

CFTC Proposed Amendments To Swap Data Reporting Requirements

Friday, May 17, 2019

Sellers under virtual power purchase agreements often agree to assume the duty to report the swap transactions contemplated by those agreements. Parties acting as reporting parties for Dodd-Frank purposes will be interested in the Roadmap to Achieve High Quality Swap Data (“Roadmap”) rulemakings currently under way at the Commodity Futures Trading Commission (“CFTC”).

As part of the Roadmap proceedings, the CFTC recently published proposed amendments to its regulations governing swap data reporting requirements and swap data repositories (“SDR”). 84 Fed. Reg. 21044 (May 13, 2019). Among other changes, the proposals would require an SDR to distribute to each reporting counterparty on a regular basis an “open swaps report” detailing the swap data maintained by the SDR for all open swaps, organized by the unique identifier created for each swap. SDRs would be required to distribute the open swaps reports to non-swap dealer (“non-SD”) reporting counterparties, which would encompass most energy firms acting as a reporting counterparty, on a monthly basis, no later than the end of the day Eastern Time on the day of the month that the SDR chooses to regularly distribute the reports. The reporting counterparty would then be required to compare its books and records against the report to determine if the swap data that the SDR maintains is complete and accurate. A non-SD reporting counterparty would be required to submit either a verification of data accuracy or a notice of discrepancy within 96 hours of the SDR providing the open swaps report. This would be a change from the current regulatory framework that is based on the concept of negative affirmation, whereby reported swap data is presumed accurate and confirmed if a counterparty does not inform the SDR of errors or omissions or otherwise make modifications to a trade record within a specified time period under SDR rules.

If a notice of discrepancy were filed, the error or omission must be corrected within three business days of that notice filing. The current regulations require that an error or omission be corrected “as soon as technologically practicable” following discovery, but the proposals would reinforce that requirement with the three-business-day time frame. If that three-business-day time frame cannot be met, the reporting party would be required immediately to inform the Director of the CFTC’s Division of Market Oversight, or the Director’s designee, in writing, of such errors or omissions and provide an initial assessment of the scope of the errors or omissions and an initial remediation plan for their correction.

The requirements for correcting errors or omissions would apply to both swap data required by Part 45 of the CFTC’s regulations (creation and continuation data) and to swap transaction and pricing data required by Part 43 of the CFTC’s regulations. However, the open swaps report provision would only apply to the former, although the preamble of the notice announcing the proposed amendments specifically requests comment on whether that report should also cover swap transaction and pricing data.

The CFTC also states in the preamble that it expects that a reporting counterparty that repeatedly discovers errors or omissions, especially if they follow a pattern, would evaluate its reporting systems to discover and correct any issues. This would include working with the relevant SDR to address any reporting issues. The CFTC further notes that it may consider a reporting counterparty that fails to perform such an evaluation and improvement in light of repeated errors not to be in compliance with the regulations.



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The proposed amendments, which are available [here](#), are part of the CFTC's Roadmap, and constitute the first of three anticipated Roadmap rulemakings. The comment period on these proposed amendments closes July 29, 2019. When the CFTC proposes the next two rulemakings, it anticipates re-opening the comment period for this first proposal to provide market participants with an opportunity to comment collectively on the three rulemakings together. The CFTC also anticipates that key provisions of each rulemaking would have the same compliance date, regardless of when each rulemaking is adopted in final form. The CFTC intends to provide a sufficient implementation period for these various rulemakings to give SDRs and market participants enough time to implement and test the changes that would be required.

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