



Swap Reporting: Who and When?

By Annette L. Nazareth and Gabriel D. Rosenberg

One key provision of the Dodd-Frank Act requires reporting of over-the-counter swap transactions. The Commodity Futures Trading Commission has finalized detailed regulations in this area that are being implemented in phases. This article outlines the CFTC's OTC reporting compliance timeline.

In late 2011 and early 2012, the CFTC finalized a series of regulations related to the reporting of swap transactions: rules governing reporting to the public, rules governing reporting to data repositories and the CFTC itself, and rules governing reporting of “historical swaps.” For all their complexity—these rules and their corresponding releases total more than 200,000 words—one aspect was relatively simple: the dates on which reporting was set to begin. Specifically, the reporting rules set three “compliance dates” for reporting:

- Starting on Compliance Date One, reporting would be required for interest rate swaps and credit default swaps where at least one of the counterparties was a swap dealer or a major swap participant;
- Ninety days later, on Compliance Date

Two, reporting would be required for all other swap transactions where at least one of the counterparties was a swap dealer or MSP; and

- Ninety days later, on Compliance Date Three, reporting would be required for all other swaps—those for which neither counterparty was a swap dealer or MSP.

The exact dates of Compliance Dates One, Two and Three were tied to the publication of key swaps definitional rules.

In the intervening year, these simple rules transformed into the complex timeline summarized in the accompanying chart. Below, as a supplement to the chart, we attempt to rationalize the resulting reporting structure by dividing the characteristics that establish when a particular swap must be reported along three lines: the type of reporting, the type of counterparties, and the type of swap.

Type of Reporting

Dodd-Frank requires three types of reporting of swap transactions:

- **SDR Reporting.** Under these requirements, swap counterparties must report a host of information about swaps to new “swap data repositories” registered with the CFTC, both upon creation and throughout the life of the swap. The CFTC, but not the public, will have access to the full complement of information stored at SDRs. Mandatory SDR reporting began on Dec. 31, 2012.

- **Real-Time Reporting.** Under the “real-time reporting” requirements, key information about swaps must be publicly disseminated via SDRs. This information is rendered anonymous to protect the identity of the counterparties. Delays in reporting are allowed for large “block”

transactions. Until “block” is more fully defined, all swaps are subject to the “block” delay. Mandatory real-time reporting began on Dec. 31, 2012.

■ **Historical Swap Reporting.** SDR reporting upon execution and real-time reporting are only required for new swaps and, in some cases, material amendments to existing swaps entered into after the relevant compliance date. However, counterparties to “historical swaps” entered into before those compliance dates are required to report information to SDRs. The scope of the information reported depends on when the swap was entered into and terminated, but at a minimum, some information is required for any swap that was in existence on or after July 21, 2010. Mandatory historical swap reporting began on Jan. 30, 2013.

Under the CFTC’s final reporting rules, all three types of reporting were to begin on the same date for any given swap type and counterparty pair. Over the past year, that paradigm has changed in two key ways. First, based on input from market participants, the CFTC decided to delay historical swap reporting until 30 days after SDR reporting is required for the particular swap type and counterparty pair. Second, as discussed further below, the CFTC chose to separate SDR reporting and real-time reporting in the context of the cross-border application of swap requirements. As a result, market participants must now consider each of these three types of reporting separately when determining which requirements must be complied with and by when.

Type of Counterparties

The CFTC’s final swap reporting rules divide transactions into those where at least one counterparty is a swap dealer or MSP, and those where neither counterparty is a swap dealer or MSP, for purposes of determining compliance timing. While transactions between affiliates will generally be subject to reporting requirements, the real-time reporting release includes a limited exception for certain types of inter-affiliate trades.

In June 2012, the CFTC proposed cross-border guidance, and a related proposed exemptive order, that describe the application of swap rules, including reporting rules, to

transactions. The CFTC has since adopted a final exemptive order that applies until July 2013, but has not yet adopted final guidance. While the full details of these cross-border releases are beyond the scope of this article, they generally divide counterparties into five groups for purposes of reporting:

- swap dealers and MSPs that are “U.S. persons;”
- swap dealers and MSPs that are not “U.S. persons,” which are further subdivided into those that do and do not have U.S. person parents with certain regulatory statuses;



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- non-U.S. branches of swap dealers and MSPs that are “U.S. persons;”
- “U.S. persons” that are not swap dealers or MSPs (i.e., U.S. end-users); and
- non-“U.S. persons” that are not swap dealers or MSPs (i.e., non-U.S. end-users).

