ISDA | Safe, Efficient Markets

Dodd Frank Act - Swap Transaction Reporting Party Requirements
Version – July 15, 2013

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 is 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[1] to an SDR as soon as technologically practicable after execution in accordance with the Dodd Frank Act.[2] 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 to an SDR ''as soon as technologically practicable.''
>
> For Part 45 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:
> - o If both parties are non-SDs/MSPs, and only one party is a financial entity,[3] the party that is a financial entity is the RP.
> - o 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:

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[1] 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:

(I) 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.

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

[3] As defined in Section 2(h)(7)(C) of the Commodity Exchange Act.

o 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.

<u>For swaps executed off-facility: (one U.S. person only)</u>

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.

<u>For swaps accepted for clearing:</u>

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".[4]

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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[4] Available at:
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 both 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.

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 Rate Payer exists	Fixed Rate Payer. Otherwise, Reverse ASCII sort, first LEI/Entity ID
Debt Option	All	Option Buyer
Exotic	All	Reverse ASCII sort, first LEI/Entity ID
FRA	All	Fixed Rate Payer
IRS Basis	All	Reverse ASCII sort, first LEI/Entity ID
IRS Fix-Fix	All	Reverse ASCII sort, first LEI/Entity ID
IRS Fix-Float	All	Fixed Rate Payer
IRSwap: Inflation	When a single Fixed Rate Payer exists	Fixed Rate Payer. Otherwise, Reverse ASCII sort, first LEI/Entity ID
IRSwap: OIS	All	Fixed Rate Payer
Swaption	All	Option Buyer
XCCY Basis	All	Reverse ASCII sort, first LEI/Entity ID
XCCY Fix-Fix	All	Reverse ASCII sort, first LEI/Entity ID
XCCY Fix-Float	All	Fixed Rate Payer

Tiebreaker Logic

When the participant identifier tiebreaker is invoked the following processes will be used:

1a. Determining identifiers

When an entity has multiple entity identifiers ("IDs"), the following hierarchy will be used to determine which entity ID to use in the RP determination logic:

LEI/CiCi is used before DTCC GTR ID which is used before an AVOX ID which is used before any other identifier.

1b. Identifier Tiebreaker Logic Scenarios

i. When both firms must have an LEI/CiCi then rank based on the two LEI/CiCis.

ii. When one firm has an LEI/CiCi and the other firm has a DTCC ID but does not have an LEI then rank based on the comparison of the LEI/CiCi to the DTCC ID.

iii. When one firm has an LEI/CiCi and the other firm has an AVOX ID but does not have an LEI then rank based on the comparison of the LEI/CiCi to the AVOX ID.

iv. When neither firm has an LEI/CiCi and both firms have a DTCC ID then rank based on the two DTCC IDs.

v. When neither firm has an LEI/CiCi and one firm has a DTCC ID and the other firm has only an AVOX ID then rank based on the comparison of the DTCC ID to the AVOX ID.

vi. A firm will be the RP when that firm has a DTCC ID or LEI/CiCi and the other has neither an LEI/CiCi nor a DTCC ID nor an AVOX ID. Please note that in all cases the RP will have a DTCC ID and by extension will have an LEI/CiCi.

2. Determining sort order of identifiers

LEI/CiCi, DTCC GTR IDs, and AVOX IDs 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.

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.[5]

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.

4. Commodity

It is recognized within the commodities industry that different SDRs are currently proposing differing rules in determining the RP. The methodology detailed below is the industry preferred and agreed way of working, as signed-off by the GTRfC Commodities Industry WG.

Where both parties are of the same hierarchy level, RP status may be determined by reference to the convention which is attached as Annex 2 to this document. This convention requires the parties to apply a seller convention if the executed trade is one of the three trade types enumerated (which have no ambiguity concerning which party is the selling party) and designates the seller as RP. If the trade to be executed is not one of the three

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[5] http://www2.isda.org/otc-taxonomies-and-upi/

specified trade types then the convention defaults to an Alpha process the LEI/CiCi's of the two parties should be resolved into an ASCii sorting tool with the LEI/Entity which comes first/top in the resulting list then designated as RP.

