

## Dodd-Frank Title VII Rule Compliance Schedules — A Matrix

The CFTC's recent release of several final rules, including rules regarding registration of swap dealers and major swap participants ("SDs" and "MSPs", respectively), allows renewed consideration of the speed and sequencing of implementation of Title VII of Dodd Frank. This Update attempts to put recent CFTC actions in perspective, set against the CFTC's own July 2011 "Effective Date for Swap Regulation" final order and the tentative schedule for further rule releases that Chairman Gensler made public at the CFTC's January 11 open meeting (attached as Annex A).<sup>1</sup> Although the July 2011 final order indicated that the effectiveness of many rulemakings would be coordinated around the completion of entity (SD and MSP) definitions ("Entity Definitions") and product (swap) definitions ("Product Definitions"), it is now apparent that some important rulemakings will follow the two definitional rulemakings. It is not clear that the July 2012 final effective date postulated by the CFTC in its December 23, 2011 amendment<sup>2</sup> to its July 2011 final order will be achieved. It is also not clear where the SEC stands in its cooperative and complementary implementation process.

In the CFTC's rulemakings, we are seeing the developing interplay of rule "effective" dates and mandatory compliance dates. Final rules may offer both an effective date<sup>3</sup> and a potentially later compliance date.<sup>4</sup> Our matrix below stresses compliance dates as most meaningful. Additionally, some CFTC proposing releases describe prerequisites to still-unknown

compliance dates, which prerequisites we also include in our matrix.

### Analysis

In July 2011, the CFTC responded to the fast-approaching statutory deadline for general Title VII effectiveness with a final exemptive order that recognized, most significantly, that certain provisions of Title VII required rulemakings to become meaningfully effective, and that still other provisions required completed Entity and Product Definitions before they could become effective. This relatively simple formulation, however, has been superseded by several more complex paradigms. First, the CFTC has passed rules that appear dependent only on the completion of the Entity and Product Definitions, but that actually require still other rulemakings to be functional. An example is the SD/MSP registration rule itself (see "SD/MSP Registration and Duties" below), which many market participants may find baffling before the completion of the extraterritoriality rule scheduled for some time after March 2012. Second, in certain other rulemakings, the CFTC has correctly established prerequisites to compliance beyond the definitional rulemakings (see, for example, the September 2011 proposed rules on compliance and implementation schedules for Clearing and Trade Execution Requirements<sup>5</sup> and for Trading Documentation and Margining Requirements<sup>6</sup> below). Third, in still other rulemakings, the CFTC may have set earlier effective dates, but afforded compliance schedules stretching through 2012. For example,

although the process for review of swaps for mandatory clearing now is running with respect to swaps that were actually being cleared in July 2011, it is unlikely that clearing will be made mandatory before November 2012 (see “Mandatory Clearing and Trade Execution – Protection of Cleared Swaps Customer Contracts and Collateral” below).

Certainly, it is best that the CFTC sets a schedule that allows it to generate well-considered regulations and that allows market participants the time needed to comply in good order. It is possible that the CFTC still could reconsider progress thus far and provide additional rationalization of the regulatory process.

## SD/MSP Registration and Duties

RULE TOPIC	MANDATORY COMPLIANCE DATE
SD/MSP REGISTRATION (adopted January 11, 2012) <sup>7</sup>	Unknown. Filing of a registration application is not mandatory until the Product Definitions and the Entity Definitions are effective. The application must document compliance with any then-applicable Section 4s Implementing Regulations <sup>8</sup> (see below). The SD/MSP must supplement its application to demonstrate compliance with subsequently issued Section 4s Implementing Regulations.
SECTION 4s REQUIREMENTS:	Final implementing rules will specify compliance dates. <sup>9</sup>
<ul style="list-style-type: none"> <li>External business conduct (adopted 1/11/12 but not publicly available as this Update went to press)</li> </ul>	Later of (i) 180 days after rule-effective date (60 days after publication) or (ii) deadline for SD/MSP registration application. <sup>10</sup>
<ul style="list-style-type: none"> <li>Internal Business Conduct (Duties, Recordkeeping, CCO)</li> </ul>	Unknown. Final rules tentatively scheduled for consideration in 1Q 2012.
<ul style="list-style-type: none"> <li>Capital and Margin</li> </ul>	<p>Unknown. Final rules tentatively scheduled for consideration after 1Q 2012.</p> <p>Prerequisites for compliance with margin requirements: adoption of final rules on Product Definitions, Entity Definitions (each of which is tentatively scheduled for consideration during 1Q 2012), SD/MSP registration (adopted) and Trading Documentation (scheduled for consideration after 1Q 2012).<sup>11</sup></p> <p>The CFTC proposed a staged compliance schedule, under which compliance with respect to Category 1 Entities<sup>12</sup> must occur no later than 90 days from the publication of the Trading Documentation requirements. The compliance date for Category 2 Entities<sup>13</sup> will occur 180 days from such publication date, and for the remaining entity categories, 270 days from such publication date.</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 models prior to the compliance date.</p>
<ul style="list-style-type: none"> <li>• Internal Business Conduct (Documentation)</li> </ul>	<p>Unknown. Final rules tentatively scheduled for consideration after 1Q 2012.</p> <p>Prerequisites: adoption of final rules on Product Definitions, Entity Definitions (each of which is tentatively scheduled for consideration during 1Q 2012), SD/MSP registration (adopted), and swap confirmation requirements and protection of collateral for uncleared swaps (scheduled for consideration after 1Q 2012).<sup>14</sup></p> <p>The CFTC proposed a staged compliance schedule, under which compliance with respect to Category 1 Entities must occur no later than 90 days from the publication of the Trading Documentation requirements. The compliance date for Category 2 Entities will occur 180 days from such publication date, and for the remaining entity categories, 270 days from such publication date.</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 models prior to the compliance date.</p>
<ul style="list-style-type: none"> <li>• Segregation for Uncleared Swaps</li> </ul>	<p>Unknown. Final rules tentatively scheduled for consideration after 1Q 2012.</p>

