

# *A Closer Look*

## The Dodd-Frank Wall Street Reform and Consumer Protection Act



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Part of an ongoing series

## *Impact On*

### Swap Data Reporting

June 2011

Swap data reporting is a cornerstone of the new derivatives regime created by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank). In an effort to increase transparency and integrity in the derivatives markets, proposed Dodd-Frank regulations will require information about every swap or security-based swap (SBS) transaction to be sent to new swap data repositories or a government agency.

The US Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) proposed separate regulatory regimes regarding data reporting for swaps and SBSs. These similar, but not identical, regimes would require designated parties to report specific data throughout the swap life cycle for real-time public or confidential regulatory use. Until these regimes become final — which may be as soon as the fourth quarter of 2011 — transition rules in effect now require counterparties to preserve confirmations and other data for any swap or SBS that was valid or entered on or after July 21, 2010, for potential future reporting.

Every swap or SBS market participant needs to consider how it will manage these new reporting requirements. The choices for compliance may differ depending on the type of swap and how it is processed. Market intermediaries that provide swap dealing, clearing, or execution services will bear the heaviest burden, as they are often the default reporters of swap data. This means that decisions regarding execution and clearing can drive a reporting outcome.

Different swap data must be reported for real-time public dissemination and confidential regulatory use, which will create challenges in designing reporting mechanics within a company. The type of information reported for each use will depend on the kind of swap and phase of the swap's life cycle, as reportable events occur from execution through termination of the swap. This will impact front to back information technology, trading desk, operations, and compliance departments and existing policies and procedures.

This *A Closer Look* describes the proposed swap data reporting rules and how swap market participants can respond. In summary, every institution that trades swaps should assess the transition and permanent swap data reporting requirements to identify the following:

- Day-to-day changes that operations, finance, and risk management functions must make to support their products and track and report the required data.
- IT functionality needed to meet the new reporting requirements by adapting existing Request For Quote (RFQ) systems, Order Book systems, or internal trade and order management systems (OMS).
- Daily testing, reconciliation, and compliance regime to ensure adherence to the new rules. The regime should include (1) verification and validation protocols; (2) the ability to identify and correct erroneous transaction reports; and (3) storage, retrieval, and interrogation of supporting contractual documentation.

Unlike other Dodd-Frank reform areas, the swap market depends on regulators to make key decisions that will affect the design and implementation of reporting systems to receive the reported data either through swap data repositories, or directly at the agency. Important decisions on new market standards, such as the use of unique identifiers for products and counterparties, have yet to be made and have international implications. These decisions pose an overarching challenge of how affected companies can plan, given the clarity in some areas and ambiguity in others.

### ***New regimes for swap data reporting: an overview***

The Dodd-Frank Act requires swap data reporting for real-time public dissemination and for confidential regulatory use. Real-time data reporting seeks price and volume transparency, while preserving counterparty anonymity. Confidential regulatory reporting includes not only real-time data, but also counterparty-specific information that helps the agencies conduct market oversight, enforce position limits, and track systemic risk. Both types of reporting must be done “as soon as technologically practicable.” Data for either purpose is sent to swap data repositories (SDRs) or, if no SDR will accept it, to the CFTC or the SEC. Real-time data also may be sent to a third-party real-time disseminator.

*Operationally, the systems of a swap counterparty (CP) may need to accommodate a matrix of reporting choices, as well as identify and track reportable data for the given purpose and support timely reporting. These regimes are full of moving parts. The mechanics of reporting (who reports what, when, how, and where) may depend on the asset class (swap, option), the type of transaction (cleared or uncleared), the regulatory status of the counterparties (registrant or not), the purpose for the reporting (real time or confidential), and the regulator requiring the reporting (CFTC or SEC).*

Identifying the data fields to report — and flagging that data for the real-time or regulatory stream — can be challenging. The fields may vary according to asset class (e.g., credit, equity, interest rate, currency, or other swap). Some fields are reported both for real-time and regulatory purposes; others are not.

For certain transactions, reporting will be automatic. Standardized swaps that are centrally cleared and executed come with self-executing reporting; the market utility that clears or executes the trade has the duty to report. Swap dealers are default reporters and are expected to have sophisticated systems for dealing that are adaptable to meet reporting requirements. Reporting becomes a more complex task when market utilities or other registrants are not involved in the trade.