Under the final exemptive order, the extent to which, and the date on which, the three types of reporting apply depends on how the counterparties are categorized and which type of reporting is in question.

Type of Swap

The CFTC’s final swap reporting rules established different reporting dates for CDS and IRS, on one hand, and commodity, equity, foreign exchange or other swaps, on the other, where at least one counterparty is a swap dealer or MSP.

In November 2012, as permitted by the Dodd-Frank Act, Treasury Secretary Timothy Geithner exempted “foreign exchange forwards” and “foreign exchange swaps,” as defined in Dodd-Frank, from the vast majority of Dodd-Frank swaps rules. In the reporting arena, these instruments remain subject to SDR and historical reporting, but are exempt from real-time reporting. Other foreign exchange derivatives, including non-deliverable forwards and foreign exchange options, remain subject to all swap rules, including real-time reporting.

Over the course of the past several months, the CFTC staff has issued a series of no-action letters providing specific relief meant to solve a number of reporting concerns. This includes relief related to bespoke and complex swaps, swaps in emerging market jurisdictions, cleared swaps, and swap reporting that implicates privacy concerns for counterparties in certain non-U.S. jurisdictions. The specific contours of this relief is beyond the scope of this article, but market participants should carefully consider whether any specific relief is applicable to their swap transactions or the reporting of certain data elements.

Finally, though not specific to reporting, the CFTC has announced that it does not intend to bring an enforcement action against a swap dealer or MSP for failing to fully comply with Dodd-Frank swaps requirements before July 12, 2013 if that failure stems from a practical or technical impediment to compliance or uncertainty interpreting Dodd-Frank requirements. The market participant must act reasonably and in good faith to fully comply with the requirement, including demonstrating progress towards compliance, identification of issues as soon as reasonably possible, elevation of issues to senior management and, to the extent necessary, timely consultation with the CFTC and other industry participants. It seems likely that market participants will benefit from such an enforcement posture for some of the highly technical problems currently faced with respect to swap reporting. ■

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Summary Chart of Reporting Compliance

Dates as of Feb. 20, 2013¹

One party is:	The other party is:	Interest Rate Swaps / Credit Default Swaps	"Foreign Exchange Swaps" and "Foreign Exchange Forwards"	Other Foreign Exchange Derivatives, Equity Swaps, Commodity Swaps and Other Swaps
A U.S. person that is a swap dealer or MSP ²	Any counterparty	SDR Reporting: 12/31/12 Real-Time Reporting: 12/31/12 Historical Swap Reporting: 1/30/13	SDR Reporting: 2/28/13 Real-Time Reporting: Not required under the Treasury Exemption Historical Swap Reporting: 3/30/13	SDR Reporting: 2/28/13 Real-Time Reporting: 2/28/13 Historical Swap Reporting: 3/30/13
A non-U.S. branch of U.S. swap dealer or MSP ("Non-U.S. Branch")	A U.S. person (other than another Non-U.S. Branch)	SDR Reporting: 12/31/12 Real-Time Reporting: 12/31/12 Historical Swap Reporting: 1/30/13	SDR Reporting: 2/28/13 Real-Time Reporting: Not required under the Treasury Exemption Historical Swap Reporting: 3/30/13	SDR Reporting: 2/28/13 Real-Time Reporting: 2/28/13 Historical Swap Reporting: 3/30/13
	A non-U.S. person or Non-U.S. Branch	SDR Reporting: 12/31/12 Real-Time Reporting: Not currently required under the cross-border exemptive order ³ Historical Swap Reporting: 1/30/13	SDR Reporting: 2/28/13 Real-Time Reporting: Not required under the Treasury Exemption Historical Swap Reporting: 3/30/13	SDR Reporting: 2/28/13 Real-Time Reporting: Not currently required under the cross-border exemptive order Historical Swap Reporting: 3/30/13
A non-U.S. swap dealer or MSP with a U.S. ultimate parent ⁴	A U.S. person (other than a Non-U.S. Branch)	SDR Reporting: 12/31/12 Real-Time Reporting: 12/31/12 Historical Swap Reporting: 1/30/13	SDR Reporting: 2/28/13 Real-Time Reporting: Not required under the Treasury Exemption Historical Swap Reporting: 3/30/13	SDR Reporting: 2/28/13 Real-Time Reporting: 2/28/13 Historical Swap Reporting: 3/30/13
	A non-U.S. person or Non-U.S. Branch	SDR Reporting: 12/31/12 Real-Time Reporting: Not currently required under the cross-border exemptive order Historical Swap Reporting: 1/30/13	SDR Reporting: 2/28/13 Real-Time Reporting: Not required under the Treasury Exemption Historical Swap Reporting: 3/30/13	SDR Reporting: 2/28/13 Real-Time Reporting: Not currently required under the cross-border exemptive order Historical Swap Reporting: 3/30/13

