

After 12 Enforcement Actions and 9 No-Action Letters, CFTC Staff Effectively Repeals the Pre-Trade Mid-Market Mark Disclosure Requirement

Article By:

Carl E. Kennedy

The Commodity Futures Trading Commission's (CFTC or Commission) Market Participants Division (MPD) issued Letter 25-09, which effectively eliminates the pre-trade mid-market mark (PTMMM) disclosure requirement for uncleared swaps, foreign exchange forwards and foreign exchange swaps.[1]

For the CFTC's 106 registered swap dealers, MPD staff's April 4 action is very welcome news. Since the PTMMM disclosure requirement was adopted in February of 2012,[2] the Commission has brought and settled 12 enforcement actions against registered swap dealers, each for their alleged failure to comply with the requirement. That averages to be almost one enforcement action per year. And following the rule's adoption, MPD staff has issued nine separate no-action letters to provide relief (not including Letter 25-09) from the PTMMM disclosure requirement because either the rule's stated purpose could be achieved through alternative means, or the disclosure requirement would be too difficult in practice to implement under certain circumstances.[3]

But Why Eliminate the PTMMM Disclosure Requirement?

When the CFTC adopted the PTMMM disclosure requirement back in 2012, the Commission stated that "[t]he spread between the quote in the mid-market mark is relevant to disclosures regarding material incentives and provides the counterparty with pricing information that facilitates negotiations and balances historical information asymmetry regarding swap pricing." [4] The CFTC noted that dealers historically had an informational advantage over non-dealers. The requirement was essentially intended to resolve this informational imbalance.

Specifically, CFTC Rule 23.431(a)(3)(i) and paragraph (d)(2) together provide that, before a swap is executed, swap dealers must disclose to their non-dealer counterparties the mid-market mark of the swap, which accounts for the swap dealer's material incentives included in the price of the swap.[5] The CFTC imposed this blanket requirement and then, over the next few years, issued a series of relief from the requirement with respect to certain types of swaps (e.g., swaps that are intended to be cleared; foreign exchange forwards and foreign exchange swaps where each currency of the transaction is one of the Bank of International Settlements 31 currencies and where the

transaction has a stated maturity of one year or less). In many of the letters where MPD staff provided relief in response to letters from industry trade groups, staff noted that relief from PTMMM disclosure requirements was warranted in certain circumstances where real-time, tradeable bid and offer swap pricing information is widely available to non-dealers on CFTC registered exchanges.[6]

Following the receipt of a joint letter from three industry trade associations in early 2025, MPD staff reached a different conclusion. That is, Letter 25-09 reflects a complete “about-face” in terms of the Commission’s policy view on this particular requirement.

Specifically, Letter 25-09 expressly states that MPD staff now concludes a “reconsideration of the usefulness and effectiveness of the PTMMM disclosure requirement should be undertaken.” MPD staff found persuasive the trade associations claim that “the PTMMM [Requirement] does not provide any significant informational value to a Swap Entity’s counterparties, and the PTMMM Requirement imposes significant operational burdens on Swap Entities, and at worst, impedes the prompt execution of swap transactions.”

In the letter, MPD staff also note that the US Securities and Exchange Commission (SEC) — which has very similar rules generally to the CFTC with respect to dealers in security-based swaps — declined to adopt a similar PTMMM disclosure requirement notwithstanding the relevant Dodd-Frank Act amendments to the Exchange Act of 1934 mirroring the amendments to the Commodity Exchange Act for business conduct standards. Letter 25-09 will harmonize the two agencies’ business conduct standards for dealers.

The relief in Letter 25-09 is also consistent with Acting Chairman Caroline D. Pham’s commitment to return “back to basics.” During her tenure, the Acting Chairman Pham has focused on, among other things, providing regulatory clarity,[7] reducing regulatory obligations where those obligations do not address their intended purposes, and redirecting the Enforcement Division’s focus on cases where there is actual market abuse and customer harm.

What Does This Mean for Registered Swap Dealers?

The relief in Letter 25-09 represents a significant development for swap dealers, who tend to spend exorbitant amounts of resources to ensure compliance with the PTMMM disclosure requirement. Additionally, swap dealers are frequently asked to demonstrate compliance with PTMMM disclosure requirements as part of their annual examinations with the National Futures Association (NFA).

All of that now goes away.

Another significant development that has not received much attention is the fact that MPD staff’s adoption of Letter 25-09 will likely have a positive impact on any active investigations or enforcement actions where the alleged misconduct is related to compliance with the PTMMM disclosure requirement. Swap dealers that are in the middle of any investigations or enforcement actions should consider engaging with CFTC Division of Enforcement staff to discuss the letter’s impact on their cases.

Does the Letter’s Relief Impact Other Requirements?

The relief in Letter 25-09 will remain in force until the Commission adopts a final rule addressing the PTMMM requirement. It will be interesting to see how quickly the CFTC moves forward with adopting a rule, which officially repeals the requirement.

MPD staff make clear that the Letter's relief will have no impact on swap dealers' obligations to provide daily mark disclosures to their non-dealer counterparties pursuant to CFTC Rule 23.431(d). The Letter also provides that it will have no impact on swap reporting requirements under Parts 43 and 45 of the Commission's regulations.

[1] See CFTC Staff Letter 25-09 (Apr. 4, 2025), available at <https://www.cftc.gov/csl/25-09/download>.

[2] See Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 77 Fed. Reg. 9734 (Feb. 17, 2012).

[3] Note that MPD was previously named the Division of Swap Dealer and Intermediary Oversight (DSIO). Most of the no-action letters were issued by staff in DSIO.

[4] *Id.* at 9766.

[5] See CFTC Rule 23.431(d)(2), which provides that "the mid-market mark of the swap shall not include amounts for profit, credit reserve, hedging, funding, liquidity, or any other costs or adjustments."

[6] See CFTC Staff Letter 12-58 (Dec. 18, 2012). Letter 12-58 also requires the non-dealer counterparty to agree in advance that the swap dealer need not disclose the PTMMM.

[7] See CFTC Staff Letter 25-10 (Apr. 9, 2025) (Advisory that provides clarity regarding CFTC staff's view on whether certain foreign exchange instruments are swaps, foreign exchange forwards or foreign exchange swaps).

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