

The Commodity Futures Trading Commission has been formulating proposals based on the Dodd-Frank Wall Street Reform and Consumer Protection Act. The following is a summary of the aspects of those proposals related to transparency. Specifically, we have reviewed the rulings related to:

1. Regulatory transparency
2. Public markets transparency
3. Definitions of Swap Dealer and Major Swap Participant

Glossary for OTC Derivatives

- **CEA** – Commodities Exchange Act
- **CFTC** – Commodity Futures Trading Commission
- **DCM** – Designated Contract Market (exchange model)
- **DCO** – Derivative Clearing Organization
- **“Dodd-Frank”** – Wall Street Reform and Consumer Protection Act
- **MSP** – Major Swap Participant
- **Order Book** - IDB trading model
- **RFQ** – Request-for-Quote (CanDeal model)
- **SD** – Swaps Dealer
- **SDR** – Swap Data Repository
- **SEF** – Swap Execution Facility

1. Regulatory Transparency

Swap Data Recordkeeping and Recording

The legislation provides for the registration and comprehensive regulation of swap dealers (SD) and major swap participants (MSP); imposing clearing and trade execution requirements on standardized derivative products; creating rigorous recordkeeping and data reporting regimes with respect to swaps, including real time reporting; and enhancing the Commission’s rulemaking and enforcement authorities with respect to, among others, all registered entities, intermediaries, and swap counterparties subject to the Commission’s oversight.

Swap Data Repository

The Act establishes a newly-created registered entity—the swap data repository (SDR)—to collect and maintain data related to swap transactions as prescribed by the Commission, and to make such data electronically available to regulators.

SDR Duties:

- Acceptance of data;
- Confirmation of data;
- Recordkeeping requirements;
- Commission direct electronic access;
- Real-time reporting obligations;
- Monitoring, screening and analyzing data;
- Maintenance of data privacy;
- Permitting data access to other regulators; and
- Adoption of emergency procedures;

1. Regulatory Transparency con't

Reporting to the SDR:

Section 729 requires that at least one counterparty to a swap must report data concerning that swap to an SDR. The determination of this reporting counterparty depends on the status of the counterparties involved. If only one counterparty is an SD, the SD is required to report. If one counterparty is an MSP, and the other counterparty is neither an SD nor an MSP (non-SD/MSP counterparty), the MSP must report. Where the counterparties have the same status—two SDs, two MSPs, or two non-SD/MSP counterparties—the counterparties must select a counterparty to report. In addition, Section 729 provides for reporting swap data to the Commission for swaps neither cleared by a DCO nor accepted by a SDR.

2. Public Market Transparency

Real Time Public Reporting of Swap Transaction and Pricing Data

The proposed rules require that parties to a swap report swap data to a real-time disseminator, which would be either a swap data repository that accepts data for the particular asset class, or to a third-party service provider. Such report must be made as soon as technologically practicable.

Parties to a swap may satisfy this requirement by executing the transaction on a swap market, which is either a swap execution facility (SEF) or a designated contract market (DCM). Under the proposed rules, the swap market would be responsible for reporting the swap data to a real-time disseminator as soon as technologically practicable following execution of the transaction.

For swaps executed off of a SEF or DCM, the proposed rules specify an order of precedence for reporting the swap pricing and volume data. If the swap includes a swap dealer, then the swap dealer is responsible for reporting. If the swap does not include a swap dealer but does include a major swap participant (MSP), then the MSP is responsible for reporting the swap. If the swap includes two swap dealers or two MSPs, then the parties to the swap must choose which party must report. If the swap does not include either a swap dealer or a MSP, then the parties to the swap must choose which party must report.

As soon as technically possible

The proposed rules require that swap transactions be reported to a real-time disseminator as soon as technologically practicable. Upon receipt of the data, the real-time disseminator must make the swap transaction data publicly available as soon as technologically practicable. Reports for block trades and large notional swap transactions are subject to a delay in reporting to the public.