*Taken together, the CFTC and SEC proposed rules would require swap transaction information to be transmitted using uniform data standards to secure, centralized swap data repositories that disseminate information to regulators and market participants.*

## **Complexity and uncertainty**

Regulatory complexity itself is an issue both within a data reporting regime and between the two regimes proposed by the CFTC and SEC. The CFTC proposed separate rules for real-time and confidential reporting that use different terminology to describe some of the same reportable data and assign various participants in a swap transaction (counterparties, clearinghouse, or exchange/platform) the duty to report specific data fields.<sup>1</sup> In contrast, the SEC proposed a single rule that requires the counterparty to report specified data, but permits it to rely on third parties to fulfill this duty. The SEC considers real-time reporting as creating a base of information that is supplemented by confidential data reporting requirements.<sup>2</sup>

These differences, combined with incongruent regulatory language (for example, the CFTC refers to a *uniform counterparty identifier*, while the SEC refers to a *participant ID*), will create challenges for companies that must adapt their systems for trade capture and reporting for swaps and SBS transactions.

## **What to report**

The proposed regulations identify specific data fields that must be reported for every swap and for classes of swaps. Some data fields would be reported for real-time dissemination as well as confidential regulatory use; others will be solely confidential. The swap markets will play (and, for some instruments, already are playing) a significant role in refining these data fields and data streams. Standardization is a major goal for the regulators and a necessity for the marketplace.

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<sup>1</sup> *Swap Data Reporting and Recordkeeping*, 75 FR 76574 (December 8, 2010); and *Real Time Public Reporting of Swap Transaction and Pricing Data*, 75 FR 76140 (December 12, 2010).

<sup>2</sup> *Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information*, 75 FR 75288 (December 2, 2010).

## 1. Real-time data

In many ways, the new regulations attempt to have swap markets capture and disseminate information in a manner comparable to the long-standing practices in futures and securities markets. That said, the principles of transparency and anonymity protection for specifics should not be confused. The proposed regulations emphasize the importance of maintaining the anonymity of the parties to a swap, even permitting the use of broad terms where a specific data element of the swap may enable other market participants to identify one of the parties involved.

The CFTC has proposed at least 28 data fields, while the SEC proposed at least 11 fields, to reflect information that must be captured and conveyed to an SDR for public dissemination in real time. The two sets of fields are shown in the accompanying lists.

### CFTC-required real-time reporting fields for swaps\*

Cancellation	Asset class	Notional currency 1
Correction	Sub-asset class	Notional currency 2
Date stamp	Contract type	Notional or principal amount
Execution time stamp	Contract sub-type	Payment frequency 1
Cleared or uncleared	Price-forming continuation data	Payment frequency 2
Indication of price-affecting terms	Underlying asset 1	Reset frequency1
Block or large notional	Underlying asset 2	Resent frequency 2
Execution venue	Price notation	Tenor
Instrument	Additional price notation	
Start date	Unique product identifier	

\*The CFTC proposed additional fields for options, swaptions, and swaps with embedded options.

### SEC-required real-time reporting fields for security-based swaps

Asset class	Price
Identifier for SBS and specific assets/issues of underlying	Terms and frequency of any fixed or floating rate payments
Notional amount/currency	Cleared or uncleared
Date and time of execution	Whether parties are SB swap dealers
Effective date	Indication that swap does not reflect the market, as necessary
Scheduled termination date	

These generic data fields seek to ensure public dissemination of core pricing and volume information across all asset classes and contract types.<sup>3</sup> Not all fields will apply to all types

<sup>3</sup> Contract types may include basis swaps, index swaps, broad-based security swaps, option, swaps.

of swaps, and some may be blank. Information arising from execution through termination is reportable. CPs also must report “price-affecting” information that arises during a swap’s existence, also called “continuation data” by the CFTC, from, for example, novation or unwind. Finally, an SDR may require counterparties to report additional confidential information, including identifiers, that allow the SDR to match the data reported to the data publicly disseminated.

When making this data public, the SDR or real-time disseminator must preserve the anonymity of the counterparties. The CFTC includes general statements prohibiting an SDR from reporting data in a “manner that discloses or otherwise facilitates the identification of a party to a swap.”

## 2. Confidential data for the CFTC

The CFTC’s proposed rule for confidential reporting seeks to provide the regulators with “complete data concerning swaps.” This rule divides the reportable data into two categories: information arising from the creation of a swap (“creation data”) and information produced about the swap until termination or expiration (“continuation data”). The rule then proposes minimum data fields reportable for each category that turn on the relevant asset class.<sup>4</sup> While the data fields for confidential regulatory reporting duplicate many fields required for real-time reporting, they extend well beyond to include contract terms and execution and clearing choices.

