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CFTC Deadlines Loom for Commercial End Users

End users of swaps should be aware of three impending deadlines for complying with new Commodity Futures Trading Commission (CFTC) regulations.

Commercial End-User Exception From Dodd-Frank's Clearing Mandate

As of **September 9, 2013**, any market participant that enters into many types of interest rate swaps (IRS) and credit default swaps (CDS) will be required to submit these swaps for clearing to a derivatives clearinghouse, absent an exception.¹ One significant exception — called the “commercial end-user exception” — allows certain companies to enter into these swaps without submitting them for clearing if certain criteria are met.² For more information about the commercial end-user exception, please contact the attorneys listed here or your regular Skadden contact.

Reporting Requirements

Beginning on **August 19, 2013**, if two end users (essentially non-Swap Dealers) enter into a swap, one of these end users will need to report data on the swap to a Swap Data Repository to satisfy obligations under various CFTC reporting rules.³ If one of the two end users is a financial entity,⁴ the financial entity will be the party responsible for reporting.⁵ If neither end user is a financial entity, the end users must agree upon which party shall be responsible for reporting.

As of **September 19, 2013**, any foreign exchange swaps, equity swaps and “other commodity” swaps that a non-financial swap counterparty entered into with another end user between April 10, 2013, and August 19, 2013, must have been reported to a Swap Data Repository. For more information about the reporting requirements, please contact the attorneys listed here or your regular Skadden contact.

- 1 The CFTC phased in the dates on which market participants must begin complying with CFTC rules requiring certain IRS and CDS to be submitted for clearing to a clearinghouse. September 9, 2013, is the first day on which all market participants will be required to comply with these rules. For details on which IRS and CDS are subject to the clearing mandate, see Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 74284 (Dec. 13, 2012). For more information regarding how to qualify for and claim the commercial end-user exception, see Skadden Client Alert “[New CFTC Swap Clearing Rules to Require Board Review and Approval of the Election to Rely on the ‘Commercial End-User Exception’](#)” (March 12, 2013).
- 2 See End-User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42560 (July 19, 2012).
- 3 See 17 C.F.R. Parts 43 and 45. For details regarding what information must be reported and by whom, see Skadden Client Alert “[Impending Swap Reporting Requirements to Impact All Swap Market Participants](#)” (April 4, 2013).
- 4 For the definition of financial entity, see 7 U.S.C. § 2(h)(7)(C)(i).
- 5 One exception is that the end user that is not a financial entity would be responsible for reporting if the non-financial entity is a U.S. person and the financial entity is a non-U.S. person.

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