

MEMO# 27884

February 11, 2014

CFTC Announces Measures for Orderly Transition to Mandatory Trading

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 11-14
INVESTMENT ADVISER MEMBERS No. 4-14
SECURITIES OPERATIONS ADVISORY GROUP RE: CFTC ANNOUNCES MEASURES FOR
ORDERLY TRANSITION TO MANDATORY TRADING

As we previously informed you, the first set of interest rate swaps will be subject to the trade execution requirement under the Commodity Exchange Act ("CEA") on February 15. [\[1\]](#) All transactions involving swaps that are subject to the trade execution requirement must be executed through a swap execution facility ("SEF") or a designated contract market ("DCM") and can no longer be executed bilaterally. In connection with the trading mandate, the Commodity Futures Trading Commission ("CFTC") and its Division of Market Oversight ("DMO") announced four measures to facilitate an orderly transition to mandatory trading.

First, DMO issued a no-action letter providing relief until May 15, 2014 from mandatory trading of certain swaps executed as part of a "package transaction." [\[2\]](#) For purposes of the relief, a "package transaction" is a transaction involving two or more instruments: (1) that is executed between two counterparties; (2) that is priced or quoted as one economic transaction with simultaneous execution of all components; (3) that has at least one component that is a swap that is made available to trade and subject to the trade execution requirement; and (4) where the execution of each component is contingent upon the execution of all other components.

Second, DMO issued guidance to SEFs concerning consent to jurisdiction of a SEF. DMO confirmed that all market participants of a SEF must consent to the jurisdiction of that SEF. [\[3\]](#) In addition, DMO clarified that, although a SEF is required to obtain consent to its jurisdiction from all market participants that either directly or indirectly effect transactions on its facility, such consent need not be obtained by the SEF through an affirmative writing. A SEF may comply with this requirement by providing in its rulebook that any person initiating or executing a transaction on or subject to the rules of the SEF directly or through an intermediary and any person for whose benefit such a transaction has been initiated or executed consents to the jurisdiction of the SEF.

Third, the CFTC issued an interim final rule clarifying that a party to an anonymous trade execution on a SEF or DCM cannot access information in swap data repositories to obtain the identity of its counterparty. [4]

Finally, a centralized list of swaps subject to the mandate is published on the CFTC's website. The chart is available at:

<http://www.cftc.gov/ucm/groups/public/@otherif/documents/ifdocs/swapsmadeavailablechart.pdf>

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endnotes

[1] See ICI Memorandum 27872 (Jan. 30, 2014), available at http://www.ici.org/my_ici/memorandum/memo27872 and ICI Memorandum 27852 (Jan. 22, 2014), available at http://www.ici.org/my_ici/memorandum/memo27852.

[2] CFTC Letter No. 14-12 (Feb. 10, 2014), available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/letter/14-12.pdf>.

[3] Division of Market Oversight Guidance on Swap Execution Facility Jurisdiction (Feb. 10, 2014), available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/dmostaffguidance021014.pdf>. (In an earlier version of the guidance that was subsequently replaced with this version, the staff stated that all market participants of a SEF “including customers of asset managers and customers of introducing brokers” must consent to the jurisdiction of that SEF. There is no explanation in the new version why the underlined text was removed nor is there any explanation of the implications of this removal.)

[4] Swap Data Repositories – Access to SDR Data by Market Participants (Feb. 10, 2014), available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister021014.pdf>.