

US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules USA (National/Federal)

Related Content

A Practice Note providing an overview of CFTC swap data reporting and recordkeeping rules issued under Title VII of the Dodd-Frank Act. This Note includes details on SDR reporting and recordkeeping rules under CFTC Regulations Part 45, real-time reporting under Part 43, large-trader reporting, swap data recordkeeping, and block-trade rules.

One of the primary goals of Title VII of the [Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010](#) (Dodd-Frank Act) was to create transparency in the historically opaque [over-the-counter \(OTC\) derivatives](#) market. Toward that end, the [Commodity Futures Trading Commission](#) (CFTC) has issued a number of final rules covering swap data reporting and recordkeeping under Title VII. The final rules discussed in this Note have gone into effect and compliance is required for most parties to US swaps, as well as certain others.

Among other rules on swap data reporting and recordkeeping (see [Part 45 Swap Data Recordkeeping Rules](#)), this Note covers final:

- **Regulatory swap data reporting and recordkeeping rules (Part 45).** Swap data reporting under Part 45 of the CFTC Regulations – referred to as SDR rules – is considered regulatory reporting. That is because data reported under these rules is not publicly disseminated and regulators, not the public, ultimately receive the data reported under these rules (see [Part 45 \(SDR\) Data Reporting Rules](#)).
- **Real-time swap data reporting rules (Part 43).** Swap data reported under Part 43 of the CFTC Regulations is disseminated to the public. Unlike reporting under Parts 45 and 46, data under Part 43 is reported and disseminated anonymously to the public to protect the confidentiality of market participants (see [Part 43 CFTC Real-Time Public Swap Data Reporting Rules](#)).
- **Historical swap data reporting and recordkeeping rules (Part 46).** Data reporting under Part 46 of the CFTC Regulations is also considered regulatory reporting, as under Part 45. This data is not publicly disseminated. Regulators, and not the public, ultimately receive the data reported under these rules (see [Part 46 Data Reporting Rules for Historical Swaps](#)).
- **Large-trader ownership and control (OCR) reporting for physical commodity swaps (Part 20).** CFTC rules on physical commodity positions have long been in effect but were expanded under the Dodd-Frank Act (see [Large-Trader Position Data Reporting for Physical Commodity Swaps](#)).

For a user-friendly guide to compliance with CFTC Part 45 and Part 43 swap data reporting rules, see [Practice Note, US Derivatives Regulation: Practical Guide to Over-the-Counter \(OTC\) Swap Data Reporting](#).

For details on corollary SEC Dodd-Frank data reporting rules for [security-based swaps](#) (SBS) under Regulation SBSR, see [Practice Note, US Derivatives Regulation: SEC Regulation SBSR Data Reporting for Security-Based Swaps](#).

Part 45 (SDR) Data Reporting Rules

On December 20, 2011, the CFTC adopted [final rules](#) under Title VII of the Dodd-Frank Act on swap data reporting and recordkeeping requirements for parties to all non-historical swaps ([77 Fed. Reg. 2136 \(January 13, 2012\)](#)). These rules are codified in Part 45 of the CFTC regulations ([17 C.F.R.](#)

[§§ 45.1 to 45.14](#)). These rules are referred to as the final SDR rules. SDR reporting is referred to as regulatory reporting because the data reported under these rules is not publicly disseminated and is used only by regulators.

CFTC regulations established [swap data repositories](#) (SDRs), as required under Title VII, which are entities that receive and store reported swap data. Part 49 of the CFTC regulations ([17 C.F.R. §§ 49.1 to 49.27](#)) includes extensive provisions for the establishment, governance, and conduct of SDRs, although swap data reporting obligations applicable to SDRs are covered under Part 45.

The final SDR reporting rules set out swap data reporting and recordkeeping obligations for SDRs, [derivatives clearing organizations](#) (DCOs), [designated contract markets](#) (DCMs), [swap execution facilities](#) (SEFs), [swap dealers](#) (SDs), and [major swap participants](#) (MSPs), collectively referred to in these rules, as well as in CFTC rules generally, as "registered entities." ([17 C.F.R. §§ 45.1, 45.2, 45.3, and 45.4](#).) (Note that SDR acceptance and analysis of data, and subsequent access to data collected, is handled under Part 49).

The final SDR rules also impose reporting obligations on swap counterparties that are neither SDs nor MSPs, including commercial end users that are otherwise exempt from many Dodd-Frank swaps regulations. These non-dealer swap counterparties must keep "full, complete, and systematic records" of swaps to which they are a counterparty, though SDs and MSPs have more explicit documentation requirements under the final SDR reporting rules. ([17 C.F.R. § 45.2\(a\), \(b\)](#).) For an example of reporting obligations of non-dealer swap counterparties under Part 45, see [Standard Document, The ISDA Master Agreement: Dodd-Frank Amendment for End-User Swaps: Drafting Note: Data Reporting Duties of Non-Reporting Counterparty; Corporate Events](#).

The final SDR rules require electronic reporting to a registered SDR by the reporting party (see [Practice Note, US Derivatives Regulation: Practical Guide to Over-the-Counter \(OTC\) Swap Data Reporting: Box, Which Is the Reporting Party?](#)) of the required swap data at the following stages:

- **Upon the creation of the swap.** This data is referred to in the rules as "creation data." ([17 C.F.R. § 45.3](#).) For detailed information on creation data reporting requirements under the final SDR rules, see [Practice Note, US Derivatives Regulation: Practical Guide to Over-the-Counter \(OTC\) Swap Data Reporting: CFTC Reporting Compliance: Creation Data Reporting Under Part 45](#) and [Real-Time Reporting Under Part 43](#).
- **During the life of the swap until its termination or expiration.** This data is referred to in the rules as "continuation data." Continuation data for cleared swaps is reported by DCOs and includes valuation data, which reflects daily movements of the value of the parties' positions under the swap ([17 C.F.R. § 45.4\(b\)](#)). According to the June 2016 amendments to the CFTC swap data reporting and recordkeeping rules (see [Cleared Swap Data Reporting Under Part 45: The Cleared Swap Rule](#)), only DCOs are required to report valuation data for cleared swaps. Continuation data for uncleared swaps must be reported by the reporting party to the swap and includes valuation data ([17 C.F.R. § 45.4\(d\)](#)). For detailed information on continuation data reporting requirements under the final SDR rules, see [Practice Note, US Derivatives Regulation: Practical Guide to Over-the-Counter \(OTC\) Swap Data Reporting: CFTC Reporting Compliance: Continuation Data Under Parts 45 and 46](#).

The final SDR rules specify the following "asset classes" of swaps for which data must be reported, which are consistent throughout all final CFTC data reporting and recordkeeping rules:

- [Interest rate swaps](#).
- Credit swaps (which includes [credit default swaps](#) (CDS)).
- Foreign exchange (FX) swaps, which excludes certain currency swaps.
- Equity swaps, which includes [total return swaps](#) (TRS).
- "Other commodity" swaps, which includes all commodity swaps and their economic equivalents, as well as certain currency swaps not included in the FX category. This asset class also acts as a catchall for certain swaps not covered by the other asset classes.

([17 C.F.R. § 45.1](#).)

Though technically applicable as of October 12, 2012, compliance with the final SDR rules began as a practical matter for the largest swap dealers as of December 31, 2012. These rules are currently effective, except for certain non-US parties.

On November 30, 2017, the CFTC issued [No-Action Letter 17-64](#) which further extended to December 1, 2020, relief for swap dealers and MSPs established in Australia, Canada, the European Union, Japan, and Switzerland from SDR and historical swap data reporting requirements, as regulators address issues of comity with overlapping rules of these jurisdictions (see [Legal Update, CFTC Issues Fifth Extension of Relief for Certain Non-US Swap Dealers from SDR Reporting Rules](#)).

