



# 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)

## Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants Fact Sheet

The Commodity Futures Trading Commission (Commission) is proposing regulations establishing requirements for swap trading relationship documentation 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 adding section 4s, which sets forth a number of requirements for swap dealers and major swap participants. This rulemaking is being proposed pursuant to section 4s(i). Section 4s(i)(1) requires swap dealers and major swap participants to “conform with such standards as may be prescribed by the Commission by rule or regulation that relate to the timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.” Section 4s(i)(2) expressly directs the Commission to “adopt rules governing documentation standards for swap dealers and major swap participants.”

The proposed regulations would require swap dealers and major swap participants to adhere to certain standards for the documentation of trading relationships between swap dealers, major swap participants, and their trading counterparties. Documentation of swaps is a critical component of the bilaterally-traded, over-the-counter derivatives market and has been the focus of significant domestic and international attention in recent years.

### Proposed Swap Trading Relationship Documentation Rules

The proposed regulations would require each swap dealer and major swap participant to establish policies and procedures designed to ensure that, prior to entering into a swap with a counterparty, the parties have agreed in writing to all terms governing their trading relationship, including terms related to credit support arrangements, such as initial and variation margin requirements and custodial arrangements.

A swap dealer or major swap participant also would be required to include in its swap trading relationship documentation written documentation in which the parties agree on the methods, procedures, rules, and inputs for determining the value of each swap at any time from execution to the termination, maturity, or expiration of the swap. The agreed methods, procedures, rules and inputs would be required to constitute a complete and independently verifiable methodology for valuing each swap entered into between the parties, and the regulations would require that the methodology include complete alternative methods for determining the value of the swap in the event that one or more inputs to the methodology become unavailable or fail, such as during times of market stress or illiquidity. The regulations also would require swap dealers and major swap participants to notify the Commission of swap valuation disputes that have not been resolved within set time periods.

The proposed regulations would also require that swap dealers and major swap participants include a provision in their swap trading relationship documentation under which each party agrees that it will not exercise any right to terminate, liquidate, or net a swap solely by reason of the insolvency of the other party (or the insolvency of a related party) until the close of the next business day following the insolvency-related default, if the defaulting party or the related party is subject to an insolvency proceeding under a special resolution regime (e.g. a resolution under

12 USC § 5384 et seq., 12 USC § 1821 et seq., or similar proceeding under other applicable law) in which positions may be transferred to a performing third party (including a bridge bank, bridge financial institution, or other government-run financial institution). The proposed regulations also would require that each party consent to the transfer of swaps to a performing third party prior to the close of the next business day following such insolvency-related default.

In addition, a swap dealer or major swap participant would be required to create a record containing certain items of information whenever it submits a swap for clearing to a registered derivatives clearing organization (DCO), along with a statement that in accordance with the rules of the DCO, the original swap is extinguished and is replaced by equal and opposite swaps between clearing members and the DCO. The regulations would require that all terms of the cleared swap conform to the templates established under the DCO's rules, and that all terms of the swap, as carried on the books of the clearing member, conform to the terms of the cleared swap established under the DCO's rules.

Finally, the proposed regulations would require an annual audit of the required swap trading relationship documentation to ensure compliance with approved documentation policies and procedures of the swap dealer or major swap participant and Commission regulations.

### **Proposed End User Exception Rule**

The proposed regulation would require swap dealers and major swap participants to obtain documentation from any counterparty seeking to exercise its rights under the end user exception from the mandatory clearing requirement under section 2h(7) of the CEA. For swaps subject to the mandatory clearing requirement, the proposed regulation would require that swap dealers and major swap participants comply with any mandatory clearing requirement by obtaining documentation sufficient to provide the swap dealer or major swap participant with a reasonable basis to believe that its counterparty meets the statutory conditions required for an exception from a mandatory clearing requirement, as defined in section 2h(7) of the CEA.