



Commodity Futures Trading Commission

Office of Public Affairs

Three Lafayette Centre

1155 21st Street, NW

Washington, DC 20581

www.cftc.gov

Proposed Rules Regarding Capital Requirements for Swap Dealers and Major Swap Participants

The Commodity Futures Trading Commission (Commission) is proposing rules to implement section 731 of the Dodd-Frank Act, regarding capital requirements for swap dealers and major swap participants.

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

The Commodity Futures Trading Commission is proposing rules to implement section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 731 requires the Commission to adopt capital requirements for swap dealers (SDs) and major swap participants (MSPs) that are not subject to prudential regulation by the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration or the Federal Housing Finance Agency (collectively the prudential regulators). The CFTC has consulted with the prudential regulators as well as with the Securities and Exchange Commission in developing the proposed capital rules. The proposed rules also address the capital requirements of any SDs or MSPs that may also be registered as futures commission merchants (FCMs).

Proposed capital requirements

The proposed rules address the SD's or MSP's qualifying capital and the minimum levels of such qualifying capital that the SD or MSP would be required to maintain. The proposed requirements would be included as amendments to existing Commission regulations governing FCM capital requirements, and also as new capital rules that would apply to SDs and MSPs that are not FCMs. The proposed rules also address when internal models may be used for purposes of the required capital calculations.

- a) SDs and MSPs that are also FCMs. These SDs and MSPs would be required to meet existing FCM requirements to hold minimum levels of adjusted net capital, and also would be required to calculate the required minimum level as the greatest of the following:
 - a fixed dollar amount, which under the proposed rules would be \$20 million;
 - the amount required for FCMs that also act as retail forex exchange dealers;
 - 8 percent of the risk margin required for customer and non-customer exchange-traded futures positions and over-the-counter (OTC) swap positions that are cleared by a clearing organization;
 - the amount of adjusted net capital required by a registered futures association of which the FCM is a member; and
 - for an FCM that also is registered as a securities broker or dealer, the amount of net capital required by SEC rules.

- b) SDs and MSPs that are not FCMs and are nonbank subsidiaries of U.S. bank holding companies. These SDs and MSPs would be required to meet the same capital requirements that U.S. banking regulations apply to the bank holding company. Generally, such banking regulations require a minimum ratio of qualifying total capital to risk-weighted assets of 8 percent, of which at least half, i.e., 4 percent, should be in the form of

Tier 1 capital. The proposed rules also specify a minimum fixed dollar amount of at least \$20 million of Tier 1 capital.

- c) SDs and MSPs that are neither FCMs nor a bank holding company subsidiary as described above. These SDs and MSPs would be required to maintain tangible net equity equal to \$20 million, plus additional amounts for market risk and over-the-counter derivatives credit risk. A firm's tangible net equity generally would be based on net equity as determined under U.S. GAAP, minus intangibles such as goodwill.

Application for approval of internal models

Under the proposed rules an SD or MSP may apply for Commission approval to use internal models for purposes of its capital calculations. Initially, only SDs and MSPs whose internal models are approved and subject to ongoing review by the Federal Reserve Board or, as applicable, the SEC, would be permitted to apply for such Commission approval. The proposed rules also provide that the Commission may at any time determine by written order to accept applications requesting approval of internal models used by other SDs and MSPs that are not subject to review by the Federal Reserve Board or the SEC.

If an SD or MSP is subject to the tangible net equity requirement and has not received approval to use internal models, it would be required to calculate its market risk and over-the-counter credit risk exposures based upon certain internationally recognized standardized methodologies under the Basel Accord.

Financial condition reporting and related recordkeeping requirements

The proposed rules also include financial condition reporting and related recordkeeping requirements for SDs and MSPs. FCMs would be required to meet the current requirements for unaudited monthly financial reports and annual audited financial statements. SDs and MSPs that are not subject to supervision by a prudential regulator would be subject to similar financial condition reporting requirements under the proposed rules.

Also, the Commission proposes to require FCMs to provide the same financial reporting for the segregated funds of customers with swaps cleared by a derivatives clearing organization that existing Commission rules require FCMs to provide for the segregated funds of their customers trading futures on regulated exchanges. This reporting consists of an additional schedule that would be included in the monthly and annual financial condition reports filed with the Commission. The proposed schedule is to be published in the Federal Register together with the proposed rules.