

By When? – The CFTC’s Dodd-Frank Compliance Dates

“By when?” is perhaps the most frequently asked question as swap market participants prepare to comply with the various requirements of Title VII of Dodd Frank. The following matrix is intended to catalog the “by when” dates presently found in many of the final and proposed regulations published by the Commodity Futures Trading Commission (“CFTC”), as modified by recent moderating actions of the CFTC and its staff. We have prepared this matrix in conjunction with our Dodd-Frank-related work for the International Swaps and Derivatives Association, Inc.

The CFTC and the Securities and Exchange Commission (“SEC”) have finalized both the entity definitions (further defining “swap dealer” (“SD”) and major swap participant (“MSP”)) (“**Entity Definitions**”)¹ and the product definitions (further defining “swap”) (“**Product Definitions**”).² The effective date of the Product Definitions, which occurred on October 12, 2012, had less of an impact than formerly anticipated, due to CFTC staff guidance confirming that the two-calendar month registration period under the de minimis exemption (see SD/MSP Registration below) is available to all putative SDs.³ As a result, even persons whose swap dealing activity exceeded the de minimis threshold shortly after the October 12, 2012 start date for measuring transactional activity do not have to register as SDs until two months after the end of October 2012. Such persons will not be deemed to be SDs until that date or any earlier date on which the person files a complete application for SD registration. Until such time, putative SDs are subject only to those laws and regulations that apply to non-SD market participants, and are entitled to the later compliance dates applicable to non-SDs under certain regulations. **As a result, the compliance dates for the Section 4s requirements and those other requirements applicable by virtue of a person’s status as a SD are the later of those shown for SDs in the matrix below and the date such person files or is required to file an SD registration application (i.e., December 31, 2012 at the earliest unless the application is voluntarily filed earlier).**

A recently adopted CFTC exemptive order permits non-U.S. SD/MSPs to delay compliance with certain “entity-level” requirements and in certain instances to adhere to “local” jurisdiction “transaction-level” requirements until July 12, 2013.⁴ The exemptive order also

¹ 77 Fed. Reg. 30596 (May 23, 2012); 77 Fed. Reg. 39626 (corrections)(July 5, 2012)

² 77 Fed. Reg. 48208 (August 13, 2012)

³ Press Release PR6348-12 Q&A 2, The Commodity Futures Trading Commission (September 10, 2012) (*available at* <http://www.cftc.gov/PressRoom/PressReleases/pr6348-12>).

⁴ Final Exemptive Order regarding Compliance with Certain Swap Regulations; Further Proposed Guidance (December 21, 2012). The entity-level requirements within the scope of the order comprise: (i) chief compliance officer; (ii) risk management; (iii) swap data recordkeeping; (iv) swap data reporting (“SDR Reporting”); and (v) large-trader reporting for physical commodity swaps reporting (“LTR”). The Adopting Release lists the specific CFTC regulations that correspond to Entity-Level Requirements as CFTC regulations 1.31, 3.3, 23.201, 23.203, 23.600-603, 23.605-609 and Parts 20, 45 and 46. Although SDR Reporting and LTR are classified as “entity-level”, the exemptive order does not modify the compliance date for such requirements; however, non-U.S. SD/MSPs not part of an affiliated group headed by certain types of U.S. entities (including holding companies) are excused from SDR Reporting and LTR with respect to swaps with non-U.S. counterparties during the term of the order. Capital adequacy, proposed to be “entity level”, may come within the order when relevant rules are finalized. The exemptive order does not modify the compliance dates for “transaction-level” requirements (i.e., clearing, swap processing, uncleared swap margin, trade execution, trading relationship documentation, portfolio reconciliation and compression, real-time reporting, daily trading records and external business conduct) when a SD/MSP transacts with U.S. counterparties, although non-U.S. SD/MSPs (including non-U.S. affiliates of U.S. SDs) and foreign

contains temporary rules relating to who is a U.S. person for Title VII purposes and de minimis counting in the cross-border context.

Please note that the matrix is intended to be a general timing guide to many of the important final and proposed regulations. It does not attempt to summarize the content of those regulations or to identify all CFTC or staff guidance or relief that may be relevant to compliance with a given requirement. The matrix should not be viewed as legal advice or as a comprehensive essay on the topic of effectiveness. Persons that intend to rely on the timing relief granted in CFTC staff no-action letters should review carefully the scope and conditions of the relevant relief.

