



Swap Dealer Enforcement Actions

A 10 Year Summary (2012 – 2022)

June 2023

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Executive summary

Qualitative & quantitative overview of report

Executive summary

10 years since Swap Dealer registration began, pursuant to reforms enacted in the Dodd-Frank Act, we look back on a decade of Commodities Future Trading Commission (“CFTC”) Enforcement Actions. Our analysis provides key insights into how the Commission’s Division of Enforcement has imposed **increasingly scrutinous oversight of registered firms**.

Observations across specific rule areas illustrate **repeat failures from firms**, sometimes across multiple subsidiaries, to build suitable swap dealer control frameworks. **Supervision failures are the most prevalent** – accounting for almost a third of total rule breaches across the period, indicating the weight the CFTC places on failures to diligently supervise matters related to their businesses as CFTC registrants.

From detailed **industry case studies** and rule area spotlights across Recordkeeping, Pre-trade Mid Market Marks, and Reporting rule areas, this report **synthesizes the most impactful themes** from the recent incidents and regulatory actions, and **offers practical recommendations** on what the Board, Senior Management, including business and risk functions, can do to immediately evaluate and **address the types of vulnerabilities** that led to these incidents.

Swap Dealer enforcement actions have totalled almost **\$1bn** over the past 10 years

\$714m the cost of non-compliance for Swap Dealers in 2022 alone

\$100m the largest cost of non-compliance for a single firm with a Swap Dealer

10% average increase year on year in the number of firms facing enforcement actions since the regime began

42 enforcement actions across **7** countries and covering **34** unique registered Swap Dealers

Overview of CFTC division of enforcement actions

Our analysis and market expertise aims to highlight trends and areas of regulatory risk within the industry

Background

The CFTC provides ongoing regulation of the U.S. derivatives markets, and through its Division of Enforcement ("DOE"), detects, investigates and prosecutes violations of Commodities Exchange Act ("CEA") and CFTC regulations.

Upon consideration of the DOE's enforcement recommendations, the CFTC authorizes administrative or federal action. For the purpose of summary, actions have been categorized to illustrate areas of specific focus for firms operating in the industry. Categories are defined using the various swap dealer rule areas (e.g. Part 20.1 – 20.11 Large Trader Reporting for Physical Commodity Swaps).

This analysis excludes any enforcement orders resulting from unlawful trading practices for the purpose of market manipulation, and generally includes registered Swap Dealers (excluding other registrants such as Futures Commission Merchant's ("FCM's") and Commodity Pool Operators).

Analysis of the enforcement actions over the previous ten years indicate a number of trends:

1

Increased scrutiny of provisionally registered swap dealers, by measure of the number of firms facing enforcement actions per calendar year.

2

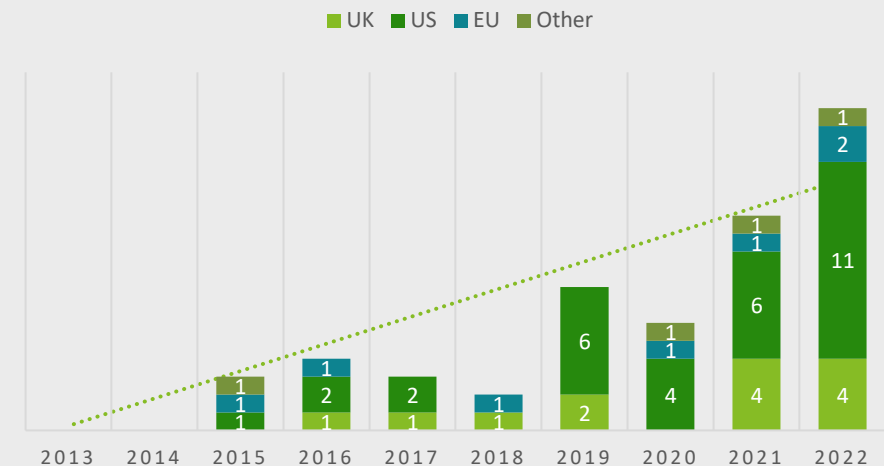
Supervision failures, closely followed by reporting and recordkeeping failures, are the most commonly occurring violations over the period.

