



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

30 October 2015

Re. RIN 3038 – AR 12, Amendment to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps

Dear Mr Kirkpatrick:

LCH.Clearnet Limited, LCH.Clearnet SA and LCH.Clearnet LLC (together “LCH”) are each Derivatives Clearing Organizations (“DCOs”) registered with the Commodity Futures Trading Commission (the “CFTC” or “Commission”) and welcome the opportunity to respond to this rulemaking.

LCH intends to respond to a number of specific points in this rulemaking, but would like to begin by thanking the Commission for making these proposals, which LCH agrees do generally improve the clarity of swap data reporting requirements.

Overarching comments

We would like to note that in order to comply with the rules as currently proposed, the majority of necessary changes required for DCOs will be related to the requirement to report termination data for original swaps. While we agree that the DCO is the best placed entity to report creation data for clearing swaps, we believe that the original reporting counterparty should be responsible for reporting the continuation data of the original swap. In particular, we have the following concerns with the proposed rules:

- From a technological, administrative and operational perspective, LCH, as a DCO, will need to make, test and monitor connections to every registered SDR and will be required to contract with each SDR. Technologically, LCH will be required to make and test changes to allow it to consume new fields such as the SDR LEI.
- LCH will need to modify its outgoing confirmation messages to include the unique swap identifiers (“USIs”) of the beta and gamma trades. Also, to protect the DCO from accepting trades of which it could not properly report the acceptance criteria embedded in its clearing engines may require amendments.

- Given the level of coordination required between trade sources, DCOs and SDRs, we would recommend a period of at least 12 months from the time the rules are finalised to agree a design and build a solution. LCH anticipates that following the implementation of such changes, the industry would require a period of industry testing, which could reasonably take up to 3 months.
- With regards to the clarity of reporting for both principal and agency clearing models, LCH understands that the Commission expects all client transactions that are cleared to be reported as a single record identifying the client as the counterparty of the CCP and detailing the identity of the clearing member. In this respect LCH suggests that, in line with reporting requirements in other jurisdictions, it is clearer to report client transactions as two separate transactions; the first between the DCO and its clearing member and the second between the clearing member and its client. By taking this approach, the DCO would only be required to report the contract it has with the clearing member and LCH believes this more accurately reflects the risk that the DCO is managing and better mirrors the obligations on clearing members towards the DCO.

Specific comments on the proposed rules

Proposed amendments to §45.1

LCH agrees that the definitions of “original swap” and “derivatives clearing organization” are sufficiently clear and complete. LCH would like to comment that the proposed definition of “clearing swap” is clear but may not be sufficiently complete. In LCH’s reading of the current definition there are some client facing trades, created as a result of clearing, which are not captured. Particularly, the DCO is not party to the cleared trade between Client and Clearing Member in the principal clearing model, which is the preferred reporting model in some jurisdictions.

Proposed amendments to §45.3

LCH agrees that the DCO is the best placed entity to report creation data for clearing swaps, but not for original swaps. Specifically, LCH believes that the reporting party of a trade should always be a counterparty to the transaction and therefore does not believe that the DCO would be better suited than the swap execution facility (“SEF”), derivatives contract market (“DCM”) or reporting counterparty to report creation data about a swap which becomes an original swap.

LCH respectfully recommends that the Commission amends §45.3(e) so that instead of referring to the “execution of a clearing swap” the requirement refers to the “creation of a clearing swap”. LCH believes this will better capture trades created as a result of compression activities, which are not strictly executed. LCH would also recommend that §45.3(f) is amended to capture those cases where a block trade is cleared and the allocation is performed post-clearing. LCH believes this can be achieved by amending §45.3(f)(1) to include a cross reference to §45.3(e).

LCH agrees with the Commission that the entity with the reporting obligation should be free to choose the swap data repository (“SDR”) to which it reports.

The current industry standards used by market participants do not support the amendments proposed by the Commission. Specifically, the legal entity identifier (“LEI”) of the SDR is not reported and messaging will need to be modified to support this.

