

MEMO# 32276

March 12, 2020

CFTC Proposes Amendments to Swap Data Reporting Requirements

[32276]

March 12, 2020 TO: Derivatives Markets Advisory Committee RE: CFTC Proposes Amendments to Swap Data Reporting Requirements

On February 20th, the Commodity Futures Trading Commission (CFTC or “Commission”) proposed amendments to its regulations regarding swap data reporting.^[1] Specifically, the Commission (i) proposed amendments to its regulations under Part 43 regarding real-time public reporting and dissemination of swap data (“Real-Time Reporting Proposal”); (ii) proposed amendments to its regulations under Part 45 regarding swap data reporting and recordkeeping for swap data repositories (SDRs) and other swap data reporting parties (“Swap Data Reporting Proposal”); and (iii) reopened the comment period for its previously issued proposal on SDR and swap data reporting requirements (“Reopened Reporting Proposal”).^[2] The three swap data reporting proposals (“Proposals”) are intended to improve data quality and consistency, and streamline CFTC regulations. We have summarized below those aspects of the Proposals most relevant to registered investment companies.

Comments on the Proposals are due to the Commission on May 20, 2020. ICI expects to file a comment letter on the Proposals. We will discuss potential comments on our next member call of the Derivatives Markets Advisory Committee on Tuesday, March 17th, from 12-1 pm ET. You should have received an Outlook invitation for that call. If you did not, please contact Monique Curtis at monique.curtis@ici.org.

Background

In 2011, the CFTC adopted regulations relating to the reporting of swap data, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). One set of regulations provided for real-time public reporting of swap transaction and pricing data pursuant to Part 43 of the CFTC’s regulations, while another set out the requirements for swap data recordkeeping and reporting to SDRs, pursuant to Part 45 of the Commission’s regulations. Also in 2011, the CFTC adopted regulations regarding registration requirements and duties for SDRs, pursuant to Part 49 of the Commission’s regulations. In 2012, the CFTC adopted Part 23 of its regulations, which set out requirements for swap dealers (SDs) and major swap participants (MSPs) related to the timely and accurate reporting, confirmation, and processing of swaps. In 2013, the

Commission adopted a block trade regulation, consistent with the requirements of Section 2(a)(13)(E) of the Commodity Exchange Act.[\[3\]](#)

In 2017, the CFTC released its Roadmap to Achieve High Quality Swaps Data (“Roadmap”). The Roadmap contemplated that the CFTC would review its reporting regulations (i) to ensure that it receives accurate, complete, and high-quality data on swaps transactions for its regulatory oversight role; and (ii) to streamline reporting, reduce messages that must be reported, and right-size the number of data elements that are reported to meet the agency’s priority use-cases for swaps data.

Pursuant to the Roadmap, last April, the Commission proposed amendments to its SDR and swap data reporting requirements, and subsequently extended the comment period on the proposal twice.[\[4\]](#) To allow market participants to comment on that proposal in conjunction with the two proposals issued on February 20th, the Commission now has provided for a comment period of May 20, 2020 for all of the Proposals.

Amendments to Real-Time Public Reporting Requirements

The Commission proposes to amend its regulations for real-time public reporting and dissemination requirements for SDRs, derivatives clearing organizations (DCOs), swap execution facilities (SEFs), designated contract markets (DCMs), SDs, MSPs, and swap counterparties that are neither SDs nor MSPs. These amendments would revise the method and timing of real-time reporting and public dissemination; the standardization and validation of real-time reporting fields; requirements regarding delegation of authority to the Commission staff; and clarify certain real-time reporting issues.

In addition, and of most relevance to registered funds, the Real-Time Reporting Proposal would, as described below, amend the definition of “block trade,” change the swap categories for block treatment under the CFTC’s regulations, update block thresholds and cap sizes, and change the reporting delay for block trade data.[\[5\]](#)

Background on Block Trade Regulation

As part of its 2013 block trade regulation, the CFTC provided for a two-period (initial and post-initial) phased-in approach for determining appropriate minimum block sizes (AMBSs) and cap sizes. The Commission published the initial AMBSs by asset class in Appendix F to Part 43 of its regulations. However, the Commission never implemented post-initial minimum block and cap sizes. The Real-Time Reporting Proposal would update the Commission’s approach by, among other things, revising swap categories to reflect data that has been reported to SDRs since the initial period and implementing post-initial block and cap sizes. The Commission also would remove Appendix F and, instead, publish the AMBSs and cap sizes on the Commission’s website.

