

CFTC Delays April 10 Compliance Date for Many Swap Data Reporting Requirements

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Mark D. Young
Washington, D.C.
202.371.7680
mark.d.young@skadden.com

Maureen A. Donley
Washington, D.C.
202.371.7570
maureen.donley@skadden.com

Yossi Vebman
New York
212.735.3719
yossi.vebman@skadden.com

Ann A. Hawkins
Houston
713.655.5104
ann.hawkins@skadden.com

Joyce Penn Farnsworth
New York
212.735.3233
joyce.farnsworth@skadden.com

Elizabeth A. Doyle
Washington, D.C.
1.202.371.7312
elizabeth.doyle@skadden.com

Ryan K. Elsey
Washington, D.C.
202.371.7317
ryan.elsey@skadden.com

Theodore M. Kneller
Washington, D.C.
202.371.7264
ted.kneller@skadden.com

Daniel S. Konar II
Washington, D.C.
202.371.7102
daniel.konar@skadden.com

1440 New York Avenue, NW,
Washington, D.C. 20005
Telephone: 202.371.7000

Four Times Square, New York, NY 10036
Telephone: 212.735.3000

WWW.SKADDEN.COM

On April 9, 2013, the Commodity Futures Trading Commission's (CFTC) Division of Market Oversight, responding to requests from multiple interested parties, issued a no-action letter (the No-Action Letter) extending the April 10, 2013, deadline for many end-users that are required to report swaps under Parts 43, 45 and 46¹ of the CFTC's new Dodd-Frank regulations. As we explained in our [April 4, 2013 Alert](#) *Impending Swap Reporting Requirements to Impact All Swap Market Participants*, the CFTC's swap reporting rules require, in many instances, even swap market participants that are not swap dealers (SDs) or major swap participants (MSPs) (which, for purposes of this Alert, we call "end-users") to file reports on swap transactions. In some instances, the CFTC's swap reporting rules make end-users responsible for reporting both new swaps (real-time reporting pursuant to Part 43 and regulatory reporting pursuant to Part 45) and pre-existing (even terminated or expired) swaps (historical reporting pursuant to Part 46), as well as FX forwards and FX swaps that are exempt from most other Dodd-Frank Act regulations (Parts 45 and 46). Subject to a key exception, the No-Action Letter means that the deadline for end-users required to report their swaps under the CFTC's reporting rules is no longer April 10, 2013.

The No-Action Letter divides relief among two groups: "financial swap counterparties" — defined as non-SD, non-MSP counterparties that are "financial entities" as defined in CEA Section 2(h)(7)² — and "non-financial swap counterparties" — defined as non-SD, non-MSP counterparties that are not financial entities. For each swap, the CFTC's reporting rules provide that one party is deemed the reporting counterparty. With respect to swaps for which the reporting counterparty is a financial swap counterparty, the No-Action Letter provides the following relief:

- Staff will not recommend enforcement action for not reporting data to swap data repositories (SDRs) for equity swaps, foreign exchange swaps or other commodity swaps under Parts 43 (real-time reporting) or 45 (regulatory reporting) until 12:01 a.m. Eastern time on May 29, 2013. As a condition of this relief, by 12:01 a.m. Eastern time June 29, 2013, the financial swap counterparty must backload and report all data for equity swaps, foreign exchange swaps or other commodity swaps that would have been required to be reported pursuant to Part 45 between April 10, 2013 and May 29, 2013. Data that would have been reported pursuant to Part 43 does not have to be backloaded and reported.
- Staff will not recommend enforcement action for failure to report "historical swaps" for all swap asset classes pursuant to Part 46 until 12:01 a.m. Eastern time September 30, 2013.

The No-Action Letter does not provide financial swap counterparties any relief from the April 10, 2013, deadline for reporting interest rate or credit swaps under Parts 43 or 45.

With respect to swaps for which the reporting counterparty is not a financial swap counterparty, the No-Action Letter provides the following relief:

- Staff will not recommend enforcement action for not reporting data to SDRs for interest rate and credit swaps under Parts 43 or 45 until 12:01 a.m. Eastern time

on July 1, 2013. As a condition of this relief, by 12:01 a.m. Eastern time August 1, 2013, the non-financial swap counterparty must backload and report all data for interest rate and credit swaps that would have been required to be reported pursuant to Part 45 between April 10, 2013 and July 1, 2013. Data that would have been reported pursuant to Part 43 does not have to be backloaded and reported.

