

Time for a Change: The CFTC Adopts Extensive Amendments to Swap Reporting Regulations to Improve Data Quality

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Eight years after the Commodity Futures Trading Commission (CFTC or Commission) established a comprehensive swap data reporting and public dissemination regulatory regime, on September 17, the Commission adopted extensive modifications to that regime (Swap Reporting Amendments) that will generally simplify reporting requirements and harmonize them with global standards. These are very positive developments, but in the short run they will present implementation and compliance challenges for many market participants, including swap dealers, derivatives clearing organizations (DCOs), swap execution facilities (SEFs), designated contract markets (DCMs) and swap data repositories (SDRs).

The general compliance date for the Swap Reporting Amendments will be 18 months after publication in the *Federal Register*, except that minimum block size and notional cap size changes will have a compliance date that is one year after the end of that 18-month period. Market participants and registered entities, however, are permitted to adopt the changes in the Swap Reporting Amendments before the compliance date.

The Swap Reporting Amendments include the following key changes:

<i>Description of Change</i>	<i>Most Relevant Rules¹</i>
Creation of a common set of swap data elements for reporting under Parts 43 and 45	Part 43 and P

Changes to methodology for determining block trades and large notional off-facility swaps that will reduce the number of those trades	Part 43
Elimination of duplicate reporting for prime brokerage swaps	Part 43
Capping of swap transactions that reach a certain large notional amount	Part 43
Combination of primary economic terms and confirmation data into a single set of data and harmonization with critical data elements used globally	Part 45
Requirement to report uncleared margin data	Part 45
Replacement of unique swap identifiers (USIs) with unique transaction identifiers (UTIs)	Part 45
Extended T+1 deadlines for reporting certain trades to an SDR	Part 45
New requirements for swap data validation, verification and correction	Part 49
Elimination of state data reporting	Part 45

This Katten Advisory summarizes the Swap Reporting Amendments adopted by the Commission and highlights key points that market participants, SEFs, DCMs, DCOs and SDRs should consider when adapting their compliance systems to implement these amendments.

Background and Context

While the swap data reporting requirements span multiple parts in the CFTC's regulations, the bulk of the reporting requirements pertaining to market participants and registered entities are contained in Parts 43, 45 and 49 of CFTC's regulations. The reporting obligations in Parts 43 and 45 were adopted in 2012,² whereas the general obligations for SDRs were adopted in 2011.³ In 2016, the CFTC adopted several amendments in order to streamline and better clarify reporting obligations for cleared swaps.⁴ Even considering those 2016 changes, market participants have struggled to comply with the CFTC's swap data reporting regime, as evidenced by recent enforcement actions that have resulted in payment of significant fines.⁵

The CFTC's adoption of the Swap Reporting Amendments concluded a multi-year effort by the full Commission and CFTC staff in the Division of Market Oversight (DMO) to holistically review the Commission's swap reporting regulations since their adoption and implementation with the goal of improving the quality, accuracy and completeness of the swap data reported to the CFTC. That effort

— which was formally announced and outlined in DMO staff's *Roadmap to Achieve High Quality Swaps Data (Roadmap)* — resulted in the CFTC proposing several amendments to its swap reporting rules in February 2020.⁶

In commenting on the Swap Reporting Amendments, Chairman Heath P. Tarbert indicated that the amendments were intended to simplify swap data reporting by, among other things, "streamlin[ing] hundreds of different data fields currently required by swap data repositories into 128" to better advance the regulatory objectives of the CFTC."⁷ Similarly, Commissioner Dawn D. Stump, a vocal supporter of swap data regulatory reform, noted that the amendments were intended to "better harmonize with other regulators around the world, reasonably refine reporting obligations to a common set of reportable elements, improve the accuracy of regulatory reporting, and reduce the burden placed on market participants."⁸ Commissioner Stump also pointed out that the Swap Reporting Amendments will result in the collection of more useful swaps data to the CFTC from a regulatory oversight perspective as it considers implementing further reforms in the US swaps market.⁹

Part 43 Amendments

The amendments to Part 43 (collectively, Part 43 Amendments) revise the CFTC's regulations for real-time public reporting and dissemination requirements for reporting counterparties (which include swap dealers, major swap participants (MSPs), swap counterparties that are neither swap dealers nor MSPs, and DCOs), SEFs, DCMs and SDRs. While the Part 43 Amendments did not impose a uniform 48-hour delay on block trade reporting of all swaps as was proposed back in February of this year, the CFTC did adopt many foundational changes to its regulations for the real-time reporting of swap transaction and pricing data.