Definition of “Block Trade”

The Real Time Reporting Proposal would amend the definition of “block trade” to make it consistent with the proposed definition in the Commission’s recent SEF proposal.[\[6\]](#) The Commission proposes a two-part definition that would incorporate both the proposed definition of “block trade” and large notional off-facility swaps.[\[7\]](#)

Swap Categories

Based on the additional swap data now available to it through SDRs, the Commission has

re-evaluated the current swap categories that serve as a basis for determining AMBSs. The Commission believes that it may be appropriate to expand the swap categories to better tailor block sizes to the particular swap transactions within each applicable swap category. The Commission therefore proposes to:

- *Interest Rate Asset Class*: Establish 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)[\[8\]](#) and the nine current tenor ranges, for a total of 135 swap categories. The Commission proposes to create 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*: Replace the current spreads and tenor ranges in Regulation 43.6(b)(2)(i) and (ii) with seven product types[\[9\]](#) and four- to six-year tenor ranges in setting the parameters of the credit swap categories. Based on a review of SDR data, the Commission believes that most market participants trade these specific credit products within these tenor ranges. The Commission also proposes to add 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*: Not change its current approach to the swaps in the equity asset class, which contains no subcategories and makes equity swaps ineligible for block treatment. This approach reflects: (i) that there is a highly liquid underlying cash market for equities; (ii) the absence of time delays for reporting block trades in the underlying equity cash market; (iii) the relatively small size of the equity index swaps market compared to the futures, options, and cash equity index markets; and (iii) the Commission's goal of protecting the price discovery function of the underlying equity cash market and futures market.
- *Foreign Exchange Asset Class*: Replace the existing swap categories in Regulation 43.6(b)(4) for foreign exchange (FX) swaps with new swap categories by currency pair that reflect more recent SDR data. The CFTC's proposed swap categories would pair USD with each of 20 other currencies.[\[10\]](#) For FX swaps where neither currency in the pair is USD, the Commission proposes that parties could 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). The Commission considers currency pairs outside of those it enumerates in the proposed regulations to trade at relatively low liquidity, and thus proposes to add a swap category for those swaps that would set their block size at zero, making them eligible for delayed dissemination.
- *Other Commodity Asset Class*: Amend the swap categories in Regulation 43.6(b)(5)(i) for the other commodity asset class based on the list of underliers in current Appendix D to Part 43 (which the CFTC would redesignate as Appendix A). For swaps that have a physical commodity underlier listed in that appendix, the Commission would group swaps in the other commodity asset class by the relevant physical commodity underlier. The Commission also proposes to add 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

The CFTC proposes several changes to the process to determine AMBS under its

regulations. Most significantly, the Commission proposes to raise 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. This change would reflect the Commission's intentions regarding the determination of AMBS in the post-initial period.

Reporting Delay for Block Trades

The CFTC proposes 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 appropriate minimum block size, if the parties to the swap have elected block treatment. There was extensive discussion at the CFTC open meeting regarding the appropriate length of the public reporting delay for block trades.[\[11\]](#) It was clear from the discussion that the commissioners are unsure (or have concerns) about whether 48 hours is the appropriate period for delaying public reporting of block trades. The commissioners seek public feedback and data on this issue, including whether a shorter delay or tailored delays corresponding to different swap categories or the size/characteristics of block trades would be more appropriate.[\[12\]](#)

Cap Sizes and Masking

The CFTC proposes to revise the cap sizes for notional and principal amounts that would mask the total size of a swap transaction if it equals or exceeds the AMBS for a given swap category. The existing regulations reflect the initial cap sizes set by the Commission. The Commission proposes to establish revised cap sizes based on the post-initial cap sizes that it intended when it adopted the block trade regulation in 2013.

