
Five key points from the CFTC's amendment to swap data reporting

Last month, the Commodity Futures Trading Commission (CFTC) amended its reporting and recordkeeping rule for Swap Dealers (SDs) and Derivatives Clearing Organizations (DCOs). The amendment alters requirements for cleared swaps finalized in December 2011 (which SDs and DCOs have been subject to since December 2012) in order to address data quality issues identified after the agency began reviewing information submitted to the Swap Data Repositories (SDRs).¹ Most notably, the amendment clarifies key areas of the existing rule (e.g., which party is responsible for choosing the SDR to report a trade to) and removes problematic valuation and confirmation data reporting requirements for cleared swaps.

- 1. The CFTC is addressing industry concerns.** Under Chairman Timothy Massad, the CFTC has been working since 2014 to address reporting requirements which the industry has been unable to comply with. The agency has provided the industry with continuous rolling relief from regulatory action, leaving SDs and DCOs to operate with uncertainty about if and when they would need to meet various reporting and recordkeeping requirements.² Where relief was not granted, the industry has often abstained from compliance due to the associated impracticalities.³ The CFTC's amendment – a first under the CFTC's swap rulemakings – is a big help to the industry and sets an encouraging precedent that the CFTC may address other industry concerns.
- 2. Duplicative valuation reporting is no longer required.** One of the amendment's most important changes is that daily valuations for cleared swaps no longer have to be reported by both the SDs and the clearing DCOs. Removing this requirement shows that the agency heard the industry's comments regarding the complexities involved in reporting these valuations and the limited benefits of identifying differences between valuations from SDs and DCOs. With this move, the CFTC is also aligning itself with global regulators who do not require this duplicative reporting.
- 3. The CFTC converges with the SEC.** The industry provided comments to both the CFTC and the SEC suggesting that they align their respective reporting requirements prior to the issuance of the SEC's final reporting rule in 2015.⁴ The CFTC's amendment illustrates that the CFTC agrees, at least in part, with the industry and the reporting approach taken by the SEC. While the industry is likely to now benefit from reduced complexity, it will continue to hope that the CFTC will further simplify reporting requirements to match the SEC in other areas such as the SEC's minimal confirmation data reporting requirement for uncleared swaps.

4. Will the CFTC continue to listen to the industry on future reporting challenges? The CFTC has indicated it plans to reduce the trading thresholds necessary for dealers to register with the agency (e.g., from \$8 billion to \$3 billion). Such a reduced threshold would cause many currently unregistered dealers to register as SDs, thus subjecting more SDs to reporting requirements. This change could create a reporting challenge because it is not clear how live trades between SDs and newly registered-SDs will be reported. Currently, when two SDs enter into a trade, the reporting party is determined using tie-breaker logic adopted across the industry. However, when an SD and non-SD enter into a trade, the SD is automatically the reporting party. If the threshold is lowered and a non-SD must register as an SD, the CFTC will need to clarify whether the originally reporting SD will continue to report the trade even if it is contrary to the tie-breaker logic. Much of the industry would prefer this option rather than the complexity of shifting the reporting burden to the newly registered-SD.

5. Even with two vacancies, the CFTC continues to make progress. Since August 2015, the CFTC has had only three commissioners to carry out the agency's work. However, the fact that the reporting rule amendment was approved without a full panel of commissioners (and outside of a public meeting to vote on the changes) is a positive sign that the CFTC will continue to be able to refine reporting regulations over the coming months.

Endnotes

1. Under Dodd-Frank, all cleared and uncleared swap transactions are required to be reported to an SDR, a central facility for swap data reporting and recordkeeping.
2. See PwC's *Regulatory brief, Derivatives: Year-ahead US roadmap* (February 2016).
3. An example of the industry's inability to comply has been the requirement to report confirmation data for swaps which are intended to be cleared at the point they are executed. As these swaps are cleared, and therefore terminated, prior to the point of being confirmed, there was no confirmation data to be reported and thus the requirement could not be satisfied.
4. See PwC's *First take, Ten key points from the SEC's swaps reporting and disclosure rules* (February 2015).

Additional information

For additional information about PwC's Financial Services Regulatory Practice and how we can help you, please contact:

Dan Ryan

Financial Services Advisory Leader
646 471 8488
daniel.ryan@pwc.com
@DanRyanWallSt

Mike Alix

Financial Services Advisory Risk Leader
646 471 3724
michael.alix@pwc.com

Adam Gilbert

Financial Services Global Regulatory Leader
646 471 5806
adam.gilbert@pwc.com

Armen Meyer

Director of Regulatory Strategy
646 531 4519
armen.meyer@pwc.com

Contributing authors: Samuel Crystal and Samuel Kestenbaum.

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