



AMERICAN PETROLEUM INSTITUTE

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Monday, August 21, 2017

Mr. Amir Zaidi
Director
Division of Market Oversight
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: Review of Swap Reporting Rules in Parts 43, 45, and 49 of Commission Regulations

Dear Mr. Zaidi:

The American Petroleum Institute (“API”) appreciates the opportunity to submit the following comments in response to the U.S. Commodity Futures Trading Commission’s (the “CFTC” or “Commission”) review of swap data reporting regulations.¹

The Division of Market Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”) announced that it will begin a comprehensive review of the swap data reporting regulations found in Parts 43, 45, and 49 of the Commission’s Regulations. The Division stated that it will focus on changes to the existing regulations and guidance with two goals in mind: (a) to ensure that the CFTC receives accurate, complete, and high quality data on swaps transactions for its regulatory oversight role; and (b) to streamline reporting, reduce messages that must be reported, and right-size the number of data elements that are reported to meet the agency’s priority use-cases for swaps data.

The Division released the Roadmap that is detailed below, which is intended to communicate its plan to improve swap data reporting along with its proposed timelines. The proposal states that the Division plans to present proposed rule changes in two tranches. The first tranche addresses swap data repository (“SDR”) operations, in particular SDRs’ validation of incoming swaps data and swap counterparties’ confirmation of the accuracy of swap data at SDRs. The second tranche addresses reporting workflows generally, and focuses on standardizing and harmonizing data fields, reducing the number of messages that must be reported on an individual swap, and exploring whether delayed reporting deadlines will improve data quality.

API’s comments respond to the specific CFTC request for Tranche 1, Tranche 2 and the implementation timeline.

¹ <http://www.cftc.gov/PressRoom/PressReleases/pr7585-17>

Overall, with regards to implementing the Tranches, API believes that finalizing Tranche 1 in 2Q18 while Tranche 2 is still in proposed rulemaking will not work well because they are intricately related to each other. Addressing duplicative and ambiguous and unnecessary data fields first would lead to more success on ensuring the accuracy and completeness of the data being received by the SDRs. API proposes that the DMO work on both Tranches simultaneously, and finalize changes to Parts 43, 45 and 49 at the same time. Additionally, it is important that any changes in these regulations be applied prospectively. Retroactive changes would be extremely expensive and difficult.

Tranche 1: SDR Operations Review – SDR Validations

- **Leverage existing SDR validation processes to improve consistency and completeness of data reporting.** API supports DMO leveraging existing processes to reduce burden and costs and feels that any increase in data validation needs adequate lead time for implementation.
- **Work with SDRs to set up processes for rejecting swap data reports with missing or invalid data.** Reporting Parties will be impacted by changes in the SDR processes for rejecting swap data reporting due to missing or invalid data. Therefore, API proposes that DMO also consult with Reporting Parties, in addition to SDRs, to set up processes for rejecting swap data reports with missing or invalid data.
- **Identify initial set of minimum validations, including blank/not blank validations and some allowable values and format validations where appropriate.** API is supportive of using validations that will provide specificity and clarity on the exact data fields to be reported. API would like to stress that the trade repositories must implement validations consistently (e.g. field formats must be the same) and API proposes that the CFTC continue to work with industry so that DMO can gather further details and proposals for data validation models prior to any proposed rule.

Tranche 1: SDR Operations Review - Ensure Counterparties Confirm Accuracy of SDR Data

- **Identify most efficient and effective solution for swap counterparty(ies) to confirm the accuracy and completeness of data held in an SDR**
 - **Consider which counterparty(ies) must perform reconciliations.** API understands that counterparties are accountable for accuracy and completeness of data in the SDR and risk adverse regulatory action when it is wrong. Therefore, API proposes that the solution or timing of any reconciliation should be left to the discretion of the counterparty. Requirement should be different depending on the amount of trades and the status of the counterparty; therefore one size does not fit all. Reconciliations are most useful between dealers or between dealers and larger counterparties. Some smaller customers resist reconciliation. Additionally, the mark-to-market reports that dealers are required to provide to their customers serve the same function that the reconciliations are intended to.

- **Consider frequency of reconciliation against the counterparty's internal book.** API does not believe that reconciliation details of internal books should be required, nor should it be reported or be required to be performed. No party has the ability to review or control the internal records of its counterparties.
- **Consider whether to require reconciliation of position data or full audit trail of each swap.** API does not support the requirement for reconciliation of position data or full audit trail of each swap because both it would be redundant since a portfolio and trade confirmation process exist today.

Tranche 2: Reporting Workflows - Streamline Workflows

- Generally, API believes that Part 45 regulations and subsequent Amendment do not include explicit guidance with respect to the reporting of transactions subject to the Principal Model. Part 45 does not align with global jurisdictions for reporting based on the applicable clearing model (Agency vs Principal). API proposes that DMO remove the data fields which are not part of core trade information and are unlikely to be used or aggregated for CFTC analysis. In addition, we recommend that swaps between affiliates be exempt from reporting requirements.
- **Explore whether to combine PET and Confirmation data into single, clearly defined, and electronically reportable set of data elements.** API supports a single stream of creation data (PET + confirmation data) which is clearly defined, electronically reportable, with each field enumerated, and focuses on the core set of data elements to achieve the Commission's regulatory mandate. API believes that having one stream of specific data elements to report in conjunction with the data validation tables will enable Reporting Parties to clearly understand expectations of how each data field is defined and should be reported.
- **Work to remove uncertainty as to what must be reported and how.** API supports DMO removing uncertainties as to what must be reported. API recommends that DMO work with industry to review the specific reporting requirements to determine where clarification is appropriate, such as with regards to confirmation data, as an example.
- **Eliminate multiple reporting streams and unnecessary messages.** Some current reporting requirements are duplicative, for example The Large Trader Reports contain much of the same data that is reported to the SDRs. Where possible, this overlap should be eliminated. API also proposes that the roadmap include a review of inconsistent reporting requirements and formats across regimes. In some cases the same data is reported in multiple reports, but the reports call for the data to be reported in different forms. This is wasteful and also creates a compliance risk--the different presentations of the same data could be interpreted as misreporting. Alignment of data fields in reporting formats would be cost effective for both Reporting Parties and SDRs as today many Reporting Parties must create trade data in several formats to meet requirements pursuant to the different requirements of global regulations. Thus, API supports global data harmonization where there is the same reporting requirements for trades reportable under multiple reporting obligations.