Use of this convention can only be relied upon when both parties to the transaction are committed to use it. Where one side is not signed up to the convention it should not be used and the parties should revert to an alternative methodology to determine RP in compliance with the rules.

5. FX

The FX RP rules have been defined by the GFMA Global FX Division's Market Architecture Group (September 2012). The publication entitled "Determining the Reporting Party under Dodd-Frank in the Foreign Exchange Market" sets out some suggested rules that participants may wish to consider for determining the RP within a relevant hierarchy level, as well as setting out suggestions in respect of specific hierarchy cases not covered by the CFTC rules.

For more information see:

http://www.gfma.org/uploadedfiles/initiatives/foreign_exchange_(fx)/determiningreportingpartyunderdoddfrank.pdf

7. Change in Registration Status of the non-MSP/SD

On October 16, 2012 the ISDA DWG participants were polled to determine what should happen to the RP obligations on a trade executed between an SD and a non-MSP/SD, where at a later date, the non-MSP/SD becomes an SD.

Option A (see below) received the most votes and the majority of firms are thought to either have already built infrastructure to support this approach or are developing internal systems to support it in time for the first CFTC compliance date, or shortly afterwards. Notably a few firms may not be in a position on compliance date 1 to support Option A, having originally built towards Option B below.

Option A: *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).*

N.B. A Firm may change its reporting status as not all firms are built to adhere to Option A.

Option B: *The RP obligation remains unchanged until there is a subsequent confirmable lifecycle event, such as a partial unwind. At this point, the RP "tie-breaker" logic is invoked to determine which counterparty will be the RP going forward using the statuses effective at that date.   (Rationale being that we have agreed USI must be shared on confirm, therefore any change of USI goes hand in hand with transmitting a confirm). Note for Equity swap positions of portfolio swaps can change from long to short and thus could change RP based on buy/sell under this option, regardless of change in RP SD/MSP status.*

It should be noted that should the registration status of the non-SD/MSP remain unchanged throughout the life cycle of a transaction, then the RP will remain constant.

Annex 1 (CFTC Reporting Obligations)

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

Was the swap executed on SEF or DCM?

Yes

No

Was the swap cleared? (under Yes)

Was the swap cleared? (under No)

Yes → The SD/MSP reports only valuation data, daily.
The DCM/SEF reports PET and confirmation data in a single report, ASATP after execution. The DCO reports confirmation data, ASATP after clearing; valuation data, daily; and all other continuation data on the day a change to a primary economic term occurs.

No → The SD/MSP reports:
- Confirmation data: ASATP but no later than 30 minutes after confirmation if confirmation is electronic; or ASATP but no later than 24 business hours after confirmation if confirmation is non-electronic.
- Valuation data: daily
- All other continuation data: on the day a change to a primary economic term occurs.

The DCM/SEF reports PET data, ASATP after execution.

Yes (right branch) → **Was the swap accepted for clearing before the applicable deadline* for the SD/MSP to report PET data?**

No (right branch) → The SD/MSP reports:
- PET data: ASATP after execution, but no later than the applicable deadline*.
- Confirmation data: ASATP but no later than 30 minutes after confirmation if confirmation is electronic; or ASATP but no later than 24 business hours after confirmation if confirmation is non-electronic.
- Valuation data: daily.
- All other continuation data: on the day a change to primary economic term occurs.

Yes (under accepted for clearing) → The SD/MSP reports only valuation data, daily.
The DCO reports PET and confirmation data in a single report, ASATP after clearing; valuation data, daily; and all other continuation data on the day a change to a primary economic term occurs.

No (under accepted for clearing) → The SD/MSP reports:
- PET data: ASATP after execution, but no later than the applicable deadline.*

The DCO reports confirmation data, ASATP after clearing; valuation data, daily; and all other continuation data on the day a change to a primary economic term occurs.