The CFTC's [Q&A: On Start of Swap Data Reporting](#) clarified that swaps entered into on or after October 12, 2012, but before the applicable compliance date for data reporting under the final SDR rules, are classified as transition swaps subject to final historical swap data reporting rules under Part 46 rather than to Part 45 SDR rules (see [Part 46 Data Reporting Rules for Historical Swaps](#)).

For details on swap data recordkeeping rules under the final SDR rules, see [Part 45 SDR Recordkeeping Rules](#).

Cleared Swap Data Reporting Under Part 45: The Cleared Swap Rule

On June 14, 2016, the CFTC approved a [final rule \(81 Fed. Reg. 41736 \(June 27, 2016\)\)](#) which amended and clarified existing swap data reporting obligations for cleared swaps under CFTC Regulations Part 45. The amended rules include clarification of the duties of DCOs with respect to cleared swaps under Part 45. For details, see [Legal Update, CFTC Amends Cleared Swap Reporting Regulations](#).

Note that the CFTC granted relief under [No-Action Letter 16-85](#) to DCOs and parties that clear swaps through "relief DCOs," which are DCOs that are currently exempt from DCO reporting obligations to report certain swap creation and continuation data under Part 45. This relief was extended under [No-Action Letter 16-86](#) to parties that cleared swaps through registered DCOs (as well as to other swap data reporting entities), but that relief has expired. For details on the relief extended under No-Action Letters 16-85 and 16-86, see [Legal Update, CFTC Issues No-Action Relief on Cleared Swap Data Reporting](#).

The relief granted under No-Action Letter 16-85 was extended by [No-Action letter 18-03](#) and will expire on February 19, 2021 (see [Legal Update, CFTC Further Extends Cleared Swap Data Reporting Relief](#)).

Part 43 CFTC Real-Time Public Swap Data Reporting Rules

Shortly after the approval of the final SDR rules (see [Part 45 \(SDR\) Data Reporting Rules](#)), on January 9, 2012, the CFTC adopted [final rules](#) under Title VII of the Dodd-Frank Act requiring the real-time public reporting of certain swap transaction and pricing data to SDRs ([77 Fed. Reg. 1182 \(January 9, 2012\)](#)). These rules are codified in Part 43 of the CFTC's regulations ([17 C.F.R. §§ 43.1 to 43.7](#)). Swap data reported under the CFTC real-time rules is disseminated to the public ([17 C.F.R. § 43.3](#)). Unlike under Part 45 (SDR) and 46 (historical) data reporting, data under Part 43 is reported and disseminated anonymously to protect the confidentiality of market participants ([17 C.F.R. § 43.4](#)).

The CFTC real-time data reporting rules are intended to make swap transaction and pricing data publicly available in real time, which, under the rules, means as soon as technologically practicable after execution for most swaps. Execution is defined as an agreement by the parties (whether orally, in writing, electronically, or otherwise) to the terms of a swap that legally binds the parties under applicable law. ([17 C.F.R. §§ 43.2 and 43.4](#).)

Swap data that must be reported and publicly disseminated under the CFTC real-time rules is limited to "pre-allocation" swap data (for required data fields and suggested order of data to be reported under the CFTC real-time reporting rules, see [US Derivatives Regulation: CFTC Swap Data Reporting Required Data Fields Checklist: Required Data Fields Under Final CFTC Real-Time Swap Data Reporting Rules \(17 CFR Part 43\)](#)).

Both the CFTC SDR rules and the CFTC real-time reporting rules require the reporting of similar creation data. However, despite indications to the contrary during the rulemaking process, the CFTC declined to align the data fields that must be reported under the CFTC real-time data reporting rules with the data fields required to be reported under the final SDR rules. The real-time rules do not require the reporting of continuation data.

All swap transaction and pricing data is required to be reported to the appropriate registered SDR by the reporting party regardless of whether the swap is executed on a regulated trading platform such as a DCM or SEF, or bilaterally. SDRs must ensure the public dissemination of data relating to all publicly reportable swap transactions. For details on which party to a swap is the reporting party under the final rules, see [Practice Note, US Derivatives Regulation: Practical Guide to Over-the-Counter \(OTC\) Swap Data Reporting: Box, Which Is the Reporting Party?](#)

Appendix A to the final rules sets out the data fields that, to the extent applicable for a particular publicly reportable swap transaction, must be publicly disseminated and provides guidance for compliance with the reporting and public dissemination of each data field ([17 C.F.R. Pt. 43, App. A](#)).

Though technically applicable as of October 12, 2012, compliance with the CFTC real-time reporting rules began, as a practical matter, for the largest swap institutions as of December 31, 2012. These rules are currently effective, and data must be reported to a registered SDR in accordance with the CFTC real-time rules for all swaps subject to Title VII of the Dodd-Frank Act, as all applicable compliance dates have passed (search "real-time" in [US Derivatives Regulation: Compliance Calendar](#)).

For details on compliance with the CFTC real-time data reporting rules, see [Practice Note, US Derivatives Regulation: Practical Guide to Over-the-Counter \(OTC\) Swap Data Reporting: CFTC Reporting Compliance: Real-Time Reporting Under Part 43](#).

For details on swap data recordkeeping requirements in connection with the final real-time rules, see [CFTC Rules on Non-Historical Swap Data Recordkeeping by SDs and MSPs](#).

For information on real-time data reporting for SBS, see [Practice Note, US Derivatives Regulation: SEC Regulation SBSR Data Reporting for Security-Based Swaps: Primary Trade Information for Public Dissemination](#).

Parties may view the real-time public dissemination of swaps and derivatives data at SDR Depository Trust & Clearing Corporation (DTCC) Data Repository's [real-time dissemination dashboard](#).

CFTC Block Trade Rules

Section 727 of the Dodd-Frank Act added Section 2(a)(13)(E) to the [Commodity Exchange Act](#) (CEA) ([7 U.S.C. § 2\(a\)\(13\)\(E\)\(iii\)](#)) to require that the CFTC determine what constitutes a "large [notional](#) swap transaction" for purposes of:

- Applying real-time data reporting delays to these swaps as specified under the CFTC real-time swap data reporting rules ([17 C.F.R. § 43.5](#); see [Determining Minimum Block Sizes for Large Swap Real-Time Reporting Delays](#)).
- Determining which swaps will be publicly disclosed with a generic notional "cap" number for purposes of maintaining anonymity of market participants to certain large identifiable swaps in the public dissemination of swap data ([17 C.F.R. § 43.4\(h\)](#); see [Minimum Cap Sizes: Maintaining Anonymity of Market Participants](#)).

On May 31, 2013, the CFTC issued [final rules](#) ([78 Fed. Reg. 32866 \(May 31, 2013\)](#)) under Title VII of the Dodd-Frank Act and Section 2(a)(13) of the CEA establishing what constitutes a large notional (or "outsize") swap transaction for these purposes ([7 U.S.C. §§ 2, 12a\(5\)](#) and [24a](#)). These swaps are referred to in the rules as:

- **Block trades.** These are large notional swaps that are executed on a swap exchange (a DCM or SEF) registered with the CFTC.
- **Large notional off-facility swaps.** These are large notional swaps that are executed [bilaterally](#), not on a DCM or SEF.

([17 C.F.R. § 43.2](#).)

