

CFTC NEW RULES FOR SWAP DATA REPORTING

By Salim Modi, Principal Consultant
Matthew Rodgers, Principal Consultant
Spencer Schulten, Executive Director

INTRODUCTION

On September 17, 2020, the Commodity Futures Trading Commission (CFTC) held an open meeting¹ during which it unanimously approved three final rules related to swap data reporting. The amendments create broad changes in the CFTC's swap data reporting framework, relieving swap counterparties of reporting obligations in some cases, and creating new obligations in others, adding, changing and removing definitions, and reorganizing parts of the regulatory framework.

The compliance date for these final rules is 18 months from the date of publication in the Federal Register. Although the publication date in the Federal Register is unknown, if the final rules are published in October 2020, the compliance date would be in April 2022.

CFTC regulations implemented under the Commodity Exchange Act (CEA), as amended by the Dodd-Frank Act, created a complex framework for reporting swap transactions and pricing data for public dissemination and regulatory purposes. Following the initial adoption of swap data reporting rules, the CFTC's Division of Market Oversight (DMO) began reviewing those rules. In July 2017, the DMO announced a "Roadmap To Achieve High-Quality Swaps Data" (Roadmap)², outlining plans to improve the accuracy, completeness and quality of swap data while streamlining the CFTC's swap data reporting requirements. Since that time, the CFTC has issued several proposed rulemakings intended to address the Roadmap issues. The swaps data reporting amendments are the culmination of this process.

One critical aspect of the new reporting framework is that reporting counterparties must reconcile their books and records against reports provided by a swap data repository ('SDR'). Suppose the reporting counterparty discovers (or should have discovered) errors or omissions in the SDR reports. In that case, the reporting counterparty must correct those reports within seven business days of discovering the error or omission. If the reporting counterparty cannot correct the error or omission within seven business days, then the reporting counterparty must notify the CFTC's Division of Market Oversight and include a remediation plan if such a plan is available. These new obligations will impose a significant burden on the compliance, legal, and technology departments across the industry to address reporting errors and potentially interact with the regulator on an accelerated timeframe.

The Commission also approved two other measures: a final rule governing compliance by non-U.S.-based derivatives clearing organizations ('DCOs'), and a re-proposed rule regarding DCO bankruptcies. The rule set creates a framework to allow certain clearing organizations not based in the U.S. to register with the agency while relying largely on their home country regulatory regimes.

This article discusses several key changes to the final swap data reporting rules and derivatives clearing organization (DCO) registration requirements approved at the open meeting.

¹ <https://www.cftc.gov/PressRoom/Events/opaeventopenmeeting091720>

² <https://www.skadden.com/insights/publications/2017/07/cftc-launches-review-of-swap-reporting-regulations>

CFTC PART 43

Amendments to the Real-Time Public Reporting Requirements (Part 43)

BACKGROUND

The Part 43 swap data reporting amendments revise rules for real-time public reporting and dissemination of swap data³. The amendments apply to swap data repositories (SDRs), DCOs, swap execution facilities (SEFs), designated contract markets (DCMs), swap dealers (SDs) and non-SD swap counterparties. The changes include the following:

- **Block trades:** The final Part 43 rule modifies the dissemination delay for reporting block trades, the size threshold for a swap to be eligible for the block trade reporting delay, and the ability to mask the size of large swap transactions. The approach the CFTC adopted to determine the length of the real-time dissemination delay utilizes factors such as liquidity and market depth. Additionally, while the CFTC had proposed imposing a uniform 48-hour delay on block trade reporting, a significant change from the current rules, which set the delay based on transaction and counterparty characteristics, commenters registered concerns. The commenters' concerns regarded negative impacts on transparency, price discovery and liquidity, and the CFTC ultimately declined to adopt this change. The rules also increase cap sizes and block trade thresholds.
- **Block trade thresholds:** In terms of the size threshold for a swap to be eligible as a block trade, the final rule increases the threshold amount for block trade treatment from a 50 percent to a 67 percent notional calculation. Once the amendments take effect, certain trades that are currently treated as block trades subject to reporting delays may no longer be subject to those delays if they do not meet the revised block trade thresholds.
- **Cap Sizes:** Under the CFTC's current real-time reporting rules, the notional size of a swap disseminated to the market is capped at a specific notional size, so if the size of a swap

meets or exceeds the cap, only the cap is disseminated to the market. Under the final rule, the CFTC increased the cap's size, which means more swaps will be disseminated with the actual notional size as opposed to the capped notional size.