Creation data consists of a swap’s “primary economic terms” and “confirmation data” for the swap. The primary economic terms are defined as “all terms verified or matched by the counterparties at or shortly after the execution of the swap.”<sup>5</sup> This is information that arises from affirmation, matching, or confirmation and differs by asset class and execution choices.

Confirmation data consists of the “full, signed legal confirmation by the counterparties of all of the terms of a swap” matched and agreed upon in confirming the swap. The CFTC acknowledges that it can take weeks or months for full legal confirmation to appear.

After a swap is executed and cleared, a CP must continue to report data about the swap until termination or expiry. Information needed to determine the current market value of a swap, including daily margin, daily mark to market, and other “valuation data,” is required for all swaps. Other “continuation data” is required over the life of the swap and depends on the asset class. A CP to a *credit or equity swap* must report “life cycle event data” that provides information for events such as novation, full or partial termination, change to cash flows or collateral agreement (uncleared swaps), or corporate events affecting an asset underlying the swap. It also must report “contract intrinsic data,” which is any scheduled or anticipated event occurring during the swap that does not change its contractual terms, such as expiration or an interest rate adjustment. A CP to an *interest rate swap, currency swap, or other commodity swap* would have to report “state data” on a daily basis to give a snapshot view of the swap until termination. State data is all of the primary economic terms of a swap, including changes thereto.

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<sup>4</sup> This proposed rule also contains a Master Reference Generic Data Fields List for use when reportable data for standardized swaps in some or all asset classes.

<sup>5</sup> The CFTC considers execution to occur when the counterparties become irrevocably bound by contract.



### 3. SEC data reporting requirements for security-based swaps

*Under the SEC's data reporting rule, three types of swap information would be reported to an SDR:*

- 1. Information to be reported in real time (generally defined as less than 15 minutes) and disseminated to the public immediately, including identification of asset class, date and time of execution, price, whether cleared, whether counterparties are SBS dealers, whether the SBS transaction accurately reflects the market, and whether the transaction is a customized trade.*
- 2. Additional information for regulatory purposes, to be reported within specified times to an SDR but not to be publicly disseminated, such as unique participant identifiers, other terms of the transaction, the name of the clearing organization if the SBS is cleared, and the venue where the SBS was executed.*
- 3. Information about "life cycle events" that would be reported to an SDR as a result of a change to information previously reported, such as changes resulting from an assignment or novation, partial or full termination of the SBS, changes in the cash flows originally reported, changes in collateral agreements, or corporate actions affecting a security on which the SBS is based.*

#### **When to report**

The CFTC and SEC generally require data to be reported for real-time or confidential purposes "as soon as is technologically practicable" following execution. The proposed rules acknowledge market practice, recognizing that affirmation to the primary economic terms (PETs) of a swap is not the same as confirmed execution. The real-time rules provide a 15-minute delay for block trades and "large" swaps before dissemination is required.<sup>6</sup>

The CFTC's real-time reporting rules contain a two-step reporting analysis that can be satisfied in several ways. Technically, swap CPs must report real-time data to a registrant, preferably an SDR, or third-party disseminator as soon as technologically practicable. The SDR or other registrant then disseminates the data publicly. In some cases, the swap CP has no practical duty to report. For swaps executed or cleared on a facility — Swap Execution Facility (SEF), designated contract market (DCM), or derivatives clearing organization (DCO) — reporting and dissemination occur simultaneously by virtue of execution or clearing. For off-facility swaps, the CP would have report to an SDR or third-party disseminator under the general technologically practicable standard.

The confidential reporting rules tie the timing for reporting to the way a swap is processed and to the type of information reported. If the swap is processed on a SEF, DCM, and/or DCO, reporting must be electronic and must occur "as soon as technologically practicable following execution of the swap." For swaps that are not processed on a facility, reporting must occur "promptly following verification of the primary economic terms" at or immediately following execution, and no later than 15 minutes after electronic execution and verification or 30 minutes after electronic verification only. The timing for swaps that

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<sup>6</sup> Execution immediately follows or is simultaneous with the preexecution affirmation of the swap, when the parties have formed a legally enforceable contract. This definition implicitly recognizes that cost and access to the latest and fastest technology are not uniform across market participants.

are not executed, verified, or confirmed electronically has not been set but will appear in the final rule.

### **Delays for block and large notional trades**

For transactions that are sufficiently large, disseminating a report on the transaction in real time could provide a signal to other market participants that a hedge is about to be put on. Industry bodies point out that the cost of hedging positions will increase and become more difficult to source where large transactions are published to the market in real time, because of weaker bargaining positions where counterparties can anticipate the structure of a hedge from public information. This, they maintain, could lead to less liquidity in the market, lower trading volume, and less opportunity to effectively manage risk.

