

## Commodity Futures Trading Commission's Dodd-Frank Rulemaking: Still a Work in Progress

Article By:

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The **Dodd-Frank Act** was signed into law more than two years ago, but the energy industry remains mired in uncertainty as the **U.S. Commodity Futures Trading Commission (CFTC)** continues to finalize inter-related rules in a piecemeal fashion even as compliance obligations have taken effect. At least [14 proposed rulemakings](#) (see table below) have yet to be finalized due to pending resolution on comments and petitions, and the CFTC is still sitting on proposed orders and petitions. In a joint filing, leading associations for the electric and natural gas industries [requested a stay](#) of the application of the rules because of the uncertainty caused by the Commission's implementation schedule. On the first day of compliance, the CFTC provided limited relief through a number of [no-action letters](#), but the request for a more comprehensive stay has been ignored. Below are some of the key proceedings for the energy industry.

Major industry trade associations [petitioned the CFTC](#) to exclude certain energy-related swaps with "Special Entities" (government entities, such as state agencies) from being included in the calculation of the *de minimis* threshold for Swap Dealer registration. The trade associations argued that the low threshold amount for swaps with Special Entities would decrease the number of potential counterparties to the swaps and raise costs.

While the CFTC has not acted on that petition, the CFTC did issue no-action relief on October 12 to companies who remain under a threshold of \$800 million for swaps with "Utility Special Entities" (special entities that are Federal power marketing agencies or that own/operate electric or natural gas facilities with public service obligations under Federal, state or local law), up from the rule's \$25 million threshold applicable to swaps with all Special Entities. To rely on the no-action relief, entities must provide notice of the exemption election to the CFTC by December 31, 2012, and thereafter on a quarterly basis, along with a list of relevant transactions. The CFTC's no-action relief will remain in effect until the CFTC acts on the petition.

The energy industry has also been waiting for a final determination from the CFTC that energy products traded in FERC-recognized regional transmission organization (RTO) and independent system operator (ISO) markets will be exempt from CFTC regulation (other than provisions relating to the CFTC's general anti-fraud, anti-manipulation and enforcement authority). In August, the CFTC [published a proposed order](#) that would exempt certain energy transactions, forward capacity transactions, financial transmission rights (FTR) transactions and certain other ISO/RTO

transactions in FERC-recognized wholesale markets, including CAISO, PJM, NYISO, ISO-NE, MISO and ERCOT. The CFTC has not finalized the proposed order, but it did provide temporary relief on October 11, issuing a no-action letter for these energy products, which will remain in place until the earlier of the date the CFTC acts on the proposed order or March 31, 2013.

The CFTC issued additional no-action relief to provide for the Intercontinental Exchange's (ICE) transition of all ICE swap products to CFTC-regulated futures. ICE announced in September that all of its cleared over-the-counter (OTC) energy swaps and options would be transitioned to futures on October 15, three days after the initial compliance date for entities to begin calculating whether the volume of swaps that they trade would require them to register with the CFTC as a Swap Dealer or Major Swap Participant. In response to industry requests for a delay of enforcement, the CFTC provided temporary no-action relief on October 12, allowing companies to exclude from notional value calculation all swaps executed prior to October 20.

## Proposed Rulemakings that Have Yet to be Finalized

Date Proposed	<a href="#">Proposed Rules</a>
To be proposed	Revised Position Limits Rule
10/23/12	Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations
8/21/12	Clearing Exemption for Swaps Between Certain Affiliated Entities (CEA)
8/7/12	Clearing Requirement Determination under Section 2(h) of the CEA
7/17/12	Clearing Exemption for Certain Swaps Entered into by Cooperatives
7/12/12	Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act
3/15/12	Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades
2/24/12	Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators
2/14/12	Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Covered Funds
12/14/11	Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade under Section 2(h)(8) of the Commodity Exchange Act
9/20/11	Swap Transaction Compliance and Implementation Schedule; Trading Documentation and Margining Requirements under Section 4s of the CEA

5/12/11	Capital Requirements of Swap Dealers and Major Swap Participants
4/28/11	Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants
1/7/11	Core Principles and Other Requirements for Swap Execution Facilities
1/6/11	Governance Requirements for Derivates Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interests

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