



May 13, 2024

VIA EMAIL: <https://comments.cftc.gov/>

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

**Re: Notice of Intent To Renew Collection 3038–0095;
Large Trader Reporting for Physical Commodity Swaps**

Dear Mr. Kirkpatrick:

The Futures Industry Association, Inc. (“FIA”) and the International Swaps and Derivatives Association, Inc. (“ISDA”) (collectively, the “Associations”) appreciate the opportunity to submit comments in response to the Commission’s proposed request for approval from the Office of Management and Budget to continue to collect information related to certain physical commodity swap positions pursuant to Part 20 of the Commission’s regulations (the “Swaps LTR Rules”).¹ The Associations’ comments focus on the Commission’s question concerning “[w]hether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use.”² The answer to the Commission’s question is no.

The Commission Should Sunset the Swaps LTR Rules

The Commission issued the final Swaps LTR Rules on July 22, 2011, as a temporary swaps data collection measure to enable it “to administer its regulatory responsibilities under the Commodity Exchange Act by implementing and conducting effective surveillance of economically

¹ FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA’s membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers. FIA’s mission is to support open, transparent and competitive markets; protect and enhance the integrity of the financial system; and promote high standards of professional conduct.

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 77 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers.

² *Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0095; Large Trader Reporting for Physical Commodity Swaps*, 89 Fed. Reg. 19298, 19299 (Mar. 18, 2024).

equivalent physical commodity futures, options and swaps.”³ Since adopting the Swaps LTR Rules, the Commission has jointly with the Securities and Exchange Commission further defined the term “swap,” authorized the registration of swap data repositories (“SDRs”), issued and amended the swap data reporting requirements in Parts 43 and 45 of the Commission’s regulations, and set federal position limits on economically equivalent swaps in Part 150 of the Commission’s regulations.⁴ In addition, CFTC Staff has issued the Technical Specification for Parts 43 and 45 swap data reporting and a non-public Guidebook to SDRs (“SDR Guidebook”) that specifies the Part 49 swap data that SDRs must submit to the Commission.⁵

When it adopted the Swaps LTR Rules, the Commission acknowledged that the rule no longer would be necessary once “SDRs are capable of processing positional data in a manner that would enable the Commission to effectively oversee and surveil paired swaps trading and paired swap markets.”⁶ Accordingly, it included a sunset provision that would render all or part of the Swaps LTR Rules ineffective upon a finding by the Commission that SDRs are “processing positional data . . . that . . . will enable the Commission to effectively surveil trading in paired swaps and swaptions and paired swap and swaption markets.”⁷

The utility and effectiveness of the Swaps LTR Rules as a mechanism for surveilling economically equivalent physical commodity futures, options and swaps has been overtaken by the Commission’s many other extensive regulatory requirements related to swap data reporting and position limits. The Associations, therefore, have advocated for the sunset of the Swaps LTR Rules since at least 2017.⁸ Other swap dealers, clearing members and market participants also have commented on the appropriateness of sunseting the Swaps LTR Rules.⁹ And, in 2020, when it amended swap data reporting requirements, the Commission noted that it may address Part 20 reporting requirements in the future.¹⁰

For more than a decade, SDRs have been collecting and processing aggregated open commodity swap position data from reporting parties. Regulation 49.2(a) defines an “open swap” as “an executed swap transaction that has not reached maturity or expiration, and has not been fully exercised, closed out, or terminated.” An open swap is the equivalent of an open swap position.

³ *Large Trader Reporting for Physical Commodity Swaps*, 76 Fed. Reg. 43851 (July 22, 2011).

⁴ 17 C.F.R. Part 150.

⁵ *CFTC Technical Specification, Parts 43 and 45 Swap Data Reporting and Public Dissemination Requirements*, Ver. 3.2, March 1, 2023. The Associations are unaware of a publicly available version of, or citation to, the SDR Guidebook.

⁶ 76 Fed. Reg. at 43857.

⁷ CFTC regulation 20.9(a), 17 C.F.R. § 20.9(a).

⁸ See, e.g., FIA Comments on CFTC Project KISS (RIN 3038-AE55), September 28, 2017; ISDA Comments on CFTC Project KISS (RIN 3038-AE55), September 29, 2017; ISDA-SIFMA Comments on Amendments to the Swap Data Recordkeeping and Reporting Requirements (RIN 3038-AE31), Amendments to the Real-Time Public Reporting Requirements (RIN number 3038-AE60), Certain Swap Data Repository and Data Reporting Requirements (RIN number 3038-AE32), May 22, 2020.

⁹ See, e.g., *Swap Data Recordkeeping and Reporting Requirements*, 85 Fed. Reg. 75503, 75545 (Nov. 25, 2020).

