b/t Transferor 1 and Remaining Party)	Y
	Novated Trade (b/t Transferee 1 and Transferee 2)	Y
	Free Trade (b/t Transferor 1 and Transferee 1) (For Part 43 reporting <u>only</u> )	Y (For Part 43 reporting)
Exercise	Original Option	Y
	New Swap (resulting from Physically Settled option)	Y
Prime Brokerage	EB-client execution	n/a
	EB: PB leg	Y
	PB: Client leg	Y
Succession Events	Rename	N
	Reorganizations	Y (each new trade)
Credit Events	Bankruptcy / Failure to Pay	N
	Restructuring	Y <sup>6</sup>
Compression Events	Original Trade - Terminated	N
	Original Trade – Amendment/Increase/Decrease	N
	New Trade	Y
CCP: Position Transfer (i.e. transfer of a trade between Clearing Members)		Y
CCP: Compression		Y

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<sup>6</sup> Depending on product type and triggering activity

## 8. Part 46 Historical Swap Reporting

As described in the prior section, each individual swap should have a single Reporting Party (RP) for the life of the swap. Therefore the party responsible for reporting an historic swap under the CFTC's Part 46 regulations should be the party that first incurs the RP obligation and retains that obligation throughout the remaining life of the swap, if any. Such RP should be determined in accordance with section 46.5 of the CFTC's rules and the Reporting Party Rules specified in this document.

Given the uncertainties in the evolving regulation of the swaps marketplace, including but not limited to the interplay of the CFTC's Cross Border Interpretive Guidance<sup>7</sup>, Exemptive Order<sup>8</sup> and/or a change in the swap dealer registration status of counterparties, for a swap between two non-U.S. Persons, the parties may have reporting obligations commence at different points in time. To prevent duplication or gaps in historic swap reporting, participants should determine the RP for an historic swap, whether live or non-live, based on the Reporting Party determination rules provided in this document, without regard to whether the other party's reporting obligation is currently in effect, unless otherwise indicated in this Section 8. Each party should submit historical swap data for the swaps for which they are the RP in accordance with the commencement of their reporting obligation and in accordance with the reporting logic developed and agreed to among the swap dealers then in effect at the time of their reporting obligation.

For swaps between two non-U.S. persons, if a new swap (reportable under Part 45) was entered into in the time period where only one party ("Party 1") had already a Part 45/46 reporting obligation while the Part 45/46 reporting obligation for the other party ("Party 2") is still delayed/not yet in effect, Party 1 may rely for its Part 45 reporting obligation for the new swap on the reporting party logic set forth in this document with the result that any new trade not reported by Party 1 under Part 45 (because the reporting party logic required Party 2 to report such trade) will be reported by Party 2 as part of its (later in time) Part 46 reporting obligation.

For swaps between two non-U.S. persons, if a party to a swap changes its status and becomes a SD (the "New SD") in the time period when all applicable time delays permitted under the Exemptive Order expired (e.g., the time period starting December 22, 2013), if the other party to the swap was a SD already prior to that time period (the "Old SD"), the Old SD may have already reported the historical swap data and, therefore would remain the RP for the life of the USI.

If one of the parties to the swap is a U.S. Person, that party may have already reported the historical swap data, and therefore would remain the RP for the life of the USI.

