

CFTC Finalizes Cross-Border Swaps Guidance and Establishes Compliance Schedule

July 29, 2013 | Client Update

On July 12, 2013, the CFTC adopted long-anticipated final cross-border guidance that provides guidelines for the application of the CFTC's swap regulatory regime to cross-border swap activities. At the same time, the CFTC adopted a phase-in compliance schedule that extends, with material changes, the cross-border exemptive order issued by the CFTC in January 2013. The Final Guidance and the Exemptive Order address several important topics, including:

- (1) the final definition of U.S. person for purposes of the CFTC's swap regulatory regime;
- (2) guidance on which swaps a non-U.S. person must include in, and can exclude from, its swap dealer de minimis and major swap participant threshold calculations;
- (3) guidance on the types of offices the CFTC would consider to be a "foreign branch" of a U.S. swap dealer or MSP and the circumstances in which a swap transaction would be considered to be "with" such a foreign branch;
- (4) guidance on how swap-related requirements will be applied to cross-border swap transactions and when substituted compliance would be available if the CFTC determines that a foreign jurisdiction's rules are comparable to its own; and
- (5) phased-in compliance periods for many of the swap regulatory regime's requirements.

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.

Annette L. Nazareth

+1 202 962 7075

annette.nazareth@davispolk.com

Gabriel D. Rosenberg

+1 212 450 4537

gabriel.rosenberg@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.

Related materials

[Read the full update](#)