Under CFTC Regulation 43.2, block trades are defined as publicly reportable swap transactions that:

- Involve a swap that is listed on a SEF or DCM.
- Occur away from the SEF's or DCM's trading system or platform and are executed pursuant to the SEF's or DCM's rules.
- Have a notional or principal amount equal to or exceeding the applicable minimum block size (see [Real-Time Block Size and Cap Size Tables](#)).
- Are reported subject to the SEF or DCM rules.

([17 C.F.R. § 43.2](#).)

Large notional off-facility swaps might include, for example, an interest rate or currency swap associated with a large [asset-backed securities](#) (ABS) transaction. In practice, many large, customized swaps are not standardized and may not generally be executed on exchanges or cleared. These swaps would be classified as large notional off-facility swaps, rather than block trades.

CFTC large-swap reporting delays and cap sizes apply to both block trades and large notional off-facility swaps.

Determining Minimum Block Sizes for Large Swap Real-Time Reporting Delays

Under the CFTC real-time reporting rules, parties to block trades and large notional off-facility swaps are permitted a limited reporting delay. Specifically, parties to:

- Swaps executed under the rules of a registered SEF or DCM have up to 15 minutes after execution to report the required data (this was reduced from 30 minutes as of the first anniversary of the compliance date for the applicable swap category) ([17 C.F.R. § 43.5\(d\)](#)).
- Large notional off-facility swaps subject to mandatory clearing in which:
 - at least one party is an SD or MSP have up to 15 minutes after execution to report the required data (this was reduced from 30 minutes after the first year of compliance) ([17 C.F.R. § 43.5\(e\)\(2\)](#)); and
 - neither party is an SD or MSP have one hour after execution to report the required data (this was reduced from four hours to two after first year, and then to one hour after second year of compliance) ([17 C.F.R. § 43.5\(e\)\(3\)](#)). Cleared large notional off-facility swaps are uncommon, as are large swaps not involving an SD, so this exception rarely applies.
- Large notional off-facility swaps not subject to the mandatory clearing requirement in which least one party is an SD or MSP:

- in the interest rate, credit, FX, or equity asset classes have 30 minutes after execution to report the required data (this was reduced from one hour as of the first anniversary of the compliance date) (17 C.F.R. § 43.5(f)); and
- in all other asset commodity classes (including swaps exempt from clearing requirement) have two hours after execution to report the required data (this was reduced from four hours as of the first anniversary of the compliance date) (17 C.F.R. § 43.5(g)).
- Large notional off-facility swaps not subject to, or exempt from, the mandatory clearing requirement in which neither party is an SD or MSP have 24 business hours after execution to report the required data (this was reduced from 48 to 36 hours after the first year and then to 24 hours after the second year of compliance) (17 C.F.R. § 43.5(h)).

The final block trade rules establish swap categories based on common risk and liquidity profiles within the five swap asset classes defined in the CFTC's real-time swap data reporting rules (which are consistent with other CFTC Dodd-Frank swaps rules):

- **Interest rate swaps.** The interest rate asset class includes 27 swap categories based on nine "tenor" (length of swap) groups and three currency categories (17 C.F.R. § 43.6(b)(1)).
- **Credit swaps.** The credit asset class includes 18 swap categories based on six tenor groups and three conventional spread groups (17 C.F.R. § 43.6(b)(2)).
- **Equity swaps.** All swaps in the equity asset class are combined into one swap category because no equity swap qualifies as a block trade or large notional off-facility swap under the rules (17 C.F.R. § 43.6(b)(3), (d)). Data for all equity swaps must therefore be reported as soon as technologically practicable after execution, regardless of the swap's notional size.
- **FX swaps.** The swap categories in the foreign exchange asset class are based on specific currency combinations (17 C.F.R. § 43.6(b)(4)).
- **Other commodity swaps.** Swap categories for the "other commodity" asset class are:
 - swaps that are economically related to contracts listed in Appendix B to the final rules, which are grouped according to the listed contract (17 C.F.R. § 43.6(b)(5)(i) and Pt. 43, App. B);
 - swaps that are not economically related to contracts listed in Appendix B, which are grouped according to specified futures-related swaps) for which the minimum block sizes are based on block sizes set by DCMs for economically related futures contracts (17 C.F.R. § 43.6(b)(5)(ii) and Pt. 43, App. B); and
 - other swaps sharing common product types, found in Appendix D to the final rules (17 C.F.R. § 43.6(b)(5)(iii) and Pt. 43, App. D).

Economically related means having a direct or indirect reference to the same commodity at the same delivery location or locations, or with the same or substantially similar cash market price series (17 C.F.R. § 43.2).

Minimum Block Sizes

The minimum block sizes are being phased in over two periods:

- **An initial phase-in period.** The block sizes for this first phase, which are listed in Appendix F to the final rules (as corrected, 78 Fed. Reg. 42436 (July 16, 2013)), became effective on July 30, 2013 (17 C.F.R. § 43.6(e) and Pt. 43, App. F). There has been no additional CFTC action on this, and the block sizes listed below currently apply (see Real-Time Block Size and Cap Size Tables).
- **A post-initial period.** The initial block sizes in Appendix F to the final rules expire on the first day of the second month after the CFTC publishes new minimum block sizes for each swap category on its website (17 C.F.R. § 43.6(f)(5) and Pt. 43, App. F). This will occur on an as-yet-undetermined future date. As noted, the CFTC has not yet done this.
- Revised block sizes for this period will be determined by the CFTC based on a complex calculation that involves, among other things, multiplying the aggregate average notional amount of all outstanding swaps in the applicable swap category over the previous year by 0.67 (17 C.F.R. § 43.6(c)(2), (f)(1), (2)). The CFTC has determined that use of this coefficient would result in, for example, data for 94% of all interest rate swaps being reported in real time, while 6% would qualify for the reporting delay. These minimum block sizes will then be recalculated at least once a year for each swap category. (17 C.F.R. § 43.6(f)(1).)

Minimum Cap Sizes: Maintaining Anonymity of Market Participants

The publication of detailed information regarding outside swap transactions could expose swap counterparties to higher transaction or risk management costs. For example, the publication of detailed information about an outside swap transaction could alert the market to the possibility that one or both of the parties to the transaction will be re-entering the market to offset or hedge their position under that transaction.

The concern is that other market participants may be alerted to the parties' need to offset their risk under these large swaps and could exploit that information. This could deter swap providers and other parties that provide liquidity to swap markets from becoming parties to these types of swap transactions.

Because of this, the CFTC block trade rules aim to protect the identities of outsize-swap counterparties by removing identifying information from publicly disseminated reports, limiting geographic detail, and generically capping disclosed notional values at a fixed number to mask the exact sizes of these swap transactions.

The notional value cap applies when the notional value of a swap transaction equals or exceeds the applicable cap size for that swap category. When the data for the swap is publicly disseminated, its notional value is listed as the generic cap size followed by a plus sign (for example, "\$250MM+"). This indicates that the actual swap is equal to or larger than the cap, but does not disclose the actual size of the swap. The objective is to prevent market participants from being able to specifically identify these swaps or the parties to them.

The notional value caps are being phased in over two periods:

- **An initial phase-in period.** The initial cap sizes are the greater of:
 - the initial appropriate minimum block size for the swap category in [Appendix F \(17 C.F.R. Pt. 43, App. F; see Real-Time Block Size and Cap Size Tables\)](#); or
 - the cap sizes listed in Section 43.4(h)(1) (see [Real-Time Block Size and Cap Size Tables](#)).

(17 C.F.R. § 43.4(h)(1).)