Amended Part 43 Data Elements

The Part 43 Amendments revise the list of specific data elements subject to real-time public reporting by revising Appendix A to Part 43 and providing guidance for how to report each data element in order to promote uniformity.¹⁰ These revisions were part of CFTC DMO staff's larger review under the *Roadmap*. With these Part 43 Amendments, the CFTC also sought to reconcile differences in data fields across Parts 43 and 45.

Post-Priced Swaps and Prime Brokerage Swaps

The Part 43 Amendments also resolve two interpretive compliance challenges faced by reporting counterparties: the reporting and public dissemination of swap data relating to "post-priced swaps" and "mirror swaps" that are executed in connection with prime brokerage arrangements.

Post-priced swaps are swaps that are valued after an event occurs. Under current Part 43 regulations, post-priced swaps are publicly reported with no corresponding pricing data. The Part 43 Amendments resolve this issue by allowing reporting counterparties to report post-priced swaps the earlier of: (a) as soon as technologically practicable (ASTAP) after pricing occurs; or (b) 11:59:59 pm on the execution date. In the event that pricing does not occur by the later time, the reporting counterparty is required to report the swap transaction with all required data fields other than the price and any other then-undetermined swap transaction and pricing data.¹¹

With respect to swaps executed in connection with prime brokerage arrangements, current Part 43

requires the reporting of the offsetting swap executed with prime brokers (known as "mirror swaps") in addition to the reporting of the initial or "trigger swap" that is negotiated between a prime brokerage client and an executing broker. Current Part 43 also results in the reporting of unrelated data regarding prime-broker costs and fees within the pricing data.

The Part 43 Amendments address this issue by explicitly defining the various legs of prime brokerage swap transactions and requiring that only the trigger swap be reported (i.e., exempting the mirror swap from real-time public reporting, thereby preventing duplicative and misleading price reporting to the market).¹²

Block Trades and Notional Capping

The Part 43 Amendments revise the "block trade" definition with a view towards promoting swap trading on SEFs, providing SEFs with increased flexibility in establishing rules for block trades and mitigating the risks associated with potential information leakage in connection with block trade negotiations. The Part 43 Amendments also make a number of technical revisions to provide clarity to reporting counterparties', DCOs', SEFs', DCMs' and SDRs' compliance obligations.

As noted above, the Part 43 Amendments do not change the public dissemination delay for block trades to a uniform 48-hour delay for all block trades. Instead, Part 43 retains the bespoke public reporting timeframes that exist in the current rule, which are intended to consider liquidity, market depth, and other factors unique to specific categories of swaps.¹³

Two of the most critical aspects of the final Part 43 rule are (a) the calculation and delayed dissemination of block trades and (b) the caps that are applied to mask the notional amounts of large swaps. The Part 43 Amendments make several material revisions to each.

With respect to the calculation of block trades, the Part 43 Amendments generally broaden the number of block trade swap categories across most asset classes. In the case of credit default swaps, the Part 43 Amendments revise the swap categories to exclude certain option trades and CDS trades around the roll months in order to help ensure that dissemination delays have their desired effect of preventing front-running and similar disruptive activity.¹⁴

In addition, the Part 43 Amendments update the block trade threshold calculation from the 50 percent notional test to a 67 percent notional test, which will likely result in higher block trade thresholds. It is important to note, however, that until one year after the start of compliance date for the Part 43 Amendments (180 days following publication of the Part 43 Amendments in the *Federal Register*), the CFTC's existing block trade thresholds will remain in effect.¹⁵

The Part 43 Amendments also increased the cap size threshold for capping large notional trades from 67 percent to 75 percent. Notional caps are intended to mask the notional amount of large swaps when swap transaction and pricing data in respect of those swaps is publicly disseminated. In effect, the Part 43 Amendments will likely result in SDRs publishing the actual notional amounts of more swaps (i.e., without caps masking the notional amounts) than currently occurs under existing Part 43.¹⁶

The chart below provides a high level summary of critical changes to the determination of block trades and notional caps, as referenced in the discussion above.

<i>Key Changes</i>	<i>Current Part 43 Rules</i>	<i>Modified Part 43 Rules</i>
"Block trade" definition	The current definition does not explicitly cover trades occurring on an SEF or DCM through a platform that does not qualify as an "order book."	The revised definition now explicitly covers trades that occur through SEF or DCM platforms other than order books, while still covering all other trades "away from" an SEF or DCM platform.
Swap categories in general	Swaps are organized into five asset classes: interest rate, credit, equity, foreign exchange and other commodity.	The amended rules maintain these same five overarching categories, but make certain changes within them, as indicated below.
- Interest rate	Swaps are categorized by a combination of (1) one of three currency classes; and (2) one of nine tenor ranges.	Swaps are categorized by a combination of (1) one of 15 specified currencies; and (2) one of nine tenor ranges. Swaps in other currencies (beyond those 15) are covered by a catch-all category and will have a block size of zero. If the CFTC is unable to calculate an appropriate minimum block size for any of the specified interest rate categories, such category will have a block size of zero.
- Credit	Swaps are categorized by a combination of (1) one of three spread levels; and (2) one of six tenor ranges.	There are a total of 12 specific product-and-tenor combinations. There is a catch-all category for all other types of credit swaps, which will have a block size of zero. Data for certain trades around the "roll months" will now

