



Commodity Futures Trading Commission

Office of Public Affairs

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Q & A – On Start of Swap Data Reporting

Q1. Does the joint CFTC-SEC definition of “swap dealer” (SD)¹ affect the actual date on which swap data must first be reported to a swap data repository (SDR) by SDs?

A1. Yes.

- With respect to swap counterparties, the compliance dates provided in Part 45 of the CFTC’s regulations call for SDs and major swap participants (MSPs) to begin reporting on October 12, 2012 for credit and interest rate swap transactions in which they are a counterparty, and on January 10, 2013 for equity, foreign exchange, and other commodity swap transactions in which they are a counterparty. Swap counterparties that are not SDs or MSPs (Non-SDs/MSPs), but that are required to report a swap transaction that they execute with another Non-SD/MSP, do not have to comply with the reporting requirements until April 10, 2013.
- CFTC regulation § 1.3(ggg)(4)(i) provides that a person not registered as an SD comes within the definition of SD: (1) no earlier than the date following October 12, 2012 on which that person has entered into swap positions connected with its swap dealing activities that, in the aggregate, exceed either of the gross notional amount thresholds (the “de minimis thresholds”) in CFTC regulation § 1.3(ggg)(4)(i)²; but (2) no later than two months after the end of the month in which such date occurs.³ CFTC regulation § 1.3(ggg)(4)(vi) provides that an entity that voluntarily submits its application for registration as an SD or MSP is deemed to be an SD or MSP upon submission of its application.
- As a result, reporting by SDs will begin as follows:
 - For SDs that cross the threshold between October 12 and October 31, 2012, on either (1) the date on which the SD voluntarily submits a registration application after October 12 but before December 31, 2012; or (2) December 31, 2012.
 - For SDs that do not cross the threshold in October 2012, on either (1) the date on which the SD voluntarily submits a registration application before it is required⁴; or (2) the last day of the second month following the month in which the SD crosses the threshold.

Q2. Once an SD has submitted a registration application, when must it begin reporting?

¹ 17 CFR Part 1 (CFTC) and 17 CFR Part 240 (SEC), 77 FR 30596 (May 23, 2012), at 30744 et seq.

² Specifically, CFTC regulation §. 1.3(ggg)(4)(i) provides that an entity will be deemed not to be a “swap dealer” until it has entered into swap positions connected with its dealing activities since October 12, 2012 that exceed one of two specified gross notional amount thresholds: (1) \$8 billion (which is a phase-in amount that will ultimately be adjusted), and (2) \$25 million with regard to swaps in which the counterparty is a special entity as defined in CEA § 4s(h)(2)(C).

³ CFTC regulation § 1.3(ggg)(4)(iii) provides that a person who crosses the de minimis threshold will be deemed not to be a swap dealer until the earlier of: (1) the date on which it submits a complete application for registration or (2) two months after the end of the month in which it crosses the threshold. This means that October 2012 is the earliest month during which swap dealing activities can bring a person within the definition of SD. It further means that a person that crosses the de minimis threshold in October has until December 31, 2012 to submit its application for registration as an SD, and will not be an SD until the application is submitted. It also means that a person that crosses the threshold in a month after October 2012 has until the second month following the month in which the threshold is crossed to submit its registration application, and will not be an SD until the application is submitted.

⁴ See CFTC Regulation § 1.3(ggg)(4)(vi).

A2. For credit and interest rate swaps:

- For SDs passing the de minimis threshold in October 2012, either (1) on the date after October 12, 2012, but before December 31, 2012, on which the SD's registration application is submitted, or (2) on December 31, 2012, if no application is submitted earlier.
- For SDs passing the de minimis threshold in a month after October, 2012, either (1) on the date on which the SD's registration application is submitted, if the application is submitted earlier than required, or (2) on the final day of the second month after the month in which the SD passes the gross notional amount threshold.

For equity, foreign exchange, and other commodity swaps:

- For SDs passing the de minimis threshold in October 2012, on January 10, 2013.
- For SDs passing the de minimis threshold in a month after October, 2012, either (1) on January 10, 2013, if the SD's registration application is submitted prior to or on January 10, 2013, or (2) on the date the SD's registration application is submitted, if that date is after January 10, 2013, but before the application is required to be submitted, or (3) on the final day of the second month after the month in which the SD passes the gross notional amount threshold.

The three compliance dates provided in Part 45 of the CFTC's regulations, which are October 12, 2012, January 10, 2013, and April 10, 2013, remain in effect. Accordingly, SDs must begin reporting for credit and interest rate swaps on the first date following October 12, 2012, on which they become SDs as provided in § 1.3(ggg), and must begin reporting for equity, foreign exchange, and other commodity swaps on the first date on or after January 10, 2013, on which they become SDs as provided in § 1.3(ggg).

Q3. Does the joint CFTC-SEC definition of MSP⁵ affect the actual date on which swap data must first be reported to a swap data repository (SDR) by MSPs?