The proposed cap sizes would be based on 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. The Commission proposes cap sizes for swap categories that have limited trading activity 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). The Commission also proposes to replace the current requirement that requires it to recalculate the cap size no less than once each calendar year with a flexible approach in which it would determine, on an ongoing basis, whether recalculating the cap sizes is necessary.

Aggregation of Orders

Regulation 43.6(h)(6) generally prohibits the aggregation of orders for different accounts to satisfy minimum block trade size or cap size requirements but contains an exception for orders on SEFs and DCMs by certain commodity trading advisors, investment advisors, and foreign persons performing a similar role. The Commission proposes to amend this provision[\[13\]](#) to remove the requirement that the orders be on SEFs and DCMs (i.e., the aggregation exception would apply to swaps not listed or offered for trading on SEFs and DCMs). The Commission also proposes to remove the condition that, to rely on the exception, a CTA, investment adviser, or foreign person must have more than \$25 million in assets under management.[\[14\]](#)

Amendments to Swap Data Recordkeeping and Reporting Requirements

The Swap Data Reporting Proposal would amend the Commission's regulations under Part 45 to simplify the requirements for swap data reporting; require SDRs to validate swap

reports; permit the transfer of swap data between SDRs; alleviate reporting burdens for certain non-SD/MSP reporting counterparties; and harmonize the swap data elements counterparties report to SDRs with international technical guidance. The Swap Data Reporting Proposal also would make conforming amendments to Parts 46 and 49 of the Commission's regulations.

Reopening of Comment Period for Proposed Amendments to SDR and Data Reporting Requirements

As mentioned above, last April, the CFTC proposed amendments to improve the accuracy of swap data reported to, and maintained by, SDRs. After extending the comment period twice, the Commission is reopening the comment period until May 20th, consistent with the comment deadline of the other two swap data reporting proposals. The aspects of the Reopened Reporting Proposal most relevant to registered funds are highlighted below.

Proposed Verification Obligations

The Commission proposes to add requirements for SDRs and reporting counterparties to verify the accuracy and completeness of swap data that is reported to the SDR. Currently, SDRs are required to establish and adopt policies and procedures to ensure the accuracy of swap data and other information reported to them. The SDR must confirm the accuracy and completeness of all swap data submitted pursuant to Part 45, with the exception of swap data received from a SEF, DCM, DCO, or a third-party service provider acting on behalf of a swap counterparty, if certain conditions are met. The CFTC explains that, to satisfy these obligations, SDRs have adopted rules based on the concept of negative affirmation—SDRs typically treat reported swap data as accurate and confirmed if a counterparty does not inform the SDR of errors or omissions or otherwise make modifications to a trade record for a certain period of time.

The CFTC is concerned that SDRs not obtaining affirmative confirmation of swap data has had a negative effect on swap data accuracy and consistency. Accordingly, the Commission is proposing that SDRs affirmatively verify swap data with reporting counterparties. Importantly, the CFTC proposes that 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. The Commission requests comment on this approach.

The Commission would require that an SDR distribute to each reporting counterparty an open swaps report detailing the swap data maintained by the SDR for all open swaps. SDRs would be required to distribute the open swaps report to SD/MSP/DCO reporting counterparties on a weekly basis, and to non-SD/MSP/DCO reporting counterparties on a monthly basis, based on the Commission's understanding that non-SD/MSP/DCO reporting counterparties tend to be less active in the swap markets with fewer resources to devote to regulatory compliance.

In response to an open swaps report, a reporting counterparty would be required to provide the SDR with either a verification of data accuracy or a notice of discrepancy indicating that the data contained in an open swaps report contains one or more discrepancies.

The CFTC proposes conforming amendments to Part 45 that would require reporting counterparties to verify swap data. The amended regulations would require that reporting counterparties submit either a verification of data accuracy or a notice of discrepancy in

response to each open swaps report received from an SDR within the following timeframes: (i) 48 hours of the SDR providing the open swaps report if the reporting counterparty is an SD, MSP, or DCO; or (ii) 96 hours of the SDR providing the open swaps report to non-SD/MSP/DCO reporting counterparties.

