

MEMO# 32813

October 7, 2020

CFTC Adopts Amendments to Swap Data Reporting Requirements

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October 7, 2020 TO: ICI Members

Derivatives Markets Advisory Committee SUBJECTS: Compliance

Derivatives

Investment Advisers

Operations

Trading and Markets RE: CFTC Adopts Amendments to Swap Data Reporting Requirements

In September, the Commodity Futures Trading Commission (CFTC or “Commission”) adopted amendments to its regulations regarding swap data reporting. Specifically, the Commission (i) adopted amendments to its regulations under Part 43 regarding real-time public reporting and dissemination of swap data;[\[1\]](#) (ii) adopted amendments to its regulations under Part 45 regarding swap data reporting and recordkeeping for swap data repositories (SDRs) and other swap data reporting parties;[\[2\]](#) and (iii) adopted amendments to its regulations under Parts 43, 45, and 49 regarding SDR and swap data reporting requirements[\[3\]](#) (the three rulemakings are referred to collectively as “Final Rules”).[\[4\]](#) The Final Rules are intended to achieve the goals of the 2017 Roadmap to Achieve High Quality Swaps Data that was issued by the CFTC’s Division of Market Oversight.[\[5\]](#) We have summarized below those aspects of the Final Rules most relevant to registered investment companies.

Amendments to Real-Time Public Reporting Requirements

The Commission amended its regulations for real-time public reporting and dissemination requirements for SDRs, derivatives clearing organizations (DCOs), swap execution facilities (SEFs), designated contract markets (DCMs), swap dealers (SDs), major swap participants (MSPs), and swap counterparties that are neither SDs nor MSPs. Of most relevance to registered funds, the CFTC, as described in more detail below, amended the definition of “block trade,” changed the swap categories for block treatment under the CFTC’s regulations, and updated block thresholds and cap sizes. It did not, however, change the dissemination delay for block trade data, as it had proposed to do.

Definition of “Block Trade”

The CFTC amended the definition of “block trade” consistent with key aspects of its proposal, but declined to combine the definition of “large notional off-facility swap” (LNOF)

with the definition of “block trade,” as proposed, because the final rules retain a separate definition of “large notional off-facility swap.” Thus, as amended, “block trade” is defined as a publicly reportable swap transaction that: (i) involves a swap listed on a SEF or DCM; (ii) is executed on a SEF’s trading system or platform that is not an order book as defined in Regulation 37.3(a)(3), or occurs away from the SEF’s or DCM’s trading system or platform and is executed pursuant to the SEF’s or DCM’s rules and procedures; (iii) has a notional or principal amount at or above the appropriate minimum block size (AMBS) applicable to such swap; and (4) is reported subject to the rules and procedures of the SEF or DCM and the rules described in Part 43, including the appropriate time delay requirements set forth in Regulation 43.5.

Swap Categories

The Commission expanded and revised the swap categories that serve as a basis for determining AMBSs. The final amendments include several modifications from the proposal. In addition to those changes noted below, the Commission removed certain swaps from the data sets, including duplicate swap reports, indicated by swaps having the same unique swap identifier (USI); terminated swaps; cancelled swap reports; modifications to existing swap reports; swaps with notional values of zero; foreign exchange (FX) swaps with blank currency fields; and CDS trades around the time the index rolls twice a year.[\[6\]](#)

- *Interest Rate Asset Class:* As proposed, the Commission adopted separate swap categories for each combination of the 15 currencies that make up 96% of the total population of trades in interest rate swaps (IRS)[\[7\]](#) and the nine current tenor ranges, for a total of 135 swap categories. The Commission created a 136th swap category for IRSs that are relatively illiquid, including IRS transactions in currencies other than those of these 15 countries and nine tenors. These low liquidity swaps would have a block size of zero, making them eligible for delayed dissemination.
- *Credit Asset Class:* As proposed, the Commission replaced the current spreads and tenor ranges in Regulation 43.6(b)(2)(i) and (ii) with six product types[\[8\]](#) and four- to six-year tenor ranges in setting the parameters of the credit swap categories. In response to comments, however, the Commission added additional swap categories for CDS with optionality, based on its conclusion that there is a substantial difference in the distribution of trades sizes between non-option and option CDS products. As proposed, the Commission also included a swap category for credit swaps that trade at relatively low liquidity and set the block size at zero, making them eligible for delayed dissemination.
- *Equity Asset Class:* ICI had objected to the Commission’s proposal to not change its current approach to swaps in the equity asset class, which contains no subcategories and makes equity swaps ineligible for block treatment. We urged the Commission to consider whether to include an AMBS for equity swaps, based on data it has received from SDRs since 2013.[\[9\]](#) The Commission declined to adopt ICI’s recommendation but stated it will “continue to assess the equity asset class when it recalculates the block levels every year.”[\[10\]](#)
- *Foreign Exchange Asset Class:* As proposed, the CFTC will replace the existing swap categories in Regulation 43.6(b)(4) for FX swaps with new swap categories by currency pair that reflect more recent SDR data. The CFTC’s swap categories pair USD with each of 20 other currencies.[\[11\]](#) For FX swaps where neither currency in the pair is USD, the parties will be able to elect to receive block treatment if the notional amount of either currency in the currency exchange is greater than the minimum