## Swap Recordkeeping and Reporting

RULE TOPIC	MANDATORY COMPLIANCE DATE
<p>REAL-TIME REPORTING OF SWAP TRANSACTION DATA<sup>15</sup> (effective March 9, 2012)</p>	<p>Unknown. The rules adopt a phased compliance schedule. Compliance Date 1 will be the later of July 16, 2012 or 60 calendar days after publication of the final Product Definitions and, for off-facility swaps, final Entity Definitions. Compliance Date 1 applies to publicly reportable transactions in the interest rate and credit asset classes that are 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, which will occur 90 days after the “commencement of” Compliance Date 1, applies to publicly reportable DCM/SEF/SD/MSP swaps in the foreign exchange, equity and “other commodity” asset classes. Compliance Date 3 will occur 90 days after Compliance Date 2 and will apply to swaps in all asset</p>

	<p>classes by all other reporting parties, including non-SD/MSPs. Compliance will be postponed, if necessary, until an SDR in the relevant asset class is registered or provisionally registered. Block-size criteria and certain off-facility, “other commodity” swaps will be addressed in a re-proposed rule. Consequently, the rule provides for interim time delays for relevant swaps until appropriate minimum block sizes are established.</p>
<p>SWAP DATA RECORDKEEPING &amp; REPORTING REQUIREMENTS<sup>16</sup> (effective March 13, 2012)</p>	<p>Unknown. The rules adopt a phased compliance schedule identical to that for Real-time Reporting, except that Compliance Date 1 (which applies to SEFs, DCMs, DCOs, SDs and MSPs) requires that both the Product Definitions and the Entity Definitions be effective, and no provision is made for the unavailability of an SDR. If no SDR accepts data for the relevant swap, reporting is made to the CFTC.<sup>17</sup></p>

## Mandatory Clearing and Trade Execution

RULE TOPIC	MANDATORY COMPLIANCE DATE
<p>PROCESS FOR REVIEW OF SWAPS FOR MANDATORY CLEARING<sup>18</sup> (effective 9/26/2011)</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 after issuance of the stay, unless the DCO agrees to an extension.</p> <p>Any swaps listed for clearing by a DCO as of the Dodd-Frank enactment date (July 21, 2010) were considered submitted to the CFTC on September 26, 2011, the effective date of the final rule. Unless the relevant DCOs have agreed to extensions, the 90 day review period for such swaps has already expired.</p>
<p>MANDATORY CLEARING COMPLIANCE SCHEDULE (proposed 9/20/2011)</p>	<p>Unknown. Prerequisites: adoption of final rules on Protection of Cleared Swaps Customer Contracts and Collateral (adopted 1/11/2012), Product Definitions, Entity Definitions, and the End-user Exception to Mandatory Clearing (each of which is tentatively scheduled for consideration during the first quarter of 2012 and can be effective no earlier than 60 days after final publication).</p>