SD/MSP REGISTRATION AND DUTIES

Rule Topic	Mandatory Compliance Date
<p>SD/MSP Registration⁵ (effective March 19, 2012)</p> <p>17 C.F.R. §§3.10, 23, 23.21-22, 170.16</p>	<p>From and including October 12, 2012 (i.e., 60 days after publication in the Federal Register of Product Definitions) (the “Swap Definition Effective Date”), each person who “intends to engage in business” as an SD or MSP must apply to be registered as such. CFTC Rule 3.10(a)(1)(v)(C), subject to exhaustion of the de minimis exemption. Entities relying on the de minimis exemption from SD status must apply for SD registration by the end of the second calendar month following the month in which the de minimis threshold is exceeded.⁶ A registration application must document compliance with any then-applicable Section 4s Implementing Regulations⁷ (see below). The SD/MSP must supplement its application to demonstrate compliance (including, where applicable, its ability to comply) with subsequently issued Section 4s Implementing Regulations.</p>

branches of U.S. SD/MSPs may comply with such regulations only as may be required under local law when transacting with non-U.S. counterparties until the July 12, 2013 expiration date of the order.

⁵ 77 Fed. Reg. 2613 (January 19, 2012).

⁶ CFTC Rule 1.3(ggg)(4)(iii). Thus a putative dealer would have at least two full calendar months to prepare its registration application and, depending on when in the calendar month the putative dealer exceeds the threshold and how frequently it monitors its activity in relation to the threshold, the time period could be as long as three calendar months. CFTC staff has issued numerous no-action letters that provide exclusions for certain categories of swap transactions from those that must be counted toward the de minimis thresholds. *See, e.g.,* CFTC Letters 12-16, 12-18, 12-20, 12-21, 12-22, 12-57, 12-60, 12-61, 12-62. The relief is time-limited, with various expiration dates applying.

⁷ Section 4s Implementing Regulations are the regulations issued by the CFTC pursuant to sections 4s(e), 4s(f), 4s(h), 4s(i), 4s(j), 4s(k) or 4s(l) of the Commodity Exchange Act (CEA), dealing, respectively, with capital and margin requirements, reporting and recordkeeping, business conduct standards, documentation standards, duties of the SD/MSP, designation of a chief compliance officer and segregation requirements for uncleared swap collateral.

Rule Topic	Mandatory Compliance Date																										
Section 4s requirements:	Final implementing rules specify compliance dates.																										
<ul style="list-style-type: none"> ● External business conduct⁸ (effective April 17, 2012) CEA § 4s(h) 17 C.F.R. §§23. 400- 451 	<p>January 1, 2013 for the sections listed below:⁹</p> <table border="0"> <tr> <td style="padding-right: 20px;">23.410(a), (b)</td> <td>Anti-fraud</td> </tr> <tr> <td>23.431(d)</td> <td>Daily mark</td> </tr> <tr> <td>23.433</td> <td>Communications - fair dealing</td> </tr> <tr> <td>23.434(a)(1)</td> <td>Diligence on recommended swaps and strategies</td> </tr> <tr> <td>23.451</td> <td>Political contributions</td> </tr> </table> <p>May 1, 2013, for the remaining sections of the rule:</p> <table border="0"> <tr> <td style="padding-right: 20px;">23.402</td> <td>General provisions</td> </tr> <tr> <td>23.410(c)</td> <td>Confidential treatment of counterparty information</td> </tr> <tr> <td>23.430</td> <td>Verification of counterparty eligibility</td> </tr> <tr> <td>23.431(a)-(c)</td> <td>Disclosures, including pre-trade mid; scenario analysis</td> </tr> <tr> <td>23.432</td> <td>Clearing disclosure</td> </tr> <tr> <td>23.434(a)(2), (b) and (c)</td> <td>Institutional suitability</td> </tr> <tr> <td>23.440</td> <td>Requirements for SDs acting as advisors to special entities.</td> </tr> <tr> <td>23.450</td> <td>Requirements for SDs and MSPs acting as counterparties to special entities.</td> </tr> </table>	23.410(a), (b)	Anti-fraud	23.431(d)	Daily mark	23.433	Communications - fair dealing	23.434(a)(1)	Diligence on recommended swaps and strategies	23.451	Political contributions	23.402	General provisions	23.410(c)	Confidential treatment of counterparty information	23.430	Verification of counterparty eligibility	23.431(a)-(c)	Disclosures, including pre-trade mid; scenario analysis	23.432	Clearing disclosure	23.434(a)(2), (b) and (c)	Institutional suitability	23.440	Requirements for SDs acting as advisors to special entities.	23.450	Requirements for SDs and MSPs acting as counterparties to special entities.
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<ul style="list-style-type: none"> ● Recordkeeping requirements¹⁰ (effective June 4, 2012) CEA §§ 4s(f), (g) 17 C.F.R. §§23. 201- 203 	<p>October 12, 2012 (but see footnote 4 with regard to CFTC rules 23.201 and 23.203).</p> <p>The rules delegate authority to the Director of the Division of Swap Dealer and Intermediary Oversight to establish an alternative compliance schedule for daily trading records requirements of Rule 23.202 that are found to be technologically or economically impracticable for an affected SD or MSP that seeks, in good faith, to comply with the requirements.</p> <p>On October 26, 2012, the DSIO issued a no-action letter to provide time-limited relief (through March 31, 2013) from certain recordkeeping requirements under CFTC rules 23.201-203, including with respect to pre-execution oral communications, and identification and searchability of records by transaction and counterparty.¹¹</p>																										

⁸ 77 Fed. Reg. 9734 (February 17, 2012).

