



Commodity Futures Trading Commission

Office of Public Affairs

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
www.cftc.gov

Final Rules on Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants

The Commodity Futures Trading Commission (Commission) is adopting final rules establishing reporting, recordkeeping, and daily trading records requirements for swap dealers and major swap participants.

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

Section 731 of the Dodd-Frank Act amends the Commodity Exchange Act (CEA) by inserting Sections 4s(f) and 4s(g), which establish reporting, recordkeeping, and daily trading records requirements for swap dealers and major swap participants.

Section 4s(f)(1) requires swap dealers and major swap participants to “make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant.” Under sections 4s(f)(1)(B)(i) and (ii), the Commission is authorized to prescribe the books and records requirements of “all activities related to the business of swap dealers or major swap participants,” regardless of whether or not the entity has a prudential regulator. All books and records are required to be open to inspection and examination by any representative of the Commission. Under section 4s(f)(1)(D), books and records relating to security-based swap agreements also must be open to inspection and examination by the Securities and Exchange Commission.

Section 4s(g)(1) requires swap dealers and major swap participants to “maintain daily trading records of the swaps of the registered swap dealer and major swap participant and all related records (including records of related cash and forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls.” Section 4s(g)(3) requires that daily trading records for swaps be identifiable by counterparty, and section 4s(g)(4) specifies that swap dealers and major swap participants maintain a “complete audit trail for conducting comprehensive and accurate trade reconstructions.”

Final Recordkeeping Rules

The records required under the final rules include full and complete transaction and position information for all swap activities, including all documents on which trade information is originally recorded. Transaction records are required to be maintained in a manner that is identifiable and searchable by transaction and by counterparty.

The final rules also require that swap dealers and major swap participants keep basic business records, including, among other things, minutes from meetings of the entity’s governing body, organizational charts, and audit documentation. Additionally, certain financial records, records of complaints against personnel, and marketing materials are required to be kept. Finally, swap dealers and major swap participants are required to maintain records of information required to be submitted to a swap data repository and reported on a real-time public basis.

Final Daily Trading Record Rule

The final rules prescribe daily trading record requirements, including records of trade information related to pre-execution, execution, and post-execution data. Pre-execution trade data includes records of all oral and written communications that lead to the execution of a swap. The final rules require swap dealers and major swap participants to ensure that they preserve all information necessary to conduct a comprehensive and accurate trade reconstruction for each swap, and that they maintain each trade records in a form identifiable and searchable by transaction and counterparty. Execution trade data includes all terms of each executed swap and the date and time, to the nearest minute, that each swap was executed. Post-execution data includes records of all confirmations, reconciliations, and margining of swaps.

Under the final rules, records to be retained also include information related to cash or forward transactions used to hedge, mitigate the risk of, or offset any swap held by the swap dealer or major swap participant.

Final Retention and Inspection Rules

The Commission also is adopting a rule that requires that all records be kept in accordance with existing Commission records rules, with the exception of records of, or related to, swap transactions, which would be retained for a longer period of time.

Final Rules Regarding Reports to Swap Data Repositories and Real-Time Public Reporting

The final rules require swap dealers and major swap participants to report their swaps in accordance with real-time public reporting rules (adopted by the Commission on December 20, 2011) and swap data rules (adopted by the Commission on December 20, 2011).



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Final Rules on Duties for Swap Dealers and Major Swap Participants

The Commodity Futures Trading Commission (Commission) is adopting final rules establishing and governing the duties of swap dealers and major swap participants.

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

Section 731 of the Dodd-Frank Act amends the Commodity Exchange Act (CEA) by inserting section 4s(j), which sets forth certain duties for swap dealers and major swap participants, including the duty to:

- 1) monitor trading to prevent violations of applicable position limits;
- 2) establish risk management procedures adequate for managing the day-to-day business of the swap dealer or major swap participant;
- 3) disclose to the Commission and to applicable prudential regulators general information relating to swaps trading, practices, and financial integrity;
- 4) establish and enforce internal systems and procedures to obtain information needed to perform all of the duties prescribed by Commission regulations;
- 5) implement conflict of interest systems and procedures; and
- 6) refrain from taking any action that would result in an unreasonable restraint of trade or impose a material anticompetitive burden on trading or clearing.

Risk Management Procedures

The Dodd-Frank Act requires swap dealers and major swap participants to establish risk management procedures adequate for managing their day-to-day business. The final rule requires swap dealers and major swap participants to establish a risk management program consisting of written policies and procedures designed to monitor and manage the risks associated with their swap activities. Under the final rule, the risk management program must take into account market risk, credit risk, liquidity risk, foreign currency risk, legal risk, operational risk, settlement risk, and all other relevant risks.

The final rules also require that swap dealers and major swap participants establish policies for monitoring their traders throughout the trading day for compliance with trading limits established by the firm and require traders to follow established procedures for executing and confirming transactions. The rules also require diligent supervision of traders and separation of traders from the risk management unit.

Monitoring of Trading for Position Limits

Under the final rule, swap dealers and major swap participants would be required to establish procedures to monitor for and prevent violations of applicable position limits established by the Commission, a designated contract market, or a swap execution facility. A swap dealer or major swap participant would have to:

- 1) provide annual training for personnel;
- 2) diligently monitor and supervise trading;

- 3) implement an early warning system;
- 4) test their position limit procedures;
- 5) document compliance with position limits on a quarterly basis; and
- 6) audit the procedures annually.

Diligent Supervision

The final rule would require each swap dealer and major swap participant to establish a system of diligent supervision over all activities performed by its partners, members, officers, employees, and agents, and requires the creation of a supervisory system with qualified supervisory personnel.

Business Continuity and Disaster Recovery

Under the final rule, swap dealers and major swap participants are required to establish a business continuity and disaster recovery plan designed to enable them to resume operations by the next business day following an emergency or other disruption.

General Information: Availability for Disclosure and Inspection

The final rule requires that swap dealers and major swap participants promptly disclose all information required by the Commission or a prudential regulator. To ensure prompt disclosure of all information required by the Commission, swap dealers and major swap participants are required to have adequate internal systems that will permit the Commission to obtain any information required in a timely manner.

Antitrust Considerations

Under the final rule, swap dealers and major swap participants are required to adopt policies and procedures to prohibit any action that results in any unreasonable restraint of trade or imposes any material anticompetitive burden on trading or clearing, unless necessary or appropriate to achieve the purposes of the CEA.



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Final Rule on Conflicts of Interest for Swap Dealers, Major Swap Participants, Futures Commission Merchants, and Introducing Brokers

The Commodity Futures Trading Commission (Commission) is adopting final rules establishing conflicts of interest requirements for swap dealers, major swap participants, futures commission merchants, and introducing brokers.

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

Section 731 of the Dodd-Frank Act amends the Commodity Exchange Act (CEA) by inserting a new section 4s(j)(5), which requires that swap dealers and major swap participants establish appropriate informational partitions between persons researching or analyzing the price or market for any commodity or swap and persons whose involvement in pricing, trading or clearing activities might potentially bias the judgment or supervision of persons engaged in research. Section 731 also requires additional partitions between persons “acting in a role of providing clearing activities or making determinations as to accepting clearing customers” from persons involved in pricing, trading or clearing activities.

Section 732 of the Dodd-Frank Act similarly amends section 4d of the CEA by directing futures commission merchants and introducing brokers to implement similar informational partitions between those researching or analyzing prices or markets for commodities and those involved in trading or clearing activities.

Influence on Research

The final rules will place restrictions on non-research personnel influencing the content of research reports prepared by research analysts employed by a swap dealer, major swap participant, futures commission merchant, or introducing broker. Additionally, the rules prohibit the supervision of research analysts by certain trading and clearing personnel. The final rules also prohibit swap dealers, major swap participants, futures commission merchants, or introducing brokers from considering a research analyst’s contributions to the trading or clearing business when setting the research analyst’s compensation.

