

# Public Statements & Remarks

## Statement of Commissioner Summer K. Mersinger on Proposed Amendments to Swap Data Reporting Rules in Parts 43 and 45

December 15, 2023

The Commission's notice of proposed rulemaking ("NPRM") to amend the swap data reporting rules in Parts 43 and 45 of its regulations<sup>[1]</sup> constitutes another step in its years-long effort to implement the swap data reporting regime established by the Dodd-Frank Act,<sup>[2]</sup> and to enhance the quality of that data to better enable the agency to fulfill Congress's objectives.

The NPRM would allow for the use of the recently-designated unique product identifier in the "other commodity" asset class by adopting a reporting process that would prevent the "unintended disclosure of the identities, business transactions or market positions of swap counterparties."<sup>[3]</sup> I support this part of the NPRM, and I look forward to hearing from market participants as to any concerns they foresee in this regard.

I have serious reservations, however, about the Commission taking the opportunity to also propose requiring the reporting of several new CFTC-specific data elements that are not required by many other jurisdictions. Sadly, this is becoming something of a trend by the Commission—proposing rule amendments for a specific purpose, and then tacking on additional proposals that are poorly sourced, not well justified, and quite burdensome from a compliance perspective.

Of course, the Commission and its staff must have access to swap data they need to perform the mission that Congress has assigned the CFTC in the Commodity Exchange Act. But while I am not an expert in the technology required to report swap data, and while I have never been involved in running a global financial institution, I am quite sure that complying with new requirements to report additional data fields does not involve just flipping a switch.

I fear that we as a Commission often fail to appreciate the incredible amount of effort and resources that market participants must expend whenever we decide to tweak, or issue a new dictate regarding, our swap data reporting requirements. And I wish we would weigh such considerations more heavily before we tack on these additional reporting data fields that are not necessary to harmonize our swap reporting rules with those of the international regulatory community—especially since market participants have just finished the massive job of complying with the substantial revision of our swap reporting regime that the Commission adopted three years ago.<sup>[4]</sup>

Given these reservations, I cannot endorse this part of the NPRM. But I will vote to concur in putting the full NPRM out for comment so that we can learn about the impact of these additional required fields directly from those who will have to report them.

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[1] 17 C.F.R. Parts 43 (real-time public reporting) and 45 (swap data recordkeeping and reporting requirements).

[2] See Sections 727 and 729 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111-203, 124 Stat. 1376 (2010) (enacting Sections 2(a)(13) and 4r of the Commodity Exchange Act, 7 U.S.C. §§ 2(a)(13) and 6r, respectively).

[3] Final Rule, Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades 78 Fed. Reg. 32866, 32868 (May 31, 2013).

[4] See: 1) Final Rule, Real-Time Public Reporting Requirements, 85 Fed. Reg. 75422 (Nov. 25, 2020); 2) Final Rule, Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75503 (Nov. 25, 2020); and 3) Final Rule, Certain Swap Data Repository and Data Reporting Regulations, 85 Fed. Reg. 75601 (Nov. 25, 2020).

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