⁹ Interim Final Rule, Business Conduct and Documentation Requirements for Swap Dealers and Major Swap Participants (December 18, 2012) (“**Business Conduct IFR**”).

¹⁰ 77 Fed. Reg. 20128, 20165 (April 3, 2012).

¹¹ CFTC No Action Letter 12-29 (available at <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/12-29>).

Rule Topic	Mandatory Compliance Date
	<p>The Business Conduct IFR defers until May 1, 2013 the compliance date for Rule 23.201(b)(3)(ii), which requires an SD or MSP to keep a record indicating that it has notified its counterparty of a physical address, email and telephone number of the department to which complaints may be directed.</p>
<ul style="list-style-type: none"> ● Duties of the SD/MSP¹² (effective June 4, 2012) <p>CEA § 4s(j)</p>	<p><u>Risk Management Program</u> (17 C.F.R. § 23.600)</p> <p>October 12, 2012 (but see footnote 4).</p> <p><u>Business Continuity</u> (17 C.F.R. § 23.603)</p> <p>SD/MSPs currently regulated by a U.S. prudential regulator or registered with the Securities and Exchange Commission (SEC) (“<u>Regulated SD/MSPs</u>”): October 12, 2012 (but see footnote 4).</p> <p>SD/MSPs not currently regulated by a U.S. prudential regulator and not registered with the SEC (“<u>New Registrant SD/MSPs</u>”): December 29, 2012 (270 days after rule publication date) (but see footnote 4).</p> <p><u>Other Duties</u></p> <p>All SD/MSPs must comply with 17 C.F.R. §§ 23.601 (Monitoring of Position Limits), 23.602 (Diligent Supervision), 23.605 (Conflicts of Interest Policies and Procedures), 23.606 (General Information: Availability for Disclosure and Inspection), and 23.607 (Antitrust Considerations): October 12, 2012 (but see footnote 4).</p>
<ul style="list-style-type: none"> ● Chief Compliance Officer requirements¹³ (effective June 4, 2012) <p>CEA §§ 4d(d), 4s(k)</p> <p>17 C.F.R. §3.3</p>	<p>Regulated SD/MSPs: October 12, 2012 (but see footnote 4).</p> <p>New Registrant SD/MSPs: April 3, 2013 (360 days after rule publication date) (but see footnote 4).</p>

¹² *Id.* at 20165-66.

¹³ *Id.* at 20166.

Rule Topic	Mandatory Compliance Date
<ul style="list-style-type: none"> ● Capital and Margin <p>CEA § 4s(e)</p> <p>17 C.F.R. §§23. 100- 106 (capital)</p> <p>17 C.F.R. §§23. 150- 158 (margin)</p>	<p>Unknown.</p> <p>The CFTC proposed¹⁴ a staged compliance schedule for the margin requirements that uses a framework based on entity types that is similar to that adopted in the final rule on swap trading relationship documentation (17. C.F.R. §§23.504), as described below.</p> <p>A compliance schedule for the capital requirements has not been proposed. Market participants will be interested not only in the proposed compliance date, but also in whether they can expect CFTC approval of their internal margin models prior to the compliance date.</p>
<ul style="list-style-type: none"> ● Documentation standards (effective November 13, 2012)¹⁵ <p>CEA §§ 4s(i), 4s(h)(1)(D), 4s(h)(3)(D)</p>	<p><u>Confirmation (17 C.F.R. §23.501)</u></p> <p>Compliance began on November 13, 2012 (the effective date); the initially specified time periods for trade confirmation are progressively shortened based on a phased compliance schedule that establishes different confirmation time periods based on the swap asset class and counterparty type. 17 C.F.R. §23. 501(c).</p> <p><i>On November 28, 2012 ISDA requested that the compliance dates for the Confirmation Rules be deferred until January 1 2014 for paper confirmed trades between SD/MSPs and until January 1, 2015 for the sending of acknowledgements of paper confirmed trades to non-SD/MSP clients.</i></p> <p><u>Portfolio Reconciliation (17 C.F.R. §23.502)</u></p> <p>July 1, 2013¹⁶</p> <p><u>Portfolio Compression (17 C.F.R. §23.503)</u></p> <p>Regulated SD/MSPs: December 10, 2012 (90 days after Federal Register publication)</p> <p>New Registrant SD/MSPs: March 10, 2013 (a Sunday) (180 days after Federal Register publication)</p> <p><u>Trading Relationship Documentation (17 C.F.R. §23.504)</u></p> <p>July 1, 2013¹⁷</p>

¹⁴ 76 Fed. Reg. 58176 (“Margin and Trade Documentation Scheduling Proposal”) (September 20, 2011).