Tranche 2: Reporting Workflows - Focus on Key Data Fields

- **Work to harmonize data fields with foreign regulators, building on CPMI-IOSCO process and Dec 2015 CFTC RFC.** API believes that the “Draft Technical Specifications for Certain Swap Data Elements, as referenced in the Dec. 2015 CFTC RFC, introduces dozens of new data fields or elements that would result in significant amendments to the Reporting Regulations. In addition, the scope and complexities of the proposed Technical Specifications would result in enormous costs to market participants. API believes that the burden to end-users is particularly challenging given the additional technology, legal and compliance support and infrastructure that will be needed to capture and transform transactional data into the proposed framework of reportable data elements. Consequently, API recommends that DMO should concentrate on accumulating a high quality set of minimum data fields which allow proper oversight which reduce burdens to counterparties, SDRs and allows aggregation across regimes.
- **Look to reduce the number of fields currently reported.** API is supporting of reducing the number of fields currently reported and recommends that DMO establishes a process that ensures that any new data fields are actually necessary for oversight and analysis.
- **Focus on minimum number of fields that allow CFTC to perform its oversight functions, rather than capturing every data point on a swap.** API supports DMO reducing the number of fields to the minimum number of fields that allows the CFTC to perform its oversight function. API recommends that the DMO should conduct a review to determine if existing reporting fields provide data which they can use for purposeful analysis.
- **May expand to cover margin movements and discrete data points relating to risk and positions, with an eye to consistency with how this is reported under ESMA rules.** API believes that an expansion to cover margin movements will significantly increase reporting obligations. However, if the Commission decides to include these data elements, API recommends that the Commission rules should be consistent with CPMI IOSCO CDE global harmonization recommendations, rather than just matching ESMA’s rules.
- **Recordkeeping requirements would continue for all terms of a swap, even those not required to be reported.** API supports this requirement remaining the same.

Tranche 2: Reporting Workflows - Technical Specification

- **Once CPMI-IOSCO harmonization efforts have sufficiently progressed, DMO will propose detailed technical specifications.** API supports aligning with the recommended global standards, noting that CPMI IOSCO CDE guidance is expected to be released in early 2018.

- **Would include definitions, form and manner specifications, mapping to existing data languages (FpML and FIX), and allowable values where appropriate**
- **Will seek to match foreign regulators as closely as possible, although some elements may be different depending on Commission's needs.** API supports aligning with global standards, such as the CPMI IOSCO recommendations, unless harmonization would require the addition of a significant number of mandatory reporting elements. In addition, regulators should challenge non-consistent data elements across regimes, as they should be very rare occurrence.
- **Update specifications for SDR validations to cover full suite of required data elements and include remaining allowable values and format validations.** API notes that the Roadmap currently only mentions CPMI IOSCO CDE. API recommends that the Roadmap should be amended to include consideration of integrating CPMI IOSCO UPI and UTI recommendations.

Tranche 2: Reporting Workflows - Re-evaluate Reporting Deadlines under Part 45

- **Explore alignment of CFTC with the SEC and ESMA, including potential move to T+1 reporting.** API generally supports alignment, but would recommend that DMO work closely with the industry so that different and unique scenarios can be analyzed. For example, API is supportive of T+1 reporting but API believes that T+1 implies end of the following business day requirements whereas up to 24 hours is just 24 hours after a trade is executed.
- **Explore whether changing deadlines will improve data accuracy by building upon existing market practice of trade confirmations.** As stated above, API supports the continuation of contracts following a T+1 requirement. Conforming reporting deadlines to confirmation deadlines would improve data accuracy.
- **Find ways to leverage existing confirmation processes to aid in reporting, where appropriate** Conforming reporting deadlines to confirmation deadlines would improve data accuracy.

Tranche 2: Reporting Workflows - Increase the Utility of the Real-Time Public Tape

- **Evaluate real-time reporting regulations in light of goals of liquidity, transparency, and price discovery in the swaps market.** API is supportive of evaluating real-time reporting regulations in light of issues of liquidity, price discovery, and to avoid (indirect) counterparty disclosure. API would recommend that DMO engage the industry to further explore limiting public dissemination to highly liquid products with the Commission. For example, we would like the CFTC to consider eliminating the requirements for real-time reporting and public disclosure of data for exotic transactions.
- **Address ongoing issues of reporting packages, prime brokerage, allocations, risk mitigation services/compressions, EFRPs, and post-priced swaps by clarifying obligations and identifying those distinct types of transactions to increase the utility**

of the real-time public tape. API supports amendment Part 43 rules to resolve the ongoing issues as listed above as part of the swaps reporting review related to timing obligations, as well as harmonization with other regulators.

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If you have any questions or need any additional information with respect to the matters discussed herein, please direct them to Stephen Comstock at (202) 682-8455 or comstocks@api.org.

Respectfully submitted,
/s/ Stephen Comstock
Director of Tax and Accounting Policy
American Petroleum Institute

Sincerely,

A handwritten signature in black ink, appearing to be 'J. F. K.' with a horizontal line extending to the right.