



Commodity Futures Trading Commission

Office of Public Affairs

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Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements under Section 4s of the CEA Questions & Answers

What is the goal of the Further Notice of Proposed Rulemaking?

The Commission is proposing regulations that would establish a schedule to phase in compliance with previously proposed requirements, including the swap trading relationship documentation requirement, and the margin requirements for uncleared swaps.

How do the compliance schedules work?

Under the proposed schedules, a Swap Dealer (SD) or Major Swap Participant (MSP) would be required comply with documentation requirements within 90, 180, or 270 days (depending on the identity of its counterparty).

Category 1 Entities include swap dealers, security-based swap dealers, major swap participants, major security-based swap participants, or active funds. The Commission proposes these entities should be capable of compliance with proposed Trading Documentation (§23.504) and Margin Requirements (§ 23.150-23.158) no later than 90 days from the date of adoption of final rules.

Category 2 Entities include commodity pools; private funds as defined in Section 202(a) of the Investment Advisors Act of 1940 other than active fund; 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 these entities should be capable of compliance with proposed Trading Documentation (§23.504) and Margin Requirements (§ 23.150-23.158) no later than 180 days from the date of adoption of final rules.

Category 3 Entities include Category 2 Entities whose positions are held as third-party subaccounts. Category 4 Entities includes any person not included in Categories 1, 2, or 3. The Commission proposes these entities should be capable of compliance with proposed Trading Documentation (§23.504) and Margin Requirements (§ 23.150-23.158) no later than 270 days from the date of adoption of final rules.

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

The Commission observes that before SD and MSP could be required to comply with § 23.504, the Commission must adopt final rules related to confirmation of swap transactions and the protection of collateral for uncleared swaps. As such, the compliance schedules proposed under this release would not become effective until the Commission finalizes those two proposals in addition to the Trading Documentation rule.

The Commission also recognizes that the swap transaction compliance schedules that are the subject of this proposal reference terms such as “swap,” “swap dealer,” and “major swap participant” that are the subject of rulemaking under sections 712(d)(1) and 721(c) of the Dodd-Frank Act. In a manner consistent with the temporary relief provided in the Commission’s July 15, 2011, order, “Effective Date for Swap Regulation,” the Commission must adopt final rules regarding the further definitions in question prior to requiring compliance with the Trading Documentation rule. Lastly, the Commission must adopt final rules relating to the registration, including procedures for the provisional registration, of SDs and MSPs. The

finalization of these rules would enable SDs and MSPs to register with the Commission. The specific compliance schedules proposed in this release comport with the approach discussed in the proposed registration rules.

Likewise, no CSE could be required to comply with final Margin Requirements rules until (1) the Commission adopts further definitions of “swap,” “swap dealer,” and “major swap participant; and (2) the Commission adopts registration rules for SDs and MSPs. As noted above, the proposed Margin Requirements cross-reference certain provisions in the Trading Documentation rule. As a result, the final Trading Documentation rule would have to be published in the Federal Register prior to requiring compliance with final Margin Requirements.

What is the Commission seeking comment on?

The Commission is requesting comment on all aspects of the proposed compliance schedules described in the Further Notice. This is not a re-opening of the rulemaking record for the previous proposals.