3

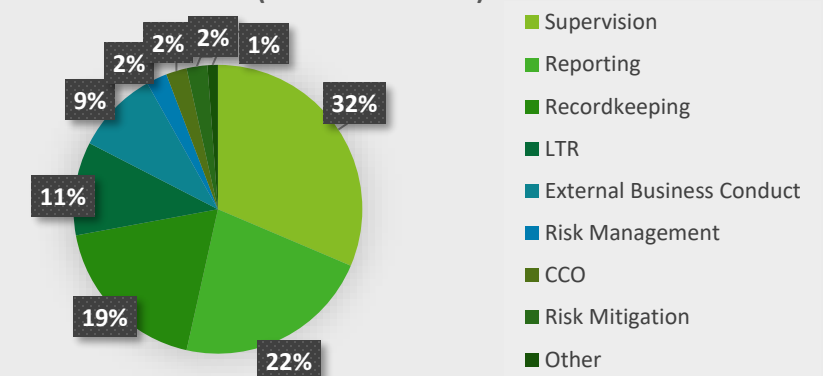
Reporting failures are likely to highlight other violations to the CFTC, specifically with regards to supervision.

- Source data taken from CFTC Division of Enforcement website: [Division of Enforcement | CFTC](#) and [CFTC Requests Public Input on Simplifying Rules | CFTC](#). Data covers the period 2013-2022.

NO. OF FIRMS FACING ENFORCEMENT ACTIONS PER YEAR (ILLUSTRATIVE)



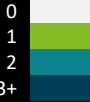
ENFORCEMENT ACTION RULE AREAS (ILLUSTRATIVE)



Heatmap

Diagram illustrates the number of violations across CFTC rule areas, broken down across umbrella firm jurisdiction and size

Key – Number of entities facing enforcement orders



US vs Non-US swap dealers

Rule Area	US - Large	US - Medium	US - Small
Reporting	2	2	2
Supervision	3+	2	2
Recordkeeping	3+	1	1
Large Trader Reporting	1	1	1
External Business Conduct	0	1	0
Risk Management	0	0	0
Chief Compliance Officer	0	0	0
Risk Mitigation	0	0	0
Average Fine Amount	\$37m	\$19m	\$9m

Non-US - Large	Non-US - Medium	Non-US - Small

Non-US regional breakdown

Canada	UK	Europe ³	Asia Pacific
\$50m	\$14m	\$22m	\$17m

Commentary



- Heatmap illustrates the distribution of categorized CFTC rule violations across the range of swap dealer enforcement orders.
- Firms are grouped by their corporate umbrella home jurisdiction, and by size based on status as a global systemically important bank (G-SIB)¹.
- We observe a **greater number of enforcement actions imposed on non-US based firms**, indicating that where the Commission has a more limited ability to oversee non-US swap dealers, a stricter lens is applied as a deterrent for non-compliance with CFTC regulations.



- In some instances, enforcement orders were distributed across multiple subsidiaries². This highlights instances **where failure to work across subsidiaries internally has led to multiple enforcement actions**.
- The diagram also demonstrates the common linkage between failures in underlying rules and related supervision failures. Specifically, **numerous instances arise where the firm had no adequate supervisory systems** in place that could have prevented or corrected inaccurate reporting, recordkeeping or client disclosures.

¹ Large firms are defined as G-SIBs with a countercyclical buffer of >1%, Medium firms are defined as G-SIBs with a 1% countercyclical buffer, and Small firms are non G-SIBs.

² For example, where firms have seen one enforcement order split across several entities, this would still be considered as one enforcement action against the corporate umbrella firm.

³ Includes Switzerland

Enforcement action analysis

Findings from analysis of enforcement actions across rule areas

Rule area	Recordkeeping	Supervision	External Business Conduct	Risk Management	Reporting
Highest fined rule areas per topic (%)	Pre-Execution Trade Information 88% 23.202 (a) (1)	Diligent Supervision	Daily Mark	Business Continuity and Disaster Recovery	Reporting of swaps to registered swap data repositories 68% 2(a)(13)(G)
	Keeping Books and Records Open to Inspection & Examination 75% 4s(f)(1)(C)	93% 23.602	63% 23.431 (d)	100% 23.603	Responsibilities to Report Swap Transaction and Pricing Data in Real Time 47% 43.3 (a)
	Transaction & Position Records 75% 23.201 (a)	Customer Protection Rules - Supervision	Know Your Counterparty	Identification of Risks and Risk Tolerance	Legal Entity Identifiers
		48% 166.3	38% 23.402 (b)	50% 23.600 (c) (1) (i)	32% 45.6
Average fine amounts (per topic area)	\$47m	\$33m	\$12m	\$5m	\$3m

1 US Based Firms

Most frequently violated **Recordkeeping** rules **23.202(a)(1)** and **4s(f)(1)(C)** in relation to pre-execution trade information and keeping books and records open to inspection and examination.

