

CFTC Proposes to Require Mandatory Clearing of Certain Interest Rate Swaps and Credit Default Index Swaps

On July 24, 2012, the CFTC issued proposed rules that would require certain interest rate swaps and credit default index swaps to be cleared. This is the first proposed mandatory clearing determination by the CFTC pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Under the proposed rules, the following types of derivatives would be subject to the clearing requirement:

- Fixed-to-floating interest rate swaps, basis swaps, and forward rate agreements in U.S. dollars, the Euro, Pounds Sterling, or the Japanese Yen; and
- Untranching credit default swaps on certain North American indices (CDX.NA.IG and CDX.NA.HY) and European indices (iTraxx Europe, iTraxx Europe Crossover, and iTraxx Europe HiVol).

A complete list of the derivatives covered by the proposed determination is available in the CFTC's release, which is available [here](#). The proposed rules are open for comment for 30 days.

The CFTC also adopted final rules that create a phased-in implementation schedule for compliance with mandatory clearing determinations under the Dodd-Frank Act. Under this schedule:

- Swaps between two "category 1 entities" will be subject to a mandatory clearing determination 90 days after such determination is published in the Federal Register. "Category 1 entities" include swap dealers, major swap participants, and active funds (which are private funds that executed a monthly average of 200 or more swaps per month over the 12 months preceding such mandatory clearing determination). "Third-party subaccounts" (as described below) are not active funds. Fewer funds will be active funds under the final rules than under the proposed rules, which used a monthly average of 20 swaps rather than 200 swaps;
- Swaps between a "category 2 entity" and a category 1 entity or a category 2 entity will be subject to a mandatory clearing determination 180 days after such determination is published in the Federal Register. "Category 2 entities" include commodity pools, private funds other than active funds, and other entities that are predominantly engaged in financial activities (other than "third-party subaccounts").
- All other swaps will be subject to a mandatory clearing determination 270 days after such determination is published in the Federal Register. This includes swaps entered into by "third-party subaccounts," which are accounts managed by an investment manager that (i) is independent of and unaffiliated with the account's beneficial owner or sponsor, and (ii) is responsible for the documentation necessary for the account's beneficial owner to clear swaps. This definition is broader than the one in the proposed rules, which included only managed accounts that required specific approval from the beneficial owner to execute, confirm, margin or clear swaps.

The CFTC's release adopting the implementation schedule is available [here](#). Please contact the Ropes & Gray attorney who usually advises you with any questions you may have or if you would like additional information.