If [Appendix F](#) does not provide an initial appropriate minimum block size for a particular swap category, the initial (current) cap size for that swap category is equal to the appropriate cap size as set out in Section 43.4(h)(1) (17 C.F.R. § 43.4(h)(1); see [Real-Time Block Size and Cap Size Tables](#)).

- **A post-initial period.** Revised cap sizes will be determined by the CFTC based on a complex calculation that involves, among other things, multiplying the aggregate average notional amount of all outstanding swaps in the applicable swap category over the previous year by 0.75 (17 C.F.R. §§ 43.4(h)(2) and 43.6(c)(3)). These cap sizes will then be recalculated at least once a year for each swap category (17 C.F.R. § 43.4(h)(2)(i)).

Real-Time Block Size and Cap Size Tables

Block sizes listed in [Appendix F](#) are as follows (17 C.F.R. Pt. 43, App. F):

Related Futures Contract	Initial Appropriate Minimum Block Size	Units
AB NIT Basis (ICE)	62,500	MMBtu.
Brent Crude (ICE and NYMEX)	25,000	bbl.
Cheese (CME)	400,000	lbs.
Class III Milk (CME)	NO BLOCKS.	
Cocoa (ICE and NYSE LIFFE and NYMEX)	1,000	metric tons.
Coffee (ICE and NYMEX)	3,750,000	lbs.
Copper (COMEX)	625,000	lbs.
Corn (CBOT)	NO BLOCKS.	bushels.
Cotton No. 2 (ICE and NYMEX)	5,000,000	lbs.
Distillers' Dried Grain (CBOT)	1,000	short tons.
Dow Jones-UBS Commodity Index (CBOT)	30,000 times index	dollars.
Ethanol (CBOT)	290,000	gallons.

Feeder Cattle (CME)	NO BLOCKS.	
Frost Index (CME)	200,000 times index	euros.
Frozen Concentrated Orange Juice (ICE)	NO BLOCKS.	
Gold (COMEX and NYSE Liffe)	2,500	troy oz.
Goldman Sachs Commodity Index (GSCI), GSCI Excess Return Index (CME)	5,000 times index	dollars.
Gulf Coast Sour Crude Oil (NYMEX)	5,000	bbl.
Hard Red Spring Wheat (MGEX)	NO BLOCKS.	
Hard Winter Wheat (KCBT)	NO BLOCKS.	
Henry Hub Natural Gas (NYMEX)	500,000	MMBtu.
HSC Basis (ICE and NYMEX)	62,500	MMBtu.
Hurricane Index (CME)	20,000 times index	dollars.
Chicago Basis (ICE and NYMEX)	62,500	MMBtu.
Lean Hogs (CME)	NO BLOCKS.	
Light Sweet Crude Oil (NYMEX)	50,000	bbl.
Live Cattle (CME)	NO BLOCKS.	
Mid-Columbia Day-Ahead Off-Peak Fixed Price (ICE)	625	Mwh.
Mid-Columbia Day-Ahead Peak Fixed Price (ICE)	4,000	Mwh.
New York Harbor RBOB (Blendstock) Gasoline (NYMEX)	1,050,000	gallons.
New York Harbor No. 2 Heating Oil (NYMEX)	1,050,000	gallons.
NWP Rockies Basis (ICE and NYMEX)	62,500	MMBtu.
Oats (CBOT)	NO BLOCKS.	
Palladium (NYMEX)	1,000	troy oz.
PG&E Citygate Basis (ICE and NYMEX)	62,500	MMBtu.
PJM Western Hub Real Time Off-Peak Fixed Price (ICE)	3,900	Mwh.
PJM Western Hub Real Time Peak Fixed Price (ICE)	8,000	Mwh.
Platinum (NYMEX)	500	troy oz.
Rainfall Index (CME)	10,000 times index	dollars.
Rough Rice (CBOT)	NO BLOCKS.	
Silver (COMEX and NYSE Liffe)	125,000	troy oz.

Snowfall Index (CME)	10,000 times index	dollars.
Socal Border Basis (ICE and NYMEX)	62,500	MMBtu.
Soybean (CBOT)	NO BLOCKS.	
Soybean Meal (CBOT)	NO BLOCKS.	
Soybean Oil (CBOT)	NO BLOCKS.	
SP-15 Day-Ahead Peak Fixed Price (ICE)	4,000	Mwh.
SP-15 Day-Ahead Off-Peak Fixed Price (ICE)	625	Mwh.
Sugar #11 (ICE and NYMEX)	5,000	metric tons.
Sugar #16 (ICE)	NO BLOCKS.	
Temperature Index (CME)	400 times index	currency units.
U.S. Dollar Cash Settled Crude Palm Oil (CME)	250	metric tons.
Waha Basis (ICE and NYMEX)	62,500	MMBtu.
Wheat (CBOT)	NO BLOCKS.	

The cap sizes listed in Section 43.4(h)(1) are as follows ([17 C.F.R. § 43.4\(h\)\(1\)](#)):

Swap Category	Cap Size
Rates	IRS (interest rate swap) with a tenor greater than 0 up to and including 2 years: USD \$250mm
	IRS with a tenor greater than 2 years up to and including 10 years: USD \$100mm
	IRS with a tenor greater than 10 years: USD \$75mm
Credit	Notional or principal amount: USD \$100mm
Equity	Notional or principal amount: USD \$250mm
FX	Notional or principal amount: USD \$250mm
Other Commodity	Notional or principal amount: USD \$25mm

Aggregation for Purposes of Using Block Trade Exception

The CFTC block trade rules ([17 C.F.R. § 43.6\(h\)\(6\)](#)) prohibit the aggregation of orders under multiple trading accounts to satisfy CFTC block sizes for purposes of both:

- The minimum block size requirements for a swap to be eligible for real-time reporting delays.
- The cap size requirements for a swap to be eligible for confidential data treatment.

However, aggregation is permitted under the rules for block trades executed on a DCM or SEF by a person (or a principal of a person) with more than \$25 million in total assets under management (AUM) ([17 C.F.R. § 43.6\(h\)\(6\)\(ii\)](#)) that is any of the following:

- A registered commodity trading advisor (CTA) or a CTA that is exempt from registration (or a principal of either a registered CTA or exempt CTA) who has discretionary trading authority over or directs client accounts ([17 C.F.R. § 43.6\(h\)\(6\)\(i\)\(A\)](#)).
- An investment advisor (IA) who has discretionary trading authority over or directs client accounts and who satisfies the conditions of Section 4.7(a)(2)(v) of the CFTC's regulations ([17 C.F.R. §§ 4.7\(a\)\(2\)\(v\)](#) and [43.6\(h\)\(6\)\(i\)\(B\)](#)).

- A foreign person performing a similar role or function as a CTA or an investment advisor who has discretionary trading authority over or directs client accounts and who is subject to foreign regulation ([17 C.F.R. § 43.6\(h\)\(6\)\(i\)\(C\)](#)).

The rules prohibiting aggregation of trades are designed to ensure that parties are unable to evade Dodd-Frank real-time data reporting obligations for transactions that are not block trades. In particular, the rules look to ensure that trades that do not meet the minimum block trade threshold are not afforded extended reporting time under the real-time data reporting rules. Ideally this maximizes the number of trades reported in real time and facilitates market transparency.

Further, the CFTC anticipates that allowing [non-eligible contract participants](#) (non-ECPs) to engage in block trades through the above-referenced entities will result in an increased participation in the swap markets and therefore increase liquidity and competitiveness in the market.

Large notional off-facility swaps added to block trade rule. On August 6, 2013, the CFTC issued [No-Action Letter 13-48 \(Amended\)](#) to correct the omission of large-notional off-facility swaps from the CFTC block trade rule and extending to large notional off-facility swaps the aggregation exemptions discussed above for block trades. This relief remains effective.

