

CFTC Adopts Internal Business Conduct Rules for Swap Dealers and Major Swap Participants

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On February 23, 2012, the CFTC adopted final rules regarding the internal business conduct of swap dealers and major swap participants under the Dodd-Frank Act. The rules combine five separate CFTC proposals and address:

- reporting, recordkeeping and daily trading records requirements;
- conflicts of interest involving research and clearing activities;
- chief compliance officer designation and duties; and
- risk management and operational requirements.

The adopted rules are largely similar to the rules proposed by the CFTC at the end of 2010, with a small number of changes in response to comments. Some of these changes will have significant ramifications for swap entities. Most importantly, the CFTC has restricted many of the risk management requirements, recordkeeping requirements and chief compliance officer duties to the “swaps activities” of a swap entity rather than applying them to all of a swap entity’s activity. The rule, however, remains quite burdensome in many ways. For example, swap entities must make and maintain records of all oral or written communications that lead to the execution of a swap and must tape all telephone conversations that include such information.

The rules will become effective 60 days after publication in the Federal Register, which is expected shortly. However, the compliance dates for different provisions depend on the regulatory status of the swap entity, as discussed in greater detail in this memorandum.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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