* 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)
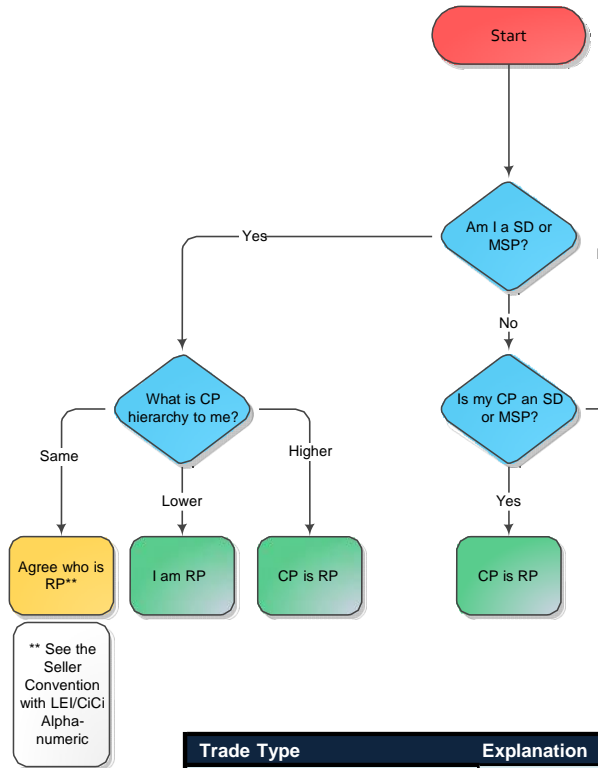
Was the swap executed on SEF or DCM?

Yes → Was the swap cleared?

No → Was the swap cleared?

Was the swap cleared? (from Yes/executed branch)

Yes:
The non-SD/MSP has no reporting obligations.
The DCM/SEF reports PET **and confirmation data in a** single report, ASATP after execution. The DCO reports confirmation data, ASATP after clearing; valuation data, daily; and all other **continuation data on the** day a change to a primary **economic term occurs.**

No:
The non-SD/MSP reports:
- Confirmation data: for the first year of reporting, within 48 business hours after confirmation; for the second *year* of reporting, within 36 business hours after confirmation; **thereafter, within 24 business hours after confirmation.**
- Valuation data: on a quarterly basis.
- All other continuation data: for the first year of reportmg, by the end of the second business day following the date of a chanqe to a primary **economic term; there-** after, by the end of the first business day following the date of such a change.

The DCM/SEF reports PET data ASATP after execution.

Was the swap cleared? (from No/not executed branch)

Yes:
Was the swap accepted for clearing before the applicable deadline• for the non -SD/MSP to report PET data?

No reporting obligations branch:
The non-SD/MSP has no reporting obligations.
The DCO reports PET and confirmation data in a single report, ASATP after clearing; valuation data, daily; and all other **continuation data on the** day a change to a primary **economic term occurs.**

PET report branch:
The non-SD/MSP reports PET data: ASATP after **execution, but no later** than the applicable deadline.•
The DCO reports confirm-ation data, ASATP after **clearing; valuation data,** daily; and all other contin–uation dat<l on the day a change to a primary **economic term occurs.**

No:
The non-SD/MSP reports:
- PET data: ASATP after execution, but no later than the applicable deadline.•
- Confirmation data: for the first year of reporting, within 48 business hours after confirmation; for the second year of reporting, within 36 business hours **after confirmation; thereafter, within 24 business hours after confirmation.**
- Valuation data: on a quarterly basis.
- All other continuation dat<l: for the first year of reporting, by the end of the second business day following the date **of a change to a primary economic** term; thereafter, by the end of the first business day follow1ng the date of such a change.

