

Record Keeping and Call Recording for Dodd-Frank

A guide to regulatory
compliance



What is the Dodd-Frank Act?

It's the most significant financial services regulatory legislation in the US since the Securities Act of 1933. The Dodd-Frank Act is a set of rules for the OTC derivatives market in existence since 2010. For the first time financial institutions are required to record all their communications. And while it's an Act created for US markets it has implications for many businesses that trade with the US.

Financial institutions and trading houses are under massive pressure to find ways that really work to record voice and data communications.

The Dodd-Frank Act doesn't just apply to US-based financial institutions (which it defines as US persons). Many non-US-based institutions that trade with US persons must also comply with the regulations.

Other G20 organisations are also putting their own legislation into place. EU measures include MiFID, EMIR, REMIT and MAD/MAR.

What's clear is that wherever you trade in OTC derivatives, you will be under growing pressure to implement voice and data recording for compliance purposes. The time to ensure your organisation has a working solution in place is now.

The Regulations – an overview

There are two specific Commodity Future Trading Commission (CFTC) regulations you need to know about that relate to voice and data recording:

- Daily trading records: CFTC §23.202
- Location of records: CFTC §23.203

There are also rules on secure storage of data which promulgate Write Once Read Many (WORM) compliance that, since the advent of Dodd-Frank, now apply more strictly than ever to financial institutions.

- Format of records: CFTC Rule 1.31
- SEC 17a-3
- SEC 17a-4

Failure to comply means heavy financial penalties. It's critical to have a compliant solution in place.

In this document we outline what those rules are – and how Red Box Quantify can help.

What the rules say about daily trading records - CFTC §23.202

(a) Daily trading records for Swaps

- (1) Pre-execution trade information. Each swap dealer and major swap participant shall make and keep pre-execution trade information, including, at a minimum, records of all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of a swap, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media. Such records shall include, but are not limited to:
- (i) Reliable timing data for the initiation of the trade that would permit complete and accurate trade reconstruction;
 - (ii) A record of the date and time, to the nearest minute, using Coordinated Universal Time (UTC), by timestamp or other timing device, for each quotation provided to, or received from, the counterparty prior to execution.

(b) Daily trading records for related cash and forward transactions

Each swap dealer and major swap participant shall make and keep daily trading records of all related cash or forward transactions it executes, including all documents on which the related cash

or forward transaction information is originally recorded. Each swap dealer and major swap participant shall ensure that its records include all information necessary to conduct a comprehensive and accurate trade reconstruction for each related cash or forward transaction. Each swap dealer and major swap participant shall maintain each transaction record in a manner identifiable and searchable by transaction and by counterparty. Such records shall include, but are not limited to:

- (1) A record of all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the conclusion of a related cash or forward transaction, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media;
- (2) Reliable timing data for the initiation of the transaction that would permit complete and accurate trade reconstruction;
- (3) A record of the date and time, to the nearest minute, using Coordinated Universal Time (UTC), by timestamp or other timing device, for each quotation provided to, or received from, the counterparty prior to execution;
- (4) A record of the date and time of execution of each related cash or forward transaction, to the nearest minute, using Coordinated Universal Time (UTC), by timestamp or other timing device.

How Red Box can help

However you trade, we can help you comply. Whether you communicate through fixed line, mobile, Hoot 'n' Holler, dealerboards, SMS or voicemail, our Quantify recording solution provides an accurate record of all your trading activity. That's thanks to the way Quantify integrates with all the major telephony and trading solutions to record and store all communications. The detail's vital. We use a centralised time protocol such as NTP to ensure all recordings are synchronised and time-stamped using UTC as required.

You can build up a picture of how a trade took place by calling on Quantify Event Reconstruct to piece together all communication sources and replay them as they happened.

When you need to hold calls for auditing, investigation or dispute resolution, we've got that covered too. CallSafe functionality lets you lock transactions for litigation hold so that they can be stored on a system for as long as you need them to be, without the risk of tampering. You get peace of mind that your recordings are safe whatever happens.

