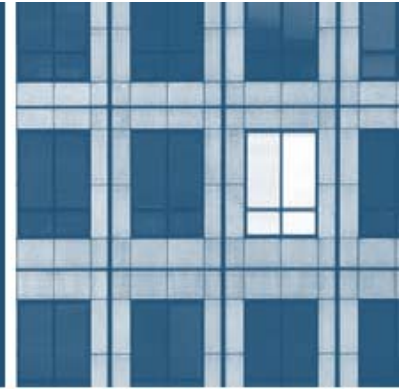


On the Subject



Energy & Commodities Advisory

October 28, 2010

The CFTC and the SEC have released rules that will require swap parties to report all security-based and all other swap transactions entered into before July 21, 2010, and that have not expired as of that date.

Dodd-Frank Swap Reporting Update

Both the U.S. Commodity Futures Trading Commission (CFTC) and the U.S. Securities and Exchange Commission (SEC) have released rules that will require swap parties to report all security-based and all other swap transactions entered into before July 21, 2010, and which have not expired as of that date (pre-enactment unexpired swaps). Under the new rules, parties to pre-enactment unexpired swaps will need to file reports with a registered security-based swap data repository (for security-based swaps) or a registered swap data repository (for all other swaps) within 60 days after the repository is registered, or by the compliance dates to be established by the SEC and the CFTC.

Information to Retain

Although a filing date has not been set at the date of this writing, parties to pre-enactment unexpired swaps must retain (to the extent the information exists at present) the following information to meet future filing requirements:

- Information necessary to identify and value the transaction
- The date and time the transaction was executed
- Information relevant to the price of the transaction
- Whether the transaction was accepted for clearing by a clearing agency or derivatives clearing organization, and, if so, the identity of that agency or organization

- Any modifications or amendments to the transaction
- The final confirmation of the transaction

Parties Responsible for Future Filings

SEC and CFTC rules identify the parties that will be required to report pre-enactment unexpired swaps in the following order of priority:

- Where one counterparty is a swap dealer or major swap participant, the swap dealer or major swap participant will report the transaction.
- Where one counterparty to a swap transaction is a swap dealer and the other counterparty is a major swap participant, the swap dealer will report the transaction.
- Where neither counterparty is a swap dealer or a major swap participant, the counterparties to that transaction will select which counterparty will report the transaction.

Conclusion

At the date of this writing, definitions have not been provided for key terms, such as swap, security-based swap, swap dealer, security-based swap dealer, major swap participant or major security-based swap participant. Until these key terms are defined in future regulations or pronouncements, parties to pre-enactment unexpired swaps cannot accurately determine their reporting status. As a result, all parties to pre-enactment unexpired swaps should be aware of possible future reporting requirements..

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