Proposed Error Correction Obligations

Currently, SEFs, DCMs, and reporting counterparties are required to correct errors and omissions in swap data that was previously reported to an SDR or was not reported as required, as soon as technologically practicable following discovery of the errors or omissions. Under current regulations, non-reporting counterparties that discover swap data errors or omissions must promptly notify the reporting counterparty, which is required to report a correction of the error or omission to the SDR. A similar obligation exists to correct errors and omissions in swap transaction and pricing data that was publicly disseminated. Under these regulations, non-reporting counterparties that become aware of an error or omission in reported swap transaction and pricing data must promptly notify the reporting party of the error or omission.

The CFTC proposes several changes to the error and omission correction requirements for swap data reported to an SDR. First, the Commission's error and omission correction requirements would apply regardless of the state of the swap, including swaps that are no longer open or "alive." Second, the Commission proposes that the current time frame for correcting swap data "as soon as technologically practicable following discovery of the errors or omissions" would be limited to no more than three business days after discovery of the error or omission. Importantly, a non-reporting counterparty that becomes aware of any error or omission in swap data previously reported to an SDR would be required to notify the reporting counterparty of the errors or omissions as soon as technologically practicable, but no later than three business days after discovery. Third, if a SEF, DCM, or reporting counterparty is unable to correct errors or omissions within three business days of discovery, the SEF, DCM or reporting counterparty must immediately 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 initial remediation plan for correcting the errors or omissions. The Commission expects that a reporting counterparty that repeatedly discovers errors or omissions in the open swaps report will evaluate its reporting systems to discover any systemic errors or omissions, including working with the SDR to improve its data reporting, if needed.

The Commission proposes conforming amendments to the error and omission correction requirements applicable to real-time public reporting of swap transaction and pricing data under Part 43.

Proposed Compliance Dates

The CFTC understands that market participants will need a sufficiently long implementation period to make the changes contemplated by the Proposals. It therefore expects that the compliance date for final regulations will be at least one year from the date that the last of each of the rulemakings is published in the Federal Register.[\[15\]](#)

Sarah A. Bessin
Associate General Counsel

endnotes

[1] See <https://cftc.gov/PressRoom/PressReleases/8121-20>.

[2] See *id.*

[3] *Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades*, 78 Fed. Reg. 32866 (May 31, 2013). ICI's 2012 letter on the CFTC's block trade re-proposal is available at <https://www.ici.org/pdf/26158.pdf>.

[4] See *Certain Swap Data Repository and Data Reporting Requirements*, 84 Fed. Reg. 21044 (May 13, 2019); 84 Fed. Reg. 57831 (Oct. 29, 2019).

[5] For a summary of the CFTC's current regulations on the reporting of block trades, please see ICI Memorandum No. 27283 (June 6, 2013), available at https://www.ici.org/my_ici/memorandum/memo27283.

[6] See *Swap Execution Facility Requirements and Real-Time Reporting Requirements*, 85 Fed. Reg. 9407 (Feb. 20, 2020).

[7] Proposed Regulation 43.2.

[8] 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.

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

[10] 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.

[11] For a summary of the commissioners' views on this issue, please see their written statements from the February 20, 2020 open meeting. Available at <https://cftc.gov/PressRoom/SpeechesTestimony/tabertstatement022020>; <https://cftc.gov/PressRoom/SpeechesTestimony/tabertstatement022020>; <https://cftc.gov/PressRoom/SpeechesTestimony/behnamstatement022020>; <https://cftc.gov/PressRoom/SpeechesTestimony/stumpstatement022020>; <https://cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement022020>.

[12] See, e.g., Real-Time Reporting Proposal at 78-79 (request for comment).

[13] The provision would also be redesignated as Regulation 43.6(h)(5).

[14] ICI had opposed this condition as applied to registered investment advisers. See Letter to Mr. David A. Stawick, Secretary, Commodity Futures Trading Commission, from Sarah A. Bessin, Senior Counsel, Investment Company Institute, dated July 26, 2012, available at <https://www.ici.org/pdf/26343.pdf>. The Commission also proposes to remove 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.

[\[15\]](#) However, the compliance date for the Commission's proposed amendments to its regulations on unique transaction identifiers, part of the Swap Data Reporting Proposal, would be December 31, 2020.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.