Block trade thresholds to govern delays in reporting are seen as the answer to this potential problem, although it should be noted that this is an entirely new market reporting regime and it may take several iterations of the thresholds to get them right. Initial levels are being set based on historical market data, such as the number and volume of trades in the single-name corporate CDS market and an assessment of what percentage went through as block trades.

In recognition of this, the CFTC has proposed rules that delay the public reporting of swap data for block trades and large notional swaps. For contracts traded on a SEF or DCM or that *are* subject to the end-user exemption, the reporting delay is 15 minutes.<sup>7</sup> The CFTC has not proposed rules regarding customized or bespoke trades, but has requested comment regarding the appropriate delay for reporting large notional swap transactions.

The delay in dissemination would be triggered if trades met certain thresholds based on their size. The CFTC has proposed two alternative methods for determining the appropriate minimum block size for block trades and large notional transactions — a “distribution test” and a “social size multiple test.” The distribution test would be met by a transaction size that was larger than 95% of transactions for that category of swap instrument over the past calendar year. The social size multiple test would be met if the transaction size was five times the largest of the mean, median, and mode of transaction sizes for that category swap instrument over the past calendar year. The appropriate minimum block size would be the larger size determined by the two tests.

Under the SEC requirements for block trades, public dissemination of the notional size would be subject to a delay of between eight and 26 hours.<sup>8</sup> In its proposed rules, the SEC proposed general criteria it would consider when setting block trade thresholds, but did not propose specific thresholds. Nevertheless, an SBS that is an equity total return swap or that is designed to offer the risks and returns proportional to a position in the equity securities on which the SBS is based would not be treated as a block trade, regardless of its notional amount. Moreover, under the SEC’s proposal, the registered SDR would have the responsibility to determine whether a transaction was a block trade; the reporting party’s obligation to timely report to the SDR would not be vitiated.

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<sup>7</sup> The reporting party would be responsible for transmitting the swap transaction and pricing data to the real-time disseminator as soon as technologically practicable, but the disseminator would not disseminate the information until a 15-minute period following execution had passed.

<sup>8</sup> The SEC released a memorandum of “Security-Based Swap Block Trade Definition Analysis” on January 13, 2011.

## Who must report

The CFTC and SEC took different approaches to determining who must report the swap data. The CFTC would designate different participants in a swap as responsible for reporting particular data; for example, the market utilities (SEFs, DCMs, and DCOs) would have express duties to report data for CPs. In contrast, the SEC would permit a CP to rely on a market utility for reporting, but the CP would remain obligated to ensure that swap data is transmitted to an SDR in a timely fashion.

The net result under either approach is that the parties may satisfy the real-time and confidential reporting requirements by executing the transaction on either a swap execution facility (SEF) or a designated contract market (DCM). Where transactions are executed “on exchange,” the market would be responsible for reporting the swap data to the SDR and, if separate, a real-time disseminator.

For swaps executed *off* a SEF or DCM, the proposed rules specify an order of precedence for reporting the swap pricing and volume data. Put simply, one party or the other involved in the swap must report. In essence, the responsibility falls to swap dealers ahead of major swap participants (MSPs) and, after those, to other types of CPs, including end users.<sup>9</sup> The parties may designate responsibility when both CPs are identical. This approach should prevent duplication of reporting. This hierarchy would be superseded by nationality of the CP. A counterparty that is a US person (legal or natural) has the duty to report when in a trade with a non-US counterparty to a swap.<sup>10</sup>

The CFTC’s confidential reporting rules further assign to specific parties the duty to report the different categories of data. A SEF or DCM must report the “primary economic terms” of a swap executed on its platforms. A DCO must report confirmation, continuation, *and* valuation data for a swap it clears through termination. This means that a CP that executes a swap on a SEC/DCM that is cleared on a DCO should have no reporting obligations arising from the *creation* of the swap. However, it would have to report information during the life of the swap, unless it engages a third-party service to do so.

A CP’s reporting obligations increase when it executes and/or clears bilaterally. It must send the creation and continuation data to the SDR or regulator. This may present challenges for nonfinancial companies that plan to rely on the commercial end-user exemption from clearing.

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<sup>9</sup> Swap dealers and MSPs will have additional daily trading recordkeeping requirements designed to preserve an audit trail for trade reconstruction. See *Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants*, 75 FR 7666 (December 9, 2010) (CFTC).

