

**MEMO# 25757**

December 29, 2011

## **CFTC Adopts Rules for Swap Data Reporting and Recordkeeping**

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 88-11  
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 53-11  
SEC RULES MEMBERS No. 145-11 RE: CFTC ADOPTS RULES FOR SWAP DATA REPORTING  
AND RECORDKEEPING

The Commodity Futures Trading Commission (“Commission”) recently adopted two sets of rules, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), that relate to the reporting of swap data. The first set of rules provides for real-time public reporting of swap transaction and pricing data (“Real-Time Public Reporting Rules”). [\[1\]](#) The second set of rules sets out the requirements for swap data recordkeeping and reporting for regulatory purposes (“Recordkeeping and Reporting Rules”). [\[2\]](#) The rules are summarized below.

### **Real-Time Public Reporting Rules**

Section 727 of the Dodd-Frank Act added new Section 2(a)(13) to the Commodity Exchange Act, which requires public availability of swap transaction data. Section 2(a)(13) specifies, among other things, that data relating to a swap transaction, including price and volume, be reported to the public as soon as technologically practicable after the time at which the swap transaction has been executed. Section 2(a)(13) also requires that publicly reported information not identify the participants to a swap transaction.

The Real-Time Public Reporting Rules, adopted under part 43 of the Commission’s regulations, implement the requirements of Section 2(a)(13) by requiring that any “publicly reportable swap transaction” must be reported and publicly disseminated. [\[3\]](#) The Real-Time Public Reporting Rules cover publicly reportable swap transactions under all five asset classes (interest rate, credit, equity, foreign exchange (“FX”), [\[4\]](#) and “other commodity” [\[5\]](#)), whether cleared or uncleared, and regardless of whether the swap is executed bilaterally or over a swap execution facility (“SEF”) or designated contract market (“DCM”). The transaction and pricing data required to be reported is specified in Appendix A to the Real-Time Public Reporting Rules. [\[6\]](#)

Under the Real-Time Public Reporting Rules, swap transaction data must be reported to a registered swap data repository (“SDR”) “as soon as technologically practicable” after execution of a publicly reportable swap transaction. [\[7\]](#) The SDR is then responsible for publicly disseminating the swap transaction and pricing data “as soon as technologically practicable.” [\[8\]](#) Requirements regarding who must report to the SDR depend on how the swap is executed and who are the parties to the transaction. For example, for publicly reportable swap transactions executed on or pursuant to the rules of a SEF or DCM, the SEF or DCM is responsible for reporting the swap transaction and pricing data to the SDR for public dissemination. For publicly reportable swap transactions that are not executed on or pursuant to the rules of a SEF or DCM, unless otherwise agreed to by the parties prior to execution, the parties must report to the SDR as follows:

- If only one party is a swap dealer (“SD”) or major swap participant (“MSP”), then the SD or MSP must report to the SDR;
- If one party is an SD and the other party is an MSP, then the SD must report to the SDR; and
- In all other situations, the parties must designate which party should report to the SDR.

The Commission had proposed rules regarding the appropriate minimum size relating to block trades and large notional off-facility swaps. It received a large number of comments expressing concern that additional analysis of block trade data was necessary before setting appropriate minimum block sizes and time delays. The Commission therefore determined to not specify the criteria for determining block trade sizes in the final rules (although it has adopted the time delays) and stated that it will address block trades in a future rulemaking. The Real-Time Public Reporting Rules provide that all block trades and large notional off-facility swaps, as well as all publicly reportable swap transactions that do not have “appropriate minimum block sizes,” will be subject to time delays for public dissemination. [\[9\]](#)

## **Recordkeeping and Reporting Rules**

Sections 727, 729, and 728 of the Dodd-Frank Act respectively added to the Commodity Exchange Act Section 2(a)(13)(G), 4r, and 21(b) relating to swap data recordkeeping and reporting requirements. The Recordkeeping and Reporting Rules implement the requirements of these sections as applied to SDRs, derivatives clearing organizations (“DCOs”), DCMs, SEFs, SDs, MSPs, and swap counterparties that are neither SDs nor MSPs (“non-SD/MSP counterparties”). Under the rules, SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties must keep records throughout the life of a swap and for five years following termination of the swap. SDRs must keep records throughout the life of the swap and for fifteen years following termination of the swap.

The Recordkeeping and Reporting Rules require electronic reporting to an SDR of swap data during the creation of a swap, as well as during the existence of the swap until its final termination or expiration. [\[10\]](#) Data required for the creation of a swap includes all data regarding primary economic terms (“PET”) and confirmation data for the swap. Data required during the continuation of a swap includes all changes to the primary economic terms of, and valuation data for, the swap. The Recordkeeping and Reporting Rules set out the time frames in which data must be reported. The time frames generally differ based on the type of counterparty.

The Recordkeeping and Reporting Rules require reporting by the entity or reporting

counterparty the Commission believes has the easiest, fastest, and cheapest access to the data. As a result, the rules generally minimize the circumstances in which non-SD/MSP counterparties must report data. For example:

- For swaps executed on a SEF or DCM, required swap creation data must be reported by the SEF or DCM;
- For off-facility swaps accepted for clearing within the applicable deadline for reporting PET data, required swap creation data must be reported by the DCO;
- For off-facility swaps not cleared or not accepted for clearing within the applicable deadline, required swap creation data must be reported by the reporting counterparty; [\[11\]](#)
- Continuation data for cleared swaps must be reported by the DCO, although SD and MSP reporting counterparties must also report valuation data; and
- For uncleared swaps, continuation data must be reported by the reporting counterparty.

