

CFTC Adopts Rules Establishing Swap Reporting Regime

Contents

Introduction	1
Swap Reporting and Dissemination of Data at Execution	1
Ongoing Reporting	3
Recordkeeping and Operational Requirements	4
Unique Identifiers	4
Compliance Schedule	5
Timeframe for Reporting Primary Economic Terms and Confirmation Data – SD/MSP Reporting Counterparties	A-1
Timeframe for Reporting PET and Confirmation Data – Non-SD/MSP Reporting Counterparties	B-1
Public Dissemination Delay for Block Trade / Large Notional Off-Facility Swap – At Least One SD/MSP Counterparty	C-1
Public Dissemination Delay for Block Trade / Large Notional Off-Facility Swap – No SD/MSP Counterparty	D-1

Introduction

The CFTC has adopted two final rules — a Swap Data Reporting Rule and a Real-Time Reporting Rule — that, in less than a fully coordinated manner, establish the new Dodd-Frank Act reporting regime for swaps.¹ The rules require market participants to report a host of swap information upon execution or shortly thereafter to a swap data repository (“SDR”), which is then responsible for disseminating a portion of that information to the public. Updated information for a given swap must be reported to the same SDR throughout the life of the swap.

The methods by which the swap information is reported to the SDR and the time allotted for such reporting depend on the counterparties to the swap, the type of the swap and whether the swap is large enough to qualify as a block trade or large notional off-facility swap. The rules also require market participants to maintain records concerning swaps and to ensure the timely retrievability of records. The rules will go into effect in stages based on the type of market participant and asset class, beginning no earlier than July 16, 2012.

Swap Reporting and Dissemination of Data at Execution

Information about executed swaps must be reported to SDRs, which, in turn, are responsible for public dissemination of a portion of that information — essentially, swap transaction and pricing information, but *not* the identity of the counterparties.

For swaps executed on or pursuant to the rules of a swap execution facility (“SEF”) or designated contract market (“DCM”), the SEF or DCM is responsible for reporting “swap transaction and pricing information” and “swap creation data” to the SDR (as described in the sidebar). Counterparties will not be responsible for reporting swap data to the SDR for swaps executed on or pursuant to the rules of a SEF or DCM.

¹ The Swap Data Reporting Rule implements, among other statutory provisions, Commodity Exchange Act (“CEA”) § 2(a)(13)(G), which was added by the Dodd-Frank Act and requires that “[e]ach swap (whether cleared or uncleared) shall be reported to a registered [SDR].” The Real-Time Reporting Rule implements, among other statutory provisions, CEA § 2(a)(13)(C), which requires the CFTC to provide for “the public availability of swap transaction and pricing data.”

Swap Data Reportable to an SDR:

“Swap Transaction and Pricing Information,” which includes:

- the time and date of execution;
- whether the swap is cleared;
- effective and end dates;
- price information; and
- timestamps;
- *but not* data that would identify the counterparties.

“Swap Creation Data,” which includes:

- a swap’s primary economic terms; and
- confirmation data.

A swap’s primary economic terms include most of the “swap transaction and pricing information” described above, as well as the identity of the counterparties and a number of other terms. Confirmation data includes all the terms agreed to at confirmation.

Tables describing the data fields and suggested form and order for the real-time public reporting of swap transaction and pricing data are available [here](#). Tables of the minimum primary economic terms data are available [here](#).

For off-facility swaps, a designated “reporting counterparty,” which differs depending on the status of the counterparties to the swap (as described in the sidebar on the next page), is responsible for reporting. In the case of real-time reporting requirements, such data must be reported to an SDR “as soon as technologically practicable.”

Reporting counterparties are also required to report “swap creation data” to SDRs, which consists of a swap’s “primary economic terms” and confirmation data (as described in the sidebar on this page). Primary economic terms and confirmation data must be reported “as soon as technologically practicable” after execution and confirmation, respectively, but no later than within separate reporting windows that vary from 15 minutes to 48 business hours depending on the types of counterparties, asset class and the amount of time that has passed since adoption of the rule.² These reporting windows will be phased in, narrowing each year after the compliance date.

SDRs are obligated to publicly disseminate this “swap transaction and pricing information” as soon as technologically practicable after receipt, subject to time delays for block or large notional off-facility swaps. These delays, among the most controversial elements of the proposed rules, vary between 15 minutes and 48 business hours based on a swap’s execution type, underlying asset type, and counterparty type, among other factors.³ At the urging of numerous commenters, the CFTC delayed the finalization of the criteria for determining block trade sizes.

