



# Commodity Futures Trading Commission

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## Final Regulations Regarding Registration of Swap Dealers and Major Swap Participants

The Commodity Futures Trading Commission (CFTC) announced the publication in the Federal Register of final regulations that establish the process for the registration of swap dealers and major swap participants. These final regulations implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Concurrent with the adoption of these final regulations, the Commission is, by Notice and Order, delegating to the National Futures Association the authority to perform the full range of registration functions with respect to swap dealers and major swap participants.

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

On July 21, 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 731 of the Dodd-Frank Act amended the Commodity Exchange Act (CEA) by adding Section 4s, which, among other things:

- Prohibits any person from acting as a “swap dealer” or “major swap participant” unless such person is registered with the Commission; and
- Prohibits a swap dealer or major swap participant from permitting any person associated with it to effect or be involved in effecting swaps on its behalf if such person is subject to a statutory disqualification.

Additionally, section 716 of the Dodd-Frank Act prohibits an insured depository institution (IDI) from receiving Federal assistance if it is also a swap dealer or major swap participant that engages in swaps activities not covered by the exclusion in section 716(d).

- Under section 716(c) of the Dodd-Frank Act, an IDI can retain its access to Federal assistance if it transfers covered activities to a non-IDI affiliate that is a swap dealer or major swap participant (Push-Out Affiliate), if the affiliate complies with the requirements of section 716(c), including such requirements as the CFTC may establish.
- The Push-Out Affiliate, however, would not have access to Federal assistance.

### The Commission's Proposed Regulations

On November 23, 2010, the Commission proposed regulations to implement section 731 of the Dodd-Frank Act, setting forth a comprehensive scheme for the registration process for swap dealers and major swap participants. The Commission received comments on the Proposal from a variety of persons during the comment period.

### The Commission's Final Regulations

The final regulations adopted by the Commission:

- Establish a process for the registration of swap dealers and major swap participants, including a provisional registration process pending effectiveness of final definitional regulations and regulations implementing compliance requirements under CEA section 4s;

- Require swap dealers and major swap participants to become and remain members of a registered futures association; and
- Subject Push-Out Affiliates to the foregoing requirements (while not implementing any specific regulations with respect to their activities).

In addition, the final regulations prohibit any swap dealer or major swap participant from permitting any person associated with it who is subject to a statutory disqualification to effect or be involved in effecting swaps on its behalf if the swap dealer or major swap participant knows, or in the exercise of reasonable care should know, of the statutory disqualification. The final regulations provide a limited exception to this prohibition for any person associated with a swap dealer or major swap participant who has been duly listed as a principal or registered as an associated person of another registrant (e.g., FCM, CPO or CTA) notwithstanding that such person is subject to a statutory disqualification.

Moreover, the final regulations:

- Provide that a statutory disqualification, for purposes of this prohibition, refers to a statutory disqualification under section 8a(2) or 8a(3) of the CEA; and
- Clarify that a “person associated with a swap dealer or major swap participant,” for purposes of this prohibition, refers to an associated person, defined by the final regulations to mean a natural person with respect to a swap dealer or major swap participant.