



# Commodity Futures Trading Commission

## Office of Public Affairs

Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581  
[www.cftc.gov](http://www.cftc.gov)

## Q & A – End-User Exception to the Clearing Requirement for Swaps

### What is the purpose of the final rulemaking?

The final rulemaking implements the exception to the clearing requirement for non-financial entities and small financial institutions established by Congress in the Dodd-Frank Act. Specifically, Section 2(h)(7) of the CEA, added by the Dodd-Frank Act, provides that the clearing requirement shall not apply to a swap if one of the counterparties to the swap is a non-financial entity that is using the swap to hedge or mitigate commercial risk and notifies the Commission how it generally meets its financial obligations associated with non-cleared swaps. The final rule establishes criteria for determining whether a swap hedges or mitigates commercial risk for purposes of electing the exception. The rule also specifies the information that counterparties must report to satisfy the notification requirement.

### Who is eligible to elect the exception?

To elect the exception, a counterparty to a swap must be a non-financial entity. In the Dodd-Frank Act, Congress defined “financial entity” to include swap dealers and security-based swap dealers; major swap participants and major security-based swap participants; commodity pools; private funds, as defined in the Investment Advisers Act of 1940; employee benefit plans, as defined in the Employee Retirement Income Security Act of 1974; and persons predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in the Bank Holding Company Act of 1956.

### What must a non-financial entity do to elect the exception?

When reporting a swap in accordance with the Commission’s swap reporting rules, the electing counterparty must provide, or cause the reporting counterparty (if they are not the same) to provide, notice that the exception is being elected and the identity of the electing counterparty. The electing counterparty has the option of providing additional electing counterparty information required by the rule in an annual filing or on a swap-by-swap basis.

### Is the definition of “hedging or mitigating commercial risk” limited to positions that qualify for hedge accounting treatment or bona fide hedging treatment?

No. The definition covers swaps hedging or mitigating any of a person’s business risks, regardless of their status under accounting guidelines or the bona fide hedging rule.

### What is the exemption for small financial institutions?

The Dodd-Frank Act directed the Commission to consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions from the definition of “financial entity” used in the end-user exception, including those with total assets of \$10 billion or less. The Commission is implementing this exemption for “small financial institutions” with total assets of \$10 billion or less in the final rule, making these institutions eligible to elect the end-user exception.