1 This chart is a general summary of applicable reporting deadlines and is not meant as legal advice. The dates cited are subject to change. In addition, a number of specific exceptions are not reflected in this chart, including for certain trades between affiliates.

2 For the purposes of this chart, we assume that a person that will register as a swap dealer or MSP has registered by Dec. 31, 2012. A person who registers after such date will be subject to the SDR and real-time reporting requirements applicable to a swap dealer on the earlier of (i) the date they would be required to register and (ii) April 10, 2013. The same person will be subject to historical swap reporting requirements on the earlier of (i) 30 days after becoming subject to SDR and real-time reporting requirements and (ii) April 10, 2013.

3 The cross-border exemptive order expires on July 12, 2013, absent further action by the CFTC.

4 Specifically, an ultimate parent that is a U.S. swap dealer, MSP, bank, financial holding company or bank holding company.

One party is:	The other party is:	Interest Rate Swaps / Credit Default Swaps	“Foreign Exchange Swaps” and “Foreign Exchange Forwards”	Other Foreign Exchange Derivatives, Equity Swaps, Commodity Swaps and Other Swaps
A non-U.S. swap dealer or MSP without a U.S. ultimate parent	A U.S. person	SDR Reporting: 12/31/12 Real-Time Reporting: 12/31/12 Historical Swap Reporting: 1/30/13	SDR Reporting: 2/28/13 Real-Time Reporting: Not required under the Treasury Exemption Historical Swap Reporting: 3/30/13	SDR Reporting: 2/28/13 Real-Time Reporting: 2/28/13 Historical Swap Reporting: 3/30/13
	A non-U.S. Branch	SDR Reporting: 12/31/12 Real-Time Reporting: Not currently required under the cross-border exemptive order Historical Swap Reporting: 1/30/13	SDR Reporting: 2/28/13 Real-Time Reporting: Not required under the Treasury Exemption Historical Swap Reporting: 3/30/13	SDR Reporting: 2/28/13 Real-Time Reporting: Not currently required under the cross-border exemptive order Historical Swap Reporting: 3/30/13
	A non-U.S. person	SDR Reporting: Not currently required under the cross-border exemptive order Real-Time Reporting: Not currently required under the cross-border exemptive order Historical Swap Reporting: Not currently required under the cross-border exemptive order	SDR Reporting: Not currently required under the cross-border exemptive order Real-Time Reporting: Not required under the Treasury Exemption Historical Swap Reporting: Not currently required under the cross-border exemptive order	SDR Reporting: Not currently required under the cross-border exemptive order Real-Time Reporting: Not currently required under the cross-border exemptive order Historical Swap Reporting: Not currently required under the cross-border exemptive order
A U.S. end user	A U.S. end user	SDR Reporting: 4/10/13 Real-Time Reporting: 4/10/13 Historical Swap Reporting: 4/10/13	SDR Reporting: 4/10/13 Real-Time Reporting: Not required under the Treasury Exemption Historical Swap Reporting: 4/10/13	SDR Reporting: 4/10/13 Real-Time Reporting: 4/10/13 Historical Swap Reporting: 4/10/13
	A non-U.S. end user	SDR Reporting: 4/10/13 Real-Time Reporting: 4/10/13 Historical Swap Reporting: 4/10/13	SDR Reporting: 4/10/13 Real-Time Reporting: Not required under the Treasury Exemption Historical Swap Reporting: 4/10/13	SDR Reporting: 4/10/13 Real-Time Reporting: 4/10/13 Historical Swap Reporting: 4/10/13
A non-U.S. end user	A non-U.S. end user	SDR Reporting: Not required Real-Time Reporting: Not required Historical Swap Reporting: Not required	SDR Reporting: Not required Real-Time Reporting: Not required under the Treasury Exemption Historical Swap Reporting: Not required	SDR Reporting: Not required Real-Time Reporting: Not required Historical Swap Reporting: Not required