<sup>10</sup> The SEC proposed defining a US person in Regulation SBSR as a natural person who is a US citizen or resident or a legal person that is organized under the corporate laws or any part of the United States or has its principal place of business in the United States. If non-US counterparties clear a swap through a US clearinghouse, then they must decide which counterparty has the reporting obligation.



## CFTC confidential data rules: Who reports, what data, and when?

<u>Data Categories</u>	<u>DCO</u> <i>Cleared (mandatory or elective)</i>	<u>SEF/DCM</u> <i>Cleared/uncleared</i>	<u>SD/MSP/Other</u> <i>Bilateral execution or clearing</i>
<u>Creation Data</u>			
All Swap Types (from swap trade)	Confirmation data (as soon as technologically practicable)	Primary economic terms	<i>Not executed on SEF/DCM: Primary economic terms</i>  <i>Not cleared: Confirmation</i>
<u>Continuation Data</u>			
Credit Swaps	Life-cycle event data (same day)	N/A	<i>Cleared: Intrinsic data (same day), valuation data (daily)</i>
Equity Swaps (post trade)	Valuation data (daily)		<i>Not cleared: Intrinsic data (same day), life-cycle data (same day), and/or valuation data (daily except for other CPs)</i>
<u>Continuation Data</u>			
Interest Rate Swaps	Valuation data (daily)	N/A	<i>Cleared: Snapshot/state data of primary economic terms (daily) and valuation data (daily)</i>
Currency Swaps			
Other Commodity Swaps (post trade)			<i>Not cleared: Snapshot/state data (daily) and valuation data (daily)</i>

### Where to report

The swap data reporter generally must send swap data to a registered SDR that accepts data for the asset class. An SDR is a registered entity that collects and transmits swap data information either to regulators or to the public. DCOs may register as SDRs, which can produce efficiencies since DCOs will have primary reporting duty for cleared swaps. Real-time public data may be sent to third-party disseminators instead of SDRs. If no SDR will accept the reported data, data would be sent to the CFTC or SEC.

### Unique identifiers

The swap data regulations contemplate the use of unique identifiers to facilitate reporting. The CFTC and SEC's approaches and terminology for unique identifiers differ, however. The CFTC's proposed regulation would require each swap to have a unique swap identifier (USI) issued at execution and that parties to the swap have a unique counterparty identifier (UCI) to facilitate tracking. The USI would be used to report data about the swap from start to end. The agencies also contemplate adding a unique product identifier to reflect the asset class of a swap. The USI is viewed as a tool that enables data aggregation across

counterparties, asset classes, and transactions so that regulators can monitor and mitigate systemic risk, prevent market manipulation, enforce position limits, and assist in orderly resolution or recovery situations.

A “first touch” approach would be used to identify which participant must get the USI assigned. SEFs and DCMs would be responsible for swaps they execute. A swap dealer or MSP would be next if the swap is executed bilaterally, followed by any other swap counterparties with the reporting obligations for a swap when no swap dealer or MSP is a counterparty.

The SEC contemplates using unique identifiers for the SBS, the CPs, and various intermediaries involved in an SBS transaction. It would require a unique identification code to be issued for the SBS and each person involved in the SBS transaction. This could lead to identification codes for a trading desk or branch of a financial institution, broker, and trader who executes the SBS. The SEC also contemplates relying on an internationally recognized standards-setting body to supply these codes.

The CFTC discussed the issues of unique identifiers at its January 2011 roundtable on swap data reporting. Swap dealers and potential MSPs noted that decisions regarding unique identifiers should be the top priority for regulators. Many institutions raised concerns about implementation. Several vendors proposed options for UCIs, ranging from barcode technology used on products in grocery stores, to XBRL and ISO solutions, to existing SWIFT and BIC standards, registration, and governance. Operational considerations of managing this data field are dominated by the third-party providers: Avox/DTCC, Thomson Reuters, Bloomberg, SWIFT, Markit, and others.

All parties agreed that, under the proposed regulations, no one set of existing identifiers fits all purposes. With the competing commercial imperatives at work among potential solution providers, the UCI is a candidate for an industry-wide solution through use of a utility or registration authority.

Moreover, the cross-border question, taking into account London and other global markets, suggests that a decentralized model promoting interoperability and recognizing global businesses and national sovereignty is important.