block size for an FX swap between either of the respective currencies, in the same amount, and USD, described in Regulation 43.6(b)(4)(i). For currency pairs outside of those enumerated, the block size will be set at zero, reflecting their relatively low liquidity, and making them eligible for delayed dissemination.

- *Other Commodity Asset Class:* As proposed, the Commission amended the swap categories in Regulation 43.6(b)(5)(i) for the other commodity asset class based on the list of underliers in Appendix D to Part 43. For swaps that have a physical commodity underlier listed in that appendix, the Commission has grouped swaps in the other commodity asset class by the relevant physical commodity underlier. The Commission also added a swap category in Regulation 43.6(b)(5)(ii) for relatively illiquid other commodity swaps and set the block size for those swaps at zero.

Methodologies for AMBS and Cap Sizes

The Commission, as proposed, raised the 50-percent notional amount to calculate new AMBSs to 67-percent, with the exception of those swap categories described above for which the block size would be zero. The Commission also revised cap sizes from a 67-percent notional amount calculation to a 75-percent notional amount calculation for certain swap categories in the interest rate, credit, FX (consisting of USD and specified non-US currency pairs) and other commodity asset classes. Cap sizes for swap categories that have limited trading activity will be as follows: interest rate (USD 100 million), credit (USD 400 million), equity (USD 250 million), FX (USD 150 million), and other commodity asset classes (USD 100 million). These thresholds are based on the AMBSs and cap sizes the Commission established for the post-initial period in its 2013 block trade regulation.

The Commission rejected comments from ICI and others that it should re-evaluate the basis and continued appropriateness of the 67-percent and 75-percent calculations, as well as concerns about the implications for liquidity, particularly in stressed markets, of raising the block thresholds and cap sizes, which will result in a larger number of transactions being subject to the trade execution requirement.^[12] The Commission stated that increased transparency and competition will “stimulate more trading and thereby enhance liquidity and pricing” and that concerns about information leakage and liquidity impairment “will be mitigated by the fact that the appropriate minimum block size is being raised for relatively liquid products.”^[13]

Based on comments, the Commission determined to not replace its current requirement for establishment of block thresholds and cap sizes with a more flexible approach. Thus, it will maintain the current requirement in Regulation 43.6(g)(2) to establish AMBS using a one-year window of reliable SDR data according to the 67-percent notional amount calculation no less than once each calendar year, and the current requirement in Regulation 43.4(h)(2) to establish cap sizes using a one-year window of reliable SDR data according to the 75-percent notional amount calculation recalculated no less than once each calendar year.

Reporting Delay for Block Trades

The CFTC had proposed to require SDRs to implement a time delay of 48 hours for disseminating swap transaction and pricing data for each applicable swap transaction with a notional or principal amount above the corresponding AMBS, if the parties to the swap have elected block treatment. Based on comments, however, the Commission declined to adopt a 48-hour dissemination delay, and instead determined to maintain the current dissemination delays for block trades, which range from 15 minutes to 24 business hours,

depending on the type of market participant, method of execution, and asset class.

The CFTC stated that the majority of commenters opposed the proposed 48-hour delay and expressed concern that such a delay would have negative impacts on transparency, price discovery, and liquidity. The Commission agreed with these concerns and reiterated that its policy goal is “to provide maximum public transparency, while taking into account the concerns of liquidity providers regarding possible reductions in market liquidity.”[\[14\]](#)

The Commission’s failure to revise the dissemination delays for block trades, while raising block trade thresholds and cap sizes, was a subject of considerable discussion by the commissioners at the public meeting adopting the amendments, with several of the commissioners issuing critical statements regarding the Commission’s process and final rules in this respect.[\[15\]](#) At the meeting, Commissioner Stump secured Chairman Tarbert’s commitment that the Commission will (i) publish the swap data relevant to the calculation of the block threshold that it will receive under the amended rules; (ii) hold a roundtable or other public forum for discussion of block trade issues; and (iii) revisit the block trade threshold if the data shows that the CFTC’s approach needs to be adjusted.

