

**COMMODITY FUTURES TRADING COMMISSION**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-64926; File No. 4-635]**

**Acceptance of Public Submissions for a Study on International Swap Regulation  
Mandated by Section 719(c) of the Dodd-Frank Wall Street Reform and Consumer  
Protection Act**

**AGENCY:** Commodity Futures Trading Commission; Securities and Exchange  
Commission.

**ACTION:** Request for Comment.

**SUMMARY:** Section 719(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC and, together with the CFTC, the Commissions) jointly to study and then report to Congress on swap regulation and clearinghouse regulation in the United States, Asia, and Europe and to identify areas of regulation that are similar and other areas of regulation that could be harmonized. The report also must identify major dealers, exchanges, clearinghouses, clearing members, and regulators in each geographic area and describe the major contracts (including trading volumes, clearing volumes, and notional values), methods for clearing swaps, and the systems used for setting margin in each geographic area. In connection with the study and report, the CFTC and SEC are issuing this request for information through public comment.

**DATES:** Submit comments on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments by any of the following methods:

**CFTC:**

- Agency website, via its Comments Online process at <http://comments.cftc.gov>. Follow the instructions for submitting comments through the website.
- Mail: David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- Hand Delivery/Courier: Same as mail above.

Please submit comments using only one method. Comments should be identified by “International Swap Regulation Study” in the subject line of responses submitted electronically and in paper submissions.

All comments must be submitted in English or, if not, accompanied by an English translation. Comments will be posted on the CFTC’s Internet website at <http://www.cftc.gov>, without review and without removal of personally identifying information. You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that may be exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures

established in § 145.9 of the Commission's regulations.<sup>1</sup> The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments will be retained in the public comment file and may be accessible under FOIA.

**SEC:**

Electronic Comments

- Use the agency's Internet comment form at <http://www.sec.gov/rules/other.shtml>; or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-635 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number 4-635. This file number should be included on the subject line if e-mail is used. To help the SEC process and review your comments more efficiently, please use only one method. Comments will be posted on the SEC's Internet website at <http://www.sec.gov>. Comments also are available for website viewing and printing in the SEC's Public Reference Room, Station Place, 100 F

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<sup>1</sup> CFTC regulations referred to herein are found at 17 CFR Ch. 1 (2010). They are accessible on the Commission's website at <http://www.cftc.gov>.

Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the SEC does not edit personally identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** CFTC: Natalie Markman

Radhakrishnan, Senior Special Counsel, 202-418-5059, [nmradhakrishnan@cftc.gov](mailto:nmradhakrishnan@cftc.gov),

Office of International Affairs, Commodity Futures Trading Commission, Three

Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, DC 20581; SEC: Babback Sabahi,

Senior Counsel, 202-551-5398, [sabahib@sec.gov](mailto:sabahib@sec.gov), Office of International Affairs,

Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1004.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Dodd-Frank Act was enacted on July 21, 2010.<sup>2</sup> Title VII of the legislation<sup>3</sup> amends the Commodity Exchange Act<sup>4</sup> and the Securities Exchange Act of 1934<sup>5</sup> to establish a comprehensive new regulatory framework for swaps and security-based swaps to reduce risk, increase transparency, and promote market integrity within the financial system. Among other things, Title VII: (1) provides for the registration and

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<sup>2</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at <http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm>.

<sup>3</sup> Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the “Wall Street Transparency and Accountability Act of 2010”.

<sup>4</sup> 7 U.S.C. 1 *et seq.*

<sup>5</sup> 15 U.S.C. 78a *et seq.*

comprehensive regulation of swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants; (2) imposes clearing and trade execution requirements on swaps and security-based swaps, subject to certain exceptions; (3) creates rigorous recordkeeping and real-time reporting regimes; and (4) enhances the Commissions' rulemaking and enforcement authorities with respect to certain registered entities and intermediaries subject to the Commissions' oversight.