Block Trades and Large Notional Swaps

Under the proposed rules block trades and large notional swaps are subject to a delay in the reporting of swap transaction and pricing data to the public. For standard contracts, which are traded on a SEF or DCM or are subject to the end-user exemption, the reporting delay is 15 minutes.

For customized trades, the Commission is requesting comment regarding the appropriate time delay for reporting such large notional swap transactions.

2. Public Market Transparency con't

Appropriate Minimum Block Size

The proposed rules specify a procedure using two tests – the distribution test and the social size test – to determine the appropriate minimum block size for a block trade and large notional transaction.

The distribution test determines the transaction size that is larger than 95 percent of transactions for that category of swap instrument over the past calendar year.

The social size multiple test is the transaction size that is five times the largest of the mean, median, and mode of transaction sizes for that category swap instrument over the past calendar year.

The appropriate minimum block size would be the larger size determined by those two tests. SDRs would be responsible for determining the appropriate minimum block size.

3. Swap Dealers and Major Swap Participants

Definition of a Swap Dealer

The proposed rules defining the term “swap dealer” as any person who:

- i. holds itself out as a dealer in swaps,
- ii. makes a market in swaps,
- iii. regularly enters into swaps with counterparties as an ordinary course of business for its own account, or
- iv. engages in activity causing itself to be commonly known in the trade as a dealer or market maker in swaps.

The Commission intends to interpret the definition in a manner that would enable it to respond to evolution in the ways that swap dealers operate and that accounts for the diversity of the swap markets. The Commission preliminarily believes that the distinguishing characteristics of swap dealers are that:

- swap dealers tend to accommodate demand for swaps from other parties;
- swap dealers are generally available to enter into swaps to facilitate other parties’ interest in entering into swaps;
- swap dealers tend not to request that other parties propose the terms of swaps; rather, they tend to enter into swaps on their own standard terms or on terms they arrange in response to other parties’ interest; and
- swap dealers tend to be able to arrange customized terms for swaps upon request, or to create new types of swaps at their own initiative.

Definition of a Major Swap Participant

There are three parts to the definition. A person that satisfies any one of them is an MSP:

- A person that maintains a “substantial position” in any of the major swap categories, excluding positions held for hedging or mitigating commercial risk and positions maintained by certain employee benefit plans for hedging or mitigating risks in the operation of the plan.
- A person whose outstanding swaps create “substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.”
- Any “financial entity” that is “highly leveraged relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate Federal banking agency” and that maintains a “substantial position” in any of the major swap categories.

3. Swap Dealers and Major Swap Participants con't

Definition of Substantial Position

The Commission proposes to define "substantial position" using objective numerical criteria, which promote the predictable application and enforcement of the requirements governing MSPs. The Commission proposes tests that would account for both current uncollateralized exposure and potential future exposure. A position that satisfies either test would be a "substantial position." The proposed definition of substantial position would exclude positions hedging commercial risk and employee benefit plan positions.

See link for more information:

http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/defs_factsheet.pdf

Registration Requirements of a Swap Dealer or Major Swap Participant

- Establish a process for the registration of swap dealers and major swap participants, including a provisional registration pending effectiveness of final definitional rules and rules implementing compliance requirements under CEA section 4s;
- Require swap dealers and major swap participants to become and remain members of a registered futures association;
- Subject Push-Out Affiliates to the foregoing requirements (while not proposing any specific rules with respect to their activities); and
- Prohibit a swap dealer or major swap participant from permitting to associate with it a person who is subject to a statutory disqualification.

Proposed rules for SDs and MSPs include policies and procedures designed to enforce rules, manage and mitigate risk, monitor and supervise trading and address conflict of interest (research/trading). In the case of derivatives trading, it is noteworthy that these requirements apply equally to SD and MSPs.

See link for more information:

http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/duties_factsheet.pdf