Post-Priced Swaps

As proposed and consistent with ICI’s recommendation, the CFTC amended Regulation 43.3(a) to permit the reporting counterparty to delay reporting of post-priced swaps until the earlier of (i) the price being determined and (ii) 11:59:59 pm eastern time on the execution date. If the price of a post-priced swap is not determined by 11:59:59 pm eastern time on the execution date, then all terms other than price must be reported, with price and other undetermined terms to be reported as soon as technologically practicable thereafter.[\[16\]](#)

Aggregation of Orders

Consistent with ICI’s recommendation, the Commission amended Regulation 43.6(h)(6) to remove the requirement that the orders be on SEFs and DCMs (i.e., the aggregation exception would also apply to swaps not listed or offered for trading on SEFs and DCMs) and redesignated it as Regulation 43.6(i). The Commission also removed the condition that, to rely on the exception, a commodity trading advisor (CTA), investment adviser, or foreign person must have more than \$25 million in assets under management.[\[17\]](#)

Amendments to Swap Data Recordkeeping and Reporting Requirements

The Commission amended its regulations under Part 45 that establish swap data recordkeeping and reporting requirements for SDRs, DCOs, SEFs, DCMs, SDs, MSPs, and swap counterparties that are neither SDs nor MSPs. The amendments, among other things, streamline the requirements for reporting new swaps, define and adopt swap data elements that harmonize with international technical guidance, and reduce reporting burdens for reporting counterparties that are neither SDs nor MSPs. The Commission also made conforming changes to certain provisions in Parts 46 and 49 of its regulations.

Amendments to SDR and Data Reporting Requirements

Proposed Verification Obligations

The Commission added requirements for SDRs and reporting counterparties to verify the

accuracy and completeness of swap data that is reported to the SDR. As amended, the regulations require that SDRs affirmatively verify swap data with reporting counterparties. As proposed and consistent with ICI's recommendation, the verification obligation would apply only to reporting counterparties, recognizing that reporting counterparties are in the best position to verify swap data with SDRs, and that it would be burdensome and inconsistent with the CFTC's swap data reporting requirements to impose this obligation on non-reporting counterparties.

In a change from the proposal, however, rather than requiring an SDR to distribute to each reporting counterparty an open swaps report detailing the swap data maintained by the SDR for all open swaps, an SDR must provide a mechanism for a reporting counterparty to access swap data maintained by the SDR for the reporting counterparty's open swaps. The reporting counterparty must verify the SDR's data using the mechanism provided by the SDR to compare the swap data the SDR maintains with the reporting counterparty's own books and records, and submit corrected swap data to the SDR, if necessary. Each SD/MSP/DCO reporting counterparty must perform this verification every 30 calendar days, while each non-SD/MSP/DCO reporting counterparty must perform this verification once every calendar quarter, with a least two months between verifications. Reporting counterparties must maintain a verification log that describes any errors discovered and corrections made.

Proposed Error Correction Obligations

The CFTC amended its error and omission correction requirements for swap data reported to an SDR, with several modifications from the proposal. First, as proposed, the Commission's error and omission correction requirements will apply regardless of the state of the swap, including swaps that are no longer open or "alive."[\[18\]](#) Second, the Commission's amended rules specify that the time frame for correcting swap data "as soon as technologically practicable following discovery of the errors or omissions" is limited to seven business days after discovery of the error or omission. The Commission agreed with commenters that three business days, as it had proposed, may be too short under some circumstances. Error correction obligations also will continue to apply to non-reporting counterparties that become aware of any error or omission in swap data previously reported to an SDR. Non-reporting counterparties must notify the reporting counterparty of the errors or omissions as soon as technologically practicable, but no later than three business days after discovery.[\[19\]](#) Third, if a SEF, DCM, or reporting counterparty is unable to correct errors or omissions within seven business days of discovery, the SEF, DCM or reporting counterparty must inform the Director of the CFTC's Division of Market Oversight, or another CFTC designee, of the errors or omissions and provide an initial assessment and, if it exists at the time, an initial remediation plan for correcting the errors or omissions.[\[20\]](#)

Compliance Dates

The compliance date of the Final Rules is 18 months from the date of publication in the *Federal Register*. However, the Commission provided an additional 12 months (for a total of 30 months) for compliance with Regulations 43.4(h) and 43.6 and the new post-initial block and cap sizes calculated, respectively, according to the 67-percent and 75-percent notional amount calculations.[\[21\]](#)

endnotes

[1] *Real-Time Public Reporting Requirements* (Sept. 24, 2020), available at <https://www.cftc.gov/media/4776/federalregister091720a/download> (“Part 43 Adopting Release”).

