



Comparison of Portfolio Reconciliation Requirements

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	Dodd-Frank Act (CFTC Regulation 23.502)		EMIR (Art. 13 of RTS 149/2013)		Comments
Frequency	For all swaps in which one counterparty is neither a swap dealer (SD) nor a major swap participant (MSP)		For all derivatives in which one counterparty is a "non-financial counterparty" (NFC) that does not exceed the Art. 10 clearing threshold		CFTC rules only apply the required higher (daily/weekly/quarterly) reconciliation frequencies to transactions between SDs/MSPs. Under EMIR, these higher frequencies apply to transactions between all FCs/NFCs over the clearing threshold (and transactions between FCs/NFCs over the clearing threshold and equivalent non-EU entities). For example, the CFTC rules only require an SD transacting with an insurance company or investment fund to reconcile outstanding transactions on a quarterly or annual basis (except in the exceptional case that the counterparty is also an SD or MSP). EMIR requires an EU bank transacting with an insurance company or investment fund to reconcile on a daily basis if the parties have 500 or more outstanding transactions (or weekly or quarterly if there are smaller numbers of outstanding transactions). ESMA has stated that the EMIR requirements apply to transactions between FCs and NFCs and non-EU entities.
	If the counterparties have more than 100 swaps outstanding with each other at any time during the calendar quarter	Once per calendar quarter	If the counterparties have more than 100 derivatives outstanding with each other at any time during the quarter	Once per quarter	
	If the counterparties have 100 or less swaps outstanding with each other at any time during the calendar year	Once per year	If the counterparties have 100 or less derivatives outstanding with each other	Once per year	
	For all swaps between SDs/MSPs		For all derivatives where both counterparties are financial counterparties (FCs) and/or NFCs that exceed the Art. 10 clearing threshold		
	If the counterparties have 500 or more swaps outstanding with each other	Each business day	If the counterparties have 500 or more derivatives outstanding with each other	Each business day	
	If the counterparties have between 51 and 499 swaps outstanding with each other at any time during the week	Once per week	If the counterparties have between 51 and 499 derivatives outstanding with each other at any time during the week	Once per week	
	If the counterparties have 50 or less swaps outstanding with each other at any time during the quarter	Once per quarter	If the counterparties have 50 or less derivatives outstanding with each other at any time during the quarter	Once per quarter	

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Scope – Parties	<p>SDs/MSPs must agree in writing on terms of reconciliation with counterparties (does not require reconciliation of swaps cleared by a DCO).</p> <p>Does not apply to swaps if no SD or MSP is involved.</p> <p>No exemption for inter-affiliate transactions.</p> <p>Reconciliation can be performed by a third party.</p>	<p>FCs/NFCs must agree in writing (or other equivalent electronic means) on terms of reconciliation with counterparties for OTC derivatives not cleared by a CCP.</p> <p>Must be agreed before entering into OTC derivatives contract.</p> <p>Requirements apply to derivatives if one counterparty is an FC or NFC.</p> <p>Requirements may not apply to transactions between an FC/NFC and other counterparties that are not FCs or NFCs (e.g. individuals) or entities exempt from EMIR (e.g. EU central banks).</p> <p>However, ESMA has indicated that FCs/NFCs must also comply with these requirements when dealing with entities established outside the EU.</p> <p>ESMA is consulting on draft RTS that would also apply these requirements to transactions between non-EU entities where the transaction has a direct, substantial and foreseeable effect in the EU or application of the rules is necessary or appropriate to prevent evasion of EMIR.</p> <p>No exemption for intra-group transactions.</p> <p>Reconciliation can be performed by a third party.</p>	<p>CFTC rules only apply to SDs/MSPs (but apply to all their swap transactions). EMIR requirements apply more broadly to any FC or NFC that enters into uncleared OTC derivative transactions (and, in some circumstances, to transactions between non-EU entities). For example, the CFTC rules would not require a corporate end-user to reconcile transactions with one of its corporate affiliates (if neither party is an SD/MSP). However, EMIR would require a corporate end-user to reconcile its transactions with an affiliate or any other counterparty.</p>