### ***Swap data reporting options available now***

Several swap data repositories currently gather and retain data of certain types of swaps. The market landscape by asset class is led by:

- The Depository Trust and Clearing Corporation’s (DTCC) Trade Information Warehouse for credit derivatives
- DTCC’s Equity Derivatives Reporting Repository for equity derivatives
- TriOptima’s Rates Repository for interest rate derivatives

Recognition of the new regulatory regime is evidenced by the International Swaps and Derivatives Association’s (ISDA) Rates Steering Committee (RSC) issuance of a request for proposals in mid-March for the development of a global rates SDR. Referenced in the March 31, 2011, letter to the Federal Reserve Bank of New York, the authors — G14 dealers and key buy-side institutions — stated, “The industry has determined that the IRRR

[Interest Rate Reporting Repository] in its current form is unable to support the necessary functionality required to deliver the requisite reporting capability. Consequently, a new Request For Proposal (RFP) was published ... to identify potential service providers who can deliver against the identified requirements. The new RFP describes these functional requirements that aim to meet the requirements of the Supervisors and the global regulatory agenda under financial reform legislation.”

On May 11, 2011, ISDA announced that the RSC had selected DTCC to partner with on the next stage of development of the Interest Rate Trade Repository.

### ***Example showing swap life-cycle processing with data reporting***

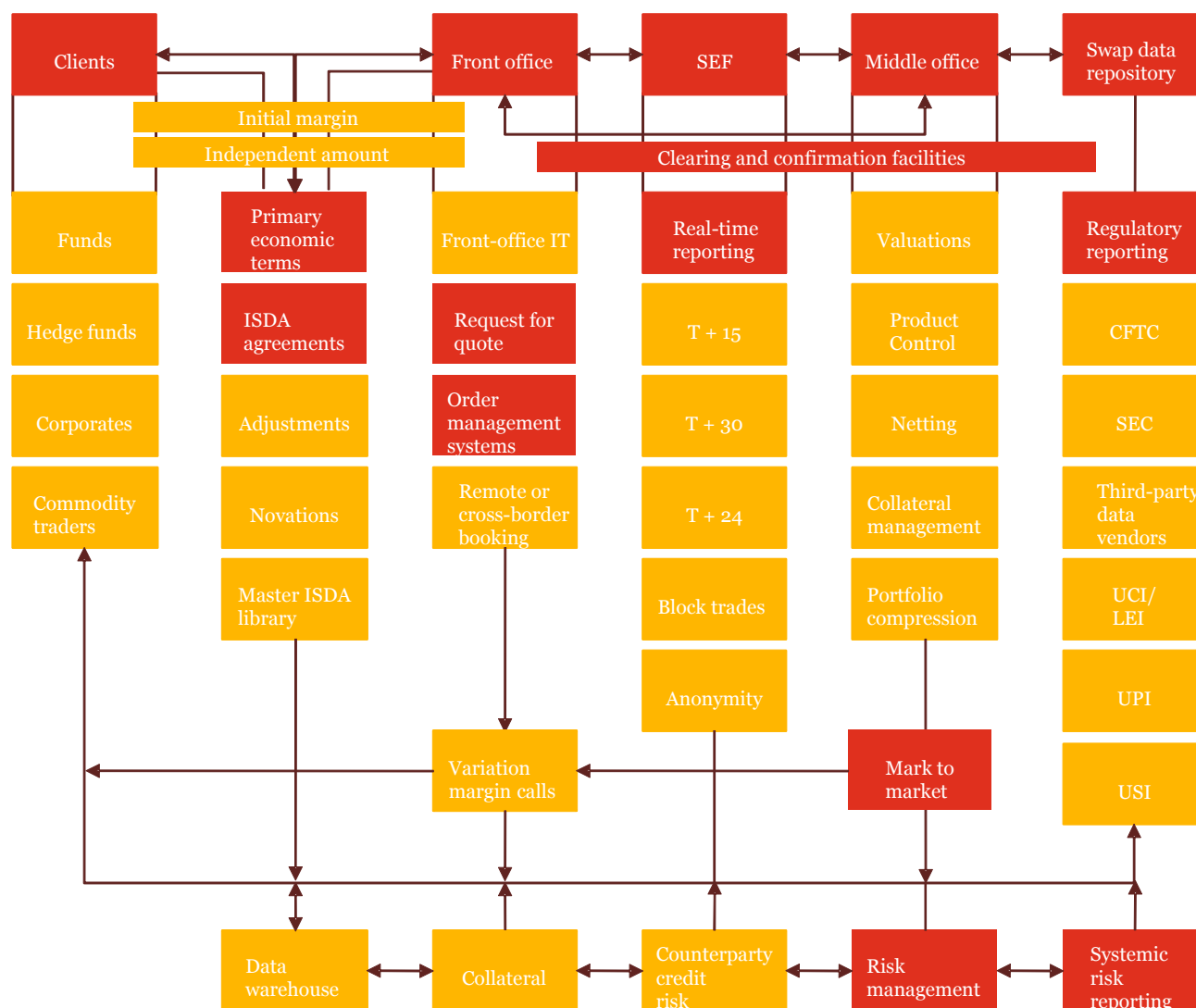
To illustrate the swap data reporting requirements, the following diagram reflects a generic processing path for a swap. Data reporting requirements are integrated from the perspective of an investment bank that will be registered as a swaps dealer under the new regime.

