

CFTC Proposed Amendments to the Swap Dealer De Minimis Exception

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Presenters

Commodity Futures Trading Commission

Division of Swap Dealer and
Intermediary Oversight

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Agenda

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 - a. Proposed Rule
 - b. Statute
 - c. Staff Reports
- II. \$8 Billion De Minimis Threshold
 - a. Methodology
 - b. Data and Analysis

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Summary

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Proposed Rule

1. Set aggregate gross notional amount (AGNA) threshold for de minimis exception at \$8 billion in dealing activity.
2. Except from de minimis exception calculation:
 - Swaps entered into with a customer by an IDI in connection with a loan to the customer.
 - Swaps entered into to hedge financial or physical positions.
 - Swaps resulting from multilateral portfolio compression.
3. Provide that the Commission can determine notional calculation methodologies, and delegate authority to make determinations to the DSIO Director.

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Statute

CEA section 1a(49) - "Swap dealer" means any person who:

1. Holds itself out as a dealer in swaps;
2. Makes a market in swaps;
3. Regularly enters into swaps with counterparties as an ordinary course of business for its own account; or
4. Engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swap.

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Statute

In no event shall an insured depository institution be considered to be a swap dealer to the extent it offers to enter into a swap with a customer in connection with originating a loan with that customer.

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Statute

De minimis exception – Commission shall:

- Exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers.
- Promulgate regulations to establish factors with respect to the making of this determination to exempt.

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Staff Reports

Paragraph (4)(ii)(B) of the Swap Dealer Definition directed CFTC staff to complete and publish a report on the definition of the term “swap dealer” and the de minimis threshold as appropriate, based on available data and information.

- Preliminary Staff Report (Nov. 18, 2015)
- Final Staff Report (Aug. 15, 2016)

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Staff Reports

Data analysis provided insights into the effectiveness of the de minimis exception:

- Staff’s analysis indicated that approximately 96% of all reported swap transactions involved at least one registered SD (based on data reviewed for Final Staff Report).
- Indicative of extent to which swaps are subject to swap dealer regulation at the current \$8 billion threshold.

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\$8 Billion De Minimis Threshold



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Data Analysis Goal

Calculate swaps activity in AGNA terms to assess how the swap market might be impacted by potential changes to the current de minimis exception.



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Methodology

- Analyze 2017 calendar year swap data repository data.
- Apply filters to exclude certain transactions and entities from the analysis to account for the various exclusions.
 - The reason an entity enters into a swap is currently not collected under Part 45 swap reporting requirements.

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Methodology

- Analyze AGNA of swaps activity for IRS, CDS, FX, and equity swaps.
 - Improvement since Staff Reports.
- Analyze NFC counterparty and transaction counts to evaluate likely swap dealing activity.

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2017 Regulatory Coverage

2017 Transaction Coverage

Asset Class	Transactions	Transactions with 1-2 SDs	Coverage (%)
IRS	945,593	937,975	99.19
CDS	133,570	132,899	99.50
FX	2,443,659	2,435,537	99.67
Equity	281,219	281,211	>99.99
NFC	633,943	546,823	86.26
TOTAL	4,437,984	4,334,445	97.67

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2017 Regulatory Coverage

2017 AGNA Coverage

Asset Class	Total AGNA (\$Bn)	AGNA with 1-2 SDs (\$Bn)	Coverage (%)
IRS	182,961	182,847	99.94
CDS	7,527	7,490	99.51
FX	28,794	28,775	99.93
Equity	1,850	1,850	>99.99
TOTAL	221,132	220,963	99.92

AGNA data not available for NFC swaps

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Lower Threshold

Likely Swap Dealer Counts and Estimated Regulatory Coverage

AGNA Threshold (\$Bn)	Likely SD Count	Likely SDs vs. \$8Bn	Coverage (%)		
			AGNA	Trade	Counterparty
3	121	13	99.96	99.83	90.75
8	108	--	99.95	99.77	88.80

IRS, CDS, FX swaps, and Equity swaps

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Lower Threshold

Categories of Likely SDs

Category	\$3 Billion	\$8 Billion	Difference
Bank, bank sub, bank affiliate	105	95	10
Non-bank financial	14	11	3
Other	2	2	0
Total	121	108	13

"Other" refers to commercial entities, such as consumers, merchants, producers, or traders of physical commodities, who appear to be engaging in some swap dealing activity.

IRS, CDS, FX swaps, and Equity swaps

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Higher Thresholds

Likely Swap Dealer Counts and Estimated Regulatory Coverage

AGNA Threshold (\$Bn)	Likely SD Count	Likely SDs vs. \$8Bn	Coverage (%)		
			AGNA	Trade	Counterparty
8	108	--	99.95	99.77	88.80
20	93	(15)	99.94	99.72	86.00
50	81	(27)	99.91	99.35	83.09
100	72	(36)	99.88	99.20	81.19

IRS, CDS, FX swaps, and Equity swaps

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NFC Regulatory Coverage

Categories and Registration Status

NFC In-Scope Entities: Minimum 10 CPs

Category	Registered SDs	Unregistered In-Scope Entities
Bank, bank sub, bank affiliate	39	12
Non-bank financial	2	8
Other	3	22
Total	44	42

"Other" refers to commercial entities, such as consumers, merchants, producers, or traders of physical commodities, who appear to be engaging in some swap dealing activity.

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