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Q & A – Final Rulemaking on Swap Data Recordkeeping and Reporting

What is the goal of the final rulemaking?

This final rulemaking implements the Dodd-Frank Act's new statutory framework regarding swap data recordkeeping and reporting requirements for swap data repositories (SDRs), derivatives clearing organizations (DCOs), designated contract markets (DCMs), swap execution facilities (SEFs), swap dealers(SDs), major swap participants (MSPs) and swap counterparties who are neither swap dealers nor major swap participants (non-SD/MSP counterparties) (including, without limitation, counterparties entitled to elect the clearing requirement exception pursuant to CEA § 2(h)(7) with respect to particular swaps).

What are the recordkeeping requirements under the final regulations?

SDs, MSPs, SEFs, DCMs, and DCOs must keep records throughout the existence of a swap and for five years following termination of the swap. The records must be readily accessible to the entity or counterparty throughout the life of a swap and for two years following its termination. For the remainder of the retention period, the records must be retrievable within three business days. Non-SD/MSP counterparties must keep records throughout the existence of a swap and for five years following termination of the swap. The records must be retrievable by the counterparty within five business days throughout this retention period. SDRs must keep records throughout the existence of each swap and for fifteen years following termination of the swap. The records must be readily accessible to the SDR throughout the life of a swap and for five years following its termination. For the remainder of the retention period, the swap records must be retrievable within three business days.

What are the data reporting requirements under the final regulations?

In order to ensure that complete data concerning swaps is available to regulators, the final rule calls for electronic reporting to an SDR of swap data from each of two important stages of the existence of a swap: the creation of the swap, and the continuation of the swap over its existence until its final termination or expiration. Required swap creation data means all primary economic terms data and all confirmation data for a swap. Required swap continuation data means all changes to primary economic terms and all valuation data.

The final rule adopts a streamlined reporting regime calling for reporting by the entity or reporting counterparty the Commission believes has the easiest, fastest, and cheapest access to the data. For all swaps executed on a SEF or DCM, all required creation data is reported by the SEF or DCM. For off-facility swaps accepted for clearing within the applicable deadline for reporting PET data, all required swap creation data is reported by the DCO. For off-facility swaps not cleared or not accepted for clearing within the applicable deadline, required swap creation data is reported by the reporting counterparty.

Continuation data for cleared swaps is reported by the DCO, though SD and MSP reporting counterparties must also report valuation data. For uncleared swaps, all continuation data is reported by the reporting counterparty. Continuation data may be reported via either the life cycle or the snapshot reporting method, so long as the data in the SDR remains current and accurate and includes all changes to primary economic terms.

How would data be aggregated?

The final rulemaking calls for the use of three unique identifiers in connection with swap data reporting, including a Unique Swap Identifier (USI), a Legal Entity Identifier (LEI), and a Unique Product Identifier (UPI). These unique identifiers will be crucial regulatory tools for linking data together and enabling data aggregation by regulators across counterparties, asset

classes, and transactions. This will enhance regulators' ability to mitigate systemic risk, prevent market manipulation, conduct effective market and trade practice surveillance, enforce position limits, and exercise resolution authority.

Is third-party facilitation of data reporting allowed?

Registered entities and counterparties required to report required swap creation data or required swap continuation data may contract with third-party service providers to facilitate reporting. However, these entities remain fully responsible for reporting as required by the proposed regulations.

How is the SDR selected?

To prevent data fragmentation, all data for a swap must be reported to a single SDR, which is the SDR receiving the first data report. Under the streamlined reporting regime adopted in the final rule, the SEF or DCM makes the initial report for on-facility swaps. For off-facility swaps, the reporting counterparty makes the first report, unless the swap is accepted for clearing before it is reported by the reporting counterparty and within the PET data reporting deadline, in which case the DCO makes the first report.

What are the required data standards for swap data reporting?

An SDR must maintain all swap data reported to it in a format acceptable to the Commission, and must transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission. In reporting swap data to an SDR, each reporting entity or counterparty must use the facilities, methods, or data standards provided or required by the SDR. SDRs may permit reporting entities and counterparties to use various facilities, methods, or data standards, provided that its requirements in this regard enable it to meet the requirements with respect to maintenance and transmission of swap data.

How have burdens been reduced for non-SD/MSP reporting counterparties?

Under the streamlined reporting regime adopted in the final rule, reporting obligations for non-SD/MSP counterparties are entirely eliminated in many cases, and are phased in or reduced in all other cases. Non-SD/MSP counterparties must report data only for the small minority of swaps in which both counterparties are non-SD/MSP counterparties. Even within this small minority of swaps, the non-SD/MSP reporting counterparty will have no reporting obligations for on-facility, cleared swaps, or for off-facility swaps accepted for clearing within the deadline for PET data reporting by the non-SD/MSP reporting counterparty. If an off-facility swap is accepted for clearing after the PET data reporting deadline, the non-SD/MSP counterparty is excused from reporting confirmation data, which will instead be reported by the DCO. For on-facility, uncleared swaps, the non-SD/MSP reporting counterparty's reporting obligations are limited to reporting continuation data during the existence of the swap. In addition, reporting deadlines for non-SD/MSP reporting counterparties are extended and phased in. Unlike the proposed rule, the final rule does not make a U.S. non-SD/MSP counterparty report where the other counterparty is a foreign SD or MSP. Where one of two non-SD/MSP counterparties is a financial entity as defined in the Dodd-Frank Act, the final rule makes the financial entity the reporting counterparty.

When must compliance with the rule begin?

The final rule phases in compliance dates by asset class and by counterparty type, and establishes three compliance dates. Compliance date 1, the date on which SEFs, DCMs, DCOs, SDs, MSPs, and SDRs must commence compliance with respect to credit swaps and interest rate swaps, is the later of (a) July 16, 2012, or (b) 60 days after publication of Commission definitions of "swap," "swap dealer," and "major swap participant." Compliance date 2, the date on which such entities and counterparties must commence compliance with respect to equity swaps, foreign exchange transactions, and other commodity swaps, is 90 calendar days after compliance date 1. Compliance date 3, the date on which non-SD/MSP counterparties must begin compliance with respect to swaps in all asset classes, is 90 calendar days after compliance date 2.