Generally, the Swap Data Reporting Rule mandates reporting for all swaps, while the Real-Time Reporting Rule applies to “publicly reportable swap transactions” that constitute arm’s-length transactions that result in a change in market risk, and therefore excludes, for example, swaps between 100 percent-owned subsidiaries of the same parent.

The interplay of two aspects of the Real-Time Reporting Rule effectively determines the SDR to which a swap will be reported. For off-facility swaps, the reporting party is required to make the initial primary economic terms data report, and for platform-executed swaps, the SEF or DCM is required to make the initial report. In practice, therefore, the reporting counterparty selects the SDR for an off-facility swap, and the SEF or DCM selects the SDR for an on-facility swap because the Real-Time Reporting Rule stipulates that all subsequent data for the swap must be reported to the same SDR.

² The specific reporting windows can be found in Appendices A and B.

³ The specific time delays can be found in Appendices C and D.

Reporting Counterparty Rules

The two rules set out the same general framework:

- If only one party is an SD or MSP, that party is the reporting counterparty;
- If one party is an SD and the other party is an MSP, the SD is the reporting counterparty;
- Otherwise, the parties will designate which party will be responsible for reporting.

In addition, the Swap Data Reporting Rule:

- specifies that in a transaction between a non-SD/MSP entity that is a financial entity and a non-SD/MSP entity that is not a financial entity, the financial entity is the reporting counterparty;
- specifies that, in a swap between two non-SD/MSPs where only one is a U.S. person, the U.S. person is the reporting counterparty;
- requires counterparties of the same status to agree on which is the reporting counterparty as a term of the swap agreement for off-facility swaps and as a post-execution side agreement for swaps executed on an SEF or DCM.

In most instances, swap market participants will be able to report all required information under both rules simultaneously. The CFTC notes in the Swap Data Reporting Rule release that it is working to conform the data requirements as much as possible to enable participants to comply with both rules by creating a single report.

A reporting party may retain a third-party service provider to facilitate reporting to an SDR under the Real-Time Reporting Rule, but the counterparty generally remains legally responsible for ensuring that the data is reported.

Ongoing Reporting

The two rules also impose reporting requirements that extend beyond the execution of the swap.

The Swap Data Reporting Rule requires reporting of swap “continuation data” on an ongoing basis to the same SDR to which the swap was initially reported. Market participants may choose to provide a daily “snapshot” of the primary economic terms of the swap or, instead, to report upon any “life cycle event”—any event that would change the swap’s primary economic terms. These life cycle events include, for example, assignments and novations. In addition to providing either snapshot or life cycle data, a reporting party must also provide valuation data. Derivatives clearing organizations (“**DCOs**”) are responsible for reporting continuation data for any swap that they clear, while the reporting counterparty for any uncleared swap is responsible for providing the continuation data to the SDR.⁴ In addition, the rules require all swap counterparties (whether or not they are a reporting counterparty) to timely correct any errors or omissions in reported data.

⁴ If the reporting counterparty is an SD or MSP, it must also report valuation data — but not life cycle or snapshot data — for cleared swaps. Accordingly, for a cleared swap where the reporting counterparty is an SD or MSP, the SDR will receive a valuation report from both the DCO and the reporting counterparty.

Block Trade Delays

Time delays for public dissemination of swap transaction and pricing information for block trades and large notional off-facility swaps will be phased in over three years from the compliance date for the swap in question. When fully phased in, the time delay will vary from 15 minutes to 2 hours for swaps with at least one SD/MSP counterparty and from 15 minutes to 24 business hours for swaps with no SD/MSP counterparty.

For details, see Appendices C and D.

Reporting Windows

Windows for reporting swap creation data to an SDR will be phased in over three years from the compliance date for the swap in question.

When fully phased in, reporting windows will vary from 15 minutes to 2 hours for primary economic terms data if the reporting counterparty is an SD or MSP and from 1 hour to 24 business hours if the reporting counterparty is a non-SD/MSP. Reporting windows for confirmation data vary from 30 minutes to 24 business hours for SD/MSP reporting counterparties and from the end of the first business day following confirmation to 24 business hours for non-SD/MSP reporting counterparties.

For details, see Appendices A and B.