Section 719(c)(1) of the Dodd-Frank Act requires the CFTC and SEC jointly to conduct a study on swap regulation and clearinghouse regulation in the United States, Asia, and Europe and to identify areas of regulation that are similar and other areas of regulation that could be harmonized.<sup>6</sup> Pursuant to Section 719(c)(2) of the Dodd-Frank Act, the Commissions must submit a report to Congress within 18 months after the Dodd-Frank Act's enactment (i.e., on or before Monday, January 23, 2012) that describes the results of the study and includes: (1) the identification of the major dealers, exchanges, clearinghouses, and regulators in each geographic area; (2) lists of the major swap contracts (including trading volumes, clearing volumes, and notional values) in each geographic area; and (3) a description of the methods for clearing swaps and the systems used for setting margin in each geographic area.<sup>7</sup>

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<sup>6</sup> Section 719(c)(1) provides:

(1) IN GENERAL.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly conduct a study—

(A) relating to—

(i) swap regulation in the United States, Asia, and Europe; and

(ii) clearing house and clearing agency regulation in the United States, Asia, and Europe; and

(B) that identifies areas of regulation that are similar in the United States, Asia and Europe and other areas of regulation that could be harmonized[.]

<sup>7</sup> Section 719(c)(2) provides:

## II. Request for Comments

In connection with the study and report required by Section 719(c) of the Dodd-Frank Act, the CFTC and SEC have determined to issue this request for information through public comment. Congress has directed the Commissions to conduct an independent joint study on specific topics and, in particular, to identify areas of regulation that could be harmonized.<sup>8</sup> The Commissions have determined that this request for public comment will be an effective and transparent means of gathering information necessary for the study and report from interested parties. This public

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(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall submit to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Agriculture and the Committee on Financial Services of the House of Representatives a report that includes a description of the results of the study under subsection (a), including—

(A) identification of the major exchanges and their regulator in each geographic area for the trading of swaps and security-based swaps including a listing of the major contracts and their trading volumes and notional values as well as identification of the major swap dealers participating in such markets;

(B) identification of the major clearing houses and clearing agencies and their regulator in each geographic area for the clearing of swaps and security-based swaps, including a listing of the major contracts and the clearing volumes and notional values as well as identification of the major clearing members of such clearing houses and clearing agencies in such markets;

(C) a description of the comparative methods of clearing swaps in the United States, Asia, and Europe; and

(D) a description of the various systems used for establishing margin on individual swaps, security-based swaps, and swap portfolios.

The provision's reference to "subsection (a)" presumably should be replaced with a reference to subsection (1) because no such subsection (a) applies to this study. Moreover, although Section 719(c) is entitled "International Swap Regulation" and does not consistently refer to both swaps and security-based swaps throughout, Congress mandated a joint study and, accordingly, the Commissions have interpreted the terms "swap" and "swaps" to include both swap(s) and security-based swap(s) in the context of this statutory provision.

<sup>8</sup> In addition to the study and report required by Section 719(c), Congress directed the Commissions (and prudential regulators) in Section 752(a) of the Dodd-Frank Act to "as appropriate . . . consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps, security-based swaps, swap entities, and security-based swap entities" in order to "promote effective and consistent global regulation of swaps and security-based swaps".

comment process will, as needed, be supplemented by other means of gathering the comprehensive range of information requested by Congress.<sup>9</sup>

The Commissions also are mindful of differences in regulatory development across jurisdictions. In the United States and under the Dodd-Frank Act, many of the required regulations with regard to swaps already have been proposed and made available for public comment.<sup>10</sup> Other jurisdictions, however, are proceeding under different time frames. For example, the Japanese Diet amended the Financial Instruments and Exchange Act by adopting legislation on over-the-counter (OTC) derivatives on July 10, 2009, and on May 12, 2010. These amendments are expected to be implemented by November 2012. The European Commission (EC), in turn, proposed legislation on clearing and trade repositories on September 15, 2010.<sup>11</sup> This proposed legislation calls for the European Securities and Markets Authority to propose technical standards by June 30, 2012.<sup>12</sup>

In order to strike a balance between meeting the statutory deadline for the study and report and providing timely information to Congress, the Commissions have determined to publish the request at this time and to provide for a 60-day comment

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<sup>9</sup> For example, Commission staff will engage in ongoing consultation with regulatory authorities and others throughout the study.

<sup>10</sup> For more information, visit CFTC and SEC websites on implementation of the Dodd-Frank Act, respectively at <http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm> and <http://www.sec.gov/spotlight/dodd-frank.shtml>.

