



Commodity Futures Trading Commission

Office of Public Affairs

Three Lafayette Centre

1155 21st Street, NW

Washington, DC 20581

www.cftc.gov

Q & A – Agricultural Swaps and Commodity Options

What is the purpose of the proposed rulemaking?

The notice of proposed rulemaking proposes substantial revisions to Parts 32 and 35 of the Commission's regulations and minor revisions to Part 33. The proposed revisions provide that (1) swaps in an agricultural commodity and (2) commodity options (other than options on a future, which will remain subject to Part 33) are permitted to transact subject to the same provisions of the Commodity Exchange Act (CEA), and any rule, regulation, or order thereunder applicable to all other swaps.

What is the intention of the proposed revisions to Part 32?

Because the Dodd-Frank Act includes options of any kind (with a few exceptions – e.g., options on a futures contract) in the definition of “swap,” and the Dodd-Frank Act includes a comprehensive new framework for the regulation of swaps transactions, the proposed revisions to Part 32 would permit the transaction of commodity options (other than options on a future, which remain subject to Part 33) subject to the same provisions of the CEA, and any rule, regulation, or order thereunder applicable to all other swaps. Revised Part 32 retains the anti-fraud and manipulation rules from current Part 32.

What is the intention of the proposed revisions to Part 35?

Because the Dodd-Frank Act prohibits swaps in an agricultural commodity unless conducted pursuant to a rule or order under the Commission's authority in CEA section 4(c), the proposed revisions to Part 35 would adopt, pursuant to CEA section 4(c), rules to explicitly permit the transaction of swaps in an agricultural commodity (agricultural swaps) subject to the same provisions of the CEA, and any rule, regulation, or order thereunder applicable to all other swaps.

What is the intention of the proposed revisions to Part 33?

Part 33 provides the rules for regulating commodity options traded on a designated contract market (DCM). The new definition of “swap” in the Dodd-Frank Act makes it necessary to distinguish between a DCM-traded option on a future (excluded from the swap definition) and a DCM-traded option on a physical, or any option on a physical (which do fall under the swap definition). The revisions to Part 33 would remove any reference to options on a physical to make it clear that Part 33 applies only to DCM-traded options on a future. Options on a physical, whether transacted on a DCM or otherwise, will fall under Part 32.

Would the proposed changes significantly alter the class or category of market participants eligible to transact in any particular product ?

Agricultural Swaps – The revisions to Part 35 have the effect of removing the existing eligible swap participant (ESP) requirement for agricultural swap participants and replacing it with the eligible contract participant (ECP) requirement that applies to all non DCM-traded swaps under the Dodd-Frank Act. Because the ESP definition and the ECP definition are very similar, the change is not expected to have a significant impact. In addition, new Part 35 would remove existing prohibitions on the clearing and exchange trading of swaps in an agricultural commodity.

Agricultural trade options – By removing the distinctions between agricultural and non-agricultural trade options, the proposals to amend Part 32 would replace the \$10 million net worth requirement for agricultural trade options in existing § 32.13¹ with the ECP requirement that is applicable to all non DCM-traded swaps under the CEA as amended by the Dodd-Frank Act.

Trade options – Existing § 32.4 does not have a net worth or other similar requirement for participants entering trade options, provided that the trade option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the trade option and that such person is entering into the option for purposes related to their business as such (see existing § 32.4(a)). Proposed new § 32.4 removes any discussion relating to trade options and instead incorporates the laws and rules otherwise applicable to any other swap. That would include the Dodd-Frank requirement that all non DCM-traded swaps (which would include a trade option) only be entered into by ECPs. As such, there is a possibility that under new § 32.4, certain entities entering into trade options under existing § 32.4 will be required to demonstrate that they qualify as an ECP, as that term was amended by the Dodd-Frank Act.

¹ While § 32.13 would allow agricultural trade options to be transacted by smaller entities under the agricultural trade option merchant (ATOM) program, the ATOM program has no registrants and is essentially moot (in fact, the only entity to ever register as an ATOM