

CLIENT UPDATE

DODD-FRANK ACT COMPLIANCE CHECKLIST FOR SWAP END-USERS

NEW YORK

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We would like to remind our clients that while most of the provisions of the Commodity Exchange Act (the “CEA”) added or modified by the Dodd-Frank Act apply to swap dealers, major swap participants or other registrants with the Commodity Futures Trading Commission (the “CFTC”), certain provisions will affect end-users of swaps. A small number of such provisions still await final implementation by the CFTC, but end-users should be aware of their current compliance obligations under the CEA and the CFTC regulations.

We note that the Dodd-Frank Act also amended the Securities Exchange Act of 1934 to provide regulatory framework for security-based swaps, but the Securities and Exchange Commission (the “SEC”) has not yet proposed or finalized any implementing regulations applicable to end-users of security-based swaps.

We will continue to update you on compliance obligations of end-users of swaps and security-based swaps as the CFTC and the SEC finalize the implementing regulations. We briefly summarize below the current regulatory landscape applicable to swaps end-users under the CFTC regulations.

CICI APPLICATION

Each counterparty to a swap must be identified in all recordkeeping and swap data reporting by using a single legal entity identifier (“LEI”). The CFTC has announced the designation of DTCC-SWIFT as the provider of an interim LEI called “CFTC Interim Compliant Identifier” (“CICI”). You can apply for a CICI at the following website, which is owned, managed and operated by DTCC-SWIFT at: <https://www.ciciutility.org/index.jsp>. While access to the website is free and open to the public, DTCC-SWIFT charges a \$200 CICI assignment fee. For more information, see our client update memorandum at: <http://www.debevoise.com/newseventspubs/publications/detail.aspx?id=ebb882a0-c2f5-4d28-8720-f17541e1f2f6>

ISDA DODD-FRANK PROTOCOL

You have to either sign up and follow the procedures to adhere to the ISDA August 2012 D-F Protocol (the “DF Protocol”) published by the International Swaps and Derivatives Association, Inc. (“ISDA”) or use the documentation provided by your swap dealing counterparty that achieves the same purposes as the DF Protocol. If you do not provide the representations and information requested by your swap dealing counterparties under the DF Protocol or their own documentation, they will not be able to enter into new swaps with you. Further, note that as more regulations become effective, ISDA will publish future protocols related to the Dodd-Frank Act for adherence, which may be applicable to you.

RECORDKEEPING

An end-user is required to keep full, complete and systematic records, together with all pertinent data and memoranda, with respect to each swap entered into after April 10, 2013 (“New Swap”), including all records demonstrating that it is entitled to elect the “end-user exception” from clearing with respect to each New Swap as to which such counterparty elects to claim such exception. All records required to be kept with respect to each New Swap must be retained throughout the life of such New Swap and for a period of at least 5 years following the final termination of such swap. All records must be kept in either electronic or paper form, so long as they are retrievable and information contained in such form is reportable. All records required to be kept must be retrievable within 5 business days throughout the period such records are required to be kept. For more information, see our client update memorandum at: <http://www.debevoise.com/newseventspubs/publications/detail.aspx?id=e9f8b20e-92a0-4eca-82a6-03ad89815e80>

Slightly less extensive recordkeeping requirements apply with respect to swaps entered into before April 10, 2013 and on or after July 21, 2010 (the date on which the Dodd-Frank Act was enacted into law). In addition, recordkeeping requirements also apply with

respect to swaps entered into before July 21, 2010, but are still outstanding. For more information, see our client update memorandum at: <http://www.debevoise.com/newseventspubs/publications/detail.aspx?id=2b0ae768-6cb1-4380-b84d-95f7e146675b>

CLEARING AND END-USER EXCEPTION

The Dodd-Frank Act added a requirement (the “Clearing Requirement”) that all swaps must be submitted for clearing to a derivatives clearing organization (“DCO”) if the swaps are required to be cleared and are accepted by a DCO for clearing, unless an exemption or an exception applies. To prepare for clearing, you will need to engage one or more futures commission merchants so they can clear the swaps for you in the future when the Clearing Requirement becomes effective.

However, you could benefit from an exception to the Clearing Requirement if you (1) are not a “financial entity” (as defined in the CEA), (2) are using swaps to “hedge or mitigate commercial risk” (as defined in the CEA), and (3) notify the CFTC how you generally meet your financial obligations associated with entering into non-cleared swaps. In addition, if you are an “issuer of securities” registered under Section 12 of the Securities Exchange Act or that is required to file reports pursuant to Section 15(d) of the Securities Exchange Act, your board of directors or a committee of your board with the appropriate authority must have reviewed and approved the decision to enter into uncleared swaps. For more information, see our client update memorandum at: <http://www.debevoise.com/newseventspubs/publications/detail.aspx?id=55afe714-de09-4954-9cb1-2de1baf17a52>

GUARANTORS MUST BE ELIGIBLE CONTRACT PARTICIPANTS

Starting from October 12, 2012, a guarantor of swap obligations must also be an ECP even if the guaranteed swap counterparties are eligible contract participants (“ECPs”). The ECP status of the guarantor must be determined each time a swap is entered into; therefore, the determination of the ECP status of each swap guarantor with respect to all guarantees are not limited to those guarantees that are entered into on or after October 12, 2012, but include all guarantees outstanding on or after October 12, 2012, if you continue to enter into new swaps that benefit from such guarantees. For more information, see our client update memorandum at: <http://www.debevoise.com/newseventspubs/publications/detail.aspx?id=b8c13379-e1ce-467a-9954-bee5e443f52a>

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Please do not hesitate to contact us with any questions.

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