



Commodity Futures Trading Commission

Office of Public Affairs

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
cftc.gov

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Fact Sheet and Q&A – Final Rule Amending the Capital and Financial Reporting Requirements of Swap Dealers and Major Swap Participants

The Commodity Futures Trading Commission (“Commission” or “CFTC”) adopted rules that amend Commission regulations 23.100, 23.101, 23.102, 23.103, 23.105, Appendices B and C to Subpart E of Part 23 (“Appendix B” and “Appendix C”), and the Commission’s Form 1-FR-FCM to address specific issues identified during the implementation of the final rule on the capital and financial reporting requirements of swap dealers (“SDs”) and major swap participants (“MSPs”) (hereinafter, the “2020 Final Rule”).¹

Specifically, the amendments:

- (i) make changes consistent with CFTC staff’s position in CFTC Staff Letters No. 21-15² and 21-18³ with respect to the tangible net worth capital approach and financial reporting requirements for bank SDs, respectively;
- (ii) clarify other matters including the general applicability of reporting schedules, the process for the approval of subordinated debt, the reporting timeframe required for the notification of a substantial reduction in capital, certain required statements related to any material differences between audited and unaudited financial reports, and the format of required public disclosures of regulatory capital; and
- (iii) make changes to the Commission’s Form 1-FR-FCM to reflect revisions previously adopted for FCM net capital requirements related to swaps.

Overview of the Final Rule

The Commission adopted the following amendments based on its experience administering the 2020 Final Rule and in consideration of the comments received in response to the Notice of Proposed Rulemaking (“NPRM”) associated with this final rule.⁴ The following amendments are not intended to change the Commission’s capital approach adopted in the 2020 Final Rule, but rather, to facilitate SDs’ compliance with the Commission’s financial reporting obligations and minimum capital requirements. The amendments are summarized below.

¹ Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020).

² CFTC Staff Letter No. 21-15, June 29, 2021, available at <https://www.cftc.gov/csl/21-15/download>.

³ CFTC Staff Letter No. 21-18, Aug. 31, 2021, available at <https://www.cftc.gov/csl/21-18/download>.

⁴ Capital and Financial Reporting Requirements for Swap Dealers and Major Swap Participants, 89 FR 2554 (Jan. 16, 2024).

1. Revise the definitions of “tangible net worth” and “predominantly engaged in non-financial activities” in Commission regulation 23.100, so that the eligibility of nonbank SDs and nonbank MSPs⁵ using the tangible net worth capital approach may be determined at the parent or entity level and using generally accepted accounting principles as adopted in the United States (“U.S. GAAP”) or International Financial Reporting Standards (“IFRS”); and revise Commission regulation 23.105, such that SDs’ position and other related exposure reporting must be made at the same periodicity as financial reporting, which, for SDs electing the tangible net worth capital approach, is quarterly (consistent with CFTC Staff Letter 21-15).
2. Revise Commission regulation 23.105(p), so that U.S. domiciled bank SDs file schedules under Federal Financial Institutions Examination Council (“FFIEC”) reports in lieu of Appendix C forms at the same time as filed with prudential regulators, and non-U.S. domiciled bank SDs file balance sheet and statement of regulatory capital schedules in the format provided to the bank SDs’ home country regulator, subject to the requirement that they must be in English with balances converted to U.S. dollars (consistent with CFTC Staff Letter 21-18) within 90 days of the end of reporting period. Further, the amendments require bank SDs that are also registered with the SEC as security-based swap dealers (“SBSDs”) to file Form X-17A-5 FOCUS Report Part IIC with the Commission no later than 35 calendar days from the date the report is made, and amendments to Appendix C to retain only Schedule 1, which contains position information and is required of all SDs.
3. Revise Commission regulations 23.105(k) and (l) and the titles of Schedules 1-4 in Appendix B to clarify that such supplemental schedules are intended to be provided by all nonbank SDs and to provide that the supplemental schedules must be submitted on a monthly or quarterly basis, as applicable.
4. Revise Commission regulation 23.101(a) to provide that subordinated debt for net capital is subject to a qualification determination by either the Commission or NFA. Further, revise Commission regulation 23.105(c) to provide references that incorporate the immediate notifications required for SDs that are also FCMs and to provide that the period of time required for an SD’s notification of a substantial reduction of capital should be made within two business days.
5. Revise references within the 2020 Final Rule to provide clarity on applicable market and credit risk charges both for SDs using internal models electing the Bank-Based Capital Approach in Commission regulation 23.102 and for SDs not electing the Bank-Based Capital Approach and not electing to use internal models in Commission regulation 23.103.
6. Revise Commission regulations 23.105(d) and (e) to provide that SDs that are also registered with the SEC as either broker dealers (“BDs”) or SBSBs must file financial reports required to be filed with the SEC, and SDs also registered as FCMs must file Form 1-FR-FCM (or such other form as is permissible by FCM requirements). Further, the amendments provide that an affirmative statement of no material difference between audited and unaudited financial reports is required and that SDs also registered as FCMs must include with the audited financial report a supplemental accountants report on material inadequacies.
7. Revisions to provide that the applicable public disclosure of SD unaudited statement of financial condition information in Commission regulation 23.105(i)(1)(i) includes footnote disclosures and that the amounts of regulatory capital and required minimum regulatory capital to be publicly disclosed in both Commission regulations 23.205(i)(1) and (2) need not be included as a schedule or in any particular format.
8. Revisions to the Form 1-FR-FCM to conform with the changes adopted in the 2020 Final Rule to FCM net capital requirements, including adding reporting lines for the market and credit risk charges for swaps and for 2% of the risk margin amount in required net capital for FCMs which are also SDs.

⁵ “Nonbank SDs” and “nonbank MSPs” are the terms used to refer to SDs and MSPs, respectively, that are not subject to the capital requirements of a prudential regulator and therefore subject to the CFTC’s capital requirements, whereas “bank SDs” and “bank MSPs” are the terms used to refer to SDs and MSPs, respectively, that are subject to the capital requirements for a prudential regulator. The term “prudential regulator” is defined in section 1a(39) of the Commodity Exchange Act (“CEA” or the “Act”) to include the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency, as applicable to the SD or MSP.

1. Who is affected by the final rule?

SDs electing the tangible net worth capital approach and non-U.S. bank SDs are primarily affected. Other SDs may be impacted by the further clarifications, but such impact is not expected to be substantial in relation to the general capital and financial reporting requirements for SDs.

2. What policy considerations motivated the final rule?

The Commission believes that the capital and financial reporting requirements for SDs contained in the Commission's regulations should be clear, and thus, adopted amendments consistent with two important staff implementation letters being relied upon by certain SDs. The Commission further believes that adding specificity or detail to various existing requirements (such as timeframes for notices, the approval process for subordinated debt qualifying as capital, etc.) will enhance SDs' ability to clearly demonstrate compliance with capital and financial reporting requirements.

3. What are the effective and compliance dates of the final rule?

The effective date of the final rule is 30 days from the date of publication in the Federal Register. The compliance date is September 30, 2024 to allow sufficient time to effectuate the reporting and notification amendments. For avoidance of doubt, the compliance date will apply to all financial reports with an "as of" reporting date of September 30, 2024 or later.