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CFTC UPDATE

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CFTC Finalizes Swap Data Reporting Rules

On September 17, 2020, the Commodity Futures Trading Commission (CFTC) held an open meeting during which it unanimously approved three final rules related to swap data reporting.¹ The effective date for these final rules is January 25, 2021, and the compliance date is May 25, 2022.² The final rules are generally better harmonized with data reporting frameworks in other global markets and better tailored to US market practices based upon the CFTC's current market experience and understanding. Below is a brief overview of key changes resulting from the final swap data reporting rules approved at the open meeting.

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

The CFTC approved the final "Real-Time Public Reporting Requirements" rule, which will amend Part 43 of the CFTC regulations. The final Part 43 rule amends the list of specific data elements subject to Part 43 real-time reporting, and also provides a greater degree of guidance for each data element.

The enhanced guidance was designed to promote uniformity when reporting counterparties submit real-time reports to a swap data repository (SDR). In addition, the final Part 43 rule alters the reporting rules for block trades and reduces the amount of duplicative and non-essential data for post-priced swaps and prime brokerage transactions.

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 final Part 43 rule also extends the compliance date for block thresholds and cap sizes by an additional 12 months to May 25, 2023.³

The approach the CFTC adopted to determine the length of the real-time dissemination delay utilizes factors such as liquidity and market depth. This flexible approach differs from the proposed uniform 48-hour dissemination delay across all swaps. The net impact between the proposed 48-hour delay and the final adopted delay appears to be that most block trades will be subject to a shorter reporting delay under the final Part 43 rule compared to the proposed rule.⁴ 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.⁵ Finally, 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. Consequently, 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 size of the cap, with the result that more swaps will be disseminated with the actual notional size as opposed to the capped notional size.⁶

Post-Priced and Prime Brokerage Swaps

The CFTC clarified the timing for reporting post-priced and prime brokerage swaps. 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.⁷ Then, once price data is determined, it must be reported as soon as technologically practicable (ASATP). If price data has not been determined by the 11:59:59 pm eastern time deadline, the swap nevertheless must be publicly disseminated. However, fewer post-priced swaps are expected to be published to the market without price data under this approach. Additionally, the final Part 43 rule reduces the reporting requirements for swaps executed with prime brokers to avoid publishing duplicative data on the public tape.⁸

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

The CFTC also approved the final "Swap Data Recordkeeping and Reporting Requirements" rule, which primarily amends Part 45 of the CFTC regulations.⁹ Among other things, the final Part 45 rule streamlines the data reported to SDRs, requires certain counterparties to report uncleared margin, and increases the amount of time for parties to report trades to an SDR. The rule also seeks to harmonize CFTC 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.¹⁰ However, the rule also introduces new reporting elements. For example, reporting parties that are swap dealers (SD) or major swap participants (MSP) now will be required to report daily margin and collateral data for uncleared swaps.¹¹ In contrast, reporting counterparties that are not an SD, MSP, or derivatives clearing organization (DCO) will have no requirement to report valuation, margin, or collateral information.¹² In fact, the final rule affirmatively removes the current requirement for non-SD/MSP/DCO reporting counterparties to report quarterly valuation information.¹³

The final Part 45 rule also extends the deadline for reporting to an SDR. Currently, trades must be reported ASATP. 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.¹⁴

Notably, the final Part 45 rule aims to harmonize CFTC swap data reporting requirements with international standards. The reportable data fields incorporate certain critical data elements identified by the Committee on Payments and Infrastructures and the International Organization of Securities Commissioners (CPMI-IOSCO).¹⁵ 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.

Final Rule: Amendments to Certain Swap Data Repository and Data Reporting Requirements (Part 49 Verification)

The CFTC approved the final rule titled "Certain Swap Data Repository and Data Reporting

Requirements,” which will amend Parts 43, 45, and 49 of the CFTC regulations.¹⁶ Among other things, the final rule will modify the requirements for SDRs to confirm the accuracy of reported swap data.

One critical aspect to the new reporting framework is that reporting counterparties have an obligation to reconcile their books and records against reports provided by an SDR. Although the final rule leverages SDR validation procedures, it also requires SDRs to provide reporting counterparties with access to their open swap data in order to correct any errors or omissions. Any errors or omissions must be corrected ASATP, but no later than within seven business days of discovery.¹⁷ If the reporting entity determines that the error will not be corrected in that time period, it must notify the CFTC’s Division of Market Oversight (DMO) within 12 hours of that determination.¹⁸ The notification to DMO must include an initial assessment of the scope of the error(s) and an initial remediation plan, if such remediation plan exists.¹⁹

The final rule does not use the message-based system for error identification and correction that was contemplated in the proposed rule. Rather, each reporting counterparty must use the mechanism for verification adopted by its SDR. All SD/MSP/DCO reporting counterparties are required to perform verification of open swap data every 30 calendar days, while non-SD/MSP/DCO reporting counterparties must perform verification once every calendar quarter, with at least two months between verifications.²⁰

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NOTES

- ¹ See Commodity Futures Trading Commission, CFTC Finalizes Rules to Improve Swap Data Reporting, Approves Other Measures at September 17 Open Meeting (Sept. 17, 2020), available at <https://www.cftc.gov/PressRoom/PressReleases/8247-20>.
- ² See Real-Time Public Reporting Requirements, 85 Fed. Reg. 75,422 (Nov. 25, 2020) (to be codified at 17 C.F.R. pt. 43).
- ³ See *id.* at 75,461.
- ⁴ See Commodity Futures Trading Commission, Statement of Chairman Heath P. Tarbert in Support of Final Rules on Swap Data Reporting (Sept. 17, 2020) (the Tarbert Statement of Support), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement091720c?utm_source=govdelivery.
- ⁵ See Real-Time Public Reporting Requirements, 85 Fed. Reg. 75,422, 75,498 (Nov. 25, 2020) (to be codified at 17 C.F.R. pt. 43), here.
- ⁶ See *id.*
- ⁷ See *id.* at 75,478.
- ⁸ See Tarbert Statement of Support.
- ⁹ See Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75,503 (Nov. 25, 2020) (to be codified at 17 C.F.R. pts. 45, 46, and 49).
- ¹⁰ See *id.* at 75,567–93.
- ¹¹ See *id.* at 75,562. 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. See *id.* at 75,515.
- ¹² See *id.* at 75,562.
- ¹³ See *id.* at 75,514.
- ¹⁴ See *id.* at 75,561.
- ¹⁵ See Tarbert Statement of Support.
- ¹⁶ See Certain Swap Data Repository and Data Reporting Requirements, 85 Fed. Reg. 75,601 (Nov. 25, 2020) (to be codified at 17 C.F.R. pts. 43, 45, and 49).
- ¹⁷ See *id.* at 75,654–55.
- ¹⁸ See *id.*
- ¹⁹ See *id.*
- ²⁰ See *id.* at 75,655.

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