Commodity Futures Trading Commission
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Q & A – Orderly Liquidation Termination Provision in Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants

What is the goal of the proposed rulemaking?

The Dodd-Frank Act authorizes the CFTC to adopt regulations setting forth standards for the timely and accurate confirmation, processing, netting, documentation, and valuation of swaps. The goal of the proposed rulemaking is to require swap dealers and major swap participants to include a provision in their swap trading relationship documentation regarding termination rights in the event a party becomes subject to the orderly liquidation provisions of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act or the Federal Deposit Insurance Act (FDIA).

What registrants are covered by the proposed regulations?

The proposed regulations would apply to swap dealers and major swap participants.

By when must comments on the rules be submitted?

Comments on the rules must be submitted within sixty (60) days of the publication of the proposal in the Federal Register.

What are the orderly liquidation termination provision documentation requirements?

The proposed regulation would require that swap dealers and major swap participants include in the documentation with each of their counterparties a provision that confirms both parties' understanding of how the new orderly liquidation authority under the Title II of the Dodd-Frank Act and the Federal Deposit Insurance Act (FDIA) may affect their portfolios of uncleared, over-the-counter, bilateral swaps.

As part of the resolution authority in Title II and in the existing provisions of the FDIA for insured depository institutions, the Federal Deposit Insurance Corporation (FDIC) is given a one business day period in which to transfer swaps and certain other contracts to a solvent third party financial institution. For this transfer authority to be effective, a brief stay on the ability of counterparties to terminate, liquidate, or net is necessary.

The proposed regulation would ensure both counterparties to a swap understand that under particular, unique circumstances, if one of the counterparties to a swap defaults, the non-defaulting party's swap positions could be transferred to a new, solvent counterparty by the FDIC, and the non-defaulting party may not be able to terminate its claims against the defaulting counterparty until 5:00 p.m. (U.S. eastern time) on the business day following the day the FDIC is appointed receiver. This stay would facilitate the FDIC's orderly liquidation of the defaulting counterparty's swap positions.