

CLIENT UPDATE

CFTC DEFERS COMPLIANCE DATES FOR MANY BUSINESS CONDUCT RULES FOR SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

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On December 18, 2012, the Commodity Futures Trading Commission (the "CFTC") adopted interim final rules to defer the compliance dates for a number of rules in subpart F, subpart H and subpart I to part 23 of the regulations adopted under section 4s of the Commodity Exchange Act. Deferral applies to the majority of rules establishing external and internal business conduct standards for swap dealers ("SDs") and major swap participants ("MSPs"), for which the initial compliance dates were generally set from December 11, 2012 through March 11, 2013. Adopted by the CFTC at the request of a number of swap market participants to allow time for all market participants to come into full compliance, these interim final rules will become effective upon publication in the Federal Register.

All market participants will be subject to the new compliance dates regardless of their adherence to the ISDA August 2012 DF Protocol ("ISDA Protocol") or other similar protocol sponsored by other trade associations or their execution of bilateral amendments of their existing relationship documents with their SD or MSP counterparties. Market participants that have not yet completed the ISDA Protocol or other protocol or executed bilateral amendments in anticipation of the initial compliance dates for those rules need not complete such process until the deferred compliance dates.

SUBPART F: INTERNAL BUSINESS CONDUCT STANDARDS: RECORDS OF NOTIFICATION TO COUNTERPARTY OF ADDRESS FOR COMPLAINTS

The compliance date for section 23.201(b)(3)(ii) (records indicating that a SD or MSP has notified its counterparties of the address, email address or telephone number to which complaints should be directed) is deferred until May 1, 2013.

SUBPART H: EXTERNAL BUSINESS CONDUCT STANDARDS

The compliance dates for the majority of external business conduct standards rules are deferred until May 1, 2013. They are:

- section 23.402 (general provisions, including policies and procedures to ensure compliance, know-your-counterparty requirements, and record retention);
- section 23.410(c) (confidential treatment of counterparty information);
- section 23.430 (verification of counterparty eligibility);
- section 23.431 (a) through (c) (disclosure of material risks, characteristics, material incentives and conflicts of interest, and scenario analysis);
- section 23.432 (clearing disclosures);
- section 23.434(a)(2), (b) and (c) (institutional suitability safe harbor);
- section 23.440 (requirements for SDs acting as advisors to special entities); and
- section 23.450 (requirements for SDs and MSPs acting as counterparties to special entities).

SUBPART I: INTERNAL BUSINESS CONDUCT STANDARDS: SWAP DOCUMENTATION

The compliance date for section 23.505 (documentation related to reliance on the end-user exception) is also deferred until May 1, 2013.

Further, the compliance dates for sections 23.502 (portfolio reconciliation) and 23.504 (swap trading relationship documentation) are deferred until July 1, 2013.

REMAINDER OF CONDUCT RULES NOT DEFERRED

Compliance dates for all other provisions of subpart F, subpart H and subpart I remain unchanged. For example, all SDs and MSPs must commence compliance with the following regulations from January 1, 2013:

- section 23.410(a) and (b) (prohibitions on fraud, manipulation and abusive practices);
- section 23.431(d) (disclosure of a daily mark);
- section 23.433 (fair dealings in communications); and
- section 23.434(a)(1) (reasonable diligence to understand the potential risks and rewards associated with a recommended swap or swap trading strategy).

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Please do not hesitate to contact us with any questions.

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