Commodity Futures Trading Commission
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Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA

The Commodity Futures Trading Commission (Commission) is proposing regulations that would establish a schedule to phase in compliance with the new clearing and trade execution requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Dodd-Frank Wall Street Reform and Consumer Protection Act Added New Clearing and Trade Execution Requirements

Section 723(a)(3) of the Dodd-Frank Act amends the Commodity Exchange Act (CEA) by adding Section 2(h)(1), which makes it unlawful for any person to engage in a swap that is required to be cleared unless that person submits the swap for clearing to a derivatives clearing organization. Section 723(a)(3) also added Section 2(h)(2) to the CEA. This section requires the Commission to determine whether a swap is required to be cleared pursuant to either a Commission initiated review or pursuant to a submission from a derivatives clearing organization (DCO) for the review of a swap, or group, category, type, or class of swap.

Section 723(a)(8) of the Dodd-Frank Act amends the CEA by adding Section 2(h)(8), which requires that the execution of all clearable swaps occur on Designated Contract Markets (DCMs) or Swap Execution Facilities (SEFs), except where no DCM or SEF makes the swap available for trading.

Rules that the Commission Will Finalize Prior to Requiring Compliance with the Clearing and Trade Execution Requirements

Before market participants could be required to comply with a mandatory clearing determination, the Commission must:

- Adopt its final rules related to the end-user exception to mandatory clearing established by Section 2(h)(7) of the CEA.
- Finalize rules that it proposed with the SEC that would further define "swap," "swap dealer," and "major swap participant."
- Adopt final rules relating to the protection of cleared swaps customer contracts and collateral.

Before market participants could be required to comply with a trade execution requirement, the Commission must:

- Finalize all of the above rules related to the clearing requirement.
- Adopt final rules related to SEFs and DCMs.

Compliance Schedules Generally and Triggering Events

The Commission proposes to phase in market participants based on the type of market participant entering into the swaps subject to the clearing or trade execution requirement. The proposed compliance schedules would not prohibit any type of market participant from voluntarily complying sooner than the compliance deadline. Moreover, the proposed compliance schedules would be used only when the Commission believes that phasing is necessary based on the reasons discussed in the proposed rule.

The triggering event for the proposed compliance schedule for the clearing requirement would be the Commission's issuance of mandatory clearing determination. The proposed compliance schedules for the trade execution requirement would be triggered upon the later of (1) the applicable deadline established under the compliance schedule for the associated clearing mandate; or (2) 30 days after the swap is made available for trading on either a SEF or DCM.

Three Part Implementation Phasing

Phase 1/Category 1 Entities

- Category 1 Entities include swap dealers, security-based swap dealers, major swap participants, major security-based swap participants, or active funds.
- The Commission proposes to phase in compliance with the mandatory clearing requirement for any swap transaction between Category 1 Entity or any other entity that desires to clear the transaction within the first 90 days after the Commission issues any clearing requirement. With respect to the trade execution requirement, the Commission proposes to phase in compliance with this requirement at the same time as the clearing requirement or 30 days after the swap is made available for trading, whichever is later.
- The Commission generally proposes to provide these market participants with the least additional time to come into compliance based on their level of activity, market experience, resources, and their status as registrants with the CFTC or SEC.

Phase 2/Category 2 Entities

- Category 2 Entities include commodity pools; private funds as defined in Section 202(a) of the Investment Advisors Act of 1940 other than active funds; employee benefit plans identified in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974; or persons predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in Section 4(k) of the Bank Holding Company Act of 1956, provided that the entity is not a third-party subaccount.
- The Commission proposes to phase in compliance for swap transactions between a Category 2 Entity and Category 1 Entity, another Category 2 Entity, or any other entity that desires to clear the transaction within 180 days after the Commission issues any clearing requirement. With respect to the trade execution requirement, the Commission proposes to phase in compliance with this requirement at the same time as the clearing requirement or 30 days after the swap is made available for trading, whichever is later.
- The Commission generally proposes to provide these market participants 90 more days than Category 1 Entities since these market participants will not be required to be registered with the Commission and may be less experienced and less frequent users of the swap markets than those in Category 1.

Phase 3/Category 3 Entities

- The Commission proposes to phase in compliance for all other swap transactions, including those involving third-party subaccounts and those not excepted from the mandatory clearing requirement within 270 days after the Commission issues a clearing requirement. With respect to the trade execution requirement, the Commission proposes to phase in compliance with this requirement at the same time as the clearing requirement or 30 days after the swap is made available for trading, whichever is later.
- The Commission generally proposes to provide third-party subaccounts the most amount of additional time to bring their swaps into compliance as they are likely to require the most amount of time for documentation, coordination, and management.