
CFTC Proposes Rule to Implement End-User Exception to Mandatory Swaps Clearing

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The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") amended the Commodity Exchange Act ("CEA") to require that:

(1) swaps be cleared through a derivatives clearing organization ("DCO") if they are of a type that the Commodity Future Trading Commission ("CFTC" or the "Commission") determines must be cleared, unless an exception from mandatory clearing applies;

(2) swaps be reported to a registered swap data repository ("SDR") or the CFTC; and

(3) if a swap is subject to a clearing requirement, it be executed on a registered swap execution facility or a designated contract market ("DCM"), unless no facility or market is available for execution of such swap. CEA Section 2(h)(1) provides that it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a DCO if the swap is required to be cleared.