		be excluded from size calculations.
- Equity	All equity swaps belong to a single category and are not eligible for public dissemination delays.	No change.
- Foreign exchange	Swaps are characterized based on unique pairings between a "super major" currency with (1) another "super major" currency; (2) a "major" currency; or (3) one of a specified list of nine currencies. There is a catch-all category for all other currency pairings, which have block sizes of zero.	Swaps are characterized based on (1) pairings of the US dollar with one of 20 listed currencies; or (2) unique pairings between any two of those same 20 currencies. There is a catch-all category for all other currency pairings, which will have block sizes of zero.
- Other commodity	Swaps are categorized based on (1) contracts listed in Appendix B to Part 43 for swaps economically related to those contracts; (2) a certain list of futures-related swaps contained in the rule itself; or (3) product types listed in Appendix D to Part 43.	Swaps are categorized based on physical commodity underlier listed in Appendix D to Part 43. There is a catch-all category for all swaps based on other underliers not covered in Appendix D, which will have block sizes of zero.
Minimum block size determination	While the current rules generally require the CFTC to determine minimum block size using a 67 percent notional amount calculation upon collection of at least one year's worth of data from an SDR, the CFTC had not done so to date, instead using a 50 percent notional amount calculation.	The rules have been modified to make the 67 percent notional amount calculation procedure the generally applicable standard for the CFTC's minimum block size determinations going forward (after an implementation period).

<p>Notional cap size determination</p>	<p>While the current rules generally require the CFTC to establish notional cap sizes using a 75 percent notional amount calculation upon collection of at least one year's worth of data from an SDR, the CFTC had not done so to date, relying on the specified initial cap sizes.</p>	<p>The rules have been modified to make the 75 percent notional amount calculation procedure the generally applicable standard for the CFTC's notional cap size determinations going forward. However, certain designated swap categories (i.e., categories with limited trading activity, the equity category) have specific cap sizes set by the rules, and the cap size for foreign exchange swaps in which neither currency is US dollars will be the lower of the notional amount of either currency as if that currency were paired with US dollars.</p>
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Part 45 Amendments

Part 45 of the CFTC's regulations require the regulatory reporting of swap data to SDRs for the benefit of the CFTC by swap dealers and other reporting counterparties. Part 45 data is intended to provide the Commission with the data it needs to effectively oversee the swaps markets.

As generally noted above, the amendments to Part 45 (collectively, the Part 45 Amendments) are intended to streamline the data reporting process and compliance timetables for reporting counterparties, SEFs, DCMs and SDRs without undermining the effectiveness of the process, require the reporting of uncleared swap margin data and right-size and harmonize the reportable data fields for market participants that are subject to both US and non-US swap reporting obligations by conforming Part 45 to international standards.

Noted below are some of the material changes in the Part 45 Amendments that seek to accomplish the foregoing objectives.

Streamlining the Reporting Process and Compliance Timetables

The Part 45 Amendments require reporting counterparties, SEFs, DCMs and DCOs to submit a single data report at execution rather than two separate reports for primary economic terms and confirmation as is required under the current rule.¹⁷ To that end, the Part 45 Amendments remove the primary economic terms concept from Part 43.

With respect to the electronic reporting of swap continuation data to an SDR, the Part 45 Amendments make two significant changes. First, the amendments extend deadlines for the

reporting of new swaps and swap continuation data. Second, the amendments eliminate the option for state data or "snapshot" reporting so that only life-cycle event data for swaps is permitted.

For end-users that are reporting counterparties, the Part 45 Amendments also provide some regulatory relief. In particular, for non-swap dealer/MSP/DCO reporting counterparties, the Part 45 Amendments remove requirements to report valuation data quarterly as is required under the existing Part 45 rules. In addition, the Part 45 Amendments provide end-users that are required to report swap valuation data with a longer timeframe in which to report such data, giving them two days following the date of execution (i.e., T+2).¹⁸

Reporting of Uncleared Margin Data

The Part 45 Amendments will require reporting counterparties to provide margin and collateral data on uncleared swaps. The CFTC believes that, with this data, the Commission's ability to monitor for systemic risk will be significantly improved.¹⁹

Right-Sizing and Harmonizing Data Fields

The CFTC adopted swap data reporting requirements in early 2012 as the first mover on the global stage. Since the adoption of these Parts, many non-US regulators have adopted swap data reporting regimes with different approaches. More recently, the international advisory body, the Committee on Payments and Infrastructures and the International Organization of Securities Commissioners (CPMI-IOSCO), adopted technical guidance on the harmonization of swap data reporting.