Recordkeeping and Operational Requirements

The Swap Data Reporting Rule requires market participants to keep “full, complete and systematic records,” the details of which will be established by the CFTC in forthcoming releases. SEFs, DCMs, DCOs, SDs and MSPs are required to keep records in electronic form, but they may keep records that are “originally created and exclusively maintained” in paper form in such a form to the extent that the entity can satisfy the CFTC’s record retrievability requirements — generally, real-time access through the life of the swap and for two years following final termination, and retrieval within three business days for at least five years thereafter. Non-SD/MSP swap counterparties, by contrast, have the option of keeping their records in paper form even if they were created electronically. Such records must be retrievable within five business days for the period during which the records are required to be retained.

SDRs are required to maintain readily accessible records through the life of the swap plus five years following termination. Thereafter, the SDR must be able to retrieve the records within two business days for at least 10 additional years. Furthermore, SDRs must promulgate technical requirements for reporting parties to transmit data to SDRs, and reporting parties will have to abide by those, and potentially other, SDR requirements.

All records required to be maintained by any registered entity or its affiliates or by any non-SD/MSP counterparty subject to CFTC jurisdiction is subject to inspection by the CFTC, SEC, Department of Justice or a representative of any prudential regulator as authorized by the CFTC.

Unique Identifiers

The Swap Data Reporting Rule requires that all swap records and reports include unique alphanumeric codes identifying the individual swap, the counterparties and, in most cases, its underlying product. These include:

- legal entity identifiers (“**LEIs**”) that identify the counterparties;
- unique product identifiers (“**UPIs**”) that identify a swap’s underlying product; and
- unique swap identifiers (“**USIs**”) that identify individual swaps.

LEIs and UPIs will be generated and assigned by yet-to-be determined non-governmental bodies. SEFs and DCMs will generate and assign USIs for swaps that they execute, SDs and MSPs will generate and assign USIs for off-facility swaps where they are the reporting counterparty, and SDRs will generate and assign USIs for off-facility swaps where a non-SD/MSP is the reporting counterparty. Until the CFTC designates an LEI provider, the SDR to which a counterparty reports a swap for the first time after the rule goes into effect must assign an identifier to that counterparty, which will be used by the counterparty and all other SDRs. Likewise, until the CFTC determines how it will designate providers of UPIs, the reporting

Compliance Date One

For Real-Time Reporting Rule requirements for exchange-traded credit swaps and interest rate swaps, the later of:

- July 16, 2012; or
- 60 days after Federal Register publication of final rules defining swap.

For Real-Time Reporting Rule requirements for off-facility credit swaps and interest rate swaps, the later of:

- July 16, 2012; or
- 60 days after Federal Register publication of final rules defining swap, SD and MSP.

For Swap Data Reporting Rule requirements for credit swaps and interest rate swaps, the later of:

- July 16, 2012; or
- 60 days after Federal Register publication of final rules defining swap, SD and MSP.

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counterparty will use the identifiers and descriptive systems of the SDR to which they report a swap.

Compliance Schedule

The CFTC has established a schedule of compliance dates that is staggered based on product type and reporting party status. By Compliance Date One, SEFs, DCMs, DCOs, SDs and MSPs will need to be in compliance with the rules' requirements for credit swaps and interest rate swaps. The date of Compliance Date One depends on the type of reporting requirement and the execution methodology, as described in the sidebar, but will be no earlier than July 16, 2012.⁵ By Compliance Date Two, which is 90 days after Compliance Date One, SEFs, DCMs, DCOs, SDs and MSPs must be in compliance with the rules' requirements for all asset classes. By Compliance Date Three, which is 90 days after Compliance Date Two, all swap market participants must be in compliance with the rules' requirements for all asset classes.

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⁵ For purposes of the Real-Time Reporting Rule, Compliance Date One differs depending on whether the swap is executed on- or off-facility. The Real-Time Reporting Rule is not clear whether Compliance Date Two and Compliance Date Three are triggered off the earlier or the later of these two dates.

Timeframe for Reporting Primary Economic Terms (“PET”) and Confirmation Data – SD/MSP Reporting Counterparties

The Swap Data Reporting Rule requires reporting counterparties to report PET and confirmation data for off-facility swaps as soon as technologically practicable following execution or confirmation, but not later than the specified reporting windows below.

