

supersede any previous agreement (electronically or otherwise).

§ 23.201 Required records.

(a) *Transaction and position records.* Each swap dealer and major swap participant shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all its swaps activities. Such records shall include:

(1) *Transaction records.* Records of each transaction, including all documents on which transaction information is originally recorded. Such records shall be kept in a form and manner identifiable and searchable by transaction and by counterparty, and shall include:

(i) All documents customarily generated in accordance with market practice that demonstrate the existence and nature of an order or transaction, including, but not limited to, records of all orders (filled, unfilled, or cancelled); correspondence; journals; memoranda; ledgers; confirmations; risk disclosure documents; statements of purchase and sale; contracts; invoices; warehouse receipts; documents of title; and

(ii) The daily trading records required to be kept in accordance with § 23.202.

(2) *Position records.* Records of each position held by each swap dealer and major swap participant, identified by product and counterparty, including records reflecting whether each position is “long” or “short” and whether the position is cleared. Position records shall be linked to transaction records in a manner that permits identification of the transactions that established the position.

(3) *Records of transactions executed on a swap execution facility or designated contract market or cleared by a derivatives clearing organization.* Records of each transaction executed on a swap execution facility or designated contract market or cleared by a derivatives clearing organization maintained in compliance with the Act and Commission regulations.

(b) *Business records.* Each swap dealer and major swap participant shall keep full, complete, and systematic records of all activities related to its business

as a swap dealer or major swap participant, including but not limited to:

(1) *Governance.* (i) Minutes of meetings of the governing body and relevant committee minutes, including handouts and presentation materials;

(ii) Organizational charts for its governing body and relevant committees, business trading unit, clearing unit, risk management unit, and all other relevant units or divisions;

(iii) Biographies or resumes of managers, senior supervisors, officers, and directors;

(iv) Job descriptions for manager, senior supervisor, officer, and director positions, including job responsibilities and scope of authority;

(v) Internal and external audit, risk management, compliance, and consultant reports (including management responses); and

(vi) Business and strategic plans for the business trading unit.

(2) *Financial records.* (i) Records reflecting all assets and liabilities, income and expenses, and capital accounts as required by the Act and Commission regulations; and

(ii) All other financial records required to be kept under the Act and Commission regulations.

(3) *Complaints.* (i) A record of each complaint received by the swap dealer or major swap participant concerning any partner, member, officer, employee, or agent. The record shall include the complainant’s name, address, and account number; the date the complaint was received; the name of all persons identified in the complaint; a description of the nature of the complaint; the disposition of the complaint, and the date the complaint was resolved.

(ii) A record indicating that each counterparty of the swap dealer or major swap participant has been provided with a notice containing the physical address, email or other widely available electronic address, and telephone number of the department of the swap dealer or major swap participant to which any complaints may be directed.

(4) *Marketing and sales materials.* All marketing and sales presentations, advertisements, literature, and communications, and a record documenting

§ 23.202

17 CFR Ch. I (4–1–21 Edition)

that the swap dealer or major swap participant has complied with, or adopted policies and procedures reasonably designed to establish compliance with, all applicable Federal requirements, Commission regulations, and the rules of any self-regulatory organization of which the swap dealer or major swap participant is a member.

(c) *Records of data reported to a swap data repository.* With respect to each swap, each swap dealer and major swap participant shall identify, retain, and produce for inspection all information and data required to be reported in accordance with part 45 of this chapter, along with a record of the date and time the swap dealer or major swap participant made the report.

(d) *Records of real-time reporting data.* Each swap dealer and major swap participant shall identify, retain, and produce for inspection all information and data required to be reported in accordance with part 43 of this chapter, along with a record of the date and time the swap dealer or major swap participant made the report.

§ 23.202 Daily trading records.

(a) *Daily trading records for swaps.* Each swap dealer and major swap participant shall make and keep daily trading records of all swaps it executes, including all documents on which transaction information is originally recorded. Each swap dealer and major swap participant shall ensure that its records include all information necessary to conduct a comprehensive and accurate trade reconstruction for each swap. Each swap dealer and major swap participant shall maintain each transaction record in a manner identifiable and searchable by transaction and counterparty.

(1) *Pre-execution trade information.* Each swap dealer and major swap participant shall make and keep pre-execution trade information, including, at a minimum, records of all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of a swap, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other

digital or electronic media. Such records shall include, but are not limited to:

(i) Reliable timing data for the initiation of the trade that would permit complete and accurate trade reconstruction; and

(ii) A record of the date and time, to the nearest minute, using Coordinated Universal Time (UTC), by timestamp or other timing device, for each quotation provided to, or received from, the counterparty prior to execution.

(2) *Execution trade information.* Each swap dealer and major swap participant shall make and keep trade execution records, including:

(i) All terms of each swap, including all terms regarding payment or settlement instructions, initial and variation margin requirements, option premiums, payment dates, and any other cash flows;

(ii) The trade ticket for each swap (which, together with the time of execution of each swap, shall be immediately recorded electronically for further processing);

(iii) The unique swap identifier, as required by § 45.4(a), for each swap;

(iv) A record of the date and time of execution of each swap, to the nearest minute, using Coordinated Universal Time (UTC), by timestamp or other timing device;

(v) The name of the counterparty with which each such swap was executed, including its unique counterparty identifier, as required by § 45.4(b);

(vi) The date and title of the agreement to which each swap is subject, including but not limited to, any swap trading relationship documentation and credit support arrangements;

(vii) The product name of each swap, including its unique product identifier, as required by § 45.4(c);

(viii) The price at which the swap was executed;

(ix) Fees or commissions and other expenses, identified by transaction; and

(x) Any other information relevant to the swap.

(3) *Post-execution trade information.* Each swap dealer and major swap participant shall make and keep records of