



Commodity Futures Trading Commission

Office of Public Affairs

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Q & A - Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA

What is the goal of the Notice of Proposed Rulemaking?

The Commodity Futures Trading Commission (Commission) is proposing regulations that would establish a schedule to phase in compliance with certain new statutory provisions enacted under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These provisions include the clearing requirement under new Section 2(h)(1)(A) of the Commodity Exchange Act (CEA or Act), and the trade execution requirement under new Section 2(h)(8)(A) of the CEA.

How do the compliance schedules work?

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.

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.

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.

What must happen before the additional time proposed in the compliance schedules starts to run?

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 Swap Execution Facilities and Designated Contract Markets.

Do the proposed compliance dates change the effective dates of the clearing and trade execution requirements?

The proposed compliance schedules do not address the effective dates of the clearing and trade execution requirements in the Dodd-Frank Act, including the application of the Commission’s Effective Date Order to such requirements.