



Commodity Futures Trading Commission

Office of Public Affairs

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Final Rules Regarding Registration and Regulation of Swap Data Repositories

The Commodity Futures Trading Commission (CFTC) announced its intent to publish in the Federal Register final regulations concerning the registration and regulation of swap data repositories. The rules implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

On July 21, 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 728 of the Dodd-Frank Act added to the CEA new Section 21 governing registration and regulation of swap data repositories (SDRs). This statutory provision:

- Establishes swap data repositories (SDRs) as new registered entities
- Requires all swaps, whether cleared or uncleared, to be reported to registered SDRs
- Establishes registration requirements and core duties and responsibilities for SDRs and directs the Commission to adopt implementing rules

On December 23, 2010, the Commission published for comment in the Federal Register proposed rules implementing the mandate of CEA Section 21 (NPRM)

The Commission proposed a number of registration requirements as well as a new registration form (Form SDR) and introduced a “Provisional” registration through which an SDR that is deemed by the Commission to be substantially in compliance with the registration compliance may be registered provisionally during the pendency of staff’s review of its application. The NPRM also implemented the following statutorily-imposed duties:

- Acceptance of data
- Confirmation of data
- Direct electronic access by the Commission
- Monitoring, screening and analyzing data
- Maintenance of data privacy
- Permitting data access to other regulators
- Adoption of emergency procedures and system safeguards

The NPRM also addressed the three statutory core principles applicable to SDRs:

- Antitrust considerations
- Governance arrangements
- Conflicts of interest

Section 728 of the Dodd-Frank Act also authorized the Commission to prescribe additional duties for SDRs. Pursuant to that authority, the NPRM proposed rules addressing:

- Financial resources
- Disclosure requirements
- Non-discriminatory access and fees

In implementing these statutory requirements, the Commission also proposed the following obligations:

- SDRs must accept all data in their selected asset class(es)

- SDRs may not make commercial use of reported data without the consent of the submitters
- SDRs must establish policies and procedures to protect the confidentiality of the data it maintains

The Commission has adopted final rules implementing Section 728 of the Dodd-Frank Act and new CEA Section 21 provisions of the CRA and Dodd-Frank Act substantially as proposed with some notable exceptions

The proposed rules specify data fields that must be reported to the public. The data fields provide meaning to the price of the swap by defining the contract type, the underlying asset class and commodity, the tenor of the swap, the payment frequencies, and other relevant fields.

Although the Commission has determined to adopt the Part 49 rules substantially as proposed, it has—after reviewing the comments received and consulting both internally and with other financial regulators—made the following revisions to the proposed rules.

- **Provisional registration.** The Commission has removed the one-year sunset provision so that it may continue to provisionally register applicants as warranted.
- **Invalidation of swap terms.** The Commission has revised § 49.10(c) to clarify that SDR user agreements must be reasonably designed to prevent the invalidation of swap terms.
- **Confirmation of data.** The Commission has revised § 49.11 to reflect that in certain circumstances SDRs may not be required to confirm the accuracy of data with both counterparties to a swap.
 - Data received from a SEF, DCO or certain third-party service providers: SDR is not required to confirm the accuracy of submitted data if (i) the SDR reasonably believes the data is accurate; (ii) the submission reflects agreement of both counterparties; and (iii) there is a 48-hour correction period.
 - An SDR must affirmatively communicate with both counterparties when data is directly submitted by the counterparty (i.e. an end user or a swap dealer/major swap participant)
- **Real-time reporting.** The real time reporting rules will be incorporated by reference when adopted by the Commission. As part of their enumerated duties, SDRs may be required by Part 43 to have the ability to provide real-time reporting.
- **Privacy.** The Commission has adopted § 49.16 largely as proposed, but has clarified that SDRs cannot require as a condition to accepting swap data the waiver of a counterparty's privacy rights.
- **Access to SDR data.** The Commission has made several changes to its final access rules.
 - Access by domestic and foreign regulators generally: the regulator must: (i) file a request for data with the appropriate SDR; (ii) certify that it is acting within the scope of its jurisdiction; (iii) notify the Commission; and (iv) execute a Confidentiality and Indemnification Agreement as provided in Section 21(d) of the CEA.
 - Access by other domestic regulators with regulatory oversight/jurisdiction over SDRs (separate but concurrent jurisdiction with the Commission): the Commission may designate the domestic regulator to receive direct electronic access to the data pursuant to CEA Section 21(c)(4)(A). The notice and indemnification provisions of Section 21(c)(7) and 21(d) will not apply.
 - Foreign regulators with regulatory oversight over the SDR: Access would be granted subject to the confidentiality provisions of CEA Section 8; the notice and indemnification provisions of Sections 21(c)(7) and 21(d) will not apply. The foreign regulator must have its own independent statutory basis for regulatory oversight of the SDR.
 - Market participants: the proposed rule has been amended to permit either counterparty—not just the submitting counterparty—to obtain access to its data.
 - Commercial use of data: the final rules generally prohibit commercial use of reported data by an SDR unless the submitter has consented. The rules have been revised to clarify that the SDR cannot require consent from a reporting party as a condition of accepting data and to clarify that SDRs cannot make commercial use of real-time data prior to its public dissemination.
- **Governance:** disclosure of decisions affecting the public interest. The Commission has revised §49.20 to prohibit the disclosure of Section 8 information and, where appropriate, certain confidential information.
- **CCO rules.** The Commission has revised § 49.22 (i) to clarify that the CCO of an SDR cannot be the general counsel or a member of its legal department; and (ii) with respect to removal of a CCO, the SDR is required to notify the Commission within two business days.