2 UK Based Firms

Most frequently violated **Reporting** rule **43.3(a)** in relation to reporting swap data in real time, rule **45.14(a)** and **43.3(e)** in relation to correction of errors, and **LTR** rules **20.4** and **20.7**

3 European Based Firms

Most frequently violated **Reporting** rule **2(a)(13)(G)** in relation to reporting of swaps to registered swap data repositories and **Diligent Supervision** rule **23.602**

Recordkeeping spotlight

Findings from analysis of swap dealer CFTC enforcement actions

Recordkeeping



The CFTC has exponentially increased their volume of infractions handed out over the last 3 years (as displayed in the graphic to the right)



These infractions have in large part been related to communication practices, with 2021 and 2022 having a significant number of fines for firm's lack of supervision over and adherence to internal communication policies and procedures.



11 firms in 2022 alone were handed increased fine amounts in response to findings of unapproved communication methods being used at the largest financial institutions. This included compliance and supervisory personnel as well as trading personnel using apps such as WhatsApp and text messaging to communicate.

Recordkeeping/supervision enforcements by year (illustrative)



Typical failures from firms

1

Failure to maintain required records

2

Failure to keep records in required manner

Recordkeeping reason for focus



The CFTC states that recordkeeping requirements are a key to the Commission's oversight of registrants and disregard of these principles severely threatens the Commission's ability to effectively and efficiently conduct examinations and investigations and provide oversight of the swap dealer markets. The CFTC has proven that it will, [“continue to vigorously pursue registrants that fail to comply with the core regulatory obligations such as recordkeeping,”](#) as shown in the increase in enforcements over the recent years. The emphasis the CFTC has put on recordkeeping, reporting, and supervision should motivate firms to self-examine their existing environments to ensure there is adequate oversight and key controls in place.

Actions to consider



Understanding the main areas of focus, firms should ensure they have sufficient and satisfactory control environments in place surrounding communication methods for sales and trading personnel.



Firms should ensure there is adequate 1st, 2nd, and 3rd line oversight and risk management over sales and trading activity with an emphasis on appropriate review, monitoring, and escalation of inappropriate communication methods such as through WhatsApp, personal text, and Signal.

Pre-trade mid-market marks spotlight

Findings from analysis of swap dealer CFTC enforcement actions

Pre-trade mid-market marks



The main source of infractions related to Pre-Trade Mid-Market Marks (“PTMMMs”) can be categorized as bad actors in the swap dealer market including one firm that withheld full mark-ups due to a concern that providing accurate marks would reduce revenue and another making false and misleading statements to the CFTC during investigation.

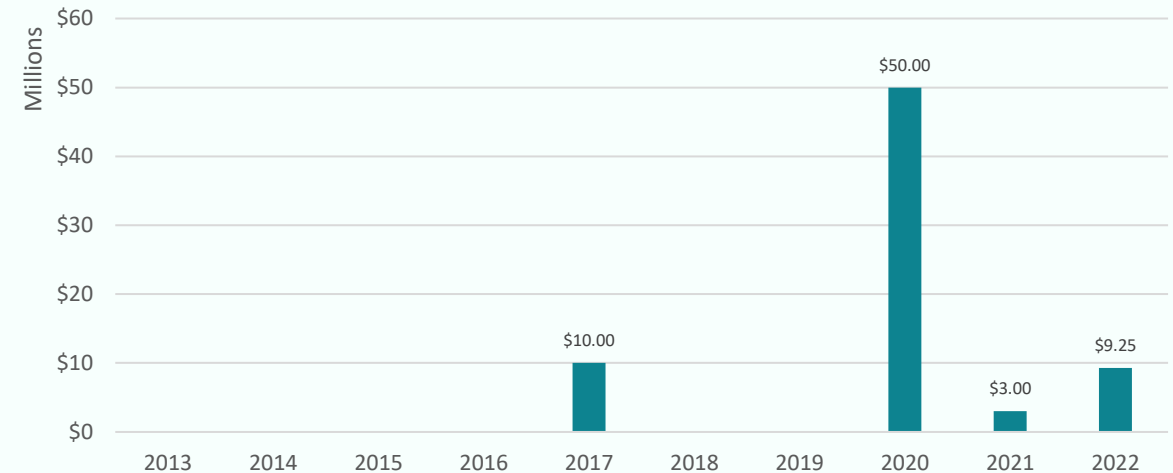


The significant increase in fine amount can be attributed to the bad actors as mentioned above. Overall, fine amounts were minimal relating to PTMMMs.