*Swap subject to mandatory clearing: 4 hours after execution (year 1), 2 hours after execution (year 2). **1** hour after execution (thereafter]
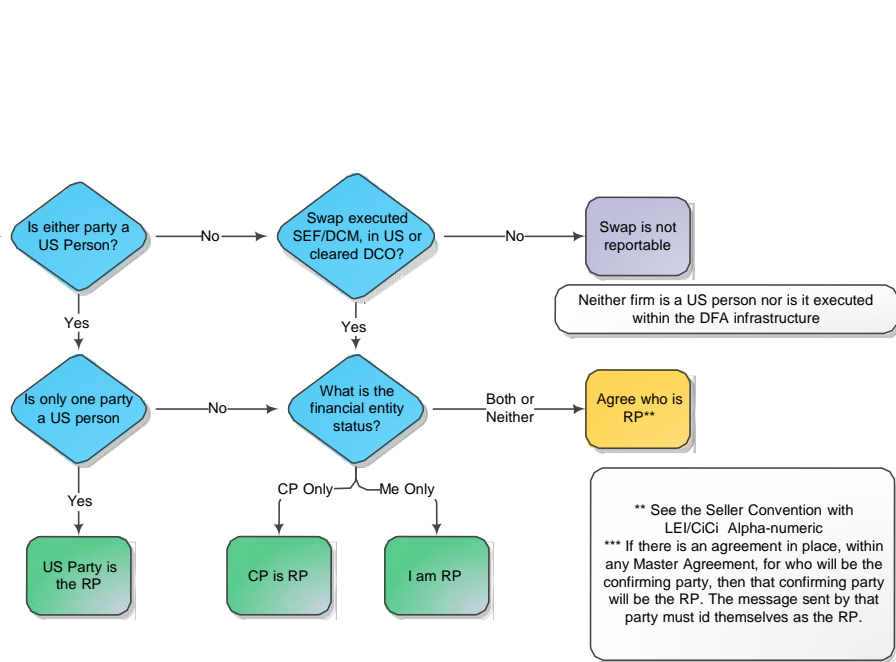
Swap not subject to mandatory clearing: 48 business hours after execution (year 1), 36 business hours after execution (year 2). 24 business hours after execution (thereafter]

Annex 2 (Commodities)

At least one SD/MSP (Source: GTR):

Non-SD/MSP vs. Non-SD/MSP (Source: GTR):

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                            Start

        Yes                  Am I a SD or MSP?        No

                              No

  What is CP                Is my CP an SD
  hierarchy to me?          or MSP?

Same        Higher

    Lower                    Yes

Agree who    I am RP   CP is RP      CP is RP
is RP**

** See the
Seller
Convention
with LEI/CiCi
Alpha-
numeric
```

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Is either party a    No    Swap executed      No     Swap is not
US Person?                  SEF/DCM, in US or         reportable
                           cleared DCO?

                                                Neither firm is a US person nor is it executed
   Yes                          Yes             within the DFA infrastructure

Is only one party   No   What is the          Both or    Agree who is
a US person              financial entity     Neither    RP**
                         status?

                      CP Only    Me Only

   Yes

US Party is          CP is RP    I am RP
the RP
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** See the Seller Convention with LEI/CiCi Alpha-numeric
*** If there is an agreement in place, within any Master Agreement, for who will be the confirming party, then that confirming party will be the RP. The message sent by that party must id themselves as the RP.

Trade Type	Explanation	Reporting Party
Fixed Floating Swap	Seller of the fixed leg = Reporting Party	Fixed leg seller (Receiver of Cash on the fixed leg)
Option	Receiver of premium payment or Option writer	Seller
Swaption	Receiver of premium payment or Swaption writer	Seller
Option strategies (Collars, Corridors, Multi Leg)	Premium receiver is the Seller = Reporting Party	Premium receiver
	If no premium, to go to alpha convention	Go to alpha convention
For trade types not listed above:		
Seller Convention with Alpha	Any trades that fall outside of that list will have the alpha-numeric ASCII convention applied based on the LEI/CiCi. The LEI/CiCi selected as the RP will be the LEI/CiCi at the top of that sort order. As an example, ASCII is the same sort logic that Microsoft Excel applies.	