A3. Yes.

- As noted above, with respect to swap counterparties, the compliance dates provided in Part 45 of the CFTC's regulations call for SDs and MSPs to begin reporting on October 12, 2012 for credit and interest rate swaps, and on January 10, 2013 for equity, foreign exchange, and other commodity swaps. Swap counterparties that are Non-SDs/MSPs, but that are required to report a swap with another Non-SD/MSP, do not have to comply with the reporting requirements until April 10, 2013.
- CFTC regulation § 1.3(hhh)(3) provides that a person not registered as an MSP, but that meets the criteria to be an MSP as a result of swap activities in a fiscal quarter, will not be deemed to be an MSP until the earlier of: (1) the date on which it submits a complete application for registration as an MSP; or (2) two months after the end of that quarter.⁶
- Pursuant to § 1.3(hhh)(3), a person whose swap activities during the fourth quarter of 2012 meet the MSP criteria would have until February 28, 2013 to submit its application for registration as an MSP, although it could voluntarily submit the application earlier. The person will not be an MSP until the person submits the application as required or until the end of the second month after the quarter in which the person meets the criteria, whichever is earlier.
- As a result, reporting by MSPs will begin as follows:
 - For MSPs that meet the MSP criteria in the fourth quarter of 2012, on either (1) the date on which the MSP submits a registration application after December 31, 2012, but before February 28, 2013; or (2) February 28, 2013.

⁵ 17 CFR Part 1 (CFTC) and 17 CFR Part 240 (SEC), 77 FR 30596 (May 23, 2012), at 30746 et seq.

⁶ Since the definition of MSP is effective on October 12, 2012, the first fiscal quarter in which a person's swap activities can meet the MSP criteria is the fourth quarter of 2012, October through December.

- For MSPs that meet the criteria during a quarter in 2013 or later, on either (1) the date on which the MSP submits a registration application before it is required; or (2) the last day of the second month following the end of the quarter in which the MSP first meets the criteria.

Q4. Once an MSP has submitted a registration application, when must it begin reporting?

A4. For swaps in all asset classes:

- For MSPs meeting the criteria in the fourth quarter of 2012, either (1) on the date after January 1, 2013, but before February 28, 2013, on which the MSP's registration application is submitted, or (2) on February 28, 2013, if no application is submitted earlier.
- For MSPs meeting the criteria during a quarter in 2013 or later, either (1) on the date on which the MSP's registration application is submitted, if the application is submitted earlier than required, or (2) on the final day of the second month after the quarter in which the MSP meets the criteria.

The three compliance dates provided in Part 45 of the CFTC's regulations, which are October 12, 2012, January 10, 2013, and April 10, 2013, remain in effect. Accordingly, MSPs must begin reporting for credit and interest rate swaps on the first date following October 12, 2012, on which they become MSPs as provided in § 1.3(hhh), and must begin reporting for equity, foreign exchange, and other commodity swaps on the first date on or after January 10, 2013, on which they become MSPs as provided in § 1.3(hhh).

Q5. Do the joint CFTC-SEC definitions of SD and MSP affect the actual date on which swap data must first be reported to a swap data repository (SDR) by a reporting counterparty that is a non-SD/MSP?

A5. No. The compliance date on which non-SDs/MSPs must begin complying with the reporting rules remains April 10, 2013.

Q6. When is reporting required for a swap between (1) a counterparty that will become an SD or MSP but has not yet become one by either submitting a registration application or passing the applicable two-month deadline, and (2) a counterparty that is a non-SD/MSP?

A6. Such a swap must be reported by the reporting counterparty, determined as provided in Part 45 of CFTC's regulations, on the earlier of the following: (1) the date on which a counterparty becomes an SD or MSP—and therefore the reporting counterparty—by either submitting a registration application or passing the applicable two-month deadline; or (2) April 10, 2013, if as of that date neither counterparty is an SD or MSP before that date.

Q7. By what date will all swaps have to be reported, regardless of any delay associated with the definitions of SD and MSP?

A7. April 10, 2013. That date is the compliance date for non-SDs/MSPs. For a given swap, if the reporting counterparty has become an SD or MSP before that date, the swap will have already been required to be reported as outlined above for SDs and MSPs. If neither counterparty has become an SD or MSP by that date, and the swap is thus a swap between two non-SDs/MSPs, the April 10, 2013 compliance date for non-SDs/MSPs will apply.

Reporting of swaps executed on a DCM will begin as scheduled on either October 12, 2012 (credit and interest rate swaps) or January 10, 2013 (equity, foreign exchange, and other commodity swaps). Reporting of swaps executed on a SEF, after CFTC issues final rules for SEFs, will begin on the later of (1) the preliminary registration of the SEF, or (2) the applicable compliance date.

Q8. What effect do the definitions of swap dealer and major swap participant have on when pre-enactment and transition swaps (collectively, historical swaps) must be reported pursuant to Part 46 of CFTC's regulations?