The Part 45 Amendments generally align the CFTC's data reporting fields with the technical guidance set by CPMI-IOSCO. The CFTC has been heavily involved in the CPMI-IOSCO working group, serving as co-chair to develop international standards on critical data elements (also known as CDEs) with the central goal of developing global guidance for swap data reporting.²⁰

Along with the Part 45 Amendments, the CFTC also has published technical specifications available on the CFTC's website, which include data elements that are unique to CFTC reporting, as well as the CDEs.²¹ In effect, the Part 45 Amendments streamline hundreds of different data fields currently required by SDRs into 128 data fields in total.

In addition to certain CDE fields, the Part 45 Amendments adopt the use of a unique transaction identifier (UTI) system in place of today's unique swap identifier (USI) system as recommended by the CPMI-IOSCO Technical Guidance. The change from USIs to UTIs will further align the CFTC's swap data reporting regulations with those of international regulators, resulting in better data sharing and reduced compliance burdens for market participants.²²

Part 49 Amendments

Part 49 of the CFTC's regulations currently requires SDRs to engage in swap data verification in order to help ensure that the accuracy of data reported to SDRs and the CFTC pursuant to Parts 43 and 45. The amendments to Part 49 (collectively, the Part 49 Amendments) seek to improve data accuracy and provide enhanced and streamlined oversight of SDRs and data reporting generally, by modifying existing rules that require SDRs to both: (1) establish policies and procedures to confirm the accuracy of swap data with both counterparties to a swap; and (2) require reporting counterparties to verify the accuracy of swap data in accordance with those procedures. The Part 49

Amendments also update existing requirements related to data-error correction and certain provisions related to SDR governance.

The Part 49 Amendments provide that any errors or omissions must be corrected ASATP, but no later than within seven business days of discovery. If a reporting counterparty does not believe it can meet this timing requirement, it must notify DMO within 12 hours of that determination.²³

Under the Part 49 Amendments, SDRs will be required to provide a mechanism for reporting counterparties to access and verify the data for their open swaps held at the SDR. As a result, each reporting counterparty will be required to compare the SDR's data with the counterparty's own books and records, correcting any data errors with the SDR. In response to public comments concerning significant implementation costs without improving error remediation, the CFTC adopted an SDR-based mechanism over a message-based system for error identification and correction, which the CFTC previously proposed.²⁴ In essence, this process will allow reporting counterparties to leverage an SDR's existing validation procedures.

1 The existing CFTC rules can be found at 17 C.F.R. § 43.1 *et seq.*, 17 C.F.R. § 45.1 *et seq.*, and 17 C.F.R. § 49.1 *et seq.*, respectively.

2 77 Fed. Reg. 2136 (Jan. 13, 2012); 77 Fed. Reg. 1182 (Jan. 9, 2012).

3 76 Fed. Reg. 54538 (Sept. 1, 2011).

4 See, e.g., 81 Fed. Reg. 41735 (June 27, 2016) (amending swap data recordkeeping and reporting requirements for cleared swaps).

5 See, e.g., *In re Northern Trust Co.*, CFTC Docket No. 19-39; *In re PNC Bank, National Ass'n*, CFTC Docket No. 19-43; *In re Commerzbank AG*, CFTC Docket No. 19-03.

6 See CFTC, "Roadmap to Achieve High Quality Swaps Data" (July 10, 2017), https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf.

7 CFTC, Statement of Chairman Heath P. Tarbert in Support of Final Rules on Swap Data Reporting, <https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement091720c>.

8 CFTC, Statement of Commissioner Dawn D. Stump Regarding Final Rules: Swap Data Reporting, <https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement091720b>.

9 *Id.*

10 See Real-Time Reporting Rule at 139-40.

11 See *id.* at 166.

12 See *id.* at 173.

13 See *id.* at 87-88.

14 See *id.* at 97.

15 See *id.* at 121-22.

16 See *id.* at 278.

17 See Swap Data Rule at 26.

18 See *id.* at 27.

19 See *id.* at 159.

20 See *id.* at 5.

21 See CFTC Technical Specification: Parts 43 and 45 Swap Data Reporting and Public Dissemination Requirements, Ver. 2.0 (Sept. 17, 2020), https://www.cftc.gov/media/4891/DMO_Part43_45TechnicalSpecification091720/download.

22 See Swap Data Rule at 48-49.

23 See SDR Rule at 103-04.

24 See *id.* at 40-41.

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National Law Review, Volumess X, Number 288

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