



COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 23, and 40

RIN 3038-AD54

Capital Requirements of Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On December 16, 2016, the Commodity Futures Trading Commission (Commission or CFTC) published in the Federal Register a notice of proposed rulemaking (Proposal) to adopt new regulations and to amend existing regulations to implement sections 4s(e) and (f) of the Commodity Exchange Act (CEA), as added by section 731 of the Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 4s(e) requires the Commission to adopt capital requirements for swap dealers (SDs) and major swap participants (MSPs) that are not subject to capital rules of a prudential regulator. Section 4s(f) requires the Commission to adopt financial reporting and recordkeeping requirements for SDs and MSPs. The Commission also proposed to amend existing capital rules for futures commission merchants (FCMs), providing specific capital deductions for market risk and credit risk for swaps and security-based swaps entered into by an FCM. The Commission further proposed several technical amendments to the regulations. As is explained below, the Commission is extending for 60 days the comment period for the Proposal.

DATES: The comment period for the Proposal published on December 16, 2016, at 81 FR 91252, is extended until May 15, 2017.

ADDRESSES: You may submit comments, identified by RIN 3038-AD54 and “Capital Requirements for Swap Dealers and Major Swap Participants”, by any of the following methods:

- CFTC website, via its Comments Online process:

<http://comments.cftc.gov>. Follow the instructions for submitting comments through the website.

- Mail: Send to Chris Kirkpatrick, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

- Hand delivery/Courier: Same as Mail above.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in Regulation 145.9 of the Commission’s regulations.¹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene

¹ Commission regulations referred to herein are found at 17 CFR chapter 1. Commission regulations are accessible on the Commission’s website, <http://www.cftc.gov>.

language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Eileen T. Flaherty, Director, Division of Swap Dealer and Intermediary Oversight, 202-418-5326, eflaherty@cftc.gov; Thomas Smith, Deputy Director, Division of Swap Dealer and Intermediary Oversight, 202-418-5495, tsmith@cftc.gov; Jennifer C.P. Bauer, Special Counsel, Division of Swap Dealer and Intermediary Oversight, 202-418-5472, jbauer@cftc.gov; Joshua Beale, Special Counsel, Division of Swap Dealer and Intermediary Oversight, 202-418-5446, jbeale@cftc.gov; Rafael Martinez, Senior Financial Risk Analyst, Division of Swap Dealer and Intermediary Oversight, 202-418-5462, rmartinez@cftc.gov; Paul Schlichting, Assistant General Counsel, Office of the General Counsel, 202-418-5884, pschlichting@cftc.gov; or Lihong McPhail, Research Economist, 202-418-5722, lmcpfail@cftc.gov, Office of the Chief Economist; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Section 731 of the Dodd-Frank Act amended the CEA by adding sections 4s(e) and 4s(f). Section 4s(e) requires that the Commission adopt rules establishing capital requirements for SDs and MSPs to help ensure the safety and soundness of the SDs and MSPs. Section 4s(f), among other things, requires that the Commission adopt regulations related to financial reporting and recordkeeping by SDs and MSPs. The Proposal would

adopt new regulations and amend existing regulations to implement the requirements of these CEA sections.²

The Proposal generally permits the application of three alternative approaches to the treatment of capital based upon existing U.S. bank regulators' capital requirements or the CFTC's future commission merchant and the Securities and Exchange Commission's broker-dealer net liquid asset capital requirements. The Proposal further provides that SDs predominantly engaged in non-financial activities and MSPs may elect minimum capital requirements based upon the tangible net worth of the entities. SDs may use internal models for purposes of computing their regulatory capital, subject to prior approval by either the Commission or the National Futures Association. The Proposal would also require certain SDs and MSPs to satisfy defined liquidity and funding requirements and would place certain limitations on the withdrawal of capital from SDs as part of the SD capital requirements.

In implementing the provisions of Section 4s(f) of the CEA, the Proposal includes recordkeeping, reporting and notification requirements for SDs and MSPs relative to their respective capital requirements. The Proposal would also allow foreign SDs to comply with comparable capital requirements in the home jurisdiction under a program of substituted compliance.

In addition to proposing minimum capital and financial reporting requirements for SDs and MSPs, the Proposal would also amend existing capital requirements for FCMs to establish specific capital requirements for FCMs that engage in swaps or security-based swaps that are not cleared by a clearing organization. The Proposal also includes certain

² The Commission previously proposed capital and financial reporting rules for SDs and MSPs in 2011. See Capital Requirements of Swap Dealers and Major Swap Participants, 76 FR 27802 (May 12, 2011).

technical amendments to several regulations as part of the proposed capital and financial recordkeeping and reporting requirements.

II. Extension of Comment Period

The comment period for the Proposal is due to expire on March 16, 2017. By letters dated February 24, 2017 and March 2, 