
Alerts

Commodity Futures Trading Commission Withdraws Elements of its "Frequently Asked Questions on Reporting of Cleared Swaps"

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Derivatives Insight

On November 28, 2012, the Commodity Futures Trading Commission ("CFTC") withdrew certain response set forth in its "Frequently Asked Questions on Reporting of Cleared Swaps." Matters raised in the questions and answers that were withdrawn are now under consideration by the CFTC as part of its review of a request from the Chicago Mercantile Exchange Inc. ("CME") for approval of CME Rule 1001—"Regulatory Reporting of Swap Data." CME's Rule 1001 provides that in compliance with CFTC rules governing the regulatory reporting of swaps, all swaps cleared by CME, and resulting positions, creation and continuation data shall be reported to CME's swap data repository. In addition, at the request of a counterparty, any such data reported to CME as a clearing house, shall be provided to a swap data repository selected by the counterparty.

Specifically, the CFTC *withdrew* the following questions and their corresponding answers:

Q: Which party has the authority to select the particular SDR for purposes of cleared swap reporting?

A: Part 45 of the CFTC's Regulations is silent regarding which party to a swap transaction has the authority to select the SDR. However, § 45.8 of the CFTC's Regulations provides a selection hierarchy for determining the Reporting Counterparty for reporting swaps to an SDR. Accordingly, Staff believes that (unless otherwise agreed to by the counterparties and the DCO) the selection of the particular SDR to which the swap data is reported for the resulting swaps due to clearing is to be determined by the counterparties to the original swap.

Q: May a DCM, SEF or DCO that is also registered as an SDR or legally affiliated with an SDR require counterparties to use their "captive" SDR for reporting swap transactions?

A: No. As set forth in § 49.27(a) of the CFTC's Regulations, SDRs are prohibited from tying or bundling the offering of mandated SDR services with other "ancillary" services. In this situation, the DCM, SEF or DCO, as a registered SDR, would be tying/bundling its SDR services with its offering of trading or clearing services. Market participants may choose to use a DCM's, SEF's or DCO's SDR for reporting swap transactions, but a DCM, SEF or DCO as part of its offering of trading or clearing services cannot require that market participants use its affiliated or "captive" SDR for reporting. Such a result would be inconsistent with the intent of Section 21 and § 49.27(a) of the Commission's Regulations relating to the reporting of transactions. Consistent with Section 21 of the CEA and § 49.27(a) of the CFTC's Regulations, Staff believes that access to SDR services must be fair, open and equal. Section 49.27 was adopted to ensure, to the greatest extent possible, that SDRs' fee, pricing and other access policies are not used as a means to deny or limit access to certain market participants.

Q: Where must the resulting swaps created through the clearing process be reported?

A: Pursuant to § 45.10 of the CFTC's Regulations, all swap data for a given swap must be reported to a single SDR, which is the SDR to which the first report of required swap creation data is made. In particular, § 45.10 provides that the initial report of creation data for a swap will be made as follows: (1) for swaps executed on a SEF/DCM, the SEF/DCM reports all creation data to a single SDR, as soon as technologically practicable after execution; (2) for off-facility swaps, the Reporting Counterparty reports all PET data to a single SDR, within the deadlines provided in part 45; and (3) for off-facility swaps, if the Reporting Counterparty is excused from reporting, as provided in part 45, because the swap is accepted for clearing before the reporting deadline and before any report made by the Reporting Counterparty, the DCO reports all creation data to a single SDR, as soon as technologically practicable after execution. In each case, continuation data must be reported to the SDR to which required PET data for that swap was first reported.

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