¹⁵ 77 Fed. Reg. 55904.

¹⁶ Business Conduct IFR.

¹⁷ Business Conduct IFR.

Rule Topic	Mandatory Compliance Date
	<p>Although final rules on protection of collateral for uncleared swaps were listed in a proposal as a prerequisite rulemaking before the trading relationship documentation rule could be finalized, no such final rules have been issued.¹⁸</p> <p><u>End User Exception Documentation</u> (17 C.F.R. §23.505)</p> <p>The Business Conduct IFR “extend[s] the compliance date” until May 1, 2013. Because the mandatory clearing compliance date applicable to end-users does not occur until September 9, 2013 (see “Mandatory Clearing Compliance Schedule” below), the import of the May 1 date is not entirely clear.</p>
<ul style="list-style-type: none"> • Segregation for Uncleared Swaps <p>CEA § 4s(1)</p> <p>17 C.F.R. §§23. 600-604 (proposed)</p>	<p>Unknown date for final rule issuance. Note, however, that the statutory requirement was classified by the CFTC in its July 14, 2011 Effective Date Order as a self-effectuating (i.e. not requiring a rulemaking) provision that refers to terms requiring further definition.¹⁹ As a result, compliance may have been required as early as October 12, 2012, notwithstanding the lack of final rules. No-action relief from the requirement expired on July 16, 2012. See CFTC Letter No. 11-09. A further request for relief is pending.</p>

SWAP RECORDKEEPING AND REPORTING

Rule Topic	Mandatory Compliance Date
<p>Real-time Reporting of Swap Transaction Data²⁰ (effective March 9, 2012)</p> <p>17 C.F.R. Part 43</p>	<p>The rules adopt a phased compliance schedule.</p> <p>Compliance Date 1- December 31, 2012 (at 12:01 a.m. eastern time) for SDs that are required to register by that date. For other SDs, the earlier of: (i) 12:01 a.m. eastern time on that SD’s registration deadline, or (ii) 12:01 a.m. eastern time on April 10, 2013.²¹ Compliance Date 1 applies to publicly reportable transactions in the interest rate and credit asset classes that are</p>

¹⁸ Margin and Trade Documentation Scheduling Proposal at 58178-79.

¹⁹ 76 Fed. Reg. 42508, 42527 (July 19, 2011). Section 4s(1) contains both (i) an apparently self-effectuating requirement to “segregate the funds or other property [received as initial margin] for the benefit of the counterparty” and (ii) an independent requirement that the SD/MSP “in accordance with such rules and regulations as the Commission may promulgate, maintain the funds or other property in a segregated account separate from the assets and other interests of the swap dealer or major swap participant”, in each case upon request of the SD/MSP’s counterparty. It is not entirely clear that the first prong was intended to operate independently of the second.

²⁰ 77 Fed. Reg. 1182 at 1228 (January 9, 2012).

²¹ The original compliance date (which would have been the date on or after October 12, 2012 on which the SD completes its application for registration) was extended by staff no-action relief. CFTC No Action Letter 12-32 (available at <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/12-32>).

Rule Topic	Mandatory Compliance Date
	<p>either (i) executed on or pursuant to the rules of a DCM or SEF or (ii) “off-facility” swaps in which at least one party is an SD or MSP (collectively, “DCM/SEF/SD/MSP swaps”).</p> <p>Compliance Date 2 – February 28, 2013 (at 12:01 a.m. eastern time) for SDs that are required to register on or prior to that date,²² and for other SDs as described above with respect to compliance dates. Compliance Date 2 applies to publicly reportable DCM/SEF/SD/MSP swaps in the foreign exchange, equity and “other commodity” asset classes.</p> <p>Compliance Date 3 will occur on April 10, 2013, and will apply to swaps in all asset classes by all other reporting parties, including non-SD/MSPs.</p> <p>Block size criteria and certain off-facility, “other commodity” swaps are the subject of a re-proposed rule.²³ Consequently, the final rule provides for interim time delays for relevant swaps until appropriate minimum block sizes are established.</p> <p>For bespoke or complex swaps, no-action relief issued in response to an ISDA request provides additional time for reporting certain data fields that are not currently represented in FpML.²⁴ The relief will expire on the earlier of such time that the relevant data elements can be electronically represented in the FpML schema or June 30, 2013.</p> <p>For prime-brokered swaps, no-action relief (issued in response to a request from FMLG and ISDA) from Part 43 reporting of the “offsetting” swap between the prime broker and its customer may be available, subject to certain conditions set out in CFTC Letter 12-53. The relief is scheduled to expire on or before June 30, 2013.²⁵</p> <p>For swaps in the interest rate and credit asset classes, no-action relief may provide SDs with additional time to address certain technological issues related to Part 43 reporting (i) by branches in emerging market jurisdictions, (ii) of “exotic/multi-leg swap</p>

²² The original compliance date of January 10, 2013 was extended by staff no-action relief, as requested by ISDA and GFMA in light of the effects of Hurricane Sandy on the testing environment for reporting. CFTC No Action Letter 12-41 (available at <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/12-41>).

²³ 77 Fed. Reg. 15460 (March 15, 2012).

²⁴ CFTC No Action Letter 12-39 (available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/12-39.pdf>).

²⁵ CFTC No Action Letter 12-53 (available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/12-53.pdf>).

Rule Topic	Mandatory Compliance Date
	<p>transactions” and (iii) of life cycle events that a dealer’s systems treat as new trades.²⁶ The relief expires at 12:01 a.m. eastern daylight time on April 30, 2013 or upon earlier resolution of the technological issues. Backloading/corrections to remedy non-compliant or withheld reports must generally be made as soon as technologically practicable upon resolution of the technological issues preventing timely compliance or May 30, 2013, whichever occurs first.</p>
<p>Swap Data Recordkeeping & Reporting Requirements²⁷ (effective March 13, 2012)</p> <p>17 C.F.R. Parts 45, 46</p>	<p>The rules adopt a phased compliance schedule for reporting identical to that for Real-time Reporting, except that no provision was made for the unavailability of an SDR. If no SDR accepts data for the relevant swap, reporting is made to the CFTC.²⁸ For Part 45 reporting, Compliance Date 1, Compliance Date 2 and Compliance Date 3 apply as described above pursuant to CFTC Letters 12-32 and 12-41.</p> <p>Although the final Part 46 rules²⁹ (for the reporting of pre-enactment and transition swaps to the CFTC or SDR) adopted the same compliance schedule as Part 45, CFTC Letters 12-32 and 12-41 provide a delay of Part 46 reporting until the earlier of: (i) 12:01 a.m. eastern time on the date that is 30 days after the date (as extended by the no-action relief described above) on which the swap dealer is required to begin reporting swap transaction data pursuant to Part 43 and Part 45 for the asset class to which the historical swap belongs, or (ii) 12:01 a.m. eastern time on April 10, 2013.</p> <p>The recordkeeping requirements of Rule 46.2, or else the comparable requirements under interim final rules of Part 44, appear to be currently in effect. These recordkeeping requirements apply to all counterparties “subject to the jurisdiction of the [CFTC]”, including non-SD/MSPs.</p> <p>Pursuant to no-action relief requested by ISDA, certain information regarding the non-reporting party may be omitted from Part 45 and Part 46 reports filed before April 10, 2012, subject to conditions stated in the no-action letter, but only to the extent that such information is not provided by the non-reporting</p>

²⁶ CFTC No Action Letter 12-66 (available at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-66.pdf>).

²⁷ 77 Fed. Reg. 2136 at 2194-95 (January 13, 2012).

²⁸ *Id.* at 2168.

²⁹ 77 Fed. Reg. 35200 (June 12, 2012).

Rule Topic	Mandatory Compliance Date
	<p>party and is otherwise unavailable to the reporting party, after a good faith effort to obtain such information.³⁰</p> <p>Pursuant to no-action relief requested by ISDA to address conflicts with non-U.S. privacy laws, a reporting party may omit certain counterparty identifying information from its Part 45 and 46 reports.³¹ The relief expires on the earlier of (i) the reporting party’s obtaining counterparty consent or regulatory authorization, as applicable, (ii) the reporting party no longer holding the requisite reasonable belief regarding the privacy law consequences of reporting or (iii) 12:01 a.m. eastern daylight time on June 30, 2013.</p> <p>For bespoke or complex swaps, no-action relief issued in response to an ISDA request provides additional time for reporting certain Part 45 data fields that are not currently represented in FpML or that are elements of certain uncleared inter-affiliate swaps.³² The relief will expire on the earlier of such time that the relevant data elements can be electronically represented in the FpML schema or June 30, 2013.</p> <p>No-action relief (issued in response to a request from FMLG and ISDA) for prime-brokered swaps addresses the allocation of reporting responsibilities between the prime broker (“PB”) and the executing dealer (“ED”), the timing of the PB’s Part 45 reporting of the “offsetting” swap between it and its customer, and the inclusion in that report of the Unique Swap Identifier (“USI”) of the related ED-PB swap.³³ The relief is scheduled to expire on or before June 30, 2013 or, with respect to the USI relief, such earlier time when the requisite functionality is built for including the ED-PB USI into the PB’s report of the</p>

³⁰ CFTC No Action Letter 12-65 (available at <http://www.cftc.gov/ucm/groups/public/@llettergeneral/documents/letter/12-65.pdf>).