Block Trade Rules: Eligibility and Election

For swaps that meet the minimum block size requirements described above:

- **Block trades.** To be treated as a block trade subject to permitted reporting delays under the CFTC real-time data reporting rules, parties to the swap must notify the SEF or DCM on which the swap is executed that they are electing to have a swap treated as a block trade. The SEF or DCM must then notify the applicable SDR of the election when submitting swap transaction and pricing data to the applicable SDR. ([17 C.F.R. § 43.6\(g\)\(1\)](#).)
- **Large notional off-facility swaps.** To be treated as a large notional off-facility swap subject to permitted reporting delays under the CFTC real-time data reporting rules, parties to the swap must themselves notify the applicable SDR of this election ([17 C.F.R. § 43.6\(g\)\(2\)](#)).

The CFTC block trade rules provide that parties to a block trade must individually qualify as ECPs under the CEA. However, the rules permit DCMs to allow the following parties to transact block trades on behalf of non-ECP customers:

- A registered commodity trading advisor (CTA) or a CTA that is exempt from registration (or a principal of either a registered CTA or exempt CTA) who has discretionary trading authority over or directs client accounts.
- An investment advisor (IA) who has discretionary trading authority over or directs client accounts and who satisfies the conditions of Section 4.7(a)(2)(v) of the CFTC's regulations ([17 C.F.R. § 4.7\(a\)\(2\)\(v\)](#)).
- A foreign person performing a similar role or function as a CTA or an investment advisor who has discretionary trading authority over or directs client accounts and who is subject to foreign regulation, subject to some additional limitations.

([17 C.F.R. § 43.6\(i\)\(1\)](#).)

The CFTC block trade rules require persons transacting block trades on behalf of customers to receive prior written instruction or consent from the customer to do so. This instruction or consent may be provided in a power of attorney or similar document by which a customer gives an agent the authority to trade on its behalf. ([17 C.F.R. § 43.6\(i\)\(2\)](#).)

Temporary Relief for SEFs From Certain Block Trade Requirements

On November 15, 2017, the CFTC issued [No-Action Letter 17-60](#), which further extends until November 15, 2020 relief granted to SEFs from the requirement under CFTC Regulation 43.2 that block trades occur away from the trading system or platform of a registered SEF or DCM. The relief permits SEFs to temporarily facilitate block trades for swaps on a SEF trading system or platform, subject to certain conditions. For more information, see [Legal Update, CFTC Further Extends SEF Relief from Certain Block Trade Requirements Until 2020](#).

Note that the CFTC has proposed to eliminate the "occurs away" requirement for block trades pursuant to its proposed SEF reforms (see [Legal Update, CFTC Proposes Revamp of Swap Execution Facility \(SEF\) and Trade Execution Framework](#)).

Part 46 Data Reporting Rules for Historical Swaps

Historical swaps include:

- **Pre-enactment swaps.** These are swaps that were entered into before July 21, 2010, the enactment date of the Dodd-Frank Act, which did not expire or terminate as of April 25, 2011.

- **Transition swaps.** These are swaps that were entered into on or after the enactment date, but before the final applicable compliance deadline for the CFTC historical swap data reporting rules, and that did not expire or terminate as of April 25, 2011. Swaps that were entered into on or after the enactment date, but that expired or terminated before December 31, 2012, are considered transition swaps. Note that the CFTC's [Q&A: On Start of Swap Data Reporting](#) clarifies that swaps entered into on or after October 12, 2012, but before the applicable compliance date for data reporting under the SDR rules, are also classified as transition swaps, subject to CFTC historical swap data reporting rules.

(17 C.F.R. § 46.1.)

Historical swaps do not include swaps that expired or were terminated before the enactment date. Data for these swaps need not be reported. However, basic data relating to these swaps must be retained for five years after their expiration or termination under the final historical swap data recordkeeping rules (see [Part 46 Historical Swap Data Recordkeeping Rules](#)).

On May 18, 2012, the CFTC issued [final rules](#) under Title VII establishing reporting requirements for historical swaps ([77 Fed. Reg. 35200 \(June 12, 2012\)](#)). These rules are codified in Part 46 of the CFTC's regulations ([17 C.F.R. §§ 46.1 to 46.11](#)). Like Part 45 (SDR rules), historical swap data reporting under Part 46 is regulatory reporting. The data reported under these rules is not publicly disseminated, but rather used only by regulators.

Historical initial data report (IDR). Under these rules, the reporting party to the historical swap must make an initial data report (IDR) on the applicable compliance date to either the applicable SDR that accepts data for that asset class of swap or to the CFTC if no such SDR exists ([17 C.F.R. § 46.3\(a\)\(1\)](#)).

See [Practice Note, US Derivatives Regulation: Practical Guide to Over-the-Counter \(OTC\) Swap Data Reporting: CFTC Reporting Compliance: Historical Swap Data Reporting](#) for details on what data the IDR must contain and how it may be submitted, as well as details on other data that must be submitted to SDRs under the final historical swap data reporting rules.

For details on which party to a swap is the reporting party under the final rules, see [Practice Note, US Derivatives Regulation: Practical Guide to Over-the-Counter \(OTC\) Swap Data Reporting: Box, Which Is the Reporting Party?](#)

Historical continuation data reporting. The reporting party must report continuation data for pre-enactment and transition swaps that were in existence on or after April 25, 2011. This includes all required swap continuation data required to be reported under CFTC Part 45 SDR rules with the exception that when a reporting counterparty reports changes to minimum primary economic terms (PET) for a pre-enactment or transition swap, the reporting counterparty must report only changes to the minimum PET listed in Appendix 1 to Part 45 ([17 C.F.R. Pt. 45, App. 1](#)) and reported in the historical swap IDR, rather than changes to all minimum PET listed in [Appendix 1](#).

Swap continuation data reporting is not required for a pre-enactment or transition swap in existence on or after April 25, 2011, that has been cleared by a designated clearing organization. ([17 C.F.R. § 46.3\(a\)\(2\)](#).)

The compliance dates for these rules have passed and the reporting of historical swap data is already required for most swap dealers (search "historical" in [US Derivatives Regulation: Compliance Calendar](#)).

Note, however, that on November 30, 2017, the CFTC issued [No-Action Letter 17-64](#) which further extended to December 1, 2020 relief for swap dealers and MSPs established in Australia, Canada, the European Union, Japan, and Switzerland from SDR and historical swap data reporting requirements, as regulators address issues of comity with overlapping rules of these jurisdictions (see [Legal Update, CFTC Issues Fifth Extension of Relief for Certain Non-US Swap Dealers from SDR Reporting Rules](#)). This relief, however, does not extend to the recordkeeping requirements under Sections 45.2, 45.6, 46.2, and 46.4 of the CFTC Regulations ([17 C.F.R. §§ 45.2, 45.6, 46.2, and 46.4](#)).

For details on data reporting for certain historical SBS, see [Practice Note, US Derivatives Regulation: SEC Regulation SBSR Data Reporting for Security-Based Swaps: Pre-Enactment \(Historical\) and Transitional SBS](#).

