

## Cabinet News and Views

Informed analysis for the financial services industry



### CFTC's Swap Reporting Advisory



By **Peter Y. Malyshev**  
Partner | Financial Services

Accurate and timely reporting of swap data is the cornerstone of swap regulation. The CFTC had promulgated its swap reporting rules in 2012, and were after 2012 among the first rules implementing the Dodd-Frank Act to require, among other things, the anonymized real-time reporting of swap data (Part 43 of CFTC regulations) as well as more detailed regulatory reporting of swap data (Part 45) to swap data repositories (“SDR”). These reports must be provided by swap dealers (or the end-users that are trading with other end-user counterparties), swap execution facilities (“SEFs”), designated contract markets (“DCMs”), and derivatives clearing organizations (“DCOs”). Swap data includes both the primary economic terms of the swaps when they were entered into (creation data) as well as any material amendments and cancellations or terminations of swaps (continuation data).

Since 2012, there have been numerous CFTC enforcement actions sanctioning swap dealers and other reporting parties for failing to comply with reporting rules, and, in fact, the CFTC’s surveillance considers reporting a “low hanging fruit” because some mistakes can be found at almost any reporting party. Conversely, market participants have noted that the 2012 reporting rules were ambiguous in many aspects as drafted, which leads to reporting mistakes.

With this in mind, the CFTC had amended its reporting rules in November 2020 to clarify many of the provisions, including Parts 43 and 45. The compliance date under the amended rules was May 25, 2022. However, the staff of the CFTC realized that the market was still struggling with implementation of the new rules, and on January 31, 2022 issued no action letter No 22-03 postponing compliance to December 5, 2022.

One of the requirements of the rules is to correct swap data that had been submitted to the SDRs if it is later discovered that the data was erroneous. On June 10, 2022, the CFTC issued advisory No 22-06 (“Advisory”) clarifying how correction

reports must be submitted to the SDRs and, if they cannot be submitted timely, to the CFTC with the remediation plan.

Further, the Advisory reminds reporting parties that many of the swaps that have been terminated remain reported as “open” on SDR’s records, which significantly distorts CFTC’s surveillance of the markets and assessment of the overall systemic risks. It is a violation of the reporting rules not to submit the continuation data indicating that the swaps have been terminated. Swap trading entities should continue monitoring CFTC’s guidance as it is likely that further advisories will be issued before the compliance date.

---