Commodity Futures Trading Commission
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Final Rules Regarding Real-Time Public Reporting of Swap Transaction and Pricing Data

The Commodity Futures Trading Commission (CFTC) announced its intent to publish in the Federal Register final regulations concerning the real-time public reporting of swap transaction and pricing data. The rules implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act).

Dodd-Frank Act added to the CEA new Section 2(a)(13) governing the real-time public reporting of swap transaction data.

Section 727 of the Dodd-Frank Act amends the Commodity Exchange Act (CEA) by inserting a new Section 2(a)(13), which requires public availability of swap transaction data. CEA Section 2(a)(13) authorizes the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery. CEA Section 2(a)(13) specifies that data relating to a swap transaction, including price and volume, be reported to the public as soon as technologically practicable after the time at which the swap transaction has been executed. CEA Section 2(a)(13) also requires that the publicly reported information not identify the transaction participants, market position or business transactions of any person.

Proposed real-time public reporting rules

On December 7, 2010, the Commission published a notice of proposed rulemaking, entitled Real-Time Public Reporting of Swap Transaction Data (Real-Time NPRM), which addressed the real-time reporting and public dissemination of swap transaction and pricing data.

- The Real-Time NPRM proposed requirements relating to the reporting in real-time of swap transaction and pricing data, including provisions relating to:
    - Determination of the parties responsible for reporting
    - Timing of reporting – "as soon as technologically practicable"
    - Recordkeeping
- The Real-Time NPRM also addressed the public dissemination of real-time swap transaction and pricing data, including provisions relating to:
    - Method of public dissemination
    - Timing of public dissemination
    - Hours of operation
    - Data elements to be publicly disseminated
    - Protecting anonymity
- Section 727 of the Dodd-Frank Act authorizes and requires the Commission to prescribe rules to specify the criteria for determining what constitutes a large notional swap transaction (block trade) and the appropriate time delays for such swaps. Pursuant to that authority, the Real-Time NPRM included provisions relating to:
    - Determination of appropriate minimum block sizes

o Time delays for block trades and large notional swaps

Final real-time public reporting rules

Although the Commission has determined to adopt the part 43 rules substantially as proposed, it has—after reviewing the comments received and consulting with other financial regulators—made the following significant revisions to the proposed rules.

- <u>Reporting to and public dissemination by registered swap data repositories</u> – All swap transaction and pricing data must be reported to the appropriate registered swap data repository, regardless of whether the swap is executed on a regulated trading platform or bilaterally. Registered swap data repositories must ensure the public dissemination of all publicly reportable swap transactions.
- <u>Definition of "publicly reportable swap transaction"</u> – "Publicly reportable swap transactions" (those transactions subject to the part 43 real-time public reporting rules) must be either (1) any executed swap that is an arm's length transaction between two parties that results in a corresponding change in the market risk position between the two parties or (2) any termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of the swap.
- <u>Data fields to be publicly disseminated</u> – Certain data fields described in Appendix A to part 43 have been revised, deleted or added for clarification and to enhance price discovery.
- <u>Recordkeeping requirements</u> – With the exception of the recordkeeping requirements relating to timestamps, the final rules remove all other recordkeeping requirements.
- <u>Time delays for public dissemination</u> – The final rules provide that time delays for public dissemination differ based on the type of execution, underlying asset and market participant, among other things. The time delays are described in § 43.5 and Appendix C to part 43.
- <u>Appropriate minimum block sizes</u> – The final rules do not contain rules relating to categorizing swaps and determining the appropriate minimum size relating for block trades and large notional off-facility swaps.
- <u>Public dissemination of certain swaps in the "other commodity" asset class</u> –The final rules do not address the public dissemination of publicly reportable swap transactions in the "other commodity" asset class that are not executed on or pursuant to a registered swap execution facility or designated contract market or listed on Appendix B to part 43 – as a result, such publicly reportable swap transactions will not be subject to the part 43 rules at this time.