Proposed amendments to §45.4

LCH believes that the original counterparties to a trade would be better placed and more efficiently able to report continuation data for an original swap. LCH has come to this conclusion¹, on the basis of the following factors:

1. In order for a DCO to comply with the proposed model, it must make connections with each existing and nascent SDR (and not just those that it chooses). This will increase the cost of clearing for all participants and create longer on-boarding processes as DCOs will require lead times in order for connections to be set up. Additionally, the choice of SDR to which an original swap was reported will become an eligibility criterion for the DCO to check before it can accept a swap for clearing. This could result in trades being rejected for clearing where the original swap was reported to an SDR to which the DCO does not have a pre-existing connection. This in turn could impact the choice of SDR by the reporting counterparty, which is more likely to impair, than improve, the competitive landscape for SDRs.
2. This approach is not consistent with other reporting regimes, such as those set out in the European regulations under EMIR, which require the reporting counterparty of the original trade to notify the relevant SDR of the termination of the original trade.
3. All parties to an original swap, including the reporting party, receive a confirmation from the DCO, that a swap has been cleared. As such the reporting party will always be aware of the termination of the alpha swap and should therefore be responsible for the reporting of this termination.
4. In the proposed model, a DCO will terminate the original swap based on the information provided to it by the original counterparties to the trade and without confirming that the creation data of the original swap was correctly reported. LCH believes that this will make it very difficult for SDRs to reconcile data, resulting in reporting breaks and data inaccuracies. For example, we foresee situations where an original swap is not reported or not reported in a timely manner, not correctly recorded or the counterparties to the trade do not include the correct SDR LEI on the trade they submit to the DCO for clearing; it is not clear with whom the responsibility would lie for these reporting errors. Further to this, LCH believes that having a number of entities responsible for writing and overwriting the same record is not in line with efforts to generally clarify these reporting obligations.
5. Under the proposed model for a swap executed on a SEF/DCM, a DCO would be required to receive data confirming the SDR where the original swap was reported and would not be able to report any continuation data for any event between the reporting of the creation data of the original trade and its submission for clearing. As an alternative to this, LCH believes that the original reporting counterparty should be responsible for reporting the continuation data of the original swap. The reporting counterparty would be aided in this by confirmation messages from a DCO which include the USI of both the beta and gamma clearing swaps as set out later in the CFTC's proposals. This would aid the CFTC's desire to 'improve the accuracy, quality, and usefulness of data', without placing a disproportionate burden on the DCO.

¹ LCH.Clearnet SA also responded to Security Exchange Commission Release No. 34-74245, File Number S7-03-15 with this position.

Proposed amendments to Appendix 1

Should the Commission concur with LCH's comments regarding agency and principal clearing models for client trades, we believe it would be useful to include fields which allowed DCOs to make this distinction.

LCH suggests that further amendments be made to the Primary Economic Terms ("PET") data in Appendix 1. Specifically, LCH suggests that the fields of 'Original swap USI', 'Original swap SDR' and 'Clearing member client account' be marked as 'if applicable' to cater for those occasions in which the original swap and/or client to the swap do not fall under the Commission's jurisdiction.

Other matters

As noted under the section *General comments*, there are cost implications in the Commission's proposed changes related to designing, testing and implementing solutions which will allow the industry to comply in short timeframes. Aside from these, LCH believes there to be significant cost implications to DCOs as they take on the role of sole reporter of creation and continuation data for cleared swaps, although, we believe that DCOs should only be required to report the continuation data for clearing swaps and not original swaps, for the reasons argued in this response. Under the CFTC's proposed model, LCH anticipates that SDRs will seek to charge DCOs directly for any trades it chooses to report to that SDR. Such charges are likely to be material and an additional cost for DCOs. LCH respectfully suggests that this has not been taken into account in the cost-benefit analysis performed to date.

Lastly, if the Commission believes that a DCO must submit the termination of the alpha swap we suggest that each SDR applies a common standard for this submission, with just one front to back messaging protocol across all SDRs. This would allow the DCO to submit the same message in the same way to any SDR and would reduce the development and support costs for the DCO.

The fragmented approach to reporting requirements across various jurisdictions is challenging. Therefore, in this response, LCH has sought to provide information about divergence from foreign trade reporting regulations; each divergence would require DCOs to build and implement increasingly separate and duplicative reporting solutions, which are complex and costly to support.

LCH is grateful for the opportunity to comment on the proposed rulemaking and would be happy to provide further information related to the issues described in this letter at the Commission's request.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Jachym', written in a cursive style.

Jonathan Jachym
Head of North America Regulatory Strategy & Government Relations
London Stock Exchange Group