



Commodity Futures Trading Commission

Office of Public Affairs

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Proposed Rule on Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps

The Commodity Futures Trading Commission (CFTC or Commission) is proposing rules establishing swap data recordkeeping and reporting requirements for counterparties to pre-enactment swaps (those executed prior to enactment of the Dodd-Frank Act) and transition swaps (those entered into between the enactment date and the future effective date for swap data recordkeeping and reporting).

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

The Commission's notice of proposed rulemaking regarding swap data recordkeeping and reporting requirements for pre-enactment swaps and transition swaps further implements the Dodd-Frank Act's new statutory framework regarding swap data recordkeeping and reporting.

Section 723 of the Dodd-Frank Act amends Section 2 of the Commodity Exchange Act ("CEA" or "Act") by adding new Section 2(h)(5), which directs that rules adopted by the Commission pursuant to this section shall provide for the reporting of data relating to swaps entered into before the date of enactment of the Dodd-Frank Act ("pre-enactment swaps") and data relating to swaps entered into on or after the date of enactment of the Dodd-Frank Act and prior to the effective date of swap data reporting rules implementing Section 2(h)(5)(B) ("transition swaps"). The proposal would establish recordkeeping and reporting requirements for pre-enactment swaps and transition swaps (collectively, "historical swaps").

Purpose of the rule

The goal of the proposed rule for historical swaps is to provide specificity and clarity, to the extent possible, concerning what records must be kept and what data must be reported with respect to historical swaps. The rule is also designed to ensure that data needed by regulators concerning historical swaps is available to regulators through swap data repositories (SDRs) beginning on the effective date.

Recordkeeping requirements for historical swaps

The rule proposes limited recordkeeping requirements for counterparties to historical swaps. For swaps in existence on or after the date of publication of the proposed rule, counterparties would be required to keep records of specified, minimum primary economic terms for a swap of the asset class in question, listed in Tables in the Appendix to the rule. In addition, if a historical swap counterparty has a confirmation of the historical swap as of that date, the counterparty would be required to keep it. For historical swaps that expired prior to publication of the proposed rule, counterparties would need to keep the records they already have, in the form they are already kept. The required records must be kept throughout the remaining existence of a historical swap and for five years following its final termination or expiration.

Data reporting requirements for historical swaps

For each historical swap in existence on or after the date of publication of the proposed rule, the rule calls for an initial data report on the effective date, and for ongoing reporting of data from the continuation of the historical swap during its remaining existence. Determination of which counterparty must report would be made in the same way provided in the main proposed rule on swap data reporting.

The initial data report would include the minimum primary economic terms for a historical swap of the asset class in question, as specified in the appropriate Table in the Appendix to the rule. If the reporting counterparty possessed a confirmation of the historical swap on or after the publication date of this rule, the confirmation terms that are recorded in the automated system of the reporting counterparty would also be included in the initial data report. For historical swaps already reported to an existing repository prior to the effective date of the final reporting rules, the proposed rule would not require duplicate reporting.

With respect to ongoing reporting of continuation data during the remaining existence of a historical swap, this proposed rule parallels the CFTC's previously published data reporting rule in following the life cycle approach for credit swaps and equity swaps, and the state or snapshot approach for interest rate swaps, currency swaps, and other commodity swaps. This unified approach to data reporting for historical swaps and new swaps is designed to minimize recordkeeping and reporting burdens for the industry, and to coordinate reporting requirements with the SEC to the extent possible.

For each historical swap which expired or was terminated prior to publication of this proposed rule, the reporting party would be required to report such information relating to the terms of the transaction as was in the reporting counterparty's possession as of issuance of the interim final rule. This information can be reported via any method selected by the reporting counterparty.

Third-party facilitation of data reporting

Counterparties required to report data concerning historical swaps may contract with third-party service providers to facilitate reporting. However, such counterparties remain responsible for reporting as required by the proposed rule.

Data standards

In reporting swap data to an SDR, each reporting counterparty shall use the facilities, methods, or data standards provided or required by the SDR to which the counterparty reports the data. SDRs may permit reporting entities and counterparties to use various facilities, methods, or data standards, provided that its requirements in this regard enable it to meet the CFTC's requirements with respect to data maintenance and transmission of data to the CFTC.