The Recordkeeping and Reporting Rules require the use of three unique identifiers in connection with reporting of swap transaction data: a “unique swap identifier,” a “legal entity identifier,” and a “unique product identifier.” These identifiers are intended to enable regulators to better link together and aggregate data across counterparties, asset classes, and transactions.

## Compliance Dates

The Real-Time Public Reporting Rules and the Recordkeeping and Reporting Rules are subject to harmonized phased in compliance dates, based on asset class and counterparty type. Non-SD/MSP counterparties receive the most time, under both sets of rules, to come into compliance.

Compliance Date 1: July 16, 2012 or 60 days after publication in the Federal Register of final Commission rules defining certain key terms, such as “swap”

- SEFs, DCMs, SDs, and MSPs must comply with the Real-Time Public Reporting Rules for swap transactions in the interest rate and credit asset classes. [\[12\]](#)
- SEFs, DCMs, DCOs, SDs, MSPs, and SDRs must comply with the Recordkeeping and Reporting Rules for swap transactions in the interest rate and credit asset classes.

Compliance Date 2: 90 calendar days after Compliance Date 1

- SEFs, DCMs, SDs, and MSPs must comply with the Real-Time Public Reporting Rules for swap transactions in the foreign exchange, equity, and other commodity asset classes.
- SEFs, DCMs, DCOs, SDs, MSPs, and SDRs must comply with the Recordkeeping and Reporting Rules for swap transactions in the foreign exchange, equity, and other commodity asset classes.

Compliance Date 3: 90 calendar days after Compliance Date 2

- Non-SD/MSP counterparties must comply with the Real-Time Public Reporting Rules for swap transactions in all asset classes.
- Non-SD/MSP counterparties must comply with the Recordkeeping and Reporting Rules for swap transactions in all asset classes.

**endnotes**

[1] Real Time Public Reporting of Swap Transaction Data, Commodity Futures Trading Commission, RIN 3038-AD08, available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister122011a.pdf> (“Real-Time Reporting Release”).

[2] Swap Data Recordkeeping and Reporting Requirements, Commodity Futures Trading Commission, RIN 3038-AD19, available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister122011b.pdf> (“Recordkeeping and Reporting Release”).

[3] The rules define a “publicly reportable swap transaction” as (1) any executed swap that is an arm’s-length transaction between two parties that results in a corresponding change in the market risk position between the two parties; or (2) any termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of a swap.

[4] The Commission explained in the Real-Time Reporting Release that, to the extent that FX swaps or forwards, or both, are excluded from the definition of “swap” pursuant to a determination by the Department of the Treasury (“Treasury”), those transactions would not be subject to the requirements of Section 2(a)(13) of the Commodity Exchange Act or the Real-Time Public Reporting Rules. The Commission noted, however, that Treasury’s determination, as proposed, would not apply to FX options or non-deliverable forwards, and that FX instruments that are not covered by Treasury’s final determination would be subject to the Real-Time Public Reporting Rules.

[5] The Commission will phase in the public dissemination requirements for “other commodity” swaps. For all off-facility swaps that reference an underlying asset or assets in the other commodity asset class which are not listed in Appendix B to the Real-Time Reporting Release (which includes the 28 physical commodity contracts that are subject to the commission’s position limits and other commodity swaps that are economically related to such contracts, as well as Brent Crude Oil and any swap that is economically related to Brent Crude Oil), the Commission intends to propose special accommodations for the public dissemination of transaction and pricing data in a future release. Until that time, these transactions will not be subject to the Real-Time Public Reporting Rules, although they will be subject to the Recordkeeping and Reporting Rules.

[6] The Commission has harmonized the data fields required to be reported for purposes of the Real-Time Public Reporting Rules with those required for purposes of the Recordkeeping and Reporting Rules so that reporting parties, SEFs and DCMs may report the data elements necessary to satisfy both requirements in the same data stream.

[7] Under the rules, “as soon as technologically practicable” means as soon as possible, taking into consideration the prevalence, implementation and use of technology by comparable market participants. The Commission acknowledges that the timing may differ based on the type of market participant that is responsible for reporting and the type of execution.

[8] As discussed further below, however, some swap transaction data is subject to a time delay under the rules.

[9] The amount of the time delay depends on the type of execution, swap category, type of counterparty, and whether the swap is subject to the mandatory clearing requirement. The time delays are phased in (are longer in the first year or earlier years), and have been harmonized with the time delays under the Recordkeeping and Reporting Rules.

[10] To avoid data fragmentation, all data for a swap must be reported to a single SDR, which is the SDR receiving the first data report.

[11] Rule 45.8 of the Recordkeeping and Reporting Rules sets out a hierarchy regarding the determination of who is required to report. For example, (1) if only one counterparty is an SD, the SD shall be the reporting counterparty; (2) if neither counterparty is an SD, but one party is an MSP, the MSP shall be the reporting counterparty; and (3) if both counterparties are non-SD/MSP counterparties, and only one counterparty is a financial entity as defined in Section 2(h)(7)(c) of the Commodity Exchange Act, the financial entity counterparty shall be the reporting counterparty. When both counterparties are non-SD/MSP counterparties (and both are financial entities or neither is a financial entity), they generally may agree on which party will be the reporting counterparty.

[12] For swaps in the interest rate and credit asset classes that are not executed on or pursuant to the rules of a SEF or DCM and have at least one party that is an SD or MSP, Compliance Date 1 will be the date that is the later of (1) 180 calendar days after the publication of the Real-Time Reporting Release in the Federal Register or (2) 60 calendar days after the publication in the Federal Register of Commission rules defining the terms “swap,” SD and MSP.