



Commodity Futures Trading Commission

Office of Public Affairs

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Q & A – Proposed Rulemaking Prohibiting the Aggregation of Orders to Satisfy Minimum Block Sizes or Cap Size Requirements, and Establishing Eligibility Requirements for Parties to Block Trades

What is the goal of the notice of proposed rulemaking?

The notice of proposed rulemaking would add certain provisions to part 43 of the Commodity Futures Trading Commission's (Commission) regulations that would prohibit the aggregation of orders for different trading accounts in order to satisfy the minimum block size or cap size requirements, except for orders aggregated by certain commodity trading advisors (CTAs), investment advisers and foreign persons, if such person has more than \$25,000,000 in total assets under management (AUM). The proposed rules also would require that parties to a block trade must individually qualify as eligible contract participants (ECPs), except where a designated contract market (DCM) allows certain CTAs, investment advisers and foreign persons, to transact block trades for customers who are not ECPs, if such CTAs, investment advisers or foreign persons have more than \$25,000,000 in total AUM. The notice of proposed rulemaking further would require that persons transacting block trades on behalf of customers must receive prior written instruction or consent from the customer to do so.

What does section 2(a)(13) of the CEA require?

Section 727 of the Dodd-Frank Act amends the Commodity Exchange Act (CEA) by inserting a new section 2(a)(13), which requires the Commission to prescribe regulations specifying what constitutes a large notional swap transaction (block trade) for purposes of applying appropriate time delays to reporting such transactions to the public. CEA section 2(a)(13) also requires the Commission to consider whether public disclosure of swap transaction and pricing data will materially reduce market liquidity and to prescribe rules that protect the identities of counterparties to mandatorily-cleared swaps, swaps excepted from the mandatory clearing requirement, and voluntarily cleared swaps. CEA section 2(a)(13) further requires the Commission to prescribe rules that maintain the anonymity of business transactions and market positions of swap counterparties.

Who can aggregate orders for different trading accounts for purposes of minimum block trade size or cap size requirements under the proposed rule?

Under the proposed rule, the aggregation of orders for different accounts in order to satisfy the minimum block trade size or the cap size requirement is prohibited, except that aggregation is permissible on a DCM or swap execution facility if done by a person who: (i) (A) is a CTA registered pursuant to Section 4n of the CEA, or exempt from registration under the CEA, or a principal thereof, who has discretionary trading authority or directs client accounts, (B) is an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of the Commission's regulations, or (C) is a foreign person who performs a similar role or function as the persons described in (A) or (B) and is subject as such to foreign regulation; and, (ii) has more than \$25,000,000 in total assets under management.

What are the eligibility requirements for parties to block trades under the proposed rule?

Under the proposed rule, parties to a block trade must be ECPs, as defined in section 1a(18) of the CEA and the Commission's regulations. However, the proposed rules provide that a DCM may allow: (i) a CTA registered pursuant to Section 4n of the CEA, or exempt from registration under the CEA, or a principal thereof, who has discretionary trading authority or directs client accounts, (ii) an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of the Commission's regulations, or (iii) a foreign person who performs a similar role

or function as the persons described in (i) or (ii) and is subject as such to foreign regulation, to transact block trades for customers who are not eligible contract participants if such CTA, investment adviser or foreign person has more than \$25,000,000 in total AUM.

In addition, the proposed rule would require that a person transacting a block trade on behalf of a customer must receive prior written instruction or consent from the customer to do so. The proposed rule further provides that such instruction or consent may be provided in the power of attorney or similar document by which the customer provides the person with discretionary trading authority or the authority to direct the trading in its account.