The top horizontal row of boxes reads from left to right in a circular flow to reflect:

- Capturing the deal
- Execution on a SEF
- Real-time reporting
- Life-cycle updating across the middle office
- Post-execution data reporting in a SEF

Backlog by 2012 starting from July 21, 2010

## New OTC derivatives reporting framework



## Global coordination

On January 17, 2011, the European Securities and Markets Authority (ESMA) wrote a letter to the CFTC and SEC observing that the proposed rules on swap data repositories did not mention any equivalency with the European regulatory regimes or proposals for cooperation with the authorities of the country of establishment of nonresident SDRs. Europe's plans are already set out in the European Commission's proposal for a regulation on OTC derivatives, central counterparties, and trade repositories. The representations from the ESMA did not mince words, stating they "strongly encouraged [the SEC and the CFTC] to consider a different regime than the one proposed." Their proposal focused on:

- Facilitating cross-border cooperation among authorities from different jurisdictions

- Ensuring mutual recognition of swap data repositories
- Establishing convergent regulatory and supervisory regimes in the global OTC market

This response may be considered to be somewhat surprising given that the US agencies both report having engaged in extensive international cooperation with the G20, the Financial Stability Board's (FSB) Data Gaps and Systemic Linkages Group, the Bank of International Settlements (BIS), the Committee on Payment and Settlement Systems (CPSS), the European Central Bank (ECB), the Committee of European Securities Regulators (CESR), and the OTC Derivatives Regulators Forum (ODRF).

### **Transition reporting requirements**

Dodd-Frank requires reporting of swap data for any swap or SBS that was in effect on, or entered on or after, July 21, 2010, the enactment date of the Dodd-Frank Act.<sup>11</sup> The CFTC and SEC issued interim rules, effective now, that require swap market participants to preserve data regarding such swaps in the form currently collected.

Various Dodd-Frank provisions require swap transition data to be reported to an SDR or to the regulators within 30 days after final rules for a permanent reporting regime appear, or such later date set by the CFTC. The proposed SEC rules would require reporting parties to report to a registered SDR any preenactment SBSs that have not expired and are subject to reporting within 60 days after an SDR becomes registered and operational to receive data and, in any event, no later than January 12, 2012.

The CFTC proposed a rule that governs reporting of data for these swaps that exist in the interim period between enactment of Dodd-Frank and the final swap data reporting regime. This rule seeks to integrate data reporting for the interim swaps with the final reporting regime. It distinguishes between "historical swaps," which are subject to mandatory reporting but expire before the swap data regime, and "transition swaps," which exist when swap data reporting begins. The CFTC plans to require an "initial data report" and "ongoing reporting of swap continuation data" for transition swaps that were in effect on April 25, 2011, when swap data reporting begins. The initial data report must contain "minimum primary economic terms" from the swap confirmation for transition swaps unless, for historical swaps, the reporting counterparty did not have a confirmation for that swap as of April 25, 2011. The initial data report must also include the unique counterparty identifier and other uniform identifiers.

Swap CPs must report continuation data for transition swaps that are in effect on the date the reporting regime becomes effective. Data reporting for these transition swaps will track the reporting regime with life-cycle data required for credit and equity swaps and state or snapshot data required for interest rate, currency, and other commodity swaps.

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<sup>11</sup> *Interim Final Rule for Reporting Pre-Enactment Swap Transactions*, 75 FR 63080 (October 14, 2010); *Reporting Certain Post-Enactment Swap Transactions*, 75 FR 78892 (December 17, 2010); *Reporting of Security-Based Swap Transaction Data*, 75 FR 64643 (October 20, 2010); and *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 76 FR 22833 (April 25, 2010) (CFTC proposed rule).



For the moment, simply preserving existing data regarding preenactment swaps is sufficient. However, CPs may wish to review their record retention policies and develop a plan for delivering the required data because final regulations appear imminent.

## **Conclusion**

The industry has to do a huge amount of work in a short time. As the timetable for implementation firms up and draws nearer, attention needs to be devoted to the brand-new regime for real-time market and regulatory reporting that will change the OTC derivatives landscape forever.

