

Comment on CFTC Proposed Rule on Capital and Financial Reporting Requirements for Swap Dealers and Major Swap Participants

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Thank you for the chance to comment on the proposed rule by the Commodity Futures Trading Commission (CFTC) to amend the capital and financial reporting requirements for swap dealers and major swap participants. I support the CFTC's efforts to simplify and streamline their compliance and reporting obligations, and to enhance the consistency and transparency of the swap dealer capital regime. Streamlining regulation while minimizing adverse effects is always a laudable goal.

The rule embodies several productive features.

First, it allows certain non-bank swap dealers to use the Tangible Net Worth Capital Approach, which is based on the equity of their parent company, to calculate their minimum capital requirement. This approach reduces regulatory burden and costs for some swap dealers, especially those that are predominantly engaged in non-financial activities and have a high level of tangible net worth. It would also recognize the financial strength and support of the parent company for the swap dealer, and align the capital requirement with the accounting standards and practices of the parent company.

Second, it would allow certain swap dealers to use alternative financial reporting formats and schedules to report and disclose their financial information to the CFTC and the registered futures association. This simplifies the compliance and reporting process for some swap dealers, especially those that are subject to the oversight of other regulators, such as prudential regulators, the Securities and Exchange Commission, or foreign regulators. It would also avoid duplication, inconsistency, or conflict among different reporting requirements and standards.

Third, it would codify parts of the CFTC Letters (staff interpretive letter 21-15 and no-action letter 21-18 and successor 23-11) that provide staff interpretations and no-action relief for swap dealers and major swap participants regarding the capital and financial reporting requirements. This enhances the transparency and clarity of the swap dealer capital regime, and provide legal certainty and guidance for them, while improving transactional efficiency by avoiding the need for one-off guidance letters. It also facilitates the implementation and enforcement of the capital and financial reporting requirements, and promote their compliance and cooperation.

In general, it appears that the rule would improve the efficiency and effectiveness of the swap dealer capital regime, and benefit the swap dealers, the CFTC, and the public interest.

However, in adopting the rule, I believe that CFTC should bear in mind the following aspects:

- The CFTC should coordinate and cooperate with other regulators that oversee swap dealers or their affiliates, such as the SEC or the prudential regulators, to harmonize and align the capital and financial reporting requirements and standards across different jurisdictions and sectors, to avoid duplication, inconsistency, or conflict.
- The CFTC should consider and adopt the international standards or best practices for swap dealer capital and financial reporting, such as those issued by the Basel Committee on Banking Supervision or the International Organization of Securities Commissions, to enhance and facilitate the cross-border supervision or cooperation of swap dealers and their parent companies.
- The CFTC should ensure that the rule is consistent and compatible with the Commission's own objectives and principles for swap dealer regulation, such as promoting market integrity, protecting customers, or mitigating systemic risk, and that it adequately addresses the operational, market, or systemic risks that swap dealers pose or face, or the ESG risks and opportunities that they may create or encounter.

Definitional Issues

The proposed rule also would benefit from added clarity regarding two definitions:

- The proposed rule does not explicitly define the “Tangible Net Worth Capital Approach” for purposes of the capital and financial reporting requirements. I suggest that the CFTC provide clear definition for this term in the text of the rule. I offer the following potential wording as a starting point:

Tangible Net Worth Capital Approach: A capital approach that allows certain non-bank swap dealers to calculate their minimum capital requirement based on the equity of their parent company, which is a commercial enterprise with a high level of tangible net worth.

- Also, the proposed rule does not explicitly define “prudential regulator”. Further, the CFTC might wish to clarify which prudential regulators are relevant for the swap dealers subject to capital and financial reporting requirements.

Michael Ravnitzky
Silver Spring, Maryland