

Derivatives Alert

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CFTC Adopts Permanent \$8 Billion Threshold for Swap Dealer De Minimis Exception

On November 5, 2018, the Commodity Futures Trading Commission (CFTC) voted 5-0 to approve a final rule amending the swap dealer registration trigger or activity threshold.¹ The amendments — which became effective on November 13, 2018 — eliminated the phase-in reduction of the de minimis threshold for swap dealing activity that triggers swap dealer registration. Absent action by the CFTC, on December 31, 2019, the registration threshold would have dropped from \$8 billion to \$3 billion in aggregate gross notional amount (AGNA). The final rule eliminates the reduction and permanently sets the de minimis threshold of swap dealing activity to \$8 billion in AGNA in any preceding 12-month period.

CFTC Chairman J. Christopher Giancarlo expressed his strong approval for the revision, stating that this regulatory change “increased market certainty — a very good thing in trading markets.”²

New Swap Dealer Registration Study

Chairman Giancarlo added that there were a number of concepts included in the proposed version of the rule that were not included in the final rule. He has therefore instructed the CFTC staff to conduct a study on alternative calculations that could be used for swap dealer registration, including the feasibility of:

1. removing cleared swaps from the current de minimis calculation;
2. haircutting cleared swaps included in the current de minimis calculation;
3. adopting a new, bifurcated de minimis calculation that uses initial margin amounts for cleared swaps and entity-netted notional amounts for uncleared swaps; and
4. applying other risk-based approaches that the staff may recommend.

Chairman Giancarlo announced that he expects the study to be made public for further discussion and possible CFTC consideration.

¹ See “De Minimis Exception to the Swap Dealer Definition,” 83 Fed. Reg. 56666 (Nov. 13, 2018).

² See CFTC, “[Statement of Chairman J. Christopher Giancarlo Regarding the Final Rule on Swap Dealer De Minimis Calculation](#),” November 5, 2018.

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