

Derivatives Alert

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

Partner / Washington, D.C.
202.371.7680
mark.d.young@skadden.com

Jonathan Marcus

Of Counsel / Washington, D.C.
202.371.7596
jonathan.marcus@skadden.com

Theodore M. Kneller

Counsel / Washington, D.C.
202.371.7264
ted.kneller@skadden.com

Jeongu Gim

Associate / Washington, D.C.
202.371.7223
jeongu.gim@skadden.com

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

Four Times Square
New York, NY 10036
212.735.3000

1440 New York Ave., N.W.
Washington, D.C. 20005
202.371.7000

CFTC Proposes Sweeping Swap Reporting Amendments Aimed at Improving Data Accuracy and Completeness

On April 25, 2019, the Commodity Futures Trading Commission (CFTC or Commission) published for public comment proposed amendments to the rules governing swap data repositories (SDRs) and reporting obligations of swap market participants (the Proposal). The 300-page release proposes numerous revisions to the CFTC’s swap reporting rules with the stated goals of improving data accuracy and completeness for swaps reporting under the Commission’s rules on Real-Time Public Reporting (Part 43) and Swap Data Reporting (Part 45). The Proposal would impose numerous new regulatory obligations on both SDRs and those swap counterparties responsible for reporting data to an SDR (reporting counterparties), including swap dealers, derivatives clearing organizations (DCOs) and other swap market participants (including certain end-users).

Although the Commission voted 5-0 to approve the proposal, at least one commissioner expressed numerous concerns about the Proposal. In her statement of concurrence, Commissioner Dawn DeBerry Stump identified several potential problems with the Proposal, including:

- Inadequately quantifying the impact of the problems
- Lack of specificity to elicit meaningful public comment
- Inadequate grounds to eliminate certain exceptions
- Insufficient justification for new regulatory burdens
- Lack of harmonization with other regulators
- Outsized burden placed on SDRs and reporting counterparties (including end-users)

The Proposal, if adopted in its current form, would impose significant additional regulatory obligations on SDRs and reporting counterparties. Some of the new obligations include:

- SDR Data Corrections
 - SDRs must be able to accept corrections to errors and omissions for both live and dead trades¹

¹ Dead trades are swaps that have terminated, matured or otherwise ceased to be open swaps.

Derivatives Alert

- Data Reconciliation
 - Weekly reconciliations: Swap dealers and DCOs must reconcile books and records with SDR swaps data
 - Monthly reconciliations: Other reporting counterparties must reconcile books and records with SDR swaps data
- Data Verification
 - Each reporting counterparty must verify to the SDR whether the data reconciliation shows (1) complete and accurate data, or (2) one or more discrepancies
- Reporting Counterparty Data Corrections
 - Errors or omissions must be corrected as soon as technologically practicable after discovery (but within at least three business days)
 - If a reporting counterparty is unable to correct a report within three business days, the counterparty must “immediately” notify the CFTC Division of Market Oversight in writing and include an initial assessment of the scope of the errors/omissions and an initial remediation plan

Finally, the Proposal suggests that a reporting counterparty that finds it is repeatedly discovering errors or omissions would need to evaluate its reporting systems to discover any potential systemic reporting issues. Moreover, the Proposal notes that a pattern of reporting failures likely implicates other requirements for further action and disclosure of the reporting counterparty’s noncompliance by registrants and registered entities. But the release did not provide examples or guidance on what “other requirements” the Commission believes may be implicated.

The Proposal keys off of the Commission’s July 2017 [“Roadmap to Achieve High Quality Swaps Data.”](#) The Roadmap outlined the Commission’s plans for improving the accuracy, completeness and quality of reported swap data while streamlining reporting obligations of swap counterparties. The Proposal is the Commission’s first of three anticipated Roadmap rulemakings on which the Commission expects to provide market participants with an opportunity to comment collectively.

Comments on the Proposal are due 75 days after publication in the Federal Register, likely between mid-July and early August 2019.