A8. The same effect as on reporting of new swaps pursuant to Part 45. Part 46 establishes the same compliance dates for reporting historical swaps as the compliance dates provided in Part 45. In addition, Part 46 calls for reporting by the reporting counterparty for each historical swap, determined as provided in § 46.5. A counterparty's status as an SD, and MSP, or a non-SD/MSP affects this determination in the same way as it does under Part 45. Accordingly, the discussion above also applies to historical swaps.

Q9. Scenario: After October 12, 2012, but before April 10, 2012, Counterparty A and Counterparty B enter into a credit or interest rate swap. Counterparty A will later become a dealer (by crossing the de minimis threshold and sending in its registration application when required, as discussed above), but both counterparties are non-SDs/MSPs on the date the swap is executed. On a later date that precedes April 10, 2012, Counterparty A becomes a dealer (by sending in its registration application after having crossed the threshold). As discussed above, the swap must be reported on the date when Counterparty A becomes a dealer. Is the swap reportable as a historical swap under Part 46, or as a new swap under Part 45?

A9. Such a swap is reportable as a historical swap under Part 46. Part 45 establishes reporting deadlines of only minutes or hours duration that run from the time a swap is executed. In this scenario, execution of the swap will have occurred prior to the day on which Counterparty A becomes a dealer by sending in its registration application as required after having crossed the threshold. Applying the Part 45 reporting deadlines to the swap would therefore be impracticable. Counterparty A's obligation is to meet the requirements of Part 46 in reporting the swap. In accordance with § 46.3(c) of the Commission's regulations, if Counterparty A prefers to avoid reporting all its historical swaps on the day when it becomes a dealer, it has the option to report its historical swaps prior to the day on which it becomes a dealer (either gradually or at once), if an SDR accepting swaps in the asset class in question is prepared to accept them. In accordance with § 46.3(d), when it becomes a dealer as discussed above, Counterparty A would not have to re-report data for a historical swap which it has previously reported to a registered SDR.

Q10. What effect do the changes to the start of swap data reporting discussed above have on the requirement to obtain and use Legal Entity Identifiers (LEIs, referred to as CFTC Interim Compliant Identifiers or CICIs pending establishment of the global LEI system) as required by Part 45 and Part 46?

A10. Part 45 provides that each counterparty to any swap subject to the jurisdiction of the Commission must be identified in all recordkeeping and all swap data reporting by a single LEI (currently known as a CICI). As noted above, Part 45 also establishes three compliance dates, October 12, 2012 for SDs and MSPs with respect to credit and interest rate swaps, January 10, 2013, for SDs and MSP with respect to equity, foreign exchange, and other commodity swaps, and April 10, 2013, for non-SD/MSP counterparties with respect to all swaps. Part 45 thus requires each counterparty to obtain an LEI (currently a CICI) and use it in its swap recordkeeping and swap data reporting beginning on the compliance date applicable to it.

- In practice, this means that each SD and MSP must obtain an LEI (currently a CICI) no later than the earlier of: (a) the first day on which they become an SD or MSP as discussed above, or (b) April 10, 2013.
- It also means that each non-SD/MSP counterparty subject to the Commission's jurisdiction must obtain an LEI (currently a CICI) no later than April 10, 2013.
- Because LEIs (currently CICIs) are required for recordkeeping as well as for reporting, swap counterparties subject to the Commission's jurisdiction must obtain an LEI (currently a CICI) by the compliance date applicable to them whether or not they are the reporting counterparty for any swaps. If an LEI (currently a CICI) has been obtained for a counterparty through third-party registration, as discussed in Part 45, that counterparty should validate or certify its own LEI (currently a CICI) with the designated CICI Utility by the compliance date applicable to it, and be responsible for maintaining that LEI thereafter.

For historical swaps, Part 46 requires the reporting counterparty for each historical swap in existence on or after April 25, 2011, to obtain and report an LEI (currently a CICI) by the compliance date applicable to the reporting counterparty, and

requires the non-reporting counterparty for each historical swap to obtain an LEI (currently a CICI) and provide it to the reporting counterparty within 180 days after the compliance date applicable to the non-reporting counterparty. Accordingly:

- The reporting counterparty for each historical swap in existence on or after April 25, 2011, must obtain and report an LEI (currently a CICI) no later than the compliance date applicable to it. This date will be as discussed above for SDs and MSPs, and will be April 10, 2013 for non-SD/MSP reporting counterparties.
- The non-reporting counterparty for each historical swap in existence on or after April 25, 2011, must obtain and report an LEI (currently a CICI) no later than 180 days after the compliance date applicable to it. For SDs and MSPs, this date will be 180 days after the counterparty becomes an SD or MSP as discussed above. For non-SDs/MSPs, this date will be October 7, 2013.
- Parts 45 and 46 must be read together in this respect: a counterparty must obtain and use an LEI (currently a CICI) by the earlier of the dates applicable to it under Part 45 or Part 46.