SWAP CHARACTERISTICS	REPORTING WINDOWS*			
	PET: Year 1	PET: Year 2	PET: Year 3 and Thereafter	Confirmation Data
Subject to Mandatory Clearing	30 minutes	15 minutes	15 minutes	If confirmation occurs electronically: 30 minutes Otherwise: 24 business hours
Not Subject to Mandatory Clearing — non-reporting counterparty is SD/MSP or financial entity, or verification occurs electronically	Credit, equity, foreign exchange and interest rate swaps: 1 hour Other commodity swaps: 4 hours for other commodity swaps	Credit, equity, foreign exchange and interest rate swaps: 30 minutes Other commodity swaps: 2 hours	Credit, equity, foreign exchange and interest rate swaps: 30 minutes Other commodity swaps: 2 hours	If confirmation occurs electronically: 30 minutes Otherwise: 24 business hours
Not Subject to Mandatory Clearing — Other	Credit, equity, foreign exchange and interest rate swaps: 24 business hours Other commodity swaps: 48 business hours**	Credit, equity, foreign exchange and interest rate swaps: 12 business hours Other commodity swaps: 24 business hours**	Credit, equity, foreign exchange and interest rate swaps: 30 minutes Other commodity swaps: 2 hours**	If confirmation occurs electronically: 30 minutes Otherwise: 24 business hours

* Reporting windows are measured from the execution or confirmation of the swap. Years are measured from the Compliance Date.

** A flowchart in the CFTC final release sets forth reporting windows that differ from the reporting windows provided in the final rule text. The appendices to this Client Memorandum are based on the final rule text.

Timeframe for Reporting PET and Confirmation Data – Non-SD/MSP Reporting Counterparties

The Swap Data Reporting Rule requires reporting counterparties to report PET and confirmation data for off-facility swaps as soon as technologically practicable following execution or confirmation, but not later than the specified reporting windows below.

SWAP CHARACTERISTICS	REPORTING WINDOWS*		
	Year 1	Year 2	Year 3 and Thereafter
Subject to Mandatory Clearing	PET: 4 business hours Confirmation: By the end of the second business day after confirmation	PET: 2 business hours Confirmation: By the end of the first business day after confirmation	PET: 1 business hour Confirmation: By the end of the first business day after confirmation
Not Subject to Mandatory Clearing	PET: 48 business hours Confirmation: 48 business hours	PET: 36 business hours Confirmation: 36 business hours	PET: 24 business hours Confirmation: 24 business hours

* Reporting windows are measured from the execution or confirmation of the swap. Years are measured from the Compliance Date.

Public Dissemination Delay for Block Trade / Large Notional Off-Facility Swap – At Least One SD/MSP Counterparty

The Real-Time Reporting Rule provides the following time delays for block trades and large notional off-facility swaps. These time delays apply to all swaps or groups of swaps, regardless of size, until the CFTC establishes an appropriate minimum block size for a particular swap or group of swaps.

SWAP CHARACTERISTICS	TIME DELAYS FOR PUBLIC DISSEMINATION*		
	Year 1	Year 2	Year 3 and Thereafter
<i>Executed On or Pursuant to the Rules of a Registered SEF or DCM</i>	30 minutes	15 minutes	15 minutes
<i>Off-Facility, Subject to Mandatory Clearing</i>	30 minutes	15 minutes	15 minutes
<i>Off-Facility, Not Subject to Mandatory Clearing</i>	Credit, equity, foreign exchange and interest rate swaps: 1 hour Other commodity swaps: 4 hours	Credit, equity, foreign exchange and interest rate swaps: 30 minutes Other commodity swaps: 2 hours	Credit, equity, foreign exchange and interest rate swaps: 30 minutes Other commodity swaps: 2 hours

* Delays are measured from the execution of the swap. Years are measured from the Compliance Date.

Public Dissemination Delay for Block Trade / Large Notional Off-Facility Swap – No SD/MSP Counterparty

The Real-Time Reporting Rule provides the following time delays for block trades and large notional off-facility swaps. These time delays apply to all swaps or groups of swaps, regardless of size, until the CFTC establishes an appropriate minimum block size for a particular swap or group of swaps.

SWAP CHARACTERISTICS	TIME DELAYS FOR PUBLIC DISSEMINATION*		
	Year 1	Year 2	Year 3 and Thereafter
<i>Executed On or Pursuant to the Rules of a Registered SEF or DCM</i>	30 minutes	15 minutes	15 minutes
<i>Off-Facility, Subject to Mandatory Clearing</i>	4 hours	2 hours	1 hour
<i>Off-Facility, Not Subject to Mandatory Clearing</i>	48 business hours	36 business hours	24 business hours

* Delays are measured from the execution of the swap. Years are measured from the Compliance Date.