[2] *Swap Data Recordkeeping and Reporting Requirements* (Sept. 24, 2020), available at <https://www.cftc.gov/media/4781/federalregister091720b/download> (“Part 45 Adopting Release”).

[3] *Amendments to Regulations Relating to Certain Swap Data Repository and Data Reporting Requirements* (Sept. 24, 2020), available at <https://www.cftc.gov/media/4786/federalregister091720c/download> (“Part 49 Adopting Release”).

[4] For a summary of the CFTC’s proposed amendments, please see ICI Memorandum No. 32276 (March 12, 2020), available at https://www.ici.org/my_ici/memorandum/memo32276. ICI’s May comment letter on the proposed amendments is available at https://www.ici.org/my_ici/memorandum/memo32480 (“ICI May Comment Letter”).

[5] *Roadmap to Achieve High Quality Swaps Data* (July 10, 2017), available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf.

[6] The CFTC explains that, because many market participants “roll” their positions from the old to the new CDS index twice a year, including CDS roll days in the CDS data set would result in significantly larger thresholds for non-roll swaps. Part 43 Adopting Release at 97.

[7] These are the currencies of Australia, Brazil, Canada, Chile, Czech Republic, the European Union, Great Britain, India, Japan, Mexico, New Zealand, South Africa, South Korea, Sweden, and the United States.

[8] These seven product types are: (i) the CDXHY; (ii) iTraxx Europe, Crossover, and Senior Financials indexes; (iii) CDXIG; (iv) CDXEmergingMarkets; and (v) CMBX.

[9] ICI May Comment Letter at 5.

[10] Part 43 Adopting Release at 106.

[11] These are the currencies of Argentina, Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Great Britain, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russia, South Korea, and Taiwan.

[12] Part 43 Adopting Release at 125-6.

[13] *Id.* at 127.

[14] Part 43 Adopting Release at 88.

[15] See *Supporting Statement of Commissioner Brian D. Quintenz Regarding Final Rules Amending the Real-Time Reporting Requirements (Part 43)* (Sept. 17, 2020), available at

<https://cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement091720b>; *Statement of Commissioner Dawn D. Stump Regarding Block Size Threshold in Final Rule: Amendments to Real-Time Public Reporting Requirements* (Sept. 17, 2020), available at <https://cftc.gov/PressRoom/SpeechesTestimony/stumpstatement091720c>.

[16] Regulation 43.3(a)(4).

[17] ICI supported the Commission's proposal to remove this condition. ICI May Comment Letter at 9. The Commission also removed this condition from the exception under which a DCM may allow certain CTAs, investment advisers, and foreign persons to transact in block trades for customers who are not eligible contract participants. In the Final Rules, the Commission added a condition to Regulation 43.6(i)(6) to clarify that aggregation must occur on a SEF or DCM if the swap is listed on a SEF or DCM (this existing condition was inadvertently omitted in the proposal).

[18] In a change from the proposal, however, the Commission clarified in Regulation 45.13(a)(3) that the error correction obligation does not apply to swaps for which the record retention periods under Regulation 45.2 have expired as of the time that the errors are discovered.

[19] The Commission determined that the three-business-day notification deadline is necessary to ensure that the non-reporting counterparty will notify the reporting counterparty of errors in a timely manner. Part 49 Adopting Release at 107. If the non-reporting counterparty does not know the identity of the reporting counterparty, it must notify the SEF or DCM where the swap was executed of the error in the same time frame for notifying the reporting counterparty.

[20] This notification must be made within twelve hours of when the determination is made that the error will not be corrected in time.

[21] The Commission also noted that during this time it will recalculate the AMBS and cap sizes using the publicly reportable swap transactions in the new Part 45 data to help ensure the levels are appropriately calibrated. The Commission intends to take action, as necessary, to ensure the appropriate minimum block sizes and cap sizes are appropriately tailored. Part 43 Adopting Release at 155.