What the rules say about location of records - CFTC §23.203

(a) Location of records

- (1) All records required to be kept by a swap dealer or major swap participant by the Act and by Commission regulations shall be kept at the principal place of business of the swap dealer or major swap participant or such other principal office as shall be designated by the swap dealer or major swap participant. If the principle place of business is outside of the US, its territories or possessions, then upon the request of a Commission representative, the swap dealer or major swap participant must provide such records as requested at the place in the United States, its territories, or possessions designated by the representative within 72 hours after receiving the request.
- (2) Records of any swap or related cash or forward transaction shall be kept until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction, and for a period of five years after such date. Such records shall be readily accessible until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction and during the first two years of the 5-year period following such date. Provided, however, that records of oral communications communicated by telephone, voicemail, mobile device, or other digital or electronic media pursuant to §23.202(a)(1) and (b)(1) shall be kept for a period of one year. All such records shall be open to inspection by any representative of the Commission, the United States Department of Justice, or any applicable prudential regulator.

How Red Box can help

Our Quantify solution can help you become compliant with this regulation by storing your recordings securely and to a standard that guarantees they are admissible in a court of law.

Secure doesn't mean inaccessible though. A web-based interface lets authorised users access online or archived recordings from anywhere in the world. That means whether you're in the US or elsewhere you can quickly comply with requests for information. And for added security you get a full audit trail of who has accessed those recordings.

Quantify can be configured to automatically retain data for any set retention period. And when you need secure deletion to maintain disclosure levels across transaction types, Quantify can handle that too.

Resilience is key. Unique frame-based recording, which ensures that all active channels are recorded in one file, ensures minimal file loss and no fragmentation of stored data. In the event that a system should fail, the deployment of a Secondary recorder ensures the highest levels of resilience with minimal duplication of data to reduce storage costs.

Six ways Red Box Quantify helps your organisation comply

▶ Recording whatever way you communicate

Quantify records and stores communications from multiple sources. Whether you use dealerboards, fixed line, Hoot 'n' Holler, SMS, voicemail or mobile phones, Quantify will work for you.

▶ Managing your choice of telephony

If you use both traditional telephony and VoIP, that's no problem. We manage hybrid recording on a single server.

▶ Giving you value

A single server can support up to 1000 channels of VoIP, 480 channels of E1, 192 channels of T1 and 240 channels of analogue/digital extension. That's a lot of recording, with a very small footprint.

▶ Integrating easily with your systems

Quantify works with the leading vendors for great compatibility. If you use technology from suppliers such as Speakerbus, BT, IPC, IP Trade, IPFX and Etrali, you'll find Quantify simple to integrate.

▶ Investigating dealing and complaints fast

With Quantify Event Reconstruct you can quickly build a complete picture of a trade. That means you can easily piece together data from different sources for auditing, investigation and evidence disclosure.

▶ Preserving calls securely for litigation hold

When you need to lock down important calls so they exceed the requirements of your standard retention policy, use CallSafe to place them into secure network storage, where they are stored indefinitely and cannot be deleted or tampered with.

What the rules say about format of records – CFTC §1.31

CFTC Rule 1.31, in existence before Dodd-Frank was enacted, mandates the use of Write Once Read Many (WORM) compliant media for storage of records. The rule requires traders to securely archive recorded data for a long retention period so that it is protected against alteration or erasure. The provision is reinforced by SEC Rules 17a-3 and 17a-4.

Rule §1.31(b)(1)(ii)(A), is designed to ensure that electronically stored records are protected against erasure or overwriting for the required retention period so that they can be accurately retrieved and viewed. The system must also allow records to be retained beyond the standard period if they are required to be kept for other legal requirements.

Rule §1.31(b)(1)(ii)(B), provides for automatic verification of the quality and accuracy of the storage media recording process. It is intended to ensure that data being used for trade reconstruction as required by the CFTC is accurately reproduced. Any existing retention system that does not currently meet the requirements.

The Securities and Exchange Commission (SEC) has published guidance with respect to paragraph (f)(2)(ii)(A) of Rule 17a-4, which requires broker-dealers maintaining records electronically to use a digital storage medium system that preserves the records exclusively in a non-rewriteable, non-erasable format. The rule also clarifies that the storage system must prevent alteration or erasure of the records for their required retention period.