CFTC Rules on Swap Data Reporting by SDs and MSPs

On February 23, 2012, the CFTC adopted [final rules](#) under Title VII establishing, among other things, swap data reporting requirements for SDs and MSPs ([77 Fed. Reg. 20128 \(April 3, 2012\)](#), codified in relevant part in [17 C.F.R. §§ 23.200 to 23.206](#)). These rules specify that SDs and MSPs must report their swap transaction data in accordance with CFTC:

- SDR data reporting rules ([17 C.F.R. § 23.204](#); see [Part 45 \(SDR\) Data Reporting Rules](#)).
- Real-time public swap data reporting rules ([17 C.F.R. § 23.205](#); see [Part 43 CFTC Real-Time Public Swap Data Reporting Rules](#)).

SDs and MSPs are also subject to the historical swap data reporting rules under Part 46 and are generally the party responsible for reporting this data in transactions involving pre-enactment or transition swaps ([17 C.F.R. § 46.5\(a\)\(1\), \(2\), \(d\)\(1\), \(2\)](#); see [Part 46 Data Reporting Rules for Historical](#)

Swaps).

SDs and MSPs should review [Practice Note, US Derivatives Regulation: Practical Guide to Over-the-Counter \(OTC\) Swap Data Reporting](#) for a summary of their swap data reporting obligations under final Dodd-Frank swap data reporting rules.

Large-Trader Position Data Reporting for Physical Commodity Swaps

The final Dodd-Frank large-trader position reporting [rules](#) for physical commodities ([76 Fed. Reg. 43851 \(July 22, 2011\)](#), adding Part 20 to the CFTC regulations) were put in place to complement the data reporting the CFTC has traditionally received on large positions in all exchange-traded physical commodity futures and option contracts. The Dodd-Frank large-trader framework introduced a system for the reporting of data on contracts traded off-exchange that are economically equivalent to the physical commodity futures and option contracts executed on exchanges.

The Part 20 reporting rules require daily ownership and control (OCR) reporting of positions in physical commodity swaps and swaptions from clearing organizations (including DCOs), clearinghouse [clearing members](#), and swap dealers. These reports must be filed electronically and include:

- For clearing organization reports, separately for each clearing member's proprietary and customer account, and in a single data record, the data elements specified in Section 20.3 ([17 C.F.R. § 20.3](#)).
- For clearing member and certain swap dealer reports, separately for each reportable position in a consolidated account, and in a single data record, the elements specified in Section 20.4 ([17 C.F.R. § 20.4](#)).

Under the Part 20 reporting rules, a reportable position is a position, in any one futures equivalent month, comprised of 50 or more "futures equivalent paired swaps" or swaptions based on the same commodity underlying one of a specified list of futures contracts ([17 C.F.R. §§ 20.1 and 20.2](#)). In other words, the following must be reported under Part 20: trading volumes of 50 or more contracts executed during a single trading day on a single DCM or SEF in all instruments that the reporting market designates with the same product identifier (including purchases and sales, and inclusive of all expiration months).

For information on the latest no-action OCR relief, see [Legal Update, CFTC Extends Relief from OCR Large-Trader Reporting Requirements](#) (discussing CFTC [No-Action Letter 17-45](#)).

For further details on the CFTC large-trader reporting rules and OCR issues, see this helpful Sidley Austin [memo](#).

For a summary of large-trader reporting procedures, please see the CFTC's [Part 20 Guidebook](#) and [Appendices](#).

Major Proposed Amendments to CFTC SDR Regulations

On April 25, 2019, the CFTC proposed amendments to Parts 49, 45, 43, and 23 of the CFTC Regulations to improve the accuracy of data reporting to and maintained by SDRs. The amendments would update:

- Requirements for SDRs to establish policies and procedures to confirm the accuracy of swap data with both counterparties to a swap.
- Requirements for SDRs, reporting counterparties, and market participants to correct swap data errors and omissions.
- SDR operational requirements to provide more streamlined CFTC oversight of SDRs and data reporting generally.

For details, see [Legal Update, CFTC Proposes Major Amendments to Swap Data Repository \(SDR\) Regulations to Improve Accuracy of Swap Data](#).

Part 45 Swap Data Recordkeeping Rules

Unless otherwise specified, the conditions under which swap records (and CFTC records generally) must be kept and produced are set forth under Section 1.31 of the CFTC Regulations. Section 1.31 was amended in 2012 to conform existing recordkeeping requirements to those of swap transactions. Section 1.31 was also amended in 2017 (see [Amendments to Section 1.31 of the CFTC Regulations](#)).

([17 C.F.R. § 1.31](#).)

This rule sets out details such as:

- The time frame that entities are required to retain their records ([17 C.F.R. § 1.31\(b\)](#)).
- Details on how to produce the records for inspection ([17 C.F.R. § 1.31\(d\)](#)).
- Details on the form and manner in which records must be kept ([17 C.F.R. § 1.31\(c\)](#)).

Part 45 SDR Recordkeeping Rules

On December 20, 2011, the CFTC adopted [final rules](#) under Title VII on swap data recordkeeping requirements for registered entities (SDs, MSPs, SDRs, DCMs, DCOs and SEFs) and parties to all non-historical swaps, including commercial end users ([77 Fed. Reg. 2136 \(January 13, 2012\)](#)), codified as [17 C.F.R. §§ 45.1 to 45.14](#)). These rules are part of the SDR rules that also set out the data reporting requirements for registered entities (see [Part 45 \(SDR\) Data Reporting Rules](#)).

The CFTC SDR recordkeeping rules are effective for parties to all US swaps, other than certain non-US parties (see [Effective Dates and Compliance](#) and search "recordkeeping" in [US Derivatives Regulation: Compliance Calendar](#)).

Under the CFTC SDR rules, records of all data that must be reported to a registered SDR must be retained through the term of the swap and for five years following its termination or expiration by:

- All parties to the swap.
- All SEFs, DCMs, and DCOs involved in the clearing or exchange trading of the swap.
- The SDR collecting the reported data.

([17 C.F.R. § 45.2\(a\), \(b\), \(c\), and \(g\)](#).)

After the expiration of the five-year period following termination or expiration of the swap, the SDR must archive the reported data for at least another ten years in a form that allows the SDR to retrieve the data within three business days ([17 C.F.R. § 45.2\(g\)](#)).

The CFTC swap data recordkeeping rules are intended to work in tandem with the CFTC swap data recordkeeping rules for SDs and MSPs (see [CFTC Rules on Non-Historical Swap Data Recordkeeping by SDs and MSPs](#)). SDs and MSPs must retain swap data in accordance with both sets of rules, which are intended to be consistent with one another.

For information on swap data retention and recordkeeping for historical swaps, see [Part 46 Historical Swap Data Recordkeeping Rules](#).

CFTC Rules on Non-Historical Swap Data Recordkeeping by SDs and MSPs

On February 23, 2012, the CFTC adopted [final rules](#) under Title VII ([77 Fed. Reg. 20128 \(April 3, 2012\)](#)), codified in relevant part in [17 C.F.R. §§ 23.200 to 23.206](#)) establishing, among other things, data recordkeeping requirements for non-historical swaps entered into by SDs and MSPs after the applicable compliance dates for the rules, all of which have passed (search "SD/MSP recordkeeping" in [US Derivatives Regulation: Compliance Calendar](#)).

Under these rules, SDs and MSPs must retain detailed records of all of their swap activities, including all data reported to an SDR ([17 C.F.R. § 23.201\(a\), \(c\)](#)). These records must include full and complete transaction and position information for all swap activities, including all documents in which trade information is originally recorded. These include all documents customarily generated in accordance with market practice that demonstrate the existence and nature of an order or transaction, such as:

- Records of all orders (filled, unfilled, or cancelled).
- Correspondence, journals, and memoranda.
- Ledgers.
- Confirmations.
- Risk disclosure documents.
- Statements of purchase and sale.
- Contracts.
- Invoices and warehouse receipts.
- Documents of title.
- Daily trading records required under Section 23.202.

