

# Public Statements & Remarks

## Statements of Concurrence by Commissioner Rostin Behnam Regarding Final Rules on Real-Time Public Reporting, Swap Data Recordkeeping, and Swap Data Repositories

September 17, 2020

I respectfully concur in the Commission's amendments to its regulations regarding real-time public reporting, recordkeeping, and swap data repositories. The three rules being finalized together today are the culmination of a multi-year effort to streamline, simplify, and internationally harmonize the requirements associated with reporting swaps. Today's actions represent the end of a long procedural road at the Commission, one that started with the Commission's 2017 Roadmap to Achieve High Quality Swap Data.<sup>[1]</sup>

But the road really goes back much further than that, to the time prior to the 2008 financial crisis, when swaps were largely exempt from regulation and traded exclusively over-the-counter.<sup>[2]</sup> Lack of transparency in the over-the-counter swaps market contributed to the financial crisis because both regulators and market participants lacked the visibility necessary to identify and assess swaps market exposures, counterparty relationships, and counterparty credit risk.<sup>[3]</sup>

In the aftermath of the financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010 (Dodd-Frank Act).<sup>[4]</sup> The Dodd-Frank Act largely incorporated the international financial reform initiatives for over-the-counter derivatives laid out at the 2009 G20 Pittsburgh Summit, which sought to improve transparency, mitigate systemic risk, and protect against market abuse.<sup>[5]</sup> With respect to data reporting, the policy initiative developed by the G20 focused on establishing a consistent and standardized global data set across jurisdictions in order to support regulatory efforts to timely identify systemic risk. The critical need and importance of this policy goal given the consequences of the financial crisis cannot be overstated.

Among many critically important statutory changes, which have shed light on the over-the-counter derivatives markets, Title VII of the Dodd-Frank Act amended the Commodity Exchange Act ("CEA" or "Act") and added a new term to the Act: "real-time public reporting."<sup>[6]</sup> The Act defines that term to mean reporting "data relating to swap transaction, including price and volume, *as soon as technologically practicable* after the time at which the swap transaction has been executed."<sup>[7]</sup>

As we amend these rules, I think it is important that we keep in mind the Dodd-Frank Act's emphasis on transparency, and what transpired to necessitate that emphasis. However, the Act is also clear that its purpose, in regard to transparency and real time public reporting, is to authorize the Commission to make swap transaction and pricing data available to the public "as the Commission determines appropriate to enhance price discovery."<sup>[8]</sup> The Act expressly directs the Commission to specify the criteria for what constitutes a block trade, establish appropriate time delays for disseminating block trade information to the public, and "take into account whether the public disclosure will materially reduce market liquidity."<sup>[9]</sup> So, as we keep Congress's directive regarding public transparency (and the events that necessitated that directive) in mind as we promulgate rules, we also need to be cognizant of instances where public disclosure of the details of large transactions in real time will materially reduce market liquidity. This is a complex endeavor, and the answers vary across markets and products. I believe that these final rules strike an appropriate balance.

Today's final rules amending the swap data and recordkeeping and reporting requirements also culminate a multi-year undertaking by dedicated Commission staff and our international counterparts working through the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions working group for the harmonization of key over-the-counter derivatives data elements. The amendments benefit from substantial public consultation as well as internal data and regulatory analyses aimed at determining, among other things, how the Commission can meet its current data needs in support of its duties under the CEA. These include ensuring the financial integrity of swap transactions, monitoring of substantial and systemic risks, formulating bases for and granting substituted compliance and trade repository access, and entering information sharing agreements with fellow regulators.

I wish to thank the responsible staff in the Division of Market Oversight, as well as in the Offices of International Affairs, Chief Economist, and General Counsel for their efforts and engagement over the last several years as well as their constructive dialogues with my office over the last several months. Their timely and fulsome responsiveness amid the flurry of activity at the Commission as we continue to work remotely is greatly appreciated.

The final rules should improve data quality by eliminating duplication, removing alternative or adjunct reporting options, utilizing universal data elements and identifiers, and focusing on critical data elements. To the extent the Commission is moving forward with mandating a specific data standard for reporting swap data to swap data repositories ("SDRs"), and that the standard will be ISO 20022, I appreciate the Commission's thorough discussion of its rationale in support of that decision. I also commend Commission staff for its demonstrated expertise in incorporating the mandate into the regulatory text in a manner that provides certainty while acknowledging that the chosen standard remains in development.

The rules provide clear, reasonable and universally acceptable reporting deadlines that not only account for the minutiae of local holidays, but address the practicalities of common market practices such as allocation and compression exercises.

I am especially pleased that the final rules require consistent application of rules across SDRs for the validation of both Part 43 and Part 45 data submitted by reporting counterparties. I believe the amendments to part 49 set forth a practical approach to ensuring SDRs can meet the statutory requirement to confirm the accuracy of swap data set forth in CEA section 21(c)<sup>[10]</sup> without incurring unreasonable burdens.

I appreciate that the Commission considered and received comments regarding whether to require reporting counterparties to indicate whether a specific swap: (1) was entered into for dealing purposes (as opposed to hedging, investing, or proprietary trading); and/or (2) needs not be considered in determining whether a person is a swap dealer or need not be counted towards a person's *de minimis* threshold for purposes of determining swap dealer status under Commission regulations.<sup>[11]</sup> While today's rules may not be the appropriate means to acquire such information, I continue to believe that the Commission's ongoing surveillance for compliance with the swap dealer registration requirements could be enhanced through data collection and analysis.

Thank you again to the staff who worked on these rules. I support the overall vision articulated in these several rules and am committed to supporting the acquisition and development of information technology and human resources needed for execution of that vision. As data forms the basis for much of what we do here at the Commission, especially in terms of identifying, assessing, and monitoring risk, I look forward to future discussions with staff regarding how the CFTC's Market Risk Advisory Committee which I sponsor may be of assistance.

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[1] Roadmap to Achieve High Quality Swap Data, *available at*

[http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo\\_swapdataplan071017.pdf](http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf).

[2] See Commodity Futures Modernization Act of 2000, Public Law 106-554, 114 Stat. 2763 (2000).

[3] See The Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (Official Government Edition), at 299, 352, 363-364, 386, 621 n. 56 (2011), *available at* <https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf>.

[4] See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

[5] G20, *Leaders' Statement, The Pittsburgh Summit* (Sept. 24-25, 2009) at 9, *available at* [https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh\\_summit\\_leaders\\_statement\\_250909.pdf](https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf).

[6] 7 U.S.C. 2(a)(13)(A).

[7] *Id.*

[8] 7 U.S.C. 2(a)(13)(B).

[9] 7 U.S.C. 2(a)(13)(C)(ii-iv).

[10] 7 U.S.C. 24a(c)(2).

[11] Commission staff has identified the lack of these fields as limiting constraints on the usefulness of SDR data to identify which swaps should be counted towards a person's *de minimis* threshold, and the ability to precisely assess the current *de minimis* threshold or the impact of potential changes to current exclusions. See De Minimis Exception to the Swap Dealer Definition, 83 FR 27444, 27449 (proposed June 12, 2018); Swap Dealer De Minimis Exception Final Staff Report at 19 (Aug. 15, 2016); (Nov. 18, 2015), *available at* [https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfreport\\_sddeminis081516.pdf](https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfreport_sddeminis081516.pdf); Swap Dealer De Minimis Exception Preliminary Report at 15 (Nov. 18, 2015), *available at* [https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfreport\\_sddeminis\\_1115.pdf](https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf).