



Commodity Futures Trading Commission

Office of Public Affairs

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Q & A – Proposed Rule to Exempt Certain Swaps Executed by Cooperatives from the Swap Clearing Requirement

What is the purpose of the proposed rulemaking?

The proposed rule would allow cooperatives that would not otherwise qualify for the swap clearing requirement exception provided in the Dodd-Frank Act (commonly referred to as the “end-user exception”), but whose members individually would qualify for the exception, to elect not to clear certain swaps entered into for the benefit of their members. The end-user exception included in Section 2(h)(7) of the Commodity Exchange Act provides that the swap clearing requirement shall not apply to a swap if one of the counterparties to the swap: (1) is not a “financial entity”; (2) is using the swap to hedge or mitigate commercial risk; and (3) notifies the Commission how it generally meets its financial obligations associated with non-cleared swaps. In a separate rulemaking, implementing the end-user exception, certain small financial institutions with total assets of \$10 billion or less are exempted from the definition of “financial entities” pursuant to section 2(h)(7). However, certain cooperatives, whose members are eligible for the end-user exception, may be “financial entities” with assets in excess of \$10 billion. Those cooperatives act in the financial markets on behalf of their members and enter into swaps for the benefit of members. While the cooperative members could individually qualify for the end-user exception, the cooperatives could not. The proposed rule would allow the members to continue to access the financial markets through their cooperatives and still receive the benefits of the end-user exception.

Who is eligible to elect the cooperative exemption?

The proposed rule would provide that a cooperative can only elect the cooperative exemption if all of its members are either: (1) non-financial entities; (2) financial entities to which the small financial institution exemption applies; or (3) cooperatives themselves, each of whose members fall into one of the first two categories. This provision would limit the cooperative exemption to cooperatives whose members are eligible for the end-user exception.

What must an exempt cooperative do to elect the exemption for a swap?

The cooperative must comply with certain reporting requirements included in the proposed rule. When reporting a swap in accordance with the Commission’s rules, the electing cooperative must provide, or cause a reporting counterparty to provide, notice that the exception is being elected and the identity of the electing cooperative. In addition, the electing cooperative must provide additional information required by the rule in either an annual filing or on a swap-by-swap basis. These reporting requirements are essentially identical to those that apply to parties electing the end-user exception.

What swaps can a cooperative elect the exception for?

The proposed rule limits application of the cooperative exemption to swaps entered into with cooperative members in connection with originating loans for members or swaps that hedge or mitigate risks associated with member loans or member loan-related swaps.