- Staff will not recommend enforcement action for not reporting data to SDRs for equity swaps, foreign exchange swaps or other commodity swaps under Parts 43 or 45 until 12:01 a.m. Eastern time on August 19, 2013. As a condition of this relief, by 12:01 a.m. Eastern time September 19, 2013, the non-financial swap counterparty must backload and report all data for equity swaps, foreign exchange swaps or other commodity swaps that would have been required to be reported pursuant to Part 45 between April 10, 2013 and August 19, 2013. Data that would have been reported pursuant to Part 43 does not have to be backloaded and reported.
- Staff will not recommend enforcement action for failure to report “historical swaps” for all swap asset classes pursuant to Part 46 until 12:01 a.m. Eastern time on October 31, 2013.

Note that the No-Action Letter does not provide financial swap counterparties or non-financial swap counterparties with relief from obtaining a legal entity identifier (LEI) (currently referred to as a CFTC interim compliant identifier, or CICI) or from any of the recordkeeping requirements in Parts 45 or 46.

New Reporting Compliance Date Schedule

	Parts 43 and 45 Compliance Dates (Initial Reports Must Be Submitted As Soon As Practicable After Execution)		Part 45 Backload Reporting Dates for Swaps Entered Into Between April 10 and the Parts 43 and 45 Compliance Date	
	<i>Interest Rates and Credit</i>	<i>FX, Equity, Other Commodities</i>	<i>Interest Rates and Credit</i>	<i>FX, Equity, Other Commodities</i>
<i>Financial Swap Counterparties</i>	April 10, 2013	May 29, 2013	N/A	June 29, 2013 ³
<i>Non-financial Swap Counterparties</i>	July 1, 2013	August 19, 2013	August 1, 2013 ⁴	September 19, 2013 ⁵

	Reporting Part 46 Historical Swaps⁶
	<i>All Asset Classes</i>
<i>Financial Swap Counterparties</i>	September 30, 2013
<i>Non-financial Swap Counterparties</i>	October 31, 2013

Continued on the next page.

Other Recent CFTC Swap Reporting No-Action Relief

In addition to the reporting delays outlined above, the CFTC Division of Market Oversight and the Division of Clearing and Risk have recently issued separate no-action relief for:

- Reporting commodity trade options ([April 8, 2013 Alert CFTC No-Action Letter Relieves End-Users of Part 45 Reporting for Trade Options](#)), and
- Reporting certain inter-affiliate swaps pursuant to Parts 45 and 46 ([April 9, 2013 Alert CFTC No-Action Letter Provides Relief from Certain Reporting Obligations Concerning Inter-Affiliate Swaps For End-Users and Other Market Participants](#)).

END NOTES

- 1 See 17 C.F.R. Parts 43, 45 and 46.
- 2 Among those considered to be “financial entities” are commodity pools; private funds; employee benefit plans as defined in paragraphs (3) and (32) of Employee Retirement Income Security Act of 1974, as amended (ERISA); and persons predominately engaged in activities that are in the business of banking or that are financial in nature, as defined in Section 4(k) of the Bank Holding Company Act of 1956. See 7 U.S.C. § 2(h)(7)(C)(i). The analysis of who is or is not a “financial entity” can be complicated by the banking regulators’ broad definition of “activities that are financial in nature” and uncertainty over how to determine whether a person is “predominantly engaged” in such activities.
- 3 Applies to equity, foreign exchange and other commodity swaps entered into between April 10, 2013 and May 29, 2013.
- 4 Applies to interest rate and credit swaps entered into between April 10, 2013 and July 1, 2013.
- 5 Applies to equity, foreign exchange and other commodity swaps entered into between April 10, 2013 and August 19, 2013.
- 6 Historical swaps are those swaps outstanding as of July 21, 2010, or swaps entered into on or after July 21, 2010 and before April 10, 2013.