



Commodity Futures Trading Commission

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Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade under Section 2(h)(8) of the Commodity Exchange Act

The Commodity Futures Trading Commission (Commission) is adopting final rules that establish (1) a process for Designated Contract Markets (DCMs) and Swap Execution Facilities (SEFs) to make a swap “available to trade” as set forth in Section 2(h)(8) of the Commodity Exchange Act (CEA) pursuant to Section 723 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act); and (2) a schedule to phase in compliance with Section 2(h)(8) of the CEA.

Dodd-Frank Act Added New Trade Execution Requirement

Section 723(a)(8) of the Dodd-Frank Act amends the CEA by adding Section 2(h)(8), which requires that transactions involving swaps subject to the clearing requirement under Section 2(h)(1) of the CEA occur on a DCM or a SEF, except where no DCM or SEF makes the swap “available to trade” or the swap transaction is subject to the clearing exception under Section 2(h)(7) of the CEA.

Final “Available to Trade” Rule

The final rules allow a DCM or SEF to submit a determination that a swap is available to trade for purposes of section 2(h)(8) of the CEA. A DCM or SEF may submit its determination under the Commission’s § 40.5 rule approval process or § 40.6 certification process for a swap (1) that it lists or offers for trading; and (2) that is subject to the clearing requirement under § 39.5 of the Commission’s regulations. Such a determination must consider, as appropriate, one or more of the following factors with respect to the swap: (1) whether there are ready and willing buyers and sellers; (2) the frequency or size of transactions; (3) the trading volume; (4) the number and types of market participants; (5) the bid/ask spread; or (6) the usual number of resting firm or indicative bids and offers. During the Commission’s rule review process, market participants will have the opportunity to provide the Commission with comments on the determination submitted by a DCM or SEF.

Once a swap is approved or deemed certified as available to trade, then all other DCMs and SEFs that list or offer that swap for trading must do so in accordance with the trade execution requirement, as set forth under Section 2(h)(8) of the CEA and the Commission’s regulations. A swap that has been deemed available to trade will remain subject to the trade execution requirement until all SEFs and DCMs that had listed or offered that swap for trading, including the SEF or DCM that submitted the available-to-trade determination, no longer list or offer the swap for trading.

Final Rule to Phase In Compliance with the Trade Execution Requirement

The final rules require market participants to comply with the trade execution requirement upon the later of (1) the applicable deadline established under the compliance schedule for the clearing requirement for a swap under § 50.25 of the Commission's regulations, or (2) 30 days after the available-to-trade determination for that swap is deemed available to trade upon being approved under § 40.5 or allowed to become effective under § 40.6.