

Corporate & Financial Weekly Digest

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CFTC Approves Final Rule on Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management

Co-authored by [Blake J. Brockway](#)

On March 20, the Commodity Futures Trading Commission approved a final rule under the Dodd-Frank Wall Street Reform and Consumer Protection Act by a vote of four to one (Commissioner O'Malia, dissenting). The final rule, which was originally proposed through four separate rule filings, addresses three areas: customer clearing documentation, time frames for submission and acceptance for clearing, and clearing member risk management for swap transactions.

Customer Clearing Documentation: The customer clearing documentation portion of the final rule prohibits provisions in customer agreements that would (1) disclose to a futures commission merchant (FCM), swap dealer (SD) or major swap participant (MSP) the identity of a customer's original executing counterparty; (2) limit the number of counterparties with whom a customer may enter into a trade; (3) restrict the size of the position a customer may take with any individual counterparty (apart from an overall credit limit across all of the customer's positions); (4) impair a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available; or (5) prevent compliance with specified time frames for acceptance of trades into clearing.

Time Frames for Submission and Acceptance for Clearing: The rules related to timing of acceptance for clearing require a clearing member FCM, or a derivatives clearing organization (DCO) acting on its behalf, to accept or reject each trade submitted for clearing as quickly as would be technologically practicable if fully automated systems were used. This standard requires action in a matter of milliseconds or seconds or, at most, a few minutes, not hours or days. The rules also require SDs, MSPs, FCMs, swap execution facilities (SEFs) and designated contract markets (DCMs) to submit swaps that are required to be cleared to a DCO as soon as technologically practicable, but no later than the close of business on the day of execution, and swaps that are not required to be cleared by the close of business on the day after execution or agreement to clear.

Clearing Member Risk Management: Under the risk management portion of the rule, each FCM, SD and MSP that is a clearing member of a DCO is required to: (1) establish risk-based limits in its proprietary and customer accounts based on position size, order size, margin requirements or similar factors; (2) screen orders for compliance with the risk-based limits; (3) monitor for adherence to the risk-based limits intra-day and overnight; (4) conduct stress tests under extreme but plausible conditions for all positions in proprietary and customer accounts; (5) evaluate its ability to meet initial margin requirements at least once per week; (6) evaluate its ability to meet variation margin requirements in cash accounts at least once per week; (7) evaluate its ability to liquidate the positions in proprietary and customer accounts in an orderly manner, and estimate the cost of the liquidation at least once per month; and (8) test all lines of credit at least once per quarter.

The effective date for FCMs, DCMs and DCOs is October 1, 2012. The effective date for SDs and MSPs is the later of October 1, or the date that the SD and MSP registration rules become effective. The effective date for SEFs is the later of October 1, 2012, or the date that the Core Principles and Other Requirements for SEFs rule becomes effective.

For more information click [here](#)

Katten Muchin Rosenman LLP
Charlotte Chicago Irving London Los Angeles New York Washington, DC