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Rule Making Area I: Registration¹

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Final Rule: Registration of Swap Dealers and Major Swap Participants

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On January 11, 2012 the CFTC approved the final regulations which establish the registration process for swap dealers and major swap participants. The commission has delegated to the National Futures Association the responsibility for the administration of swap entity registration. Because the rules that define the terms swap dealer (SD) and major swap participant (MSP) and the term swap have not yet been finalized, the registration requirement will not be mandatory until those rules are finalized. According to the CFTC's schedule of expected rulemaking, these rules will be finalized by April 2012. In the meantime, entities that believe they are swap dealers or major swap participants can register provisionally with the CFTC

A SD/MSP becomes 'provisionally registered' once they: 1) file form "7-R" 2) file form "8-R" and a fingerprint card for each principal in the SD/MSP and 3) submit any documentation required under the section 4s regulations (the specific documentation that is required is not discussed in the rule). Section 4s is a new section the Dodd-Frank Act has added to the Commodity Exchange Act. It requires registered SDs/MSPs to meet specific requirements in the areas of capital and margin requirements, reporting and recordkeeping requirements, daily trading record requirements, business conduct standards, documentation standards, trading duties, designation of a chief compliance officer, and segregation of customer funds associated with uncleared swaps. Section 4s enumerates the areas for which requirements are needed but does not actually provide requirements; they are to be detailed in separate rulemakings.

A SD/MSP becomes fully registered once the NFA confirms that the registrant has demonstrated initial compliance with section 4s regulations and full compliance with all other registration requirements.

Persons associated with swap entities (aside from principals) are not required to register. However a swap entity is prohibited from permitting an associate person to effect or to be involved in effecting swaps on the swap entity's behalf if that person is subject to a "statutory disqualification" under sections 8a(2) and (3) of the Commodity Exchange Act. In other words,

¹ Federal Register 77 FR 2708

Performance of Registration Functions by National Futures Association With Respect To Swap Dealers and Major Swap Participants
<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-791a.pdf>



associated persons involved in swap dealing do not have to register but they must meet the standards of someone who could register successfully.

The proposed registration rule requested comment on the application of the swap entity registration requirements to those entities based outside of the United States. The final rule specifically declined to address this issue. As per the CFTC's schedule of expected rulemaking, extraterritorial issues will be discussed in a proposal to be released after March 2012.

Actualize View:

At this point it is advisable to wait to register. This recommendation is based on the following factors:

- A registration deadline has not yet been defined
- The section 4S requirements are not complete and any registration would need to be updated as these requirements become complete
- Filing early does not provide an advantage because the actual registration process is simple and does not require much preparatory work, and because registration is valid as soon as the required documentation is filed

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