



Financial Services & Products ADVISORY ■

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CFTC Announces Phase-in of Mandatory Trade Execution for Certain “Package Transactions” Involving Swaps

The Dodd-Frank Wall Street Reform and Consumer Protection Act requires that any swap subject to mandatory clearing must be executed on a Swap Execution Facility (SEF) or a Designated Contract Market (DCM) once it is determined that type of swap has been “made available to trade” (a swap that is made available to trade and subject to the mandatory execution requirement is referred to below as a “MAT Swap”). To date, made-available-to-trade determinations have been made for certain credit default swaps and interest rate swaps, which must therefore be executed on a SEF or a DCM unless an exception applies.¹

Because of potential difficulties in executing and processing multicomponent transactions for which at least one component is a MAT Swap (“package transactions”), the Commodity Futures Trading Commission’s (CFTC’s) staff initially postponed mandatory execution for the MAT Swap components of those transactions until May 16, 2014, by means of a no-action letter.² The CFTC’s staff has now issued an additional no-action letter regarding mandatory execution, the effect of which is to further postpone the mandatory execution requirement for the MAT Swap components of certain package transactions. The no-action letter sets out a phased-in timetable for bringing those swaps into compliance with the mandatory execution requirement.³ The compliance date will depend on the components of the particular package transaction.

¹ See [our prior advisory](#) on the CFTC’s announcement of available-to-trade determinations on certain interest rate swaps and credit default swaps.

² See [our prior advisory](#) describing such no-action relief.

³ CFTC no-action letter [14-62](#) (May 1, 2014).

No written request or filing is necessary to take advantage of the no-action relief.⁴

Phased-in Compliance

A package transaction may be included in the latest no-action relief if it involves two or more components and (i) it is executed between two or more counterparties; (ii) it has at least one component that is a MAT Swap; (iii) it is priced as one transaction, with all components executed at or around the same time; and (iv) the execution of each component is contingent upon the execution of all other components. The phased-in timetable for compliance is as follows.

- For package transactions in which each component is a MAT Swap, mandatory execution of each MAT Swap component begins on May 16, 2014.
- For package transactions in which at least one component is a MAT Swap and all other components are swaps subject to the mandatory clearing requirement, mandatory execution of each MAT Swap component begins on June 2, 2014.
- For package transactions in which at least one component is a MAT Swap and all other components are U.S. Treasury securities (each such package transaction, a “U.S. Dollar Swap Spread”), mandatory execution of each MAT Swap component begins on June 16, 2014.
- For package transactions in which at least one component is a MAT Swap and at least one component is a swap under the CFTC’s exclusive jurisdiction, but not subject to the mandatory clearing requirement, mandatory execution of each MAT Swap component begins on November 16, 2014.
- For package transactions in which at least one component is a MAT Swap and at least one component is not a swap under CFTC rules, mandatory execution of each MAT Swap component begins on November 16, 2014 (this category excludes U.S. Dollar Swap Spreads, which are instead subject to the June 16, 2014 compliance date).
- For package transactions in which at least one component is a MAT Swap and at least one component is a swap over which the CFTC does not have exclusive jurisdiction, mandatory execution of each MAT Swap component begins on November 16, 2014.

⁴ The CFTC’s no-action letter 14-62 also grants relief to SEFs and DCMs, subject to certain conditions, with respect to package transactions for which one component has been rejected for clearing. Absent the relief, which is available until September 30, 2014, if the rejected component is resubmitted for clearing with the same terms as the original trade (except for the time of execution), the resubmitted trade might run afoul of the prohibition against pre-arranged trading.

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