

Public Statements & Remarks

Statement of Commissioner Kristin N. Johnson Regarding Notice of Proposed Rulemaking Making Amendments to Parts 43 and 45 Swap Data Reporting Technical Specifications

December 15, 2023

At its peak at the end of 2007, the notional amount outstanding in the credit default swaps market is estimated to have reached a staggering \$61.2 trillion.[1] In 2008, the near collapse of the largely bespoke over-the-counter (OTC) swaps market, most notably the credit default swap market, was a precipitating cause of the global financial crisis,[2] which the U.S. Government Accountability Office estimates resulted in roughly \$10 trillion in losses, including large declines in employment and household wealth, reduced tax revenues from lower economic activity, and lost output.[3] An exemption from regulation for OTC swaps trading in bilateral markets obscured massively excessive risk-taking and undermined the integrity of global markets. The lack of reporting requirements for swap transactions left regulators with limited visibility into the OTC swaps market.

In the wake of this economic devastation, the G20 leaders met in Pittsburgh in 2009 and agreed to introduce order, transparency, and supervision in the bespoke, bilateral swaps market to ensure that regulators would never again be blind to emerging risks in this market. President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) into law on July 21, 2010. In recognition of the importance of having visibility into the swaps market, among many other things Dodd-Frank mandated centralized clearing and exchange-trading of many OTC derivatives, as well as requiring reporting of all swaps to swap data repositories (SDRs), including those not subject to or exempt from the clearing requirement.

As Dodd-Frank recognized, it is imperative that regulators understand the risk in the market in order to effectively regulate it, and empowered the CFTC to regulate swaps.[4] Taking up this mantle, the Commission adopted real-time public reporting and swap data reporting regulations in 2012, which are located in Parts 43 and 45 of the Commission's regulations.[5] Under these regulations, swap counterparties, swap execution facilities, and designated contract markets report publicly reportable swap transactions to SDRs.

The Commission's Division of Market Oversight (DMO), Division of Data (DOD), and Office of the Chief Economist (OCE) are responsible for reviewing the information received from the SDRs and monitoring it for systemic risk, with the goal in part to prevent another collapse from unseen exposure to particular market segments. Due to the nature of derivative contracts, risk can become multiplied several times over, untethered from the exposure to the underlying asset itself. Parts 43 and 45 achieve the necessary visibility for the Commission to effectuate its mandate under Dodd-Frank to monitor the swaps market through this reporting regime. In 2020, the Commission amended parts 43 and 45 to, among other things, streamline the requirements for reporting swaps, require SDRs to validate swap reports, permit the transfer of swap data between SDRs and generally harmonize the swaps data being reported with international guidance.[6]

The new proposed rule furthers the Commission's ongoing duty to effectively monitor the swaps market by promoting international harmonization, implementing unique product identifiers (UPIs) and allowing for geographic masking. The revisions specifically: (1) allow for geographic masking after designation of UPIs for swaps falling within the other commodity asset class, a key revision to avoid reports to SDRs of UPIs that contain detailed geographic information in contravention of Regulation 43.4(c)(4)(iii) and Appendix E to Part 43; (2) add reportable data fields to Appendix A to Part 43 and Appendix 1 to Part 45 from the current 2023 CDE Technical Guidance; and (3) implement non-substantive revisions to the descriptions of the existing reportable data elements in the forgoing appendices to harmonize with changes made at the international level. I am pleased to support this rule that allows us to continue to fulfill our ongoing commitment to protecting U.S. markets through regulatory oversight.

I commend the staff of the Division of Market Oversight, the Division of Data, and the Office of the Chief Economist for bringing to the Commission a thorough and reasoned proposal for further refining swap data reporting obligations. In particular, I would like to thank Isabella Bergstein, Owen Kopon, Alicia Viguri, and Chase Lindsey of DMO; Kate Michel and Robert Stowsky of DOD; and John Roberts and Lee Baker of OCE.

[1] Bank for International Settlements, *BIS Quarterly Review*, June 2018 at https://www.bis.org/publ/qtrpdf/r_qt1806b.pdf (https://www.bis.org/publ/qtrpdf/r_qt1806b.pdf).

[2] See Financial Crisis Inquiry Commission, *Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States*, at xxiv–xxv, Feb. 25, 2011, <https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf> (<https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf>) (concluding that OTC derivatives contributed “significantly” to the crisis by fueling mortgage securitization that provided protection against default, allowing the creation of synthetic collateralized debt obligations, and adding uncertainty when the housing bubble popped due to the derivatives comprising an unseen and unregulated market).

[3] Government Accountability Office, *Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act (2013)*, <https://fraser.stlouisfed.org/title/gao-reports-testimonies-6136/financial-regulatory-reform-622249> (<https://fraser.stlouisfed.org/title/gao-reports-testimonies-6136/financial-regulatory-reform-622249>).

[4] H.R. 4173 — 111th Congress: Dodd-Frank Wall Street Reform and Consumer Protection Act § 723 (swaps).

[5] See 17 CFR 43, 45; Final Rule, Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012); Final Rule, Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012).

[6] See 2020 SDRR Final Rule, 85 FR at 75503, 75504.

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