How Red Box can help

Write Once, Read Many (WORM) is central to the secure storage of data. It's a data storage technology that lets you write information to storage media just once. By using WORM compliant technology you can avoid accidental or intentional alteration or deletion of data.

Red Box Quantify works alongside compatible WORM-compliant NAS archiving products to meet the stringent CFTC and SEC rules. For added security, Quantify's unique frame-based technology authenticates each reordering with a lifetime digital signature.



More ways Red Box Quantify can help your business comply

► Clarity of recording

Our unique frame-based recording records all active channels and writes data to disk every 5 seconds. As a result, you'll see no fragmentation of storage media.

► Continuity through reliability

With Primary and Secondary recorders in place and automated failover you can be sure of achieving the highest level of resilience.

► Proven security

All recorded calls are authenticated to prove they have not been tampered with.

► Grows with your organisation

Red Box Quantify is scalable. It's designed to grow with your organisation.

► Easy-to-use interface

Quantify's web-based interface is easy to use, secure and lets authorised users access information wherever they are in the world.

► Global support

You'll find Red Box around the world and supported by a network of over 300 partners. Our aim is always to give you the highest levels of quality, service and support.

The story behind the Dodd-Frank Act

Ever since the global financial crisis the G20 countries have been working to create a new global financial regulatory framework. Their aim is to mitigate any further market shock, increase market resilience and serve the needs of the true economy. They're demanding greater regulation and transparency in the sector.

The OTC derivatives market was a particular concern because it was largely unregulated. That's why in 2009 it was decided that three things must happen. All standardised OTC derivative contracts would be traded on exchanges or electronic trading platforms where appropriate and cleared through central counterparties, OTC contracts were to be reported to trade repositories, and non-centrally cleared contracts were to be subject to higher capital requirements.

Overseen by the Financial Stability Board, countries would advance these rules individually to an agreed timetable.

The US response was the Dodd-Frank Wall Street Reform and Consumer Protection Act, more commonly known as the Dodd-Frank Act, which passed on 21 July 2010. It effectively established a comprehensive new statutory framework for swaps and security-based swaps.

The Act repeals and amends various sections of the Commodity Exchange Act and adds new provisions. It also requires the Commodity Futures Trading Commission (CFTC) and the US Securities Exchange Commission (SEC) to promulgate rules to implement the new framework.

For the OTC derivatives market, the drive towards greater accountability and transparency has meant new and stringent requirements to keep accurate records.

The rules cover every area of communication – spoken and written. It's not just fixed-line telephone conversations, faxes and email correspondence that need to be recorded. Voicemails, instant messaging chats, conversations in chat rooms and communication using mobile devices and any other electronic media also need to be recorded.



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The goal of the law is to:

- Bring public market transparency and the benefits of competition to the swaps marketplace;
- Protect against Wall Street's risks by bringing standardised swaps into centralised clearing;
- Ensure that swap dealers and major swap participants are specifically regulated for their swap activity.

CFTC Chairman Gary Gensler
(Speaking about Dodd-Frank)

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Red Box's voice and data recording solution is trusted by some of the biggest names in the City. We work with top banks, as well as many of the leading global brokers. Red Box Quantify is proven worldwide to support critical business processes and is the smart choice for helping your organisation achieve compliance with financial regulations.

Find out more at redboxrecorders.com

The information contained within this document is correct as at 14 April 2014. This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal assistance or other advice.

If you have any concerns about how topics raised in this paper could affect your business, Red Box recommends seeking qualified legal advice.

Red Box Recorders is a global provider of voice and data recording solutions that solve technical and complex business challenges in the smartest and most effective manner possible. The company's advanced and proven solutions enable the capture, authentication, analysis and evaluation of multimedia communications from a wide range of data sources including fixed-line and mobile calls, radio, screen, SMS and instant messaging. Organisations within the contact centre, financial services and public safety sectors who work with Red Box Recorders are not only able to comply with the latest recording regulations, but also become more competitive, productive and efficient.

Red Box solutions can be found throughout the world and are supported by its established global infrastructure and a network of over 300 partners worldwide to deliver the highest levels of quality, service and support. Designed with the user in mind, its simple and easy interface, deployment, and maintenance, combined with its unrivalled functionality, makes Red Box increasingly the smart choice for businesses.

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