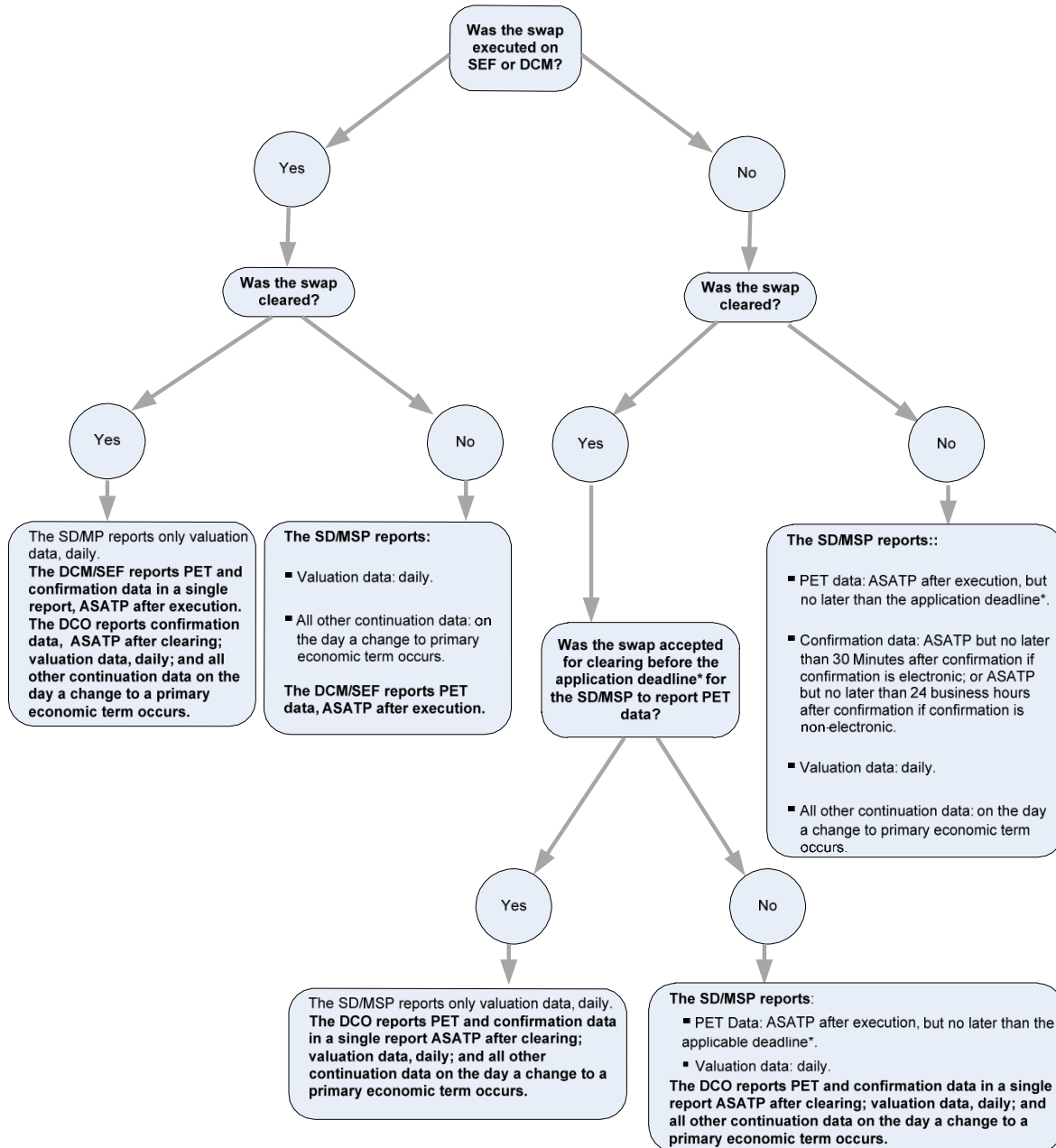
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<sup>7</sup> CFTC's *Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations* published July 26, 2013

<sup>8</sup> CFTC's *Exemptive Order Regarding Compliance with Certain Swap Regulations* published July 22, 2013

