

Corporate & Financial Weekly Digest

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CFTC Publishes Ninth Series of Dodd-Frank Rules

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The Commodity Futures Trading Commission has published its ninth series of proposed rules under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The ninth series of CFTC rule proposals relates to the swap trading relationship documentation requirements for swap dealers (SDs) and major swap participants (MSPs) and the imposition of position limits on certain derivatives (which will be discussed in a forthcoming client advisory).

- **Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants:** Section 731 of the Dodd-Frank Act directs the CFTC to “adopt rules governing documentation standards” for SDs and MSPs. Accordingly, the CFTC is proposing rules that would require each SD and MSP, before entering into a swap transaction with a counterparty, to agree in writing to all terms of the trading relationship with the counterparty, and to establish policies and procedures designed to ensure that such a written agreement (the trading relationship documentation) is effected prior to the SD’s or MSP’s entering into a swap with a counterparty. In connection with this proposed requirement, SDs and MSPs would also be obligated to:
 1. ensure that the agreed-to trading relationship documentation includes the methods, procedures, rules and inputs for valuing each swap at any time during the course of the transaction (as well as complete alternative methods for determining the swap’s value in the event that the primary method cannot be utilized);
 2. agree with its counterparty in the trading relationship documentation that, if either party is subject to insolvency proceedings under a special resolution regime in which positions may be transferred to a performing third party, the other party will not exercise any right to terminate, liquidate or net a swap solely by reason of its counterparty’s insolvency until the close of the next business day following the insolvency-related default;
 3. upon submitting a swap transaction for clearing to a registered derivatives clearing organization (DCO), make a record of certain information related to such transaction, including a statement that, in accordance with the DCO’s rules, the original swap is extinguished and replaced by equal and opposite swaps between clearing members and the DCO; and
 4. submit to an annual audit of the trading relationship documentation.

Finally, under the proposed rules, SDs and MSPs would be required to obtain documentation from any counterparty that intends to claim the end user exemption from mandatory clearing. Such information must be sufficient to afford the SD or MSP a reasonable basis for believing that such counterparty meets the statutory qualifications for such an exemption.

The ninth series of rule proposals have not yet been published in the *Federal Register*. The comment period for the proposed rules will expire 60 days from the dates of their publication. Information regarding these CFTC proposals, including the *Federal Register* release of the position limits proposal, the CFTC release of the trading relationship documentation proposal, and fact sheets and Q&As for each of the CFTC proposals, is available [here](#).

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