NOTE

This is an area with observed consistent challenges for firms

PTMMM/supervision enforcements by year (illustrative)



Pre-trade mid-market mark focus area



Pre-trade mid-market marks violations have been highlighted to reiterate the importance of acting in good faith and providing accurate information to the CFTC for all reporting requirements swap dealers are required to fulfill.

The CFTC has also shown the importance of cooperating and providing accurate information in relation to CFTC investigations or examinations. Bad actors, failing to comply with the CFTC’s process have been proven to pay heavier infraction penalties and have damaged firm’s reputation as a registered swap dealer.

Actions to consider



The importance of acting in good faith in the swap dealer market is essential to the CFTC’s ability to monitor and provide a fair market. For this reason, firms should ensure they are doing everything they can to provide accurate and timely information to the CFTC.

Firms should ensure their mark methodology is sufficient and aligned to industry standards and acceptable by CFTC regulation. There should be oversight and supervision over all PTMMM activity with documented policy and procedures and clear escalation channels. As with reporting to SDRs, there should be an adequate control environment to prevent and detect potential errors or omissions in firm’s requirement to report PTMMMs.

Reporting spotlight

Findings from analysis of swap dealer CFTC enforcement actions

Reporting

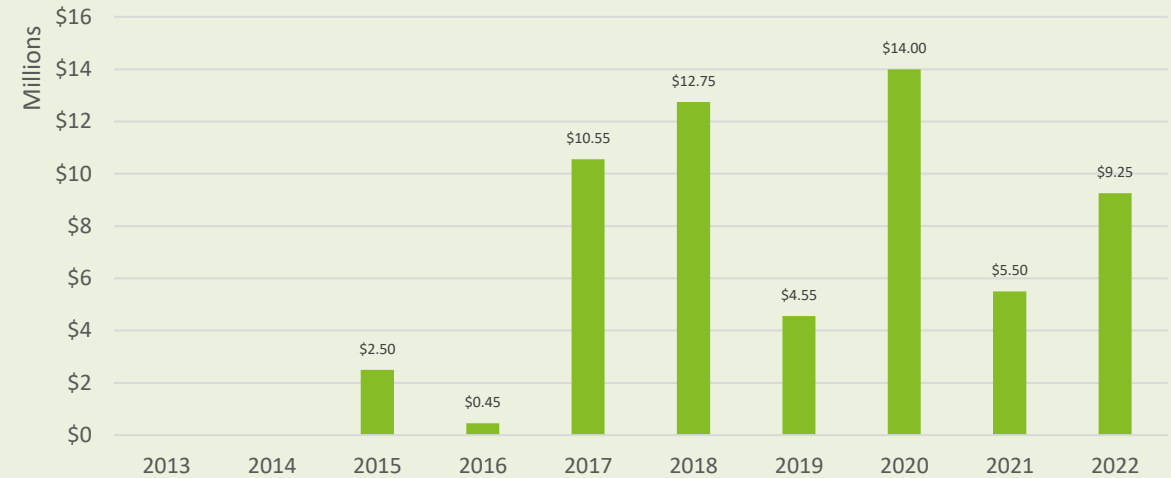


Reporting has been subject to consistent enforcement actions from 2015 – 2022.



Reporting infractions given out by the CFTC were mainly related to the following areas: inability to report Legal Entity Identifier (“LEI”) information for swap transactions properly, failure to report swap data timely and accurately to the Swap Data Repository (“SDR”), failure to implement required policies and procedures and related supervision failures.

Reporting enforcements by year (illustrative)



Reporting reason for focus

The CFTC has emphasized on multiple occurrences the importance of accurate and timely reporting

CFTC Director of Enforcement

“when reporting parties fail to meet their reporting obligations, the CFTC cannot carry out its vital mission of protecting market participants and promoting market integrity.”

