



# Commodity Futures Trading Commission

## Office of Public Affairs

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## Q & A – Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade under Section 2(h)(8) of the Commodity Exchange Act

### What is the goal of the Further Notice of Proposed Rulemaking?

The Commodity Futures Trading Commission (Commission) is proposing regulations that would establish a process for Designated Contract Markets (DCMs) and Swap Execution Facilities (SEFs) to make a swap “available to trade” as set forth in Section 2(h)(8) of the Commodity Exchange Act (CEA) pursuant to Section 723 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

### What does Section 2(h)(8) of the CEA require?

Section 2(h)(8) of the CEA requires that swaps subject to the clearing requirement under Section 2(h)(1) be traded on a DCM or SEF, unless no DCM or SEF makes the swap available to trade or the swap transaction is subject to the clearing exception under Section 2(h)(7).

### What registrants are covered by the proposed regulations?

The proposed regulations would apply to DCMs and SEFs.

### Under the proposal, how does the “Available to Trade” process work?

The proposed regulations would require DCMs and SEFs to submit any determination that a swap is available to trade to the Commission, either for approval or under self-certification procedures, pursuant to the rule filing procedures of part 40 of the Commission’s regulations. Unless the filing is found to be contrary to the Commission’s regulations, the swap, if subject to the clearing requirement, would become subject to the CEA Section 2(h)(8) trade execution requirement.

### Who is responsible to make a swap “Available to Trade”?

Under this proposed procedure, DCMs and SEFs are initially responsible to make a swap available to trade, while the Commission has a role in reviewing such determinations. To make a swap available to trade, for purposes of Section 2(h)(8) of the CEA, a DCM or SEF must consider certain factors described in the further notice of proposed rulemaking.

### What is the significance of a determination that a swap is “Available to Trade”?

Once a swap is made available to trade, such swap and any economically equivalent swap would be subject to the CEA Section 2(h)(8) trade execution requirement, if the swaps are required to be cleared, and can be traded only pursuant to the rules of a DCM or SEF. There would be an end-user exception to this requirement under CEA Section 2(h)(7).

**What is the Commission seeking comment on?**

The Commission is requesting comment on all aspects of the proposed regulations described in the further notice of proposed rulemaking. This is not a re-opening of any rulemaking record for previous proposals.

**By when must comments on the proposed regulations be submitted?**

Comments on the proposed regulations must be submitted within thirty (30) days of the publication of the proposal in the Federal Register.