Commodity Futures Trading Commission
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Q&A – Proposed Amendments to Rules Regarding Records of Commodity Interest and Related Cash or Forward Transactions

What is the goal of the proposed rulemaking?

On December 21, 2012, the Commission published a final rulemaking, which amended the recordkeeping provisions of Commission Regulation 1.35(a) to integrate the rule more fully with the framework created by the Dodd-Frank Wall Street Reform and Consumer Protection Act for swap dealers and major swap participants. The Commission has received requests for guidance and no-action relief from some market participants regarding compliance with Regulation 1.35(a). The Commission also solicited additional information about such compliance by sponsoring the April 2014 End-User Roundtable Discussion and inviting written comments after the discussion. In response to the comments and information it received, the Commission granted certain no-action relief. One of the goals of the proposed rulemaking is to codify, and in one instance expand, this no-action relief. Another goal of the proposed rulemaking is to amend the requirement that records be "identifiable and searchable by transaction" to mean that records must be in a form and manner that is: 1) searchable; and 2) allows for identification of a particular transaction. The proposed regulation limits the types of records that must be maintained in a manner that allows for identification of a particular transaction.

What is the Commission proposing for the form and manner in which records under Rule 1.35(a) must be kept?

Under the current rule, all required records must be kept in "a form and manner identifiable and searchable by transaction." The proposal would amend this provision to require that records be kept in a form and manner that 1) is searchable, and 2) that allows for the identification of a particular transaction. However, records of oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a commodity interest transaction or related cash or forward transactions would not have to be maintained in form and manner that allows for the identification of a particular transaction. This means that there would be no requirement for a market participant to link or otherwise identify a record of a communication that leads to the execution of a transaction with a particular transaction.

Under the proposed changes, would market participants be required to link their records of commodity interest transactions to their records of any related cash or forward positions?

No. The Preamble to the Proposed Rule clarifies that covered entities are not required to link all their transactions in commodity interests to related cash or forward transactions (e.g., their hedges with related hedged positions) by a specific identifier. The Commission expects a covered entity to maintain its records in such a way that would allow it to run its own targeted searches on the raw data to reasonably account for the universe of records pertaining to a particular transaction.

How would the proposal affect current no-action relief?

The Proposed Rule would codify Commission Staff Letter No. 14-72, which granted no-action relief to members of designated contract markets ("DCMs") or swap execution facilities ("SEFs") that are not registered or required to register with the Commission from the requirements to (i) record text messages, and (ii) store required records in a form and manner that is identifiable and searchable by transaction.

The Proposed Rule would also codify and expand Commission Staff Letter No. 14-60, which granted no-action relief to commodity trading advisors ("CTAs") that are members of SEFs or DCMs from the requirement to record oral communications in connection with the execution of swaps. The Proposed Rule expands this relief to all types of commodity interest transactions, not just swaps.