



# Commodity Futures Trading Commission

## Office of Public Affairs

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## Q & A – Swap Transaction Compliance and Implementation Schedule: Clearing Requirement under Section 2(h) of the CEA

### What is the goal of the Final Rulemaking?

The Commodity Futures Trading Commission (Commission) is proposing regulations that would establish a schedule to phase in compliance with the clearing requirement under Section 2(h)(1)(A) of the Commodity Exchange Act (CEA) under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

### How does the compliance schedule work?

The compliance schedule is triggered by the Commission's adoption of a clearing requirement that provides for use of the compliance schedule. The compliance schedule identifies three categories of market participants and allots a compliance timeframe for each.

#### Phase 1/Category 1 Entities

- Category 1 Entities include swap dealers, security-based swap dealers, major swap participants, major security-based swap participants, and active funds.
- The compliance schedule will phase in compliance with the clearing requirement for any swaps between Category 1 Entities or a Category 1 Entity and any other entity that desires to clear the transaction within the first 90 days after the Commission issues any clearing requirement.
- The compliance schedule will provide these market participants with the least additional time to come into compliance based on their level of activity, market experience, resources, and their status as registrants with the CFTC or SEC.

#### Phase 2/Category 2 Entities

- Category 2 Entities include commodity pools; private funds as defined in Section 202(a) of the Investment Advisors Act of 1940, other than active funds; or persons predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in Section 4(k) of the Bank Holding Company Act of 1956, provided that the entity is not a third-party subaccount. The Commission modified its proposal to remove employee benefit plans identified in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 from Category 2.
- The compliance schedule will phase in compliance for swaps between a Category 2 Entity and Category 1 Entity, another Category 2 Entity, or any other entity that desires to clear the transaction within 180 days after the Commission issues any clearing requirement.
- The compliance schedule provides these market participants 90 more days than Category 1 Entities because these market participants are not required to be registered with the Commission and are likely to be less experienced and less frequent users of the swap markets than those in Category 1.

#### Phase 3/Category 3 Entities

- The compliance schedule will phase in compliance for all other swaps, including those involving third-party subaccounts, ERISA plans, and those not excepted from the clearing requirement within 270 days after the Commission issues a clearing requirement.

- The compliance schedule provides third-party subaccounts the most amount of additional time to bring their swaps into compliance as they are likely to require the most amount of time for documentation, coordination, and management.

### **What is required to happen before the additional time proposed in the compliance schedules starts to run?**

The Commission must adopt a clearing requirement determination in order for the compliance schedule to begin to run, and specify that the compliance schedules are applicable to such determination. The Commission also identified four rules that had to be finalized before market participants could be required to comply with a clearing requirement. The Commission has adopted all four of the identified rules. Specifically, the Commission has:

- Adopted final rules related to the end-user exception to required clearing under Section 2(h)(7) of the CEA.
- Finalized rules with the SEC that would further define “swap dealer” and “major swap participant.”
- Finalized rules with the SEC that would further define “swap.”
- Adopted final rules relating to the protection of cleared swaps customer contracts and collateral.

### **Why is the Commission not finalizing the compliance schedule for the trade execution requirement?**

The Commission will finalize the final implementation schedule for the Trade Execution Requirement in a separate rulemaking. Likewise, the Commission will address the proposed compliance schedules for trading documentation and margining under section 4s of the CEA, 76 FR 58176 (Sept. 20, 2011), at the same time that it finalizes the underlying documentation and margin rules.