Prohibition of Promise of Favorable Research

The final rules prohibit swap dealers, major swap participants, futures commission merchants, and introducing brokers from offering favorable research, or threatening to change research, for existing or prospective counterparties in exchange for business or compensation.

Disclosure of Personal Conflicts of Interest

A futures commission merchant or introducing broker must disclose in research reports and a research analyst must disclose in public appearances whether the research analyst maintains a financial interest in any derivative of a type that the research analyst follows, and the general nature of the financial interest.

Under the final rules, swap dealers, major swap participants, futures commission merchants, and introducing brokers are required to disclose whether a research analyst maintains a financial interest in any derivative of a type

that the research analyst follows, and the general nature of the financial interest. Research analysts must make the same disclosure when making public appearances.

Prohibition on Retaliation

The final rules prohibit swap dealers, major swap participants, futures commission merchants, and introducing brokers from retaliating against any research analyst who produces a research report that may adversely impact certain of the firm's business activities.

Conflicts of Interest in Clearing Activities

Under the final rules, swap dealers or major swap participants are prohibited from interfering with or attempting to influence decisions related to the provision of clearing or the acceptance of clearing customers. Swap dealers and major swap participants also must maintain appropriate partitions between business trading personnel and the personnel of an affiliated clearing member. Additionally, no futures commission merchant shall permit an affiliated swap dealer or major swap participant from interfering with or attempting to influence decisions related to the provision of clearing or the acceptance of clearing customers.



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Final Rule on Designation of Chief Compliance Officer and Preparation of Annual Compliance Report

The Commodity Futures Trading Commission (Commission) is adopting final rules concerning the designation, qualifications, and duties of the chief compliance officers (CCOs) of futures commission merchants, swap dealers, and major swap participants. Additionally, the final rules describe the required contents of the annual report detailing a registrant's compliance policies and activities, to be prepared by the chief compliance officer and furnished to the Commission

Applicable Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

The Dodd-Frank Act adds section 4s(k) of the Commodity Exchange Act (CEA) to provide for designation of a CCO for swap dealers and major swap participants. The CCO must report directly to the board or to the senior officer of the registrant, review and ensure the registrant's compliance with the CEA, resolve conflicts of interest, administer required policies, and establish procedures for the remediation of noncompliance issues. Section 4s(k) of the CEA also requires that the CCO prepare, sign, and certify an annual report that contains a description of the registrant's compliance with the CEA and Commission regulations, as well as each policy of the registrant, including the code of ethics and conflict of interest policies.

The Dodd-Frank Act also amends section 4d(d) of the CEA to require each futures commission merchant to designate a CCO, who is to "perform such duties and responsibilities as shall be set forth in regulations to be adopted by the Commission."

Qualifications of a chief compliance officer

The final rule requires that a CCO have the appropriate background and skills to fulfill his or her responsibilities, and may not be disqualified from registration under the CEA. Although the CCO is not required to register with the Commission, the CCO must be a listed principal of the registrant, and therefore submit a fingerprint card and undergo a background investigation by the National Futures Association.

Duties of a chief compliance officer

The final rules track the required duties of the CCO set forth in the Dodd-Frank Act. The CCO must establish compliance policies; resolve conflicts of interest; take reasonable steps to ensure compliance of the registrant with the compliance policies, CEA requirements, and Commission regulations; identify noncompliance issues; and establish procedures for the remediation of such noncompliance issues. All of the above duties (with the exception of ensuring compliance) are to be undertaken in consultation with the board of directors or the senior officer of the registrant.

Contents of an annual report

Under the final rules, the CCO is required to prepare an annual report that would contain, among other things: a description of the registrant's compliance with the CEA, Commission regulations, and the registrant's own compliance policies; an assessment of the effectiveness of the registrant's policies; a discussion of areas for improvement; a description of the resources set aside for compliance; and a description of any non-compliance issues identified and addressed.