([17 C.F.R. § 23.201\(a\)](#).)

Unless otherwise specified, included as noted below, SDs and MSPs must retain these records for a period of five years after the termination or expiration of the swap transaction, except in the case of voice recordings, which must be kept for one year, and certain required pre-execution trade data as described below (17 C.F.R. §§ 1.31(b) and 23.203(b)).

SDs and MSPs must also retain daily trading records of all swaps, including all documents on which transaction information is originally recorded (17 C.F.R. § 23.202(a)). Note that these records need not be kept electronically, but they must be identifiable and searchable by transaction and by counterparty. Note that different requirements apply to daily trading records for related cash and forward transactions under § 23.202(b).

These records must include:

- **Pre-execution trade data.** This must include reliable timing data for initiation of the trade and the date and time, to the nearest minute, that the swap was executed, as well as records of all oral and written communications that lead to the execution of the swap, including quotes, solicitations, and bids. In connection with this, SDs and MSPs must maintain recordings of certain swap-related:

- telephone calls;
- faxes;
- chat applications;
- voicemail; and
- any other digital or electronic media.

(17 C.F.R. § 23.202(a)(1).)

The SD or MSP must create recordings and records of these communications if any pre-execution trade information is transmitted through these media. Therefore, installation of telephone recording technology (both cellphone and landline) will be required unless it is absolutely clear that no communication is made relating to the swap via telephone. Note that the required duration for the retention of regulatory records of pre-execution trade information has been shortened to five years after the creation of the swap transaction (17 C.F.R. § 1.31(b)(3); see [Legal Update, CFTC Updates Recordkeeping Requirements](#)).

- **Execution trade data.** This includes:
 - all terms of each executed swap (including certain specified information); and
 - the date and time, to the nearest minute, that the swap was executed.

(17 C.F.R. § 23.202(a)(2).)

- **Post-execution trade data.** This includes an itemized record of post-trade processing and event, including all transaction confirmations and records on reconciliation, margining, and clearing of the swap (17 C.F.R. § 23.202(a)(3)).
- **Ledgers.** This includes ledgers or other records reflecting payments and interest received, daily valuation and margin calculations, collateral transfers, and individual account balances for each counterparty (17 C.F.R. § 23.202(a)(4).)

Under the final rules, retained records must also include information related to cash or forward transactions used to hedge, mitigate the risk of, or offset any swap held by the SD or MSP. SDs and MSPs must ensure that they preserve all information necessary to conduct a comprehensive and accurate trade reconstruction for each related cash or forward transaction. SDs and MSPs must also maintain each trade record in a form identifiable and searchable by transaction and counterparty. (17 C.F.R. § 23.202(b).)

Each SD and MSP must also keep basic business records in accordance with existing CFTC rules, including, among other things:

- Minutes from meetings of its governing body.
- Organizational charts.
- Audit documentation.
- Certain financial records.
- Records of complaints against personnel.
- Marketing materials.

(17 C.F.R. § 23.201(b).)

SDs and MSPs must also maintain records of swap-related information that must be reported on a real-time basis under the CFTC real-time swap data reporting rules (17 C.F.R. § 23.201(d); see [Part 43 CFTC Real-Time Public Swap Data Reporting Rules](#)).

As noted, these final rules on swap data recordkeeping requirements for SDs and MSPs are intended to work in tandem with the CFTC SDR recordkeeping rules (see [Part 45 SDR Recordkeeping Rules](#)). SDs and MSPs must retain swap data in accordance with both sets of rules, which are intended to be consistent with one another.

Note that compliance by SDs and MSPs with many final swap data recordkeeping rules, including the obligation to record certain swap-related telephone conversations in most major swap jurisdictions, was required as of March 31, 2013 (see [Legal Update, Swap Data Recordkeeping Compliance Delayed for Swap Dealers and MSPs](#)). Certain other swap data recordkeeping rules for SDs and MSPs, including the requirement to keep all swap data on site and searchable, became effective June 30, 2013 (see [Legal Update, CFTC Further Delays Some Swap Data Recordkeeping Rules for SDs and MSPs](#)).

Part 46 Historical Swap Data Recordkeeping Rules

Final CFTC rules (77 Fed. Reg. 35200 (June 12, 2012)) on historical swap data recordkeeping require counterparties to historical (pre-enactment and transition) swaps that did not expire or terminate as of April 25, 2011 to retain, during the term of the swap and for five years after its termination or expiration:

- **Minimum Primary Economic Terms (PET).** The minimum PET of the swap based on the swap's asset class (interest rate, credit, equity, FX or other commodity), as detailed in [Appendix 1](#) to Part 46 (17 C.F.R. Pt. 46, App. 1). For a checklist detailing this information, see [US Derivatives Regulation: CFTC Swap Data Reporting Required Data Fields Checklist: Primary Economic Terms \(PET\) to Be Reported Under Final Historical \(Pre-Enactment and Transition\) Swap Data Reporting Rules](#) (17 CFR Part 46).
- **Confirmation.** The executed [transaction confirmation](#) for the swap, if in the counterparty's possession any time on or after April 25, 2011.
- **Master agreement.** Any master agreement, such as an [ISDA Master Agreement](#), governing the swap that is or was in the counterparty's possession any time on or after April 25, 2011, and all modifications or amendments to that agreement.
- **Credit support agreement.** Any credit support agreement, such as an [ISDA Credit Support Annex](#), or other agreement having the same function as a credit support agreement governing the swap that is or was in the counterparty's possession any time on or after April 25, 2011, and all modifications or amendments to that agreement.
- **Other records.** All records required by Section 45.2 of the CFTC SDR recordkeeping rules (17 C.F.R. § 45.2) to the extent they are created by or become available to the counterparty on or after the applicable compliance date specified in the final rules (search "SDR" in [US Derivatives Regulation: Compliance Calendar](#)). For more information on the records required under this section, see [Part 45 SDR Recordkeeping Rules](#).

(17 C.F.R. § 46.2(a), (c); see [Part 46 Data Reporting Rules for Historical Swaps](#).)

In the case of SDs and MSPs, the records must be readily accessible throughout the life of the swap and for two years following its termination, and retrievable by the SD or MSP within three business days during the remainder of the five-year retention period. In the case of non-SD/non-MSP counterparties, the records must be retrievable within five business days throughout the five-year retention period. (17 C.F.R. § 46.2(c), (d)(1).) Non-SD and non-MSP counterparties may keep records in either paper or electronic form provided they are retrievable and information is reportable as required (17 C.F.R. § 46.2(a)(4)).

Counterparties to historical swaps that expired or were terminated before April 25, 2011 must keep the following records during the term of the swap and for five years after its termination or expiration:

- Pre-enactment swaps must keep information and documents related to the transaction terms that were in the party's possession on or after October 14, 2010, in any format selected by the counterparty.
- Transition swaps must keep information and documents related to the transaction terms that were in the party's possession on or after December 17, 2010, in any format selected by the counterparty.

(17 C.F.R. § 46.2(b), (c).)

These records must be retrievable by the counterparty within five business days (17 C.F.R. § 46.2(d)(2)).

Historical (pre-enactment and transition) swaps do not include swaps that expired or were terminated before the enactment date ([17 C.F.R. § 46.1](#)). Data for these swaps need not be reported under the Dodd-Frank Act ([17 C.F.R. § 46.3](#)).

All records are subject to inspection upon request by the CFTC (or its authorized regulator), the US Department of Justice, or the SEC in the format specified in Section 46.2(e) ([17 C.F.R. § 46.2\(e\)](#)).

