Commodity Futures Trading Commission
Office of Public Affairs
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
www.cftc.gov

Proposed Rule on Duties for Swap Dealers and Major Swap Participants

The Commodity Futures Trading Commission (Commission) is proposing rules establishing and governing the duties of swap dealers and major swap participants.

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

Section 731 of the Dodd-Frank Act amends the Commodity Exchange Act (CEA) by inserting section 4s(j), which sets forth certain duties for swap dealers and major swap participants, including the duty to:

1) monitor trading to prevent violations of applicable position limits;
2) establish risk management procedures adequate for managing the day-to-day business of the swap dealer or major swap participant;
3) disclose to the Commission and to applicable prudential regulators general information relating to swaps trading, practices, and financial integrity;
4) establish and enforce internal systems and procedures to obtain information needed to perform all of the duties prescribed by Commission regulations;
5) implement conflict of interest systems and procedures; and
6) refrain from taking any action that would result in an unreasonable restraint of trade or impose a material anticompetitive burden on trading or clearing.

Risk Management Procedures

The Dodd-Frank Act requires swap dealers and major swap participants to establish a risk management program consisting of written policies and procedures designed to monitor and manage the risks associated with their day-to-day business. Under the proposed rules, the risk management program must take into account market risk, credit risk, liquidity risk, foreign currency risk, legal risk, operational risk, settlement risk, and all other relevant risks.

The proposed rules also would require that swap dealers and major swap participants establish polices for monitoring their traders throughout the trading day for compliance with trading limits established by the firm and require traders to follow established procedures for executing and confirming transactions. The rules would also require diligent supervision of traders and separation of traders from the risk management unit.

Monitoring of Trading

Under the proposed rule, swap dealers and major swap participants would be required to establish procedures to monitor for and prevent violations of applicable position limits established by the Commission, a designated contract market, or a swap execution facility. A swap dealer or major swap participant would have to:

1) provide annual training for personnel;
2) diligently monitor and supervise trading;
3) implement an early warning system;
4) test their position limit procedures;
5) document compliance with position limits on a quarterly basis; and
6) audit the procedures annually.

Diligent Supervision

The proposed rule would require each swap dealer and major swap participant to establish a system of diligent supervision over all activities performed by its partners, members, officers, employees, and agents, and would require the creation of a supervisory system with qualified supervisory personnel.

Business Continuity and Disaster Recovery

Under the proposed rule, swap dealers and major swap participants would be required to establish a business continuity and disaster recovery plan designed to enable them to resume operations by the next business day following an emergency or other disruption.

General Information: Availability for Disclosure and Inspection

The proposed rule requires that swap dealers and major swap participants promptly disclose all information required by the Commission or a prudential regulator. To ensure prompt disclosure of all information required by the Commission, swap dealers and major swap participants would be required to have adequate internal systems that will permit the Commission to obtain any information required in a timely manner.

Antitrust Considerations

Under the proposed rule, swap dealers and major swap participants would be required to adopt policies and procedures to prohibit any action that results in any unreasonable restraint of trade or imposes any material anticompetitive burden on trading or clearing, unless necessary or appropriate to achieve the purposes of the CEA.