

CFTC Issues Final Clearing Determination for Certain Interest Rate Swaps and Credit Default Index Swaps

On November 28, 2012, the Commodity Futures Trading Commission (CFTC) issued final rules that require certain interest rate swaps and credit default index swaps to be cleared. This is the first mandatory clearing determination by the CFTC pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The final rules will become effective upon publication in the Federal Register, and compliance with the rules will be phased in beginning on March 11, 2013 and continuing through the third quarter of 2013.

The rules require market participants to submit a swap that is required to be cleared to a derivatives clearing organization as soon as technologically practicable and no later than the end of the day of execution. The following types of swaps will 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 overnight index swaps in U.S. dollars, the Euro, and Pounds Sterling; and
- Untranchet 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 swaps covered by the rules is available in the CFTC's release, which is available [here](#). The clearing determination applies only to swaps currently cleared by CME, ICE Clear Credit, ICE Clear Europe and LCH.Clearnet Ltd. While the clearing determination only applies to the types of derivatives specified above, the CFTC may issue other clearing determinations in the future that will subject other types of derivatives to mandatory clearing.

The CFTC previously adopted final rules that create a phased-in implementation schedule for compliance with mandatory clearing determinations under the Dodd-Frank Act. The CFTC's release adopting the implementation schedule is available [here](#). The rules adopted yesterday provide for the following schedule for mandatory clearing of swaps specified in the rules as follows:

- **March 11, 2013:** Clearing of swaps between two "category 1 entities," which include swap dealers, major swap participants,¹ and active funds (which are private funds that executed a monthly average of 200 or more swaps per month over the 12 months preceding the mandatory clearing determination), is required;
- **June 10, 2013:** Clearing of swaps between a "category 2 entity" and a category 1 entity or a category 2 entity is required. Category 2 entities include commodity pools (including mutual funds), private funds other than active funds, and other entities that are predominantly engaged in financial activities (other than "third-party subaccounts" (as defined below)); and
- **September 9, 2013:** All other swaps will be required to be cleared. 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, and swaps entered into by ERISA pension plans.

Any swaps entered into prior to the applicable compliance date noted above will not be subject to mandatory clearing. Please contact the Ropes & Gray attorney who usually advises you with any questions you may have or if you would like additional information.

¹ For further information regarding the definitions of swap dealer and major swap participant, please see Ropes & Gray's previous [Alert](#).