



Commodity Futures Trading Commission

Office of Public Affairs

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Proposed Rule to Exempt Certain Swaps Executed by Cooperatives from the Swap Clearing Requirement

The Commodity Futures Trading Commission (Commission) is considering a proposed rule to exempt from the swap clearing requirement certain swaps entered into by cooperatives.

Clearing Requirement under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

Section 723 of the Dodd-Frank Act amended the Commodity Exchange Act (CEA) by adding Section 2(h)(1), which provides that “it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under [the CEA] or a derivatives clearing organization that is exempt from registration under [the CEA] if the swap is required to be cleared.” The Dodd-Frank Act also added Section 2(h)(7) to the CEA, which provides that the clearing requirement of Section 2(h)(1) shall not apply to a swap if one of the counterparties to the swap: “(i) is not a financial entity; (ii) is using swaps to hedge or mitigate commercial risk; and (iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.” The exception provided in Section 2(h)(7) is commonly referred to as the “end-user exception.” Also pursuant to Section 2(h)(7), the Commission is exempting from the definition of “financial entity” small financial institutions with assets of \$10 billion or less. However, certain cooperatives, whose members are eligible for the end-user exception, may be “financial entities” with assets in excess of \$10 billion. Those cooperatives act in the financial markets on behalf of their members and enter into swaps for the benefit of members. While the cooperative members could individually qualify for the end-user exemption, the cooperatives could not. The proposed rule would allow the members to continue to access the financial markets through their cooperatives and still receive the benefits of the end-user exception by allowing the cooperatives to elect not to clear swaps entered into in connection with member related activities.

Exempt Cooperatives

The proposed rule would provide that a cooperative can only elect the cooperative exemption if all of its members are either (1) non-financial entities; (2) financial entities to which the small financial institution exemption applies; or (3) cooperatives themselves, each of whose members fall into one of the first two categories. This provision would limit the cooperative exemption to cooperatives whose members are eligible for the end-user exception.

Only Swaps Related to Member Activities

The proposed rule limits application of the cooperative exemption to swaps entered into with cooperative members in connection with originating loans for members or swaps entered into by exempt cooperatives that hedge or mitigate risks associated with member loans or member loan-related swaps.

Reporting

The proposed rule is being considered under the authority provided to the Commission in Section 4(c) of the Commodity Exchange Act. Under that provision, the Commission can subject such exemptive relief to appropriate terms and conditions. The Commission believes it is appropriate to impose certain reporting requirements on any entities that may be exempted from the clearing requirement by this rule. The proposed reporting requirements are essentially identical to the reporting requirements for entities electing the end-user exception.