



Commodity Futures Trading Commission

Office of Public Affairs

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Proposed Rulemaking on Amendments to Adapt Certain CFTC Regulations to the Dodd-Frank Act

The Commodity Futures Trading Commission (“Commission”) is proposing amendments to certain of its regulations in Parts 1, 5, 7, 8, 15, 18, 21, 36, 41, 140, 145, 155, and 166 in order to implement aspects of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).

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

Section 721 of the Dodd-Frank Act amended the definitions of *futures commission merchant* and *introducing broker* in section 1a of the Commodity Exchange Act to permit these intermediaries to trade swaps on behalf of customers. Section 733 of the Dodd-Frank Act amended section 5 of the Commodity Exchange Act by introducing *swap execution facilities* as trading platforms for swaps. In this proposed rulemaking, the Commission revised several of its regulations to reflect these and other revisions to the Commodity Exchange Act.

Revising Recordkeeping Rules

Pursuant to proposed revisions to Regulations 1.31, 1.33, and 1.35, futures commission merchants and introducing brokers must maintain records for swap transactions that are analogous to those records they presently must maintain for futures transactions. In drafting these amendments, staff took into consideration recordkeeping rules the Commission recently proposed for swap dealers and major swap participants (*Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants*, 75 F.R. 76666 (December 9, 2010) (“Swap Dealer and Major Swap Participant Recordkeeping Proposed Rule”). For example, the Commission proposes to require futures commission merchants and introducing brokers to maintain records of swap transactions until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction plus five years. In the Swap Dealer and Major Swap Participant Recordkeeping Proposed Rule, the Commission proposed that swap dealers and major swap participants retain records of swap transactions for the same period of time.

The Commission has proposed amending Regulation 1.35 by requiring members of swap execution facilities to comply with the same recordkeeping requirements currently applicable to members of designated contract markets. For example, under proposed revised Regulation 1.35(a), a swap execution facility member must keep “full, complete and systematic records, together with all pertinent data and memoranda, of all transactions related to its business of dealing in commodity interests.”

The Commission also proposes to amend Regulation 1.35 by explicitly requiring futures commission merchants, introducing brokers, retail foreign exchange dealers, and members of designated contract markets and swap execution facilities to keep records of all oral communications that lead to the execution of transactions in a commodity interest or cash commodity. In the Swap Dealer and Major Swap Participant Recordkeeping Proposed Rule, the Commission proposed that swap dealers and major swap participants comply with the same requirement.

Finally, under proposed amended Regulation 1.31, all records required to be kept by the Commodity Exchange Act and Commission regulations would have to be maintained in their original format (paper records) or in their “native file format” (electronic records).

Bunched Orders

The Commission has proposed amending Regulation 1.35(a-1)(5) to provide procedures for end-of-day allocation of bunched orders for both cleared and uncleared products. In addition, under the proposed amendments, futures commission merchants and introducing brokers would be able to serve as *eligible account managers* for bunched orders provided that, consistent with Regulations 155.3 and 155.4, they do not bunch proprietary orders with customer orders.

Adding Swaps, Swap Execution Facilities, and Swap Data Repositories to Various Regulations

The Commission has proposed amending several regulations in Parts 1 and 140 to treat swaps analogously to futures and to treat swap execution facilities and swap data repositories analogously to designated contract markets. For example, pursuant to proposed revised Regulation 1.39, a member of a swap execution facility may simultaneously execute buying and selling orders of different principals for the same swap. Presently, Regulation 1.39 permits a member of a designated contract market simultaneously to execute buying and selling orders of different principals for the same futures or option contract. Under proposed revised Regulation 140.72, swap execution facilities and swap data repositories are added to the list of organizations to which certain Commission staff may disclose certain confidential information.

Amending Definitions

The Commission has proposed amending the definitions of *commodity interest*, *customer*, *customer funds*, *net deficit*, *net equity*, and *open contracts* so that they pertain to swaps in addition to futures. Amending these definitions enables several of the Commission’s general regulations in Part 1 to apply to both futures and swaps.