Initial steps to take are:

- Assessment of reporting requirements by desks and products
- Analysis of the differences between the SEC and CFTC requirements
- Gap analyses of existing reporting capabilities against the new requirements
- Handover and breaks assessments across the middle office for the full life cycle of the swap
- Testing regimes for accuracy and timeliness
- Developing strategy for partnering with data repositories and SEFs
- Read across into Europe, which has launched its own set of OTC derivative reform proposals that differ from the US reporting regime

Careful analysis of products, the market, and how the new rules will come to life should be part of all Dodd-Frank implementation programs for institutions involved in OTC derivatives.

## Appendix A

### Master list of fields proposed by the CFTC

1.	Cancellation	CANCEL
2.	Correction	CORRECT
3.	Date Stamp	13-10-11
4.	Execution Time Stamp	15:24:47
5.	Cleared or Uncleared	C or U
6.	Price Affecting Terms	B (Bespoke) or (NS) Non Standard
7.	Block or Large Notional	BLK
8.	Execution Venue	OFF
9.	Swap Instrument	SWI-ST-USD-IRS
10.	Start Date	20-02-12
11.	Asset Class	IR
12.	Sub Asset Class or Commodity	AG (Agriculture)
13.	Contract Type	S- (Swap) SO (Swaption) Forward (FO)
14.	Contract Sub Type	SS (Basis Swap)
15.	Price Forming Continuation Data	(N-) (Novation) (U-) (Swap Unwind)
16.	Underlying Asset 1	TX (Treasury)
17.	Underlying Asset 2	IIIL (3 month LIBOR)
18.	Price notation	2.53 (premium, yield, spread or rate)
19.	Additional Price notation	+0.25 (margin, collateral, post execution)
20.	Unique Product Identifier	To be determined
21.	Notional currency 1	EUR
22.	Notional or Principal Amount 1	200
23.	Notional currency 2	USD
24.	Notional or Principal Amount 2	45
25.	Payment Frequency 1	D,W,M,Y
26.	Payment Frequency 2	6W
27.	Reset Frequency 1	1Y
28.	Reset Frequency 2	6M
29.	Tenor	Maturity, Termination or End Date (3cht M/Y)
*	Embedded option on swap	EMBED1
*	Option Strike Price	O25
*	Option Type	Put, Call, Pay Fixed vs. Floating, Butterfly, etc.
*	Option Family	EU, AM,BM, AS
*	Option Premium	50000
*	Option Lockout Period	J19
*	Option Expiration	Z20

## SEC-required data fields

1. Asset Class (and if an ED, whether a TRS)	2. Swap Identifier (issuer, assets)
3. Notional Amount and Currency	4. Date/Time of UTC to the second of execution
5. Date Effective	6. Scheduled Termination Date
7. Price	8. Terms and Frequency of Fixed/Floating Payments
9. Cleared/Uncleared	10. Both Swap Dealers/Both Not Swap Dealers
11. Transaction not reflective of the market	12. Customized Price Data

## Additional SEC requirement fields

1. Counterparty ID
2. Broker ID, Trader ID, Desk ID as appropriate
3. Amounts, Currency, Payment Streams and their contingencies
4. Title of Master Agreement, related agreements, date and reference numbers
5. Data Elements to Price Market Value
6. If clearable, the ID of the clearing agency
7. Whether exempted from clearance
8. When not cleared, settlement terms (cash or physical) and method for valuation
9. Venue for execution

## **Appendix B**

### **The CFTC**

The CFTC has the broadest reach of jurisdiction in this aspect of derivatives reform, covering:

- Credit default swaps
- Total return swaps
- Swaptions, exotics
- Rate floors, caps, and collars
- Commodity-based swaps (energy, metal, agricultural, emissions, weather, etc.)
- Swaps based on government securities
- Broad (10 or more securities) index-based equity derivatives.
- Interest rate swaps
- Forward rate agreements
- Basis swaps
- Cross currency rate swaps

### **The SEC**

By contrast, the SEC has a much narrower remit focused on “security-based swaps” based on derivations of financial instruments to securities indexes, or single securities or loans/interest-related thereon:

- Single name credit default swaps
- Narrow (9 or less securities) equity derivatives

Options on securities remain options and do not fall under this new swaps regime, even when based on securities or securities indices. Based on DTCC data, the SEC estimates that single-name CDS will account for 85% of the SBS market, which is about 36,000 transactions per day or 13 million per year.

### **Mixed swaps, mixed jurisdictions**

Almost inevitably, some products may be argued as being in one camp or the other. The CFTC and SEC are likely to have joint authority over security-based swaps that have a commodity component.

## ***Additional information***

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