The data shows that the CFTC has shown consistent enforcement and will continue to deliver enforcement actions if firms do not ensure sufficient reporting and supervision over reporting for swap dealer activities.

Actions to consider

The importance reporting plays in the overall swap dealer market and the emphasis the CFTC holds on accurate reporting should push firms to review their current reporting processes and ensure reporting methods are sufficient to CFTC expectations.

This would include having effective preventative and detective controls in place, documented policies and procedures that adequately provide reporting processes and escalations for sales and trading personnel, and adequate personnel in supervisory positions that have the necessary knowledge of swap dealer markets.

Key takeaways

Findings from analysis of swap dealer CFTC enforcement actions

Key takeaways

1

Scrutiny of registrants has continued to increase from the launch of the regime

The average number of enforcement actions per year and monetary penalties imposed has **trended upwards year on year**, with 2022 seeing the largest cost to the industry since the CFTC regime began. **Recordkeeping** violations resulted in the largest fines on average, closely followed by **Supervision**.

2

Areas firms struggle to get right

Within the regulatory areas covered by the CFTC, specific **pain points** are identified through analysis of enforcement actions over the 10 year time period. Frequent CFTC rules breached relate to **pre-execution trade information** (for example, use of unapproved communication methods), failure to disclose **daily marks**, and failure to properly report **swap data (such as LEI's) in real time**.

3

Despite substituted compliance failures and violations still persist

In December 2013, the CFTC issued a **Comparability Determination for Substituted Compliance Purposes**. The determination covers Internal Business Conduct Requirements, specifically; **Chief Compliance Officer (CCO) reporting**, **risk management** and **recordkeeping regulations**. Despite this, compliance failures from EU and UK registered firms still persist, with **11 instances** of EU and UK firms facing enforcement actions since 2021.

Going forward considerations



Firms should have adequate swap dealer control frameworks in place, including firm-wide inventory of swap dealer controls and sub-attestation processes.



Self-review existing documentation and capabilities to identify any gaps against the regulatory requirements, considering inter dependencies between the different Rule Making Areas ("RMAs") to leverage synergies.



Assessment of current operating model and identification of IT and operational solutions to address applicable requirements, including application of the CFTC's transaction and entity-level requirements on a cross-border basis.



Assess comparability determinations and CFTC Staff Letters where applicable.

How we can help

- Our Team **includes former regulators from the NFA, CFTC, SEC and FSA / BoE alongside industry practitioners** with regulatory, operational, and technological expertise as well as direct experience of regulatory examinations.
- Observing, driving, and implementing industry leading practices; with direct experience advising regulators during early phases of regulatory processes.
- Leading derivative reform initiatives (e.g., Dodd-Frank Act Title VII, MiFID II, EMIR, etc.) assisting firms both directly (e.g., client-specific engagements) and indirectly (e.g., via industry wide initiatives).

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Rule Allocations

Rule Area	CFTC Rule	Reg Title
Recordkeeping	1.31	Regulatory records; retention and production.
	1.35	Records of commodity interest and related cash or forward transactions.
	23.201	Required Records
	23.202	Daily trading records
	23.203	Records; retention and inspection
	23.502	Portfolio reconciliation.
	43.3	Method and timing for real-time public reporting.
	43.4	Swap transaction and pricing data to be publicly disseminated in real-time.
Reporting	45.3	Swap data reporting: Creation data.
	45.4	Swap data reporting: Continuation data.
	45.5	Unique transaction identifiers.
	45.6	Legal entity identifiers.
	45.13	Required Data Standards
	45.14	Correcting errors in swap data and verification of swap data accuracy.
	46.3	Data reporting for pre-enactment swaps and transition swaps.
	46.4	Unique identifiers.
	46.11	Reporting of errors and omissions in previously reported data.
	23.204	Reports to swap data repositories.
	20.4	Reporting Entities
	20.5	Series S Filings
LTR	20.6	Maintenance of books and records
	20.7	Form and manner of reporting and submitting information or filings.
	23.402	General provisions.
	23.431	Disclosures of Material Information
External Business Conduct	23.433	Communications - fair dealing.
CCO	3.3	Chief compliance officer
Supervision	23.602	Diligent Supervision
	166.3	Supervision
Risk Management	23.600.	Risk Management Program for swap dealers and major swap participants.
	23.603	Business continuity and disaster recovery.
Other (Trade Execution)	37.9	Methods of execution for required and permitted transactions.



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