



Commodity Futures Trading Commission

Office of Public Affairs

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Q & A – Utility Special Entity Rulemaking

What is the goal of the rulemaking the Commission is considering?

The Dodd-Frank Act provided special regulatory protections in connection with swap trading by certain federal agencies and states, political subdivisions of states, and certain of their agencies, instrumentalities and pension systems. These entities collectively were defined as “special entities.” Certain electric and natural gas utilities are special entities (because, for example, they are owned or operated by state or local governments or by instrumentalities of local governments).

Currently, a person comes within the definition of “swap dealer” (and is required to register as such) if the aggregate gross notional amount of the swap positions connected with the person’s swap dealing activity over the preceding twelve months exceeds \$8 billion (General *De Minimis* Threshold). If, however, the person enters into swaps with special entities, a much lower threshold of \$25 million applies (Special Entity *De Minimis* Threshold) so that the dealers entering into swaps with special entities are subject to certain statutory and regulatory requirements for registered swap dealers that provide greater protections for special entities.

The rulemaking that the Commission is considering adopting would permit a person that enters into “utility operations-related swaps” (as defined) with “utility special entities” (as defined) to exclude those swaps in calculating the aggregate gross notional amount of the person’s swap positions, but solely for purposes of the Special Entity *De Minimis* Threshold. The goal of the rulemaking is to encourage more counterparties to enter into utility operations-related swaps that utility special entities need to provide continuous service to their customers and more cost-effectively manage the commercial risks of their operations.

Who can take advantage of the exclusion in the proposed rulemaking from the Special Entity *De Minimis* Threshold?

Any person that is not otherwise required to register as a swap dealer, and that engages in utility operations-related swaps with utility special entities can take advantage of the exclusion.

What is a utility operations-related swap?

A “utility operations-related swap” is a swap to which one of the parties is a utility special entity, and the utility special entity is using the swap to hedge or mitigate commercial risk, as defined in Regulation 50.50(c). In addition, the swap must be related to an exempt commodity as that term is defined in Section 1a(20) of the Act, or to an agricultural commodity insofar as the agricultural commodity is used for fuel for generation of electricity or is otherwise used in the normal operations of the utility special entity. Finally, the swap must be an electric energy or natural gas swap, or the swap must be associated with: the generation, production, purchase or sale of natural gas or electric energy, the supply of natural gas or electric energy to a utility special entity, or the delivery of natural gas or electric energy service to customers of a utility special entity; fuel supply for the facilities or operations of a utility special entity; compliance with an electric system reliability obligation; or compliance with an energy, energy efficiency, conservation, or renewable energy or environmental statute, regulation, or government order applicable to a utility special entity.

What is a utility special entity?

A “utility special entity” is a special entity, as that term is defined in Section 4s(h)(2)(C) of the Act and Regulation 23.401 (for example a state or local government, a government agency, or an instrumentality, department or corporation established by a state), that:

- i. Owns or operates electric or natural gas facilities, electric or natural gas operations or anticipated electric or natural gas facilities or operations;
- ii. Supplies natural gas or electric energy to other utility special entities;
- iii. Has public service obligations or anticipated public service obligations under Federal, State or local law or regulation to deliver electric energy or natural gas service to utility customers; or
- iv. Is a Federal power marketing agency as defined in Section 3 of the Federal Power Act.

Does a person seeking to rely on the exclusion in the rulemaking under consideration by the Commission have to file anything with the Commission or NFA?

The rule as proposed in June, 2014, would have required a person that used the exclusion to file a notice with the National Futures Association. After consideration of the comments received, the Commission determined to delete the notice requirement from the final rule.

How may a person determine that it qualifies to rely upon the exclusion?

A person may rely upon a written representation by the utility special entity that it is a utility special entity and that the swap is a utility operations-related swap.