³¹ CFTC No Action Letter 12-46 (available at <http://www.cftc.gov/ucm/groups/public/@llettergeneral/documents/letter/12-46.pdf>). Specifically, the reporting party may omit the non-reporting party’s LEI, the identity of the non-reporting party in specifically enumerated data fields and certain other terms that the reporting party reasonably believes would identify the non-reporting party. In addition, the relief permits a reporting party to withhold reporting of Rule 45.3 confirmation images that include the covered identifying information and would otherwise need to be manually redacted. Among other conditions, the relief requires the reporting party to make certain determinations based on a “written opinion of outside legal counsel” and to make reasonable and demonstrable efforts (including direct efforts) to obtain non-reporting party consent or regulatory authorization, as applicable, to disclose the omitted information. The CFTC staff stated in a press release that a legal memorandum of outside counsel may be used to meet the “written opinion” condition provided that the memorandum contains an attestation of counsel in the form set out in the press release. Press Release PR6479-12 (December 21, 2012) (available at <http://www.cftc.gov/PressRoom/PressReleases/pr6479-12>).

³² CFTC No Action Letter 12-39 (available at <http://www.cftc.gov/ucm/groups/public/@llettergeneral/documents/letter/12-39.pdf>).

³³ CFTC No Action Letter 12-53 (available at <http://www.cftc.gov/ucm/groups/public/@llettergeneral/documents/letter/12-53.pdf>).

Rule Topic	Mandatory Compliance Date
	<p>offsetting swap.</p> <p>No-action relief requested by ISDA has extended the compliance deadline for valuation reporting by SDs and MSPs for cleared swaps under Rule 45.4(b)(2)(ii) until June 30, 2013.³⁴ The no-action letter responded to an ISDA request calling attention to a lack of connectivity to DCO-affiliated SDRs.</p> <p>For swaps in the interest rate and credit asset classes, no-action relief may provide SDs with additional time to address certain technological issues related to Part 45 reporting (i) by branches in emerging market jurisdictions, (ii) of “exotic/multi-leg swap transactions”, (iii) of post-trade allocations, compressions or novations of an original trade without including the required linkage to the USI of the original trade and (iv) of life cycle events that a dealer’s systems treat as new trades.³⁵ The relief expires at 12:01 a.m. eastern daylight time on April 30, 2013 or upon earlier resolution of the technological issues.</p> <p>Backloading/corrections to remedy non-compliant or withheld reports must generally be made as soon as technologically practicable upon resolution of the technological issues preventing timely compliance or May 30, 2013, whichever occurs first. The relief for emerging market branches also covers Part 46 reporting.</p>

MANDATORY CLEARING AND TRADE EXECUTION

Rule Topic	Mandatory Compliance Date
<p>Process for Review of Swaps for Mandatory Clearing³⁶ (effective September 26, 2011)</p> <p>17 C.F.R. §39.5</p>	<p>Not applicable: This final rule addresses the process for submission and review of swaps for mandatory clearing decisions, not clearing compliance dates for market participants. (For the latter, see “Mandatory Clearing Compliance Schedule” immediately below.)</p> <p>The CFTC must review DCO submissions and make a mandatory clearing determination not later than 90 days after receipt of a complete submission, unless the submitting DCO agrees to an extension. After making a mandatory clearing determination, the CFTC may stay the clearing requirement pending a further review to be completed not later than 90 days</p>

³⁴ CFTC No Action Letter 12-55 (available at <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/12-55>).

³⁵ CFTC No Action Letter 12-66 (available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/12-66.pdf>).

³⁶ 76 Fed. Reg. 44464 (July 25, 2011).

Rule Topic	Mandatory Compliance Date
	<p>after issuance of the stay, unless the DCO agrees to an extension.</p> <p>DCO submissions and CFTC-initiated clearing determinations are subject to a 30-day public comment period.</p> <p>The CFTC’s first mandatory clearing determination (which covers certain single-currency interest rate swaps denominated in USD, EUR, GBP or JPY and certain North American and European untranch CDS indices) was published in the Federal Register on December 13, 2012.³⁷</p>
<p>Mandatory Clearing Compliance Schedule³⁸ (effective September 28, 2012)</p> <p>17 C.F.R. §50.25</p>	<p>When the CFTC issues a mandatory clearing determination, it will have discretion to implement a phased compliance schedule based on entity type. The CFTC anticipates that it will clarify in each proposed mandatory clearing determination whether compliance will be required immediately upon the final determination or according to the compliance schedule set out below.³⁹</p> <p>If the CFTC invokes phased compliance, the following transaction categories and deadlines would apply:</p> <ol style="list-style-type: none"> 1) Swaps between a Category 1 Entity⁴⁰ and another Category 1 Entity or a party that desires to clear (a “voluntary clearer”) – not later than 90 days from the Federal Register publication date of the mandatory clearing determination. 2) Swaps between a Category 2 Entity⁴¹ and a Category 1 Entity, another Category 2 Entity or a voluntary clearer – not later than 180 days from the Federal Register publication date of the mandatory clearing determination. 3) All other swaps not eligible to claim a clearing exemption – not later than 270 days from the Federal Register publication date of the mandatory clearing determination.