## Annex 1 (CFTC Reporting Obligations)

### SD/MSP Is the RP - Reporting Obligation Flowchart – (Source CFTC Final Part 45 Rules)

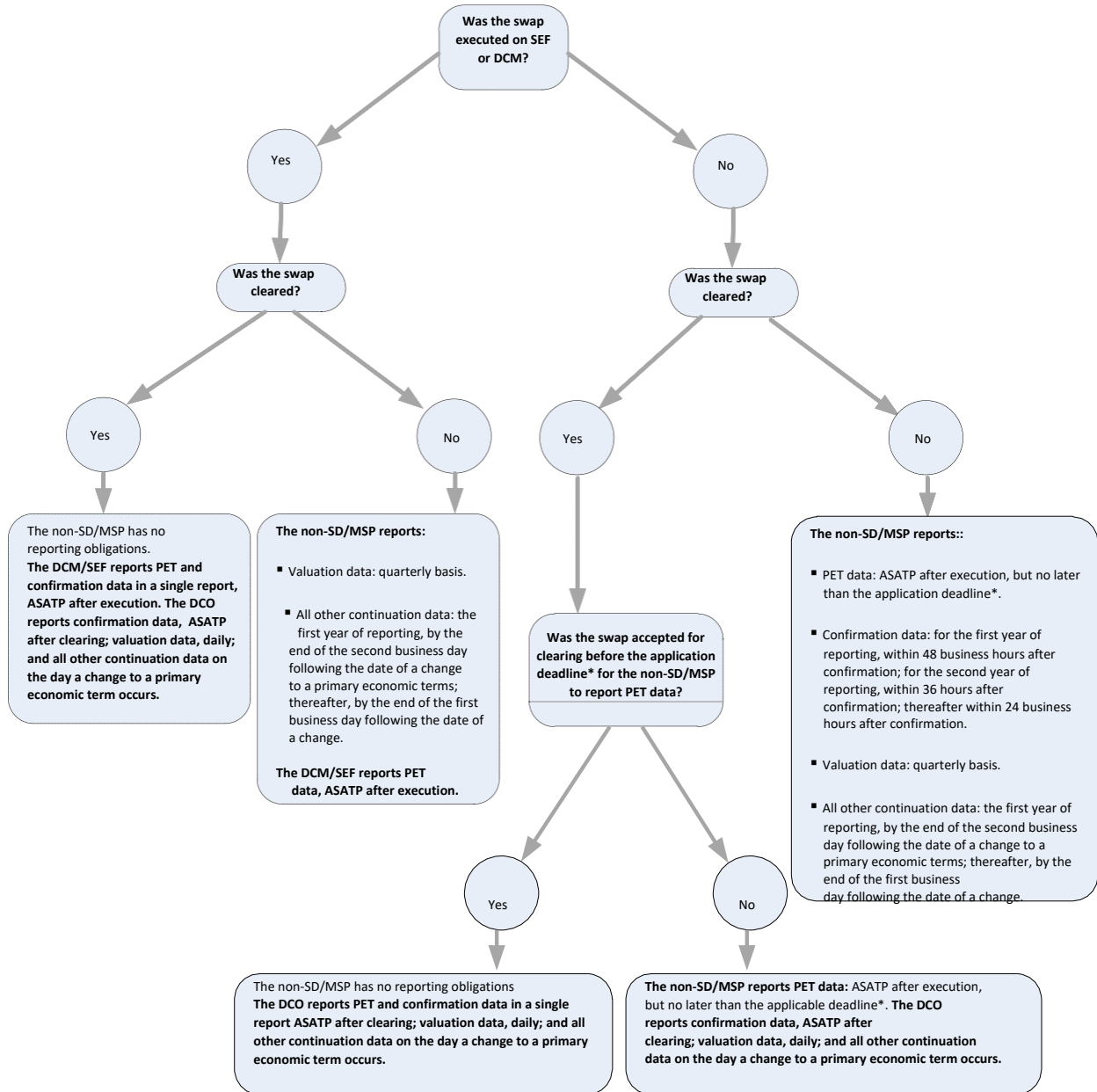


\* Swap subject to mandatory clearing: 30 minutes after execution (year 1), 15 minutes after execution (thereafter).

Swap not subject to mandatory clearing (credit, equity, FX, rates): 1 hour after execution (year 1), 30 minutes after execution (thereafter). But if the non-reporting counterparty is not a financial entity, and verification is not electronic: 24 business hours after execution (year 1), 12 business hours after execution (year 2), 30 minutes after execution (thereafter).

Swap not subject to mandatory clearing (other commodities): 4 hours after execution (year 1), 2 hours after execution (thereafter). But if the non-reporting counterparty is not a financial entity, and verification is not electronic: 24 business hours after execution (year 1), 12 business hours after execution (year 2), 30 minutes after execution (thereafter).

**Non-SD/MSP is the RP - Reporting Obligation Flowchart – Source (CFTC Final Part 45 Rules)**



\* Swap subject to mandatory clearing: 4 hours after execution (year 1), 2 hours after execution (year 2), 1 hour after execution (thereafter)

Swap not subject to mandatory clearing: 48 business hours after execution (year 1), 36 business hours after execution (year 2), 24 business hours after execution (thereafter)