<sup>11</sup> On December 8, 2010, the EC also issued a public consultation to solicit views on revisions to the Markets in Financial Instruments Directive that are designed, among other things, to increase transparency for OTC derivatives and other instruments by setting requirements for trading venues and investment firms, and to enhance business conduct standards applicable to all investment firms. The EC is expected to publish a proposal further to this consultation during summer 2011.

<sup>12</sup> See various provisions of the EC's proposed European Markets Infrastructure Regulation, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0484:FIN:EN:PDF>.

period. Given the pace of developments in the regulation of OTC derivatives here in the United States and in other jurisdictions, the Commissions plan to conduct the study based upon information received and collected by the last day of the comment period.<sup>13</sup>

Comments should be submitted during the open comment period, but staff may consider comments filed after the deadline and may consult with interested and/or relevant parties after the comment period closes in order to obtain additional or clarifying information.

The Commissions welcome public comment on all aspects of the study.<sup>14</sup>

The Commissions have developed the following requests for comment to gather information in support of the study mandated by Section 719(c) and request that commenters include a description, either in English or accompanied by an English translation, of the underlying source material used in composing each submitted response. Commenters may also provide any additional relevant information beyond that specifically requested. Because Section 719(c) requires the Commissions to prepare a report relating to the swap markets of the United States, Asia, and Europe, commenters are specifically asked to provide information about markets in those jurisdictions. Commenters also may provide any relevant information on other jurisdictions. If regulatory requirements in a jurisdiction are under consideration but not yet enacted or effective, commenters should make note of this in their answer and provide as much relevant information as possible on recent and anticipated developments.

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<sup>13</sup> The Commissions may, however, in their discretion and depending on the significance of the developments, decide to address certain legislative or regulatory developments that take place after the comment period has ended.

<sup>14</sup> In light of the statutory deadline established in Section 719(c) of the Dodd-Frank Act, the Commissions request comment on how best to ensure that the study reflects the latest state of regulatory implementation in Asia and Europe. Commenters are encouraged to submit information regarding significant relevant legislative or regulatory developments occurring after the end of the comment period and prior to the submission of the report to Congress.

While all commenters are welcome to respond to the items below in their entirety, in order to provide more focus, the requests for comment have been divided into three groups. The first group, items A-E, inquires about information to which foreign regulators may have the most efficient access. Item F, by contrast, inquires about information that may be available to a wider range of commenters, while item G inquires about information that exchanges and clearinghouses might be uniquely positioned to provide.

A. Status of Regulation

1. For each jurisdiction on which comment is being provided, please provide the name of the jurisdiction being commented upon.

2. Does the jurisdiction have a legal definition of the term “swap”, “security-based swap”, or other similar term or terms (hereinafter referred to as a “Swap” or “Swaps”)?

If so, please provide such definition(s).<sup>15</sup>

3. Are Swaps are included within the scope of any statute, regulation, or other legal requirement in the jurisdiction?

a. If not, is the jurisdiction planning to or considering whether to regulate, or to modify regulation of, Swaps?

b. Please further describe the present status of regulatory efforts and the anticipated timeline for such efforts.

4. What type of counterparty may enter into a Swap? Do any limitations apply?

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<sup>15</sup> These terms may include, but may not be limited to, OTC derivatives. The Dodd-Frank Act includes definitions of the terms “swap” and “security-based swap”.

5. Are certain types or classes of Swaps prohibited, or are certain entities prohibited from entering into certain types or classes of Swaps?
6. If Swaps are regulated:
- a. Who determines which instruments, transactions, or agreements should be regulated as Swaps?
  - b. Which Swaps, if any, are required to be executed on an organized market, on an electronic execution facility, or on any other type of market?
  - c. Which Swaps, if any, are required to be cleared by a central counterparty and, for those required to be cleared, how are the trades of non-clearing participants cleared?<sup>16</sup>
  - d. Which Swap transactions, if any, are required to be reported to a data repository or other entity, the public, or regulatory authorities?
  - e. Is regulatory oversight of the Swap market conducted by one single regulatory authority or divided among different regulatory authorities? If the latter, please identify each relevant regulatory authority and describe its responsibilities and jurisdiction.
  - f. How does the regulatory framework regulate potential systemic risk created by Swaps? Does it, for example, create a new oversight body or designate certain entities as systemically important?
  - g. Does the regulatory authority, or regulatory authorities if more than one regulator has oversight responsibilities over the Swap market, have the ability to share information related to Swaps with domestic and foreign regulatory authorities?<sup>17</sup>

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<sup>16</sup> If applicable, how does the mandatory clearing requirement work, e.g., who decides which Swaps are required to be cleared, what criteria are applied, does the requirement apply to existing Swaps or to those entered into at a certain point in time, are any entities exempt from the clearing requirement?

h. How are cross-border Swap transactions regulated? Does the Swap regulatory framework apply to persons located outside of the jurisdiction doing business with persons located within the jurisdiction, and, more generally, to cross-border Swap activities?

i. What enforcement authority exists over Swaps, and who may exercise such authority?