	<p>The CFTC will set an effective date when it issues a mandatory clearing determination, and will have discretion to implement a phased compliance schedule based on entity type. The CFTC anticipates that it will utilize phased compliance each time it issues a mandatory clearing determination for a new group, category, type or class of swaps, but not when a new product offered for clearing falls within the parameters of a previously issued mandatory clearing determination.<sup>19</sup></p> <p>If the CFTC invokes phased compliance, the following transaction categories and deadlines would apply:</p> <ol style="list-style-type: none"> <li>1) Swaps between a Category 1 Entity<sup>20</sup> and another Category 1 Entity or a party that desires to clear (a “voluntary clearer”) – not later than 90 days after the effective date set by the CFTC for its mandatory clearing determination.</li> <li>2) Swaps between a Category 2 Entity<sup>21</sup> and a Category 1 Entity, another Category 2 Entity or a voluntary clearer – not later than 180 days after the effective date set by the CFTC for its mandatory clearing determination.</li> <li>3) All other swaps not eligible to claim a clearing exemption – not later than 270 days after the effective date set by the CFTC for its mandatory clearing determination.</li> </ol>
<p>TRADE EXECUTION COMPLIANCE SCHEDULE (proposed 9/20/2011)</p>	<p>Unknown. Prerequisites: adoption of final rules for DCM core principles (tentatively scheduled for the 1st quarter of 2012) and SEF registration (scheduled for consideration after 1Q 2012).<sup>22</sup> Although not mentioned in the compliance date proposal, final rules on the Process of Making a Swap Available to Trade (proposed in December 2011<sup>23</sup> and scheduled for consideration after 1Q2012) would also seem to be a logical prerequisite.</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>
<p>PROTECTION OF CLEARED SWAPS, CUSTOMER CONTRACTS AND COLLATERAL (adopted 1/11/2012)</p>	<p>November 8, 2012 (other than amendments to the Part 190 rules, which become effective 60 days after publication in the Federal Register). Although the proposed mandatory clearing compliance schedule does not expressly require the effectiveness (as opposed to adoption) of these rules, the CFTC could exercise its discretion in setting the mandatory clearing compliance date so as to avoid forcing clearing prior to November 8, 2012.</p>

<p>DERIVATIVES CLEARING ORGANIZATION GENERAL PROVISIONS AND CORE PRINCIPLES<sup>24</sup> (effective January 9, 2012)</p>	<p><b>January 9, 2012.</b> 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><b>May 7, 2012.</b> 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><b>November 8, 2012.</b> 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)</p> <p>39.18 (System Safeguards)</p> <p>39.19 (Reporting Requirements)</p> <p>39.20 (Recordkeeping)</p>
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## Position Limits

RULE TOPIC	MANDATORY COMPLIANCE DATE
<p>POSITION LIMITS FOR FUTURES AND SWAPS<sup>25</sup> (effective January 17, 2012)</p>	<p>The rule generally adopts a compliance date of 60 days after the CFTC completes the Product Definitions. Prior to such compliance date, market participants must continue to comply with existing limits. For non-spot, non-legacy contracts, the compliance date will be set forth by CFTC order establishing such limits approximately 12 months after the collection of swap positional data.</p>

## Large Trader Reporting

RULE TOPIC	MANDATORY COMPLIANCE DATE
LARGE TRADER REPORTING FOR PHYSICAL COMMODITY SWAPS <sup>26</sup> (effective September 20, 2011)	<p>For clearinghouses, clearing members and persons with books and records obligations, compliance begins upon the effective date (September 20, 2011). SDs that are not clearing members must comply upon the effective date of the final regulations further defining the term “swap dealer.” For certain SDs, however, the CFTC may extend this latter date by an additional six months based on resource limitations or lack of experience in reporting transactions to the CFTC.<sup>27</sup> The special information-call provisions of the rule became effective on September 20, 2011.</p> <p>On September 16, 2011, the CFTC’s Division of Market Oversight issued temporary and conditional relief to clearing organizations and clearing members as a class from certain reporting requirements. In a second letter, issued on November 18, 2011, this relief was extended, subject to additional conditions, to March 20, 2012.<sup>28</sup> Under the extended relief, reporting parties who cannot readily file fully compliant reports may submit reports that differ in content and form from those mandated by the rule, by virtue of showing a good faith attempt at compliance. Such good faith demonstrations can be made by filing otherwise fully compliant reports in a specified format. Reporting parties must submit email notifications to the CFTC describing their noncompliance and their intended procedures for becoming compliant.</p>