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Scope – Transactions	Applies to "swaps", not security-based swaps. Requirements do not apply to transactions cleared by a DCO.	Applies to derivatives that are uncleared OTC derivatives. Requirements do not apply to transactions cleared by a CCP. Requirements do not apply to transactions executed on a regulated market under MiFID (or an equivalent non-EU market – but no non-EU markets are yet considered equivalent).	CFTC rules only apply to swaps and not security-based swaps. EMIR requirements apply to all uncleared OTC derivatives and may include derivatives that would be security-based swaps, as well as certain transactions that are excluded from the definition of swaps and security-based swaps (e.g. equity options, some physically settled commodities transactions and potentially foreign exchange forwards and swaps). There may be transactions that are only in scope of one or other set of rules because of differing conditions as to clearing and execution.
Required Terms for Reconciliation	<ul style="list-style-type: none"> ■ Terms of swaps ■ Valuations ■ Resolve discrepancies in material terms and valuations ■ CFTC No Action Letter 13-31 excludes specific terms from required reconciliation but suggests that all other "material terms" under Part 45 of the CFTC's rules must be reconciled. 	<ul style="list-style-type: none"> ■ Key trade terms that identify the derivative (RTS provide non-exhaustive indicative list of 10 fields) ■ Must include valuation attributed in accordance with Art. 11(2) of RTS ■ Identify discrepancy in a material term, including its valuation 	CFTC rules specify a longer list of fields requiring reconciliation than the non-exhaustive, indicative list of 10 fields specified under EMIR. However, the EMIR rules also require that reconciliation cover the specific daily valuation required to be produced under Article 11(2) EMIR by FCs and NFCs over the clearing threshold. An ISDA working group is likely to recommend a list of 14 fields as an industry standard for reconciliation under EMIR.
Discrepancy Resolution	<p><u>For swaps between SDs/MSPs and other entities:</u> Required to have policies and procedures designed to resolve any discrepancy* in terms and valuation in a timely fashion</p> <p><u>For swaps between SDs/MSPs:</u> Required to immediately resolve any discrepancy* in materials terms</p> <p>* Less than 10% valuation difference is not treated as a "discrepancy" for these purposes.</p>	<p>Under Art. 15 of RTS 149, FCs/NFCs concluding transactions with each other must agree detailed procedures and processes covering:</p> <ul style="list-style-type: none"> ■ Identification, recording and monitoring of disputes relating to recognition or valuation of the derivative or the exchange of collateral ■ Resolution of disputes in a timely manner, with a specific process for those disputes that are not resolved within 5 business days 	CFTC rules specifically provide that the parties can disregard valuation differences of less than 10%. There is no specific equivalent provision in EMIR. However, ESMA has indicated that parties may agree upfront that discrepancies below a pre-defined threshold do not count as disputes but that all other discrepancies would give rise to disputes.

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Reporting & Record Keeping	<p>SDs/MSPs required to report to CFTC (and prudential regulators / SEC where relevant) valuation disputes involving amounts greater than \$20 million not resolved within:</p> <ul style="list-style-type: none"> ■ three business days (for swaps with other SDs/MSPs) ■ five business days (for swaps with entities that are not SDs/ MSPs) <p>Record keeping requirements apply.</p>	<p>Under Art. 15 of RTS 149, FCs must report to competent authority any disputes relating to an OTC derivative contract, its valuation or exchange of collateral for an amount or value greater than €15 million and outstanding for at least 15 business days. The dispute resolution rules require the firm to agree procedures that will at least record the length of time for which a dispute is outstanding, the counterparty and the disputed amount (and firms may also be subject to general requirements to keep records).</p>	
Recognition of Other Jurisdictions	<p>Pursuant to CFTC No Action Letter 13-45, if swap is subject to EMIR rules and CFTC rules, then compliance with EMIR rules will satisfy CFTC rules, except with respect to the CFTC requirement to report disputes involving amounts greater than \$20 million.</p>	<p>Under Article 13 EMIR, the European Commission may adopt implementing acts declaring that a non-EU country has legal, supervisory and enforcement arrangements that are equivalent to key Title II EMIR obligations (including portfolio reconciliation), ensure equivalent protection of professional secrecy and are effectively applied and enforced in an equitable and non-distortive manner. Where an implementing act is adopted, it implies that counterparties entering into a derivatives transaction subject to EMIR is deemed to comply with those obligations.</p> <p>No implementing acts yet adopted.</p>	<p>ESMA has given technical advice to the European Commission that the CFTC rules should be regarded as equivalent to the EMIR requirements, subject to certain conditions. It has also given advice on the Japanese rules (indicating that they should not be regarded as equivalent) and is expected to give further advice on the regimes in Australia, Canada, Hong Kong, Singapore and Switzerland.</p>
When rules apply	<p>Currently applicable.</p> <p>Pursuant to CFTC No-Action Letter 13-50, SDs/MSPs will not be subject to enforcement action for failure to comply with CFTC Regulation 23.502 prior to 15 September 2013 if intending to comply with EMIR rules in accordance with CFTC No-Action Letter 13-45.</p>	<p>From 15 September 2013 (and apply to all outstanding derivatives between the counterparties, including existing trades as well as new trades)</p> <p>Proposed RTS will specify when requirements apply to transactions between non-EU entities.</p>	

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