



Commodity Futures Trading Commission

Office of Public Affairs

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Proposed Rule on Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants

The Commodity Futures Trading Commission (Commission) is proposing rules establishing reporting, recordkeeping, and daily trading records requirements for swap dealers and major swap participants.

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

Section 731 of the Dodd-Frank Act amends the Commodity Exchange Act (CEA) by inserting Sections 4s(f) and 4s(g), which establish reporting, recordkeeping, and daily trading records requirements for swap dealers and major swap participants.

Section 4s(f)(1) requires swap dealers and major swap participants to “make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant.” Under sections 4s(f)(1)(B)(i) and (ii), the Commission is authorized to prescribe the books and records requirements of “all activities related to the business of swap dealers or major swap participants,” regardless of whether or not the entity has a prudential regulator. All books and records are required to be open to inspection and examination by any representative of the Commission. Under section 4s(f)(1)(D), books and records relating to security-based swap agreements also must be open to inspection and examination by the Securities and Exchange Commission.

Section 4s(g)(1) requires swap dealers and major swap participants to “maintain daily trading records of the swaps of the registered swap dealer and major swap participant and all related records (including records of related cash and forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls.” Section 4s(g)(3) requires that daily trading records for swaps be identifiable by counterparty, and section 4s(g)(4) specifies that swap dealers and major swap participants maintain a “complete audit trail for conducting comprehensive and accurate trade reconstructions.”

Proposed Recordkeeping Rules

The records that would be required under the proposed rules would include full and complete transaction and position information for all swap activities, including all documents on which trade information is originally recorded. Transaction records would be required to be maintained in a manner that is identifiable and searchable by transaction and by counterparty.

The proposed rules also would require that swap dealers and major swap participants keep basic business records, including, among other things, minutes from meetings of the entity’s governing body, organizational charts, and audit documentation. Additionally, certain financial records, records of complaints against personnel, and marketing materials would be required to be kept. Finally, swap dealers and major swap participants would be required to maintain records of information required to be submitted to a swap data repository and reported on a real-time public basis.

Proposed Daily Trading Record Rule

The proposed rules would prescribe daily trading record requirements, including records of trade information related to pre-execution, execution, and post-execution data. Pre-execution trade data would include records of all oral and written communications that lead to the execution of a swap. The proposed rules would require swap dealers and major swap participants to ensure that they preserve all information necessary to conduct a comprehensive and accurate trade reconstruction for each swap, and that they maintain each trade record as a separate electronic file identifiable and searchable by transaction and counterparty. Execution trade data would include all terms of each executed swap and the date and time, to the nearest minute, that each swap was executed. Post-execution data would include records of all confirmations, reconciliations, and margining of swaps.

Under the proposed rules, records to be retained also would include information related to cash or forward transactions used to hedge, mitigate the risk of, or offset any swap held by the swap dealer or major swap participant.

Proposed Retention and Inspection Rules

The Commission also is proposing that all records be kept in accordance with existing Commission records rules, with the exception of records of, or related to, swap transactions, which would be retained for a longer period of time.

Proposed Rules Regarding Reports to Swap Data Repositories and Real-Time Public Reporting

The proposed rules would require swap dealers and major swap participants to report their swaps in accordance with real-time public reporting rules (proposed by the Commission on November 19) and swap data rules (proposed by the Commission on November 19).