



BNY Mellon Regulatory News

CFTC & SEC Begin Finalizing OTC Derivatives Reform

Final Definition of Swaps Approved as Part of Dodd-Frank

Overview

As a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), the U.S. Commodity Futures Trading Commission (CFTC) and the U.S. Securities and Exchange Commission (SEC) are writing rules to regulate the swaps marketplace, and recently approved the final product definitions for swaps and security-based swaps.

The final rules, announced by the SEC and CFTC on July 10, 2012, include the product definitions of the following: interest rate, credit default and total return swaps; foreign exchange swaps and forwards, foreign currency options, commodity options, non-deliverable forwards in foreign exchange (NDFs), cross currency swaps, forward rate agreements (FRAs), contracts for differences (CFDs); options to enter into swaps and forward swaps

Oversight

These final rules further define the swap regulatory oversight environment as co-regulated by the CFTC and the SEC.

The SEC will have supervisory oversight responsibility for securities-based swaps, including total return swaps based either on a single security or a narrow-based index where the term "yield" might be used as a proxy for price. The CFTC will have oversight responsibility for instruments based on a variety of interest or other monetary rates. These include total return swaps based on a broad-based security index, credit default swaps on broad-based security indices, and total return swaps on two or more loans. Oversight responsibility and rules on "mixed swaps" have yet to be defined.

Noteworthy Exemptions

In the final rule, it was stated that traditional insurance products are exempted from the definition of swaps provided that the products meet the “Product test” and the providers meet the “Provider test” as defined by the SEC and CFTC.

In addition, certain consumer and commercial arrangements, as well as certain loan participations, which all have traditionally been excluded in the definition of swaps, have been formally exempted from the swap definition through these final rule definitions.

Additionally, a subset of the aforementioned foreign exchange transactions may be exempted from the definition of swaps by the U.S. Treasury, which will eliminate some, but not all of the requirements of the final swap definition.

These rules will be effective 60 days after publication in the Federal Register. For more information, please visit <http://www.cftc.gov> and <http://www.sec.gov>.



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² Source: Global Finance Magazine