

Dodd-Frank Wall Street Reform and Consumer Protection Act
NAESB Summary Presentation (January 25, 2012)

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Act) was signed into law by the President on July 21, 2010. This summary is from the perspective of non-financial end-user which is believed to comprise most of NAESB membership that would be subject to the Act. Key updates noted by **bold underlined text**.

Background:

In December 2011, the Commodity Futures Trading Commission (CFTC) issued an order amending the previously-issued "Temporary Exemptive Relief" from certain provisions of the Act that would have otherwise taken effect on July 16, 2011. The temporary exemptive relief applies to provisions of the Act that require rulemakings. The temporary exemptive relief will expire upon the effective date of the relevant final rules or July 16, 2012, whichever is earlier.

Generally, it is believed that the rules, as currently proposed by the CFTC, appear to be manageable by end-users, but would impose an additional administrative and cost burden associated with establishing and maintaining an end-user's eligibility to use the end-user exception from the mandatory clearing requirement. There remains concern that the rules may reduce both the availability of various swap instruments, and counterparty liquidity, thereby restricting and end-user's ability to execute swap transactions with counterparties.

Major Final Rules affecting End-users:

Anti-Market Manipulation Rule – Final Rule on market manipulation or attempted market manipulation was effective on 8/15/2011.

Whistleblower Rule – Final Rule on whistleblower program was effective on 10/24/2011.

Position Limits – Final Rule on position limits during both short term and long term periods was effective on 1/17/2012. **On 1/20/2012, DC Court of Appeals found that the appeal by the International Swap Dealers Association (ISDA) and Securities Industry and Financial Markets Association (SIFMA) should be heard at the DC District Court.** ISDA and SIFMA previously filed an appeal at the DC District Court contending the decision making process in developing the rule was flawed and the CFTC adopted the rule without making findings as to the necessary and appropriateness of the position limits, required by the Act. In regulatory terms, the rule is "arbitrary and capricious". **The appeal is now before the DC District Court.**

Recordkeeping and Reporting – **Final Rule will be effective on 3/13/2012, but compliance will be phased-in after product and entity definitions are finalized.**

Real-Time Reporting – **Final Rule will be effective on 3/9/2012, but compliance will be phased-in after product and entity definitions are finalized.**

Federal Register publication of Final Rules by CFTC may be found at the following link:
<http://comments.cftc.gov/FederalRegister/Final.aspx>

Key Final Rules not yet issued:

- Definitions of "Swap", "Swap Dealer" (SD), "Major Swap Participant" (MSP), etc. **(1st Q 2012)**
- End-User Exception setting forth requirements to select exception to mandatory clearing. **(1st Q 2012)**

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Other matters:

- Swap Data Repository (SDR) filings by ICE and Depository Trust & Clearing Organization seeking “provisional” registration since all final rules on SDR not yet issued (SDR Registration Rule issued 9/1/2011 effective 10/31/2011).
- Comments on CFTC Implementation Plan for the rules under the Act were due 11/4/2011. Depending on whether you are SD, MSP, Financial Entity or end-user implementation time line varies from 60 (SD & MSP), 180 or 270 (end-users) days.
- CFTC Technical Advisory Committee meeting held on 12/13/2011. Agenda included interim recommendations from the Subcommittee on Data Standardization on universal product and legal entity identifiers, standardization of machine-readable legal contracts, semantics, and data storage and retrieval.
<http://www.cftc.gov/PressRoom/PressReleases/pr6153-11> The CFTC has not yet announced a date for the next meeting of the Subcommittee on Data Standardization.
- 12/5/2011, CFTC issued Final Rule on Investment of Customer Funds and Funds Held in an Account for Foreign Futures (MF Global Rule).
- **On 1/11/2012, Chairman Gensler issued a proposed timeline for remaining Final Rules (copy attached)**



CFTC Gensler
timeline