B. Regulatory Requirements for Market Participants

1. How does the regulatory framework address participants in the Swap market? What are the registration or licensing requirements for Swap-related dealers, market participants, intermediaries, or others (individually and collectively, “Participants”)?

2. Are any types of Participants in the Swap market excluded or exempted from Swap-related registration or licensing requirements?

3. What is the process for updating, withdrawing, or terminating Swap-related registration or an exemption from Swap-related registration?

4. What are the Swap-related prudential regulatory requirements (e.g., capital, liquidity, margin, risk management, segregation, collateral)?

5. What are the requirements related to insolvency or bankruptcy in regard to Participants?

6. What are the Swap-related business conduct requirements (e.g., interaction with counterparties, disclosure, supervision, reporting, recordkeeping, documentation, confirmation, valuation, conflicts of interest, avoidance of fraud and other abusive practices)?

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<sup>17</sup> In particular, are there any legal or other barriers to the collection of information or to the sharing of information, e.g., client confidentiality protection or data privacy safeguards?

7. Do Participants have the ability to share information with domestic and/or foreign regulatory authorities?

8. How are foreign Participants treated (e.g., a special recognition category, an exclusion or an exemption from registration)?

C. Regulatory Requirements for Organized Markets, Electronic Execution Facilities, and Other Types of Markets

1. Does the regulatory framework include requirements for organized markets, electronic execution facilities, and/or other types of markets for Swaps (hereinafter referred to as “Markets”)?

2. What are the registration or licensing requirements for such Markets?

3. Are any Markets excluded or exempted from such registration or licensing requirements?

4. What is the process for updating, withdrawing, or terminating such registration or exempting from such registration?

5. What are the ongoing regulatory responsibilities of such Markets (e.g., access, surveillance, transparency, compliance, recordkeeping)?

6. Do Markets have the ability to share information with domestic and/or foreign regulatory authorities?

7. How are foreign Markets treated (e.g., a special recognition category, an exclusion or an exemption from registration)?

D. Regulatory Requirements for Central Counterparties

1. Does the regulatory framework include requirements for central counterparties that provide clearing and settlement services for Swaps?

2. What are the registration or licensing requirements for such central counterparties?
3. Who is excluded or exempted from such registration or licensing requirements?
4. What is the process for updating, withdrawing, or terminating such registration or exempting from such registration?
5. What are the ongoing regulatory responsibilities of such central counterparties (e.g., financial resources, risk management, safeguards against member or participant default, authority in the event of a default, recordkeeping)?<sup>18</sup>
6. Do such central counterparties have the ability to share information with domestic and/or foreign regulatory authorities?
7. How are foreign central counterparties treated (e.g., a special recognition category, an exclusion or an exemption from registration)?

E. Regulatory Requirements for Data Repositories

1. Does the regulatory framework include requirements for data repositories for Swaps?<sup>19</sup>
2. What are the registration or licensing requirements for such data repositories?
3. Who is excluded or exempted from such registration or licensing requirements?
4. What is the process for updating, withdrawing, or terminating such registration or exempting from such registration?
5. What are the ongoing regulatory responsibilities of such data repositories (e.g., timing of reporting to the public, recordkeeping)?

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<sup>18</sup> The Recommendations for Central Counterparties were published in November 2004 (and currently are being revised) by the Committee on Payment & Settlement Systems of the Bank for International Settlements and the Technical Committee of IOSCO. Links to this standard, as well as related standards and the consultative report for revising them, are available at <http://www.bis.org/publ/cpss94.htm>.

<sup>19</sup> If entities other than data repositories can fulfill this function, please describe the jurisdiction's requirements for such activity and provide the relevant information for each question on this topic.