- **Post-priced swaps:** The final Part 43 rule will reduce the amount of duplicative and non-essential data for post-priced swaps. Post-priced swaps will not be published to the market until after pricing occurs. However, reporting counterparties may still be required to report post-priced swaps to an SDR before the price is set. The final Part 43 rule follows the proposed rule's approach, namely that post-priced swaps must be reported by the earlier of (a) the price being determined or (b) 11:59:59 pm eastern time on the execution date. Then, once price data is determined, it must be reported as soon as technologically practicable ("ASATP").
- **Prime brokerage transactions:** The final Part 43 rule will reduce the reporting requirements for swaps executed with prime brokers to avoid publishing duplicative data on the public tape. Defining and exempting certain legs of prime brokerage transactions from public dissemination in response to concerns that publicly disseminating all legs of those transactions "incorrectly suggests the presence of more trading activity and price discovery than actually exists."
- **SDR and DCO:** The rule requires SDRs to make swap transaction and pricing data available on public websites for a period of at least one year after that data is initially publicly disseminated. New regulations specify steps SDRs must take to validate swap transaction and pricing data reported to them and notify reporting counterparties whether a swap report satisfies the SDR's data validation procedures. The rule specifies that a DCO is responsible for publicly reporting clearing swaps.

³ <https://www.cftc.gov/PressRoom/PressReleases/8247-20>

Specific data elements: The final Part 43 rule amends the list of specific data elements subject to Part 43 real-time reporting and provides a greater degree of guidance for each data element, including amendments to the swap transaction and pricing data elements that must be reported in Appendix A to Part 43 of the CFTC's regulations.

Client Impact: Clients will need to look at their current real-time reporting submissions to the SDR to ensure the logic is updated for block trades, prime broker executed swaps, cap size calculation for dissemination to the market has increased for each asset class (IRS, Credit, FX, Commodity, and Equity).

- IRS-100mm
- CDS-400mm
- FX-150mm
- Commodity – 100mm
- Equity-250mm

All clients should look to ensure their entire regulatory reporting framework is re-evaluated from legal and compliance departments to trading, operations and technology. The impact to each clients workflow can't be truly determined until a thorough impact analysis has been conducted.

CFTC PART 45

Amendments to the Swap Data Recordkeeping and Reporting Requirements (Part 45)

BACKGROUND

The Part 45 swap data reporting amendments include substantial changes to the CFTC's swap data recordkeeping and regulatory reporting requirements for SDRs, DCOs, SEFs, DCMs, SDs and non-SD swap counterparties. Some of the significant changes in the rulemaking include:

The final Part 45 rule will streamline the data reported to SDRs, require certain counterparties to report uncleared margin, and increase the amount of time for parties to report trades to an SDR

- **Harmonization:** The rule seeks to harmonize CFTC swap data reporting requirements with international standards. The final Part 45 rule substantially reduces the number of data fields to be reported to SDRs. The current approach, in which parties report hundreds of different data fields, will be replaced by the requirement to report a streamlined set of 128 data fields. The reportable data fields incorporate certain critical data elements ('CDE') identified by the Committee on Payments and Infrastructures and the International

Organization of Securities Commissioners (the 'CPMI-IOSCO'). Additionally, the final Part 45 rule replaces the current system of Unique Swap Identifiers ('USIs') with Unique Transaction Identifiers ('UTIs'), which more closely aligns CFTC reporting requirements with those of other regulators.

- **Margin and Collateral:** Although the rule streamlines some data fields, it also introduces new reporting elements. For example, swap dealers ('SD') reporting counterparties now will be required to report daily margin and collateral data for uncleared swaps. DCO reporting counterparties will not be required to report margin and collateral data for cleared swaps—instead, the CFTC will continue to rely on margin and collateral data reported by DCOs pursuant to Part 39. Lastly, non-swap dealer/major swap participant ("MSP") reporting counterparties will have no requirement to report valuation, margin, or collateral information.
- **Deadline for reporting:** The final Part 45 rule also extends the deadline for reporting to an SDR. Currently, trades must

be reported ASAP. The new rule requires SD/MSP/DCO reporting counterparties to report swap data by T+1 following the execution date, while non-SD/MSP/DCO reporting counterparties must report swap data by T+2 following the execution date.

- **Single Data Report:** Requiring a single data report at execution rather than two separate reports for primary economic terms and confirmation data.

Client Impact: Clients should be focused on the new SDR reporting submission logic and fields they are sending down to the SDR. DTCC is currently going through a re-architecture as

well and the submission template and trade state reports are all changing. Clients submitting to an SDR with collateral data will need to continue to provide margin data for non-cleared swaps. Additionally, clients need to ensure their internal processes are updated and the logic applied for submission/reconciliation processes. Firms submitting to the SDR need to note that they have reprieve regarding part 45 continuation data from ASATP to T+1 for a provisionally registered swap dealer and T+2 for non-SD/MSP. All clients should look to ensure their legal and compliance departments are consulted, and the rules are implemented to the best of their understanding and infrastructure.

WWW.CAPCO.COM



© 2020 The Capital Markets Company. All rights reserved.

JN_2626

CAPCO