¹⁰ *Id.*

Regulations 49.9 and 49.17 require SDRs to provide the Commission with detailed open swaps reports and electronic access to SDR swaps data. The SDR Guidebook contains instructions that SDRs must follow when submitting Part 49 reports to the Commission.¹¹ The Associations understand that the SDR Guidebook requires SDRs to include the following, among other, information about other commodity asset class open swaps in their Part 49 reports: counterparty identification, product type (*e.g.*, crude oil, natural gas), notional quantity, prices and term. Because the Commission requires all SDRs to submit open swaps data in the same format, it has the ability to aggregate the open swap positions of all swap market participants. SDRs thus are processing and providing the Commission with the positional data it needs to surveil trading in the physical commodity swap and swaptions markets.¹²

The Swaps LTR Rules also should be sunset because the data provided to the Commission by SDRs enable it to surveil compliance by market participants with position limits on economically equivalent swaps. Moreover, the data collected under the Swaps LTR Rules do not serve their stated purpose of allowing the CFTC to monitor swaps subject to CFTC-set position limits because the definition of economically equivalent swap in Regulation 150.1 is materially different from the definition of “paired swap or paired swaption” in Regulation 20.1. An economically equivalent swap is, “with respect to a particular referenced contract, any swap that has *identical material contractual specifications, terms, and conditions* to such referenced contract.” (Emphasis added). In contrast, a paired swap or paired swaption is “an open swap or swaption that is: (1) *Directly or indirectly linked*, including being *partially* or fully settled on, or priced at a differential to, the price of any commodity futures contract listed in § 20.2; or (2) *Directly or indirectly linked*, including being *partially* or fully settled on, or priced at a differential to, the price of the same commodity for delivery at the same location or locations.” (Emphasis added). In other words, the swaps data collected under the Swaps LTR Rules are neither “identical” nor “equivalent” to the data the Commission needs to surveil economically equivalent swaps.

Finally, notwithstanding the lack of ongoing utility of the Swaps LTR Rules, Reporting entities (swap dealers and clearing members) continue to spend substantial time and resources identifying physical commodity swaps subject to the Swaps LTR Rules, converting the swap transactions into futures equivalent positions, validating position data, and submitting detailed and extensive reports to the Commission.¹³ The Commission, in turn, invests significant time and resources reviewing and verifying the swaps data it receives from Reporting entities.

¹¹ See, *e.g.*, ICE Trade Vault, LLC comments on Proposed Amendments by the Commission to Part 43 and Part 45 of the Commission’s regulations (RIN 3038-AF26), p. 6, April 11, 2024.

¹² The extension of the unique product identifier mandate to the other commodity asset class will further enhance the CFTC’s ability to surveil trading in these markets. See *Notice of Proposed Rulemaking, Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements*, 88 Fed. Reg. 90046 (Dec. 28, 2023).

¹³ The Commission’s estimated average burden hours per respondent of 14.33 woefully underestimates the actual burden per respondent of submitting reports under the Swaps LTR Rules. 89 Fed. Reg. at 19299. Just reading and attempting to understand the instructions in the 90-page Swaps LTR Guidebook takes many hours. Identifying in-scope swaps, calculating futures equivalent quantities, programing IT systems, verifying the accuracy of data inputs and outputs, and submitting and correcting reports takes each reporting party hundreds of manhours.

One particularly difficult data element to report is the Position Type Indicator, which is a data element contained in CFTC Staff Swaps LTR Guidebook (“Staff Swaps LTR Guidebook”), but was not contemplated or otherwise mentioned in the Swaps LTR Rules or the preamble.¹⁴ The position type indicator requires Reporting entities to convert a paired swap transaction into one of four position types based upon the unique aspects of the transaction, and then report the resulting positions for a given position type. These position types are unique to the Staff Swaps LTR Guidebook and are not readily available in a Reporting entity’s books and records. Reporting this data element imposes a considerable burden on Reporting entities, yet the CFTC has never performed a cost-benefit analysis for this requirement because it is not in the Swaps LTR Rules.

Conclusion

There is no continuing need for the temporary Swaps LTR Rules. Furthermore, by sunsetting the Swaps LTR Rules, the Commission could redirect its limited resources more efficiently to analyzing the swaps data provided by SDRs and surveilling compliance with position limits on economically equivalent swaps. Accordingly, the Commission should sunset the Swaps LTR Rules pursuant to Regulation 20.9.

Respectfully submitted,



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¹⁴ The current version of the Staff Swaps LTR Guidebook is available here <https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/ltrguidebook062215.pdf>. Neither the list of data elements for a clearing organization to report under CFTC Rule 20.3(b) nor the list of data elements for Reporting entities to report under CFTC Rule 20.4(c) references a position type indicator data element.