

MEMO# 26186

May 24, 2012

CFTC Adopts Recordkeeping and Reporting Requirements for Historical Swaps

[26186]

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 26-12
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 21-12
INVESTMENT ADVISER MEMBERS No. 11-12
SEC RULES MEMBERS No. 43-12 RE: CFTC ADOPTS RECORDKEEPING AND REPORTING REQUIREMENTS FOR HISTORICAL SWAPS

The Commodity Futures Trading Commission (“CFTC”) adopted final rules establishing swap data recordkeeping and reporting requirements for swaps entered into before the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) and swaps entered into on or after the date of enactment of the Dodd-Frank Act and prior to the compliance date in the CFTC’s final swap data reporting rules in new part 45 (collectively “historical swaps”). [\[1\]](#) The new provisions for swap data recordkeeping and reporting for historical swaps are contained in part 46 of the CFTC regulations. The CFTC has adopted the same compliance dates established in part 45 for part 46. [\[2\]](#)

Recordkeeping for Historical Swaps

The final rules require counterparties to historical swaps in existence on or after April 25, 2011 [\[3\]](#) to keep records of information that was in their possession on or after April 25, 2011. Counterparties must keep all of the information specified in the tables of minimum primary economic terms data in Appendix 1 to part 46 as well as certain other records if within their possession. For historical swaps expired or terminated prior to April 25, 2011, the rules require the counterparties to retain information and documents relating to the terms of the transaction that were in possession of the counterparty on or after the interim final rules were adopted. [\[4\]](#)

Reporting of Historical Swap Data

For historical swaps in existence on or after April 25, 2011, a “reporting counterparty” must report electronically to a swap data repository (“SDR”) or to the CFTC (if no SDR for swaps

in the asset class is available). The information specified in Appendix 1 of part 46 that was in possession of the reporting counterparty on or after April 25, 2011 must be reported. For each uncleared historical swap in existence on or after April 25, 2011, the reporting party must report all required swap continuation data. Swap continuation data do not need to be reported for historical swaps in existence on or after April 25, 2011 that have been cleared by a designated clearing organization.

For historical swaps that expired or terminated prior to April 25, 2011, the reporting counterparty is required to report to an SDR or to the CFTC (if no SDR is available) such information relating to the terms of the transaction in the reporting counterparty's possession on or after the interim final rules were adopted.

The determination of which counterparty is the reporting counterparty for a historical swap would be made in the same manner as for other swaps under part 45 of the CFTC regulations. The reporting counterparty is:

- If only one counterparty is a swap dealer ("SD") or major swap participant ("MSP"), the SD or MSP;
- If one counterparty is a SD and the other is a MSP, the SD; and
- For all other swaps, the counterparties agree to the reporting party.

Moreover, if only one of the non-SD/MSP counterparties is a financial entity, the financial entity will be the reporting party. If only one of the non-SD/MSP counterparties is a US person, the US person would be the reporting counterparty.

Legal Entity Identifier

The final rules require the use of legal entity identifiers ("LEIs") in data reporting for historical swaps in existence on or after April 25, 2011. Although the final rules require LEIs for non-SD/MSP counterparties, the CFTC has adopted the compliance date for non-SD/MSP counterparties 180 days after the compliance date for SDs and MSPs and has provided for an additional 180 days for non-reporting counterparties to obtain an LEI.

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endnotes

[1] Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, RIN 3038-AD48, available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister051812.pdf>.

[2] See ICI Memorandum No. 25757 (Dec. 29, 2011), available at http://www.ici.org/my_ici/memorandum/memo25757 (summary of the requirements for swap data recordkeeping and reporting, including the three compliance dates).

[3] This is the date on which the CFTC published the proposal for what records must be kept and what data must be reported. See Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 76 FR 22833 (Apr. 25, 2011).

[\[4\]](#) Previously, the CFTC adopted interim final rules for reporting of historical swaps. Reporting Certain Post-Enactment Swap Transactions, 75 FR 78892 (Dec. 17, 2010); Interim Final Rule for Reporting Pre-Enactment Swap Transactions, 75 FR 63080 (Oct. 14, 2010).

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