

CFTC Extends Deadlines for Business Conduct and Swap Documentation

On December 18, 2012, the US Commodity Futures Trading Commission (the "CFTC") issued interim final rules which extend the compliance deadlines for certain business conduct and documentation requirements for swap dealers ("SDs") and major swap participants ("MSPs") until May 1, 2013 and July 1, 2013.

Extended Compliance Dates

Under the interim final rules, compliance with portfolio reconciliation and swap trading relationship documentation is extended until July 1, 2013. Compliance with certain recordkeeping, business conduct and documentation related to the end user exception is extended until May 1, 2013. The table below outlines the specific CFTC Regulations amended and the applicable extended compliance date. The interim final rules will become effective on the date the rules are published in the Federal Register.

Implications

The primary implication is that the period for swap market participants to adhere to the ISDA Dodd-Frank Protocol or to execute similar documentation with dealers is likely to be extended for several months, most likely to a date just prior to the new May 1, 2013 compliance date.

However, certain other CFTC rules relating to client relationship management were not addressed by the interim final rule and, unless they are extended by other rules will still take effect from December 31, 2012. These include recordkeeping and reporting obligations that are likely to result in dealers requiring counterparties to provide CICI numbers; rules relating to the provision of daily marks by dealers to counterparties; rules relating to the provision and timing of written confirmations for each swap transaction; and rules relating to the mandatory clearing of swaps that may result in dealers requiring counterparties to represent that they are Eligible Contract Participants notwithstanding that the compliance deadline for know-your-client provisions under rule 23.402 has been deferred to May 1, 2013.

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TABLE 1

| Rule | CEA Section | CFTC Regulation | Description | Compliance Date |
|------------------|-----------------------------|--------------------|---|-----------------|
| 23.502 | 4s(i) | Part 23, subpart F | Portfolio reconciliation | July 1, 2013 |
| 23.504 | 4s(i) | Part 23, subpart H | Swap trading relationship documentation | July 1, 2013 |
| 23.201(b)(3)(ii) | 4(s)(f)(1)(B) 4(s)(g)(1) | Part 23, subpart H | Swap data recordkeeping – requirement to keep a record that counterparties have been given contact information for the submission of complaints. | May 1, 2013 |
| 23.402 | 4s(h) | Part 23, subpart H | External business conduct – general provisions, including policies and procedures to ensure compliance and prevent evasion; know your counterparty, true name and owner; reasonable reliance on representations; manner of disclosure; disclosures in a standard format; and record retention | May 1, 2013 |
| 23.410(c) | 4s(h) | Part 23, subpart H | External business conduct – confidential treatment of counterparty information | May 1, 2013 |
| 23.430 | 4s(h) | Part 23, subpart H | External business conduct – verification of counterparty eligibility | May 1, 2013 |
| 23.431(a) – (c) | 4s(h) | Part 23, subpart H | External business conduct – disclosures of material information, including swap characteristics, conflicts of interest and scenario analysis for swaps not executed on a SEF/DCM and where the identity of the counterparty is known prior to swap execution. | May 1, 2013 |
| 23.432 | 4s(h) | Part 23, subpart H | External business conduct – clearing disclosures | May 1, 2013 |
| 23.434(a)(2) | 4s(h) | Part 23, subpart H | External business conduct – institutional suitability – SD must have reasonable basis to believe the recommended swap or strategy is suitable for the counterparty. | May 1, 2013 |
| 23.434(b) | 4s(h) | Part 23, subpart H | External business conduct – institutional suitability – safe harbor for 23.434(a)(2) above | May 1, 2013 |
| 23.434(c) | 4s(h) | Part 23, subpart H | External business conduct – institutional suitability – safe harbor satisfied via written representation from counterparty | May 1, 2013 |
| 23.440 | 4s(h) | Part 23, subpart I | External business conduct – requirements for SDs acting as advisors to Special Entities | May 1, 2013 |
| 23.450 | 4s(h) | Part 23, subpart F | External business conduct – requirements for SDs acting as counterparties to Special Entities | May 1, 2013 |
| 23.505 | 4s(i) | Part 23, subpart H | End user exception documentation | May 1, 2013 |

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