

SPEECHES & TESTIMONY

Statement of Commissioner Dan M. Berkovitz on Proposed Amendments to the Commission's Regulations Relating to Certain Swap Data Repository and Data Reporting Requirements

April 25, 2019

I am pleased to support the Commission's notice of proposed rulemaking ("NPRM") to amend its rules for swap data repositories ("SDRs") and data reporting requirements.^[1] The proposed amendments reflect the Commission's commitment to accurate, detailed, and timely swaps data for regulators, market participants, and the public through enhanced data verification and error correction procedures, among other amendments. They are an important step in achieving the Dodd-Frank Act's mandate of swap data reporting as an integral part of OTC derivatives reform and financial market stability.^[2]

The Dodd-Frank Act codified important new swap data reporting obligations,^[3] and established SDRs as the vehicles for reporting and retaining swaps data.^[4] It recognized the role of regulatory reporting and real-time public reporting in enhancing transparency and reducing systemic risk in the U.S. financial system. Consistent with these foundational principles, the Commission has focused on swap data reporting since the very inception of its Dodd-Frank efforts. In 2011, it began finalizing a series of coordinated reporting rules that provide for both regulatory and real-time public reporting of swap transaction and pricing data (Parts 45 and 43);^[5] establish SDRs to receive data and make it available to regulators and the public (Part 49);^[6] and define certain swap dealer and major swap participant reporting obligations (Part 23).^[7]

The Commission's regulations leverage real-time public reporting to help increase transparency, fairness, and efficiency in swaps markets,^[8] while regulatory reporting assists the Commission and other financial regulators in market oversight and systemic risk mitigation.^[9] In this regard, SDRs provide a more consolidated view^[10] of market participants' exposures across their swaps portfolios, and can help to identify concentrations and other potential risks that are dispersed across individual portfolios, trading platforms, and clearinghouses. Accurate, complete, and timely information is therefore vital to any successful swaps data reporting regime. These objectives were central to post-crisis reform efforts, and they must remain the primary considerations as the Commission moves to enhance its reporting rules.

It is important to note that the existing reporting rules have already achieved important successes. Currently, three provisionally registered SDRs^[11] facilitate regulatory reporting and real-time public reporting, and CFTC staff estimates that SDRs processed approximately 13 million unique swaps in 2018. SDRs provide online systems where any member of the public can track transaction-by-transaction information as swaps are executed and publicly reported. SDRs have also designed portals and other resources to provide CFTC staff with more complete regulatory access.

While building on this solid foundation, the NPRM and the proposed amendments acknowledge areas where the Commission's existing swap data reporting rules are not working as effectively as they might. Registered swap dealers began reporting swap data on December 31, 2012, and the proposed amendments are therefore based on over six years of Commission experience with SDRs and swap data reporting. In this regard, the NPRM addresses several areas that the Commission identified for improvement in its 2017 Roadmap. For example, the NPRM addresses swap data verification and the prompt correction of errors or omissions in previously reported data. It proposes to clarify and strengthen the obligations of SDRs and reporting counterparties by requiring SDRs to provide reporting counterparties with regular reports on open swaps to "verify the accuracy and completeness of swap data reported to SDRs."^[12] In turn, reporting counterparties must respond affirmatively by indicating that the records in the reports they receive are accurate, or otherwise correcting any errors or omissions.^[13] Reporting counterparties must respond within timeframes specified in the NPRM, and they must do so pursuant to standards established by SDRs.

The NPRM also proposes that SDRs provide open swap reports to the Commission. SDRs must provide such reports pursuant to timing, method, frequency, content, and other instructions that the Commission may issue.^[14] While working with SDRs, open swaps reports will help the Commission to perform its regulatory functions more effectively and efficiently through reports that SDRs standardize in content, format, calculation methods, and other variables.

In addition to these important data-focused amendments, the NPRM also proposes amendments to rules in Part 49 of the Commission's regulations that govern the internal operations of SDRs, particularly as they pertain to an SDR's chief compliance officer ("CCO"), conflicts of interest, and annual compliance reports. I am interested in receiving comments regarding these proposed amendments, including areas where the Commission's existing CCO-related rules for SDRs are working well and where they could be improved. In this regard, the Commission should be vigilant that changes to compliance or other requirements made in the name of efficiency do not diminish the self-regulatory foundation of the Commission's oversight of derivatives markets.

I thank the staff of the Division of Market Oversight for their dedicated work on both this NPRM and potential future proposals related to swaps data reporting. I also thank staff for their responsiveness to questions and comments from my office, including their willingness to consider changes that have improved the NPRM before the Commission today. While swap data reporting is not always the most glamorous area of the Commission's work, it is vitally important that we get it right. I look forward to public comments on the NPRM, and to continued efforts by market participants and the Commission to achieve the most effective swap data reporting possible.

^[1] The NPRM notes that it is the first of three rulemakings anticipated pursuant to the Commission's 2017 "Roadmap to Achieve High Quality Swaps Data" ("Roadmap"). See NPRM section I(C). Information regarding the Roadmap is available in CFTC Letter 17-33 (Division of Market Oversight Announces Review of Swap Reporting Rules in Parts 43, 45, and 49 of Commission Regulations) (July 10, 2017), available at

<http://www.cftc.gov/idx/groups/public/@lrllettergeneral/documents/letter/17-33.pdf>. The Roadmap itself is available at http://www.cftc.gov/idx/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf.

^[2] See also G20, Leaders' Statement: The Pittsburgh Summit (Sept. 24-25, 2009), paragraph 13, available at https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.

^[3] See Dodd-Frank Wall Street Reform and Consumer Protection Act, section 727, Pub. L. 111-203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act"), available at <https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>.

^[4] See Dodd-Frank Act, section 728.

^[5] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012) ("Part 45 Adopting Release") and Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 ("Part 43 Adopting Release").

[6] Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011).

[7] Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128 (Apr. 3, 2012).

[8] See Part 43 Adopting Release, 77 FR 1182, 1183.

[9] See Part 45 Adopting Release, 77 FR 2136, 2138.

[10] However, in a jurisdiction with multiple SDRs, such as the United States, regulators' view into market participants' swap positions is not fully consolidated. The presence of different SDRs in jurisdictions across the globe also impinges on full consolidation. These limitations give added import to standardizing data reporting, data fields, and regulators' access to data. Aggregation by regulators in a jurisdiction with multiple SDRs, for example, is greatly facilitated by agreed reporting conventions.

[11] Chicago Mercantile Exchange Inc. Swap Data Repository; DTCC Data Repository (U.S.); and ICE Trade Vault.

[12] See NPRM section II(G) (discussing proposed section 49.11).

[13] See NPRM section III(B) (discussing proposed section 45.14).

[14] See NRPM section II(E) (discussing proposed section 49.9).