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## Appendix A

### Dodd-Frank Title VII Final Rules and Interpretive Orders the CFTC may consider in 2012<sup>29</sup>

JANUARY TO MARCH	<ul style="list-style-type: none"><li>• Client Clearing Documentation, Clearing Member Risk Management, Straight-Through Processing</li><li>• Commodity Options</li><li>• DCMs</li><li>• End-User Exception</li><li>• Entity Definitions</li><li>• External Business Conduct</li><li>• Internal Business Conduct (Duties, Recordkeeping, CCOs)</li><li>• Product Definitions</li><li>• Registration of SDs and MSPs</li><li>• Reporting of Historical Swaps</li><li>• Segregation for Cleared Swaps</li></ul>
APRIL AND AFTER	<ul style="list-style-type: none"><li>• Block Rule</li><li>• Capital and Margin</li><li>• Conforming Rules</li><li>• Disruptive Trade Practices</li><li>• Extraterritoriality</li><li>• Governance and Conflict of Interest</li><li>• Implementation (clearing and trade execution)</li><li>• Internal Business Conduct (Documentation)</li><li>• Process for Making a Swap Available to Trade (SEFs and DCMs)</li><li>• SEFs</li><li>• Segregation for Uncleared Swaps</li></ul>

NOTE: This outline is tentative and for preliminary purposes, and is subject to change.

## Endnotes

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- <sup>1</sup> This update does not address all related CFTC actions, nor does it attempt to summarize the content of those actions.
- <sup>2</sup> 76 Fed. Reg. 80233. The date is actually characterized as the expiration date of exemptive relief from many Title VII provisions.
- <sup>3</sup> Section 754 of Dodd-Frank stipulates that required rulemaking effective dates are to be not less than 60 days after publication of the final rule.
- <sup>4</sup> See 77 Fed. Reg. 2136, 2193 (CFTC has discretion to set forth dates after the effective date to begin enforcement of regulatory provisions).
- <sup>5</sup> 76 Fed. Reg. 58186 (“Clearing and Trade Execution Scheduling Proposal,” discussed below under “Mandatory Clearing and Trading”).
- <sup>6</sup> 76 Fed. Reg. 58176 (“Margin and Trade Documentation Scheduling Proposal,” discussed below under “SD/MSP Registration and Duties”).
- <sup>7</sup> Manuscript copy posted at [www.cftc.gov](http://www.cftc.gov). Federal Register version is not yet published.
- <sup>8</sup> See CFTC Rule 3.1(f) (defining Section 4s Implementing Regulations).
- <sup>9</sup> Commissioner O’Malia, in his opening statement at the January 11 CFTC meeting, made note of the cumbersome and complex nature of requiring market participants to track multiple rules to determine their compliance obligations. Commissioner Sommers raised similar concerns at the meeting.
- <sup>10</sup> As described in the release accompanying SD/MSP Registration at footnote 40.
- <sup>11</sup> Margin and Trade Documentation Scheduling Proposal at 58180.
- <sup>12</sup> 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 20 or more swaps per month based on a monthly average over the 12 months preceding the publication of final regulations. 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. Margin and Trade Documentation Scheduling Proposal at 48184-85.
- <sup>13</sup> Category 2 Entities are commodity pools, private funds (other than “active funds”), certain employee benefit plans, persons predominantly engaged in activities in the business of banking or that are financial in nature, but not third-party subaccounts. *Id.*
- <sup>14</sup> Margin and Trade Documentation Scheduling Proposal at 58178-79.
- <sup>15</sup> 77 Fed. Reg. 1182 at 1228.
- <sup>16</sup> 77 Fed. Reg. 2136 at 2194-95.
- <sup>17</sup> *Id.* at 2168.
- <sup>18</sup> 76 Fed. Reg. 44464.
- <sup>19</sup> Clearing and Trade Execution Scheduling Proposal at 58191-92.
- <sup>20</sup> 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 20 or more swaps per month based on a monthly average over the 12 months preceding the publication of final regulations. 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 58195.
- <sup>21</sup> Category 2 Entities are commodity pools, private funds (other than “active funds”), certain employee benefit plans, persons predominantly engaged in activities in the business of banking or that are financial in nature, but not third-party subaccounts. *Id.*
- <sup>22</sup> Clearing and Trade Execution Scheduling Proposal at 58189-90.
- <sup>23</sup> 76 Fed. Reg. 77728.
- <sup>24</sup> 76 Fed. Reg. 69334.
- <sup>25</sup> 76 Fed. Reg. 71626.
- <sup>26</sup> 76 Fed. Reg. 43581.
- <sup>27</sup> CFTC Rule 20.10(e).
- <sup>28</sup> The letter may be viewed at:  
<http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/XXXII.LargeSwapsTraderReporting/index.htm>.
- <sup>29</sup> As made public by Chairman Gensler at the CFTC’s January 11 meeting. Available at  
[http://www.cftc.gov/PressRoom/Events/opaevent\\_cftcdoddfrank011112](http://www.cftc.gov/PressRoom/Events/opaevent_cftcdoddfrank011112)