6. Are such data repositories required to use a specified data standard when they provide data to regulatory authorities and, if so, what standard is required?
7. Do such data repositories have the ability to share information with domestic and/or foreign regulatory authorities?
8. How are foreign data repositories treated (e.g., a special recognition category, an exclusion or an exemption from registration)?
9. What are the regulatory requirements in connection with data reporting for entities participating in the Swap market, such as counterparties or Participants (e.g., maintaining records, reporting data to a repository, real-time reporting to the public, providing information to domestic and foreign regulatory authorities)?

F. Regulatory Comparison

1. Across jurisdictions, for any or all items listed above, which areas of regulation are similar and which areas are different?
2. In viewing the existing laws, institutions, and enforcement mechanisms of each respective jurisdiction as a whole, are such similarities and differences appropriate and desirable for regulatory purposes, or do certain aspects of a particular jurisdiction's Swap market warrant a different regulatory approach?
3. What are the potential costs and benefits (in terms of investor protection, market efficiency, competition, or other factors) that may arise from further consistency/harmonization of regulations across borders?
4. How should consistency in regulation across jurisdictions be measured and are there factors other than the harmonized text of a regulation that should be taken into

consideration when assessing the degree to which cross-border regulatory harmonization has been implemented in practice?

5. Assuming that a theoretically "optimal" set of regulations for a particular jurisdiction might take into consideration elements unique to a specific market in ways that might make cross-border harmonization difficult, to what extent do the benefits of greater regulatory harmonization across borders outweigh the costs associated with having regulations that might be less tailored to a particular market's circumstances? In what areas do you believe the benefits of harmonization most outweigh any potential downsides?<sup>20</sup> Are there any areas where you believe the likely benefits of "optimal" market-specific regulation outweigh the likely benefits of harmonization?

6. In the United States, what steps should or could be taken to better harmonize statutory requirements under the Dodd-Frank Act with statutory requirements implemented in other jurisdictions?

7. In the United States, what steps could be taken to harmonize CFTC or SEC regulations with regulations promulgated by authorities in other jurisdictions?

G. Swap Market Information

1. Please identify major organized markets and electronic execution facilities (and the Swaps-related regulator(s) for each) for the trading of Swaps.

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<sup>20</sup> In particular, please identify any potential opportunities for regulatory arbitrage or impediments to the achievement of consistent regulatory standards across jurisdictions.

- a. For each market or facility, please provide a listing and description of the major contract classes and subclasses, such as credit default swaps (CDS),<sup>21</sup> equity swaps, currency swaps, interest rate swaps (IRS),<sup>22</sup> and commodity swaps;
  - b. For classes and subclasses of contracts identified in paragraph a above, please provide:
    - i. The trading volumes in 2009, 2010, and year-to-date; and
    - ii. The outstanding notional values at year-end 2008, 2009, 2010, and the most recent available.
2. Please identify major dealers participating in Swap markets (and the Swap-related regulator(s) for each).
3. Please identify major central counterparties (and the Swap-related regulator(s) for each) for the clearing of Swaps.
- a. For each central counterparty, please provide a listing and description of the major classes and subclasses of cleared Swap contracts, such as CDS, equity swaps, currency swaps, IRS, and commodity swaps;
  - b. For classes and subclasses of contracts identified in paragraph a above, please provide:
    - i. The clearing volumes for 2009, 2010, and year-to-date; and
    - ii. The outstanding notional values at year-end 2008, 2009, 2010, and the most recent available;
  - c. For each central counterparty, please provide:
    - i. A description of the method used to clear Swaps;

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<sup>21</sup> For CDS, include: corporate single name, sovereign single name, multi-name, index; CDS on domestic and non-domestic reference assets (classified by country, in the latter case); and CDS between domestic and non-domestic participants (classified by country, in the latter case).

<sup>22</sup> For IRS, include: underlying currency, structure, and maturity.

- ii. A description of the systems used to establish margin on individual Swaps and on Swap portfolios; and
- iii. The name of each major clearing member of the central counterparty (and the Swap-related regulator(s) for each).

Issued in Washington, DC on July 20, 2011, by the Commodity Futures Trading Commission.

David A. Stawick,  
Secretary.

Issued in Washington, DC on July 20, 2011, by the Securities and Exchange Commission.

Elizabeth M. Murphy,  
Secretary.