



# Commodity Futures Trading Commission

## Office of Public Affairs

Three Lafayette Centre

1155 21st Street, NW

Washington, DC 20581

[www.cftc.gov](http://www.cftc.gov)

## Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade and Schedule to Phase In Compliance with Section 2(h)(8) of the Commodity Exchange Act Questions & Answers

### What is the goal of the final rulemaking?

The final rulemaking establishes 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) (“trade execution requirement”) pursuant to Section 723 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Under the trade execution requirement, swap transactions subject to the clearing requirement must be traded on either a DCM or a SEF unless no DCM “makes the swap available to trade” or the transaction is not subject to the clearing requirement under section 2(h)(7) of the CEA. The Commission is also adopting regulations that establish a schedule to phase in market participants’ compliance with the trade execution requirement.

### How does the CFTC’s “available to trade” process work?

DCMs and SEFs may submit to the Commission a determination that a swap is available to trade, either for approval or under self-certification procedures, pursuant to § 40.5 or § 40.6 of the Commission’s regulations. Such a determination must have considered one or more of the following factors: (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; and (6) the usual number of resting firm or indicative bids and offers.

### What is the significance of a determination that a swap is “available to trade”?

Once a swap is determined to be available to trade, then that swap would be subject to the trade execution requirement. Subject to certain limited exceptions, swaps that are subject to the trade execution requirement and traded on a SEF must be transacted as “Required Transactions” under Part 37 of the Commission’s regulations under Title 17 of the Code of Federal Regulations, while such swaps that are traded on a DCM must be transacted pursuant to subpart J of Part 38 of the Commission’s regulations. All SEFs and DCMs that choose to list or offer these swaps for trading must do so in accordance with the trade execution methods prescribed by the Commission pursuant to the trade execution requirement.

## **When must a market participant comply with the trade execution requirement for a particular swap?**

Under the final rules, market participants must 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 a swap is deemed available to trade upon being approved under § 40.5 or allowed to become effective under § 40.6.

## **Will the "available to trade" determinations be publicly posted?**

Yes, the Commission will post such determinations on its website. Market participants will be able to identify which swaps have been determined to be available to trade and, therefore subject to the trade execution requirement, including the SEFs and DCMs that list or offer those swaps for trading.

## **When are the final rules effective?**

The regulations, guidance, and acceptable practices will take effect 60 days after publication of the final rules in the Federal Register.