



Commodity Futures Trading Commission

Office of Public Affairs

Three Lafayette Centre

1155 21st Street, NW

Washington, DC 20581

www.cftc.gov

Q & A – Final Rulemaking on Part 49 (SDRs)

What is the goal of the rulemaking?

This final rulemaking implements Title VII of the Dodd-Frank Act, which in Section 728 establishes swap data repositories (SDR) as a new registered entity under the Commodity Exchange Act. Registered SDRs will collect and maintain data and information related to swap transactions and make such data and information directly and electronically available to regulators as prescribed by the Commission. SDRs performing these functions must become registered with the Commission and must comply with core principles, duties and other requirements specified in new Section 21 of the CEA and implemented by the Part 49 Rules.

Which entities must comply with Part 49 of the Commission's regulations?

Section 728 of the Dodd-Frank Act makes it unlawful for any person to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap data repository unless registered with the Commission. Any person that is required to be registered as an SDR—including entities located outside the United States—must register with the Commission regardless of whether that person is also licensed as a bank or registered with the Securities and Exchange Commission as an SDR.

How is SDR registration affected?

The Part 49 rules prescribe procedures and substantive requirements for registration as an SDR:

- Applicants must file electronically for registration on new Form SDR, which elicits documents and supporting information necessary for a determination that the applicant is able to demonstrate compliance with the core principles, statutory duties and regulations promulgated thereunder by the Commission.
- The Commission will review an application for registration as an SDR within 180 days of receipt of a completed submission on Form SDR; the Commission may extend the review period for good cause.
- The Commission will register an SDR if it finds that the SDR is appropriately organized and has the capacity to: (i) ensure the prompt, accurate and reliable performance of its functions as an SDR; (ii) comply with all applicable provisions of the CEA and Commission regulations; (iii) carry out its functions in a manner consistent with the purposes of Section 21 of the CEA and Commission regulations thereunder; and (iv) operate in a fair, equitable and consistent manner.
- During the pendency of its review, and upon request by an applicant, the Commission may grant provisional registration to an SDR if the applicant is in substantial compliance with the standards for registration specified in the Part 49 rules (49.3).

What provisions are made for SDRs located outside the United States?

SDRs located outside of the United States must certify on Form SDR and provide an opinion of counsel that the SDR is able, as a matter of law, to provide the Commission with prompt access to its books and records and can submit to on-site inspection and examination by the Commission.

An Appropriate Foreign Regulators (and Appropriate Domestic Regulators) seeking access to swap data maintained by a registered SDR must file a request for access with the SDR and certify that the request is within the scope of its jurisdiction.

Pursuant to Section 21(d) of the CEA, Appropriate Foreign Regulators must execute a “Confidentiality and Indemnification Agreement” with the registered SDR prior to receipt of any requested data.

An Appropriate Foreign Regulator with regulatory responsibility over an SDR registered with it is not subject to Section 21(d) or the regulations promulgated thereunder. In all cases, both the SDR and the Appropriate Foreign (or Domestic) Regulator is required to comply with Section 8 of the CEA and any other relevant statutory confidentiality provisions with respect to the data.

(Similar regulatory provisions apply to Appropriate Domestic Regulators)

What statutory duties apply to registered SDRs?

The Dodd-Frank Act prescribes core duties applicable to SDRs. Part 49 establishes regulations implementing each of these statutory requirements.

- **Acceptance of data:** an SDR must establish, maintain and enforce policies and procedures for the reporting of swap data to it, and shall accept and promptly record all data in its selected asset class. If a registered SDR accepts swap data of a particular asset class, it must accept data from all swaps of that asset class.
- **Confirmation of data accuracy:** a registered SDR must establish policies and procedures to ensure the accuracy of swap data and other regulatory information required to be reported
- **Recordkeeping:** a registered SDR must maintain its books and records in accordance with the requirements of the Part 45 regulations. A registered SDR that elects to accept and disseminate swap transaction and pricing data in real time must comply with the real time public reporting and recordkeeping requirements prescribed in Part 43.
- **Provide direct electronic access to the Commission or its designee (including another registered entity) and provide information in such form and at such frequency as the Commission may prescribe to comply with the public reporting requirements in section 2(a)(13) of Title VII of the Dodd-Frank Act and the applicable Part 43 Regulations.**
- **Monitor, screen and analyze swap data in such manner as the Commission prescribes and establish and maintain sufficient IT, staff and other resources to enable it to fulfill the requirements of the Part 49 regulations in the manner prescribed by the Commission.**
- **Establish, maintain and enforce written policies and procedures reasonably designed to protect the privacy and confidentiality of all SDR information that is not subject to real-time public reporting pursuant to Part 43 of the Commission’s regulations. These shall include safeguards and procedures to prevent the misappropriation or misuse of material protected by Section 8 of the CEA, other SDR information, or intellectual property.**
- **Make available all data obtained by the SDR to specified foreign and domestic regulators. The Part 49 regulations establish specific procedures and conditions under which particular regulators and others may obtain access to data maintained by an SDR.**
- **Adoption of emergency procedures and system safeguards**

What core principles govern SDRs?

The Dodd-Frank Act established three core principles applicable to SDRs. They are:

- **Antitrust Considerations:** unless appropriate to achieve the purposes of the Act, a registered SDR shall avoid (i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or (ii) imposing any material anticompetitive burden on trading, clearing or reporting swaps.
- **Governance Arrangements:** Registered SDRs shall establish governance arrangements. These are prescribed in Regulation 49.18.
- **Conflicts of Interest:** Registered SDRs shall manage and minimize conflicts of interest and establish processes for resolving such conflicts. These are set forth in Regulation 49.19.

What additional requirements will be imposed on SDRs? The Commission proposes has prescribed additional duties related to the following:

- Maintenance of sufficient financial resources
- Disclosure requirements setting forth the risks and costs associated with using the services of an SDR
- Establishing provisions ensuring non-discriminatory access and fees

In what significant ways do the final part 49 rules differ from the proposed rules?

Although the Commission has determined to adopt the Part 49 rules substantially as proposed, it has—after reviewing the comments received and consulting both internally and with other financial regulators—made the following revisions to the proposed rules.

- **Provisional registration.** The Commission has removed the one-year sunset provision so that it may continue to provisionally register applicants as warranted.
- **Confirmation of data.** The Commission has revised § 49.11 to reflect that in certain circumstances SDRs may not be required to confirm the accuracy of data with both counterparties to a swap.
 - Data received from a SEF, DCO or certain third-party service providers: SDR is not required to confirm the accuracy of submitted data if (i) the SDR reasonably believes the data is accurate; (ii) the submission reflects agreement of both counterparties; and (iii) there is a 48-hour correction period.
 - An SDR must affirmatively communicate with both counterparties when data is directly submitted by the counterparty (i.e. an end user or a swap dealer/major swap participant)
- **Access to SDR data.** The Commission has made several changes to its final access rules.
 - Access by domestic and foreign regulators generally: the regulator must: (i) file a request for data with the appropriate SDR; (ii) certify that it is acting within the scope of its jurisdiction; (iii) notify the Commission; and (iv) execute a Confidentiality and Indemnification Agreement as provided in Section 21(d) of the CEA.
 - Access by other domestic regulators with regulatory oversight/jurisdiction over SDRs (separate but concurrent jurisdiction with the Commission): the Commission may designate the domestic regulator to receive direct electronic access to the data pursuant to CEA Section 21(c)(4)(A). The notice and indemnification provisions of Section 21(c)(7) and 21(d) will not apply.
 - Foreign regulators with regulatory oversight over the SDR: Access would be granted subject to the confidentiality provisions of CEA Section 8; the notice and indemnification provisions of Sections 21(c)(7) and 21(d) will not apply. The foreign regulator must have its own independent statutory basis for regulatory oversight of the SDR.
 - Market participants: the proposed rule has been amended to permit either counterparty—not just the submitting counterparty—to obtain access to its data.
 - Commercial use of data: the final rules generally prohibit commercial use of reported data by an SDR unless the submitter has consented. The rules have been revised to clarify that the SDR cannot require consent from a reporting party as a condition of accepting data and to clarify that SDRs cannot make commercial use of real-time data prior to its public dissemination.
- **CCO rules.** The Commission has revised § 49.22 (i) to clarify that the CCO of an SDR cannot be the general counsel or a member of its legal department; and (ii) with respect to removal of a CCO, the SDR is required to notify the Commission within two business days.