For details on recordkeeping for certain historical SBS, see [Practice Note, US Derivatives Regulation: SEC Regulation SBSR Data Reporting for Security-Based Swaps: Pre-Enactment \(Historical\) and Transitional SBS](#).

Amendments to Section 1.31 of the CFTC Regulations

On May 24, 2017, the CFTC approved a [final rule](#) ([82 Fed. Reg. 24479 \(May 30, 2017\)](#)) that:

- Clarifies certain important swap-related recordkeeping requirements.
- Updates and modernizes CFTC recordkeeping requirements generally.

The final rule amends Section 1.31 of the CFTC regulations and makes related technical amendments to Sections 1.35 and 23.203 ([17 C.F.R. §§ 1.31](#), [1.35](#), and [23.203](#)). Most importantly, these changes include:

- Clarifying that no change has been made to the retention time required for regulatory swap records and related cash or forward transactions, which must be retained from the date of creation until a period of not less than five years after the termination, maturity, expiration, transfer, assignment, or [novation](#) of the swap or related cash or forward transaction ([17 C.F.R. § 1.31\(b\)\(1\)](#)).
- Reducing the duration of retention of regulatory records of pre-execution trade information relating to swaps and related cash or forward transactions to five years from the date on which the record was created ([17 C.F.R. § 1.31\(b\)\(3\)](#)).
- Clarifying that, under Section 1.31(b)(2), no change has been made to the retention time required for oral communications related to swaps or related cash or forward transactions, which must be retained for a period of not less than one year after the communication is made ([17 C.F.R. § 1.31\(b\)\(2\)](#)).
- Removing the requirement that paper records must be kept in their original form and that electronic records must be kept in the format in which they were first created (native file format).
- Removing the requirement that records must be stored in non-rewritable, non-erasable format known as "write once, read many" (WORM).

For further details, see [Legal Update, CFTC Updates Recordkeeping Requirements](#).

Effective Dates and Compliance

The final Dodd-Frank CFTC swap data reporting and recordkeeping rules discussed in this Note have gone into effect, and compliance is now required for most parties to US swaps (for details on the cross-border reach of these rules, see [Practice Note, US Derivatives Regulation: Cross-Border Application of Swaps Rules: Final CFTC Cross-Border Guidance and Related Rulemaking](#)).

Temporary Exemption for Non-US Swap Dealers

Note, however, that on November 30, 2017, the CFTC further extended to December 1, 2020 relief for SDs and MSPs established in Australia, Canada, the European Union, Japan, and Switzerland from the final SDR and historical swap data reporting requirements under Parts 45 and 46, as regulators address issues of comity and overlapping rules in these jurisdictions (see [Legal Update, CFTC Issues Fifth Extension of Relief for Certain Non-US Swap Dealers from SDR Reporting Rules](#)). This relief, however, does not extend to the recordkeeping requirements under Sections 45.2, 45.6, 46.2, and 46.4 of the CFTC Regulations ([17 C.F.R. §§ 45.2](#), [45.6](#), [46.2](#), and [46.4](#)).

Relief Relating to Reporting of Prohibited Data

On March 10, 2017, the CFTC issued [No-Action Letter 17-16](#), which extended relief from swap data reporting obligations under CFTC Regulations Parts 20, 45, and 46 for certain data, the dissemination of which would be prohibited by the rules and regulations in certain enumerated jurisdictions. The relief was extended until:

- September 1, 2017, for reportable swaps in France and Switzerland.

- The reporting counterparty no longer holds the requisite reasonable belief regarding the consequences of reporting the specified counterparty identity information (the "reasonable belief expiration date") for swaps in all other enumerated jurisdictions.

The relief in No-Action Letter 17-16 is conditioned on the CFTC being notified promptly on the reasonable belief expiration date, or the date on which the reporting party no longer holds the requisite reasonable belief that privacy laws in the enumerated jurisdictions would preclude the reporting of swap data, for each enumerated jurisdiction. For details, see [Legal Update, CFTC Extends Relief from Reporting Certain Prohibited Data Under Dodd-Frank Swap Rules](#).

Other Data Reporting Relief

Relief for SEFs from Certain Obligations

Note that on March 24, 2017, the CFTC issued [No-Action Letter 17-17](#), extending for a fourth time relief granted to SEFs from the requirement under Section 37.6(b) of the regulations ([17 C.F.R. § 37.6\(b\)](#)) that SEFs obtain and retain copies of any previously executed swap agreements, such as an ISDA Master Agreement, incorporated into a transaction confirmation for an uncleared swap transaction executed on or under the rules of the SEF. For details, see [Legal Update, CFTC Issues Fourth Extension of Relief to SEFs from Certain Uncleared Swap Recordkeeping Requirements](#).

Large-Trader OCR Relief

For details on delays in requirements to use certain new OCR reporting forms under the final large-trader reporting rules, see [Legal Update, CFTC Provides Additional Time-Limited Relief from OCR Reporting and Permits Masking Certain Reportable Information for Physical Commodity Swaps](#).

Duplicative Reporting Obligations for Security-Based Swaps (SBS) Under CFTC Rules

While the CFTC is charged under Title VII with regulating only non-security-based swaps, CFTC swap data reporting rules require data to be reported for all swaps regardless of whether or not they are designated as non-security-based swaps or [security-based swaps](#) (SBS). The CFTC notes in the CFTC real-time reporting rules that it consulted with the SEC regarding data reporting for swaps in the credit and equity asset classes where the CFTC and the SEC share jurisdiction.

The CFTC notes further in the final real-time reporting rules that it has substantially aligned its data requirements in those asset classes with the data sought by the SEC for these SBS under Regulation SBSR. However, the CFTC and SEC rules do require duplicative compliance obligations for SBS data reporting. Data reporting for SBS is therefore more cumbersome than for non-security-based swaps.

Regulation SBSR does not require data reporting to the SEC for non-security-based swaps. For details on data reporting requirements for SBS under Regulation SBSR, see [US Derivatives Regulation: SEC Regulation SBSR Data Reporting for Security-Based Swaps](#).

Further Notes on Swap Data Reporting Under Title VII

While the CFTC already had reliable notional estimates of much derivatives activity, including for all cleared derivatives, the final Dodd-Frank swap data rules are primarily designed to keep the CFTC informed of uncleared swap exposure in the market that could pose systemic risk.

To this end, the CFTC has established a comprehensive system for capturing swap data, as required under Title VII of the Dodd-Frank Act. However, with the well-publicized limitation on the agency's resources and budget, and the volume of swap data reported under these rules, the agency continues to face reporting inconsistencies among market participants, as well as challenges on how to synthesize and process such a large volume of data.

On July 10, 2017, the CFTC announced a comprehensive review of certain Dodd-Frank swap data reporting regulations under Parts 43, 45, and 49 of the CFTC's regulations. The review aims to identify existing regulations that need updating or clarification in order to improve data quality and streamline reporting obligations. For more information, see [Legal Update, CFTC Announces Review of Dodd-Frank Swap Data Reporting Regulations](#).

Dodd-Frank swap data reporting rules add to the expense of transacting in swaps, particularly among swap dealers that are often charged with data reporting duties. As with all regulatory expenses, the additional cost necessitated by Dodd-Frank swap data reporting rules is passed on to buy-side swap counterparties like funds and end users.

PRODUCTS

PL Canada Finance, PLC US Finance, PLC US Financial Services, PLC US Law Department

© 2019 THOMSON REUTERS. NO CLAIM TO ORIGINAL U.S. GOVERNMENT WORKS.