³⁷ 77 Fed. Reg. 74284 (December 13, 2012) (“Clearing Determination”).

³⁸ 77 Fed. Reg. 44456 (July 30, 2012) (“Clearing Compliance Schedule”).

³⁹ *Id.* at 44451.

⁴⁰ Category 1 Entities are SDs, MSPs, security-based swap dealers, major security-based swap participants and “active funds.” An “active fund” is a private fund that is not a third-party sub account and that executes 200 or more swaps per month based on a monthly average over the 12 months preceding November 1, 2013. A “private fund” is an issuer that would be an investment company but for the exemption provided in Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940. *Id.* at 44456. See also Clearing Determination at 74321 (setting November 1, 2013, as the end of the 12-month measurement period for “active fund” status for purposes of the compliance dates under the Clearing Determination).

⁴¹ Category 2 Entities are commodity pools, private funds (other than “active funds”) and persons predominantly engaged in activities in the business of banking or that are financial in nature, but not third-party subaccounts or ERISA plans. *Id.*

Rule Topic	Mandatory Compliance Date
	<p>For interest rate and untranching credit default swaps subject to the CFTC’s Clearing Determination, the following compliance dates apply:⁴²</p> <p style="padding-left: 40px;">March 11, 2013 – Category 1</p> <p style="padding-left: 40px;">June 10, 2013 – Category 2</p> <p style="padding-left: 40px;">September 9, 2013 – Category 3</p> <p style="padding-left: 40px;">An alternative schedule will apply to iTraxx if no DCO has begun offering client clearing by February 11, 2013.</p> <p>On November 28, 2012, the Division of Clearing and Risk issued no-action letters delaying the application of mandatory clearing of certain inter-affiliate swaps⁴³ and hedge swaps entered into by certain cooperatives⁴⁴ until the earlier of April 1, 2013 or the date the CFTC finalizes the relevant proposed clearing exemption.</p>
<p>Trade Execution Compliance Schedule (proposed 9/20/2011)⁴⁵</p>	<p>Unknown. Prerequisites remaining: adoption of final rules for SEF registration.⁴⁶ Final rules on the Process of Making a Swap Available to Trade (proposed in December 2011⁴⁷) would also seem to be a logical prerequisite, although these were not mentioned as a prerequisite rulemaking in the compliance date proposal.</p> <p>The CFTC’s proposed compliance date for the trade execution requirement is the later of (i) the applicable deadline established under the mandatory clearing compliance schedule described immediately above and (ii) 30 days after the swap is made available to trade on a DCM or SEF.</p>

⁴² Clearing Determination at 74297.

⁴³ CFTC No Action Letter 12-35 (available at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-35.pdf>).

⁴⁴ CFTC No Action Letter 12-36 (available at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-36.pdf>).

⁴⁵ 76 Fed. Reg. 58186 at 58191-92 (September 20, 2011).

⁴⁶ *Id.* at 58189-90.

⁴⁷ 76 Fed. Reg. 77728 (December 14, 2011).

Rule Topic	Mandatory Compliance Date
<p>Protection of Cleared Swaps Customer Contracts and Collateral⁴⁸ (effective April 9, 2012)</p> <p>17 C.F.R. Parts 22, 190</p>	<p>November 13, 2012⁴⁹ (other than amendments to the Part 190 rules, which became effective on April 9, 2012).</p>
<p>Derivatives Clearing Organization General Provisions and Core Principles⁵⁰ (effective January 9, 2012)</p> <p>17 C.F.R. Part 39</p>	<p><u>January 9, 2012</u>. DCOs must comply with §§:</p> <p>39.10 (Compliance with Core Principles) (except Chief Compliance Officer requirement)</p> <p>39.15 (Treatment of Funds)</p> <p>39.16 (Default Rules and Procedures)</p> <p>39.17 (Rule Enforcement)</p> <p>39.21 (Public Information)</p> <p>39.22 (Information Sharing)</p> <p>39.23 (Antitrust Considerations)</p> <p>39.27 (Legal Risk)</p> <p><u>May 7, 2012</u>. DCOs must comply with §§:</p> <p>39.11 (Financial Resources)</p> <p>39.12 (Participant and Product Eligibility)</p> <p>39.13 (Risk Management) (except for 39.13(g)(8)(i) (Gross Margin for Customer Accounts))</p> <p>39.14 (Settlement Procedures)</p> <p><u>November 8, 2012</u>. DCOs must comply with §§:</p> <p>39.10(c) (Designation of a Chief Compliance Officer)</p> <p>39.13(g)(8)(i) (Gross Margin for Customer Accounts)⁵¹</p> <p>39.18 (System Safeguards)</p> <p>39.19 (Reporting Requirements)</p> <p>39.20 (Recordkeeping)</p>

⁴⁸ 77 Fed. Reg. 6336 (February 7, 2012).

⁴⁹ As extended by CFTC No Action Letter 12-30 (available at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-30.pdf>).

⁵⁰ 76 Fed. Reg. 69334 (November 8, 2011).

⁵¹ See Division of Clearing and Risk Letter, dated November 1, 2102 (available at <http://www.cftc.gov/ucm/groups/public/@otherif/documents/ifdocs/dcoextension11-1-12.pdf>) (granting an extension to seven DCOs until January 15, 2013 for full compliance with Rule 39.13(g)(8)(i), unless notified otherwise; the request letter related to customer positions held in a 4d(a) (i.e., futures) segregated account).

Rule Topic	Mandatory Compliance Date
<p>Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management⁵² (effective October 1, 2012)</p> <p>17 C.F.R. §23.506, 23.608-611, et al.</p>	<p>For FCMs, DCMs and DCOs, October 1, 2012. For SDs and MSPs, the later of October 1, 2012 or the date on which the SD/MSP registration rules “become effective” [sic, but probably intended as October 12, 2012] (but see footnote 3 with regard to CFTC Rules 23.608-609). For SEFs, the later of October 1, 2012 or the date on which the rules implementing SEF core principles “become effective”. The rules delegate authority to the Director of the Division of Clearing and Risk to establish an alternative compliance schedule for timing of acceptance for clearing requirements that are found to be technologically or economically impracticable for an affected FCM, SD or MSP that seeks, in good faith, to comply with the requirement.</p>

POSITION LIMITS

Rule Topic	Mandatory Compliance Date
<p>Position Limits for Futures and Swaps⁵³ (effective January 17, 2012)</p> <p>17 C.F.R. Part 151</p>	<p>On September 28, 2012 the United States District Court for the District of Columbia vacated the CFTC’s position limits rule and remanded it to the CFTC for the agency to resolve certain issues of statutory interpretation.⁵⁴ The CFTC announced on November 15, 2012 that it will appeal the decision.⁵⁵</p>

LARGE TRADER REPORTING

Rule Topic	Mandatory Compliance Date
<p>Large Trader Reporting for Physical Commodity Swaps⁵⁶ (effective September 20, 2011)</p> <p>17 C.F.R. Part 20</p>	<p>For clearinghouses, clearing members and “large traders” (i.e., persons with positions of a size that subjects them to the rule’s books and records obligations), compliance became mandatory on the effective date (September 20, 2011). However, through a series of letters, the CFTC’s Division of Market Oversight (“DMO”) extended relief to clearing organizations and clearing members from the reporting requirements of Rules 20.3 and 20.4, initially as class relief from reporting followed by conditional relief for less than fully compliant reporting.</p>

⁵² 77 Fed. Reg. 21278, 21290 (April 9, 2012)

⁵³ 76 Fed. Reg. 71626 (November 18, 2011).

⁵⁴ *International Swaps and Derivatives Association et al. vs. United States Commodity Futures Trading Commission* (D.D.C 11-cv-2146 (RLW), September 28, 2012).

⁵⁵ Press Release PR6413-12, Commodity Futures Trading Commission, (November 15, 2012). See Notice of Appeal filed November 16, 2012 by CFTC seeking review of a decision by the U.S. District Court in 1:11-cv-02146-RLW.

⁵⁶ 76 Fed. Reg. 43581 (July 22, 2011).

Rule Topic	Mandatory Compliance Date
	<p>This relief has now expired.</p> <p>The compliance date for non-clearing member SDs was specified as the effective date of the Entity Definitions (i.e., July 23, 2012). However, pursuant to staff no-action relief,⁵⁷ the compliance date for non-clearing member SDs to submit Section 20.4 reports has been deferred until March 1, 2013, and the compliance date for SDs that meet the criteria of Section 20.10(e) (e.g., resource limitations or lack of reporting experience) (a “Section 20.10(e) swap dealer”) to submit Section 20.4 reports has been deferred until September 1, 2013. Any entity that is relying on this no-action relief must state that it is doing so and, in the case of a Section 20.10(e) swap dealer, provide certain additional information in an e-mail to the Division of Market Oversight by no later than the date on which the entity applies for swap dealer registration.</p> <p>The relief described above did not alter the September 20, 2011 compliance date for other applicable provisions of Part 20, including the books and records requirements and the special information call provisions.</p> <p>Pursuant to no-action relief requested by ISDA to address conflicts with non-U.S. privacy laws, reporting parties may omit certain counterparty identifying information from Rule 20.4 and Rule 20.5 submissions, subject to the conditions and time limitations described above with respect to Part 45 and Part 46 reporting.⁵⁸</p>

For further information regarding any of the foregoing matters, please contact Joshua Cohn (+1 212 506 2539 or jcohn@mayerbrown.com) or Curtis Doty (+1 212 506 2224 or cdoty@mayerbrown.com) of Mayer Brown LLP.

⁵⁷ CFTC No Action Letter 12-51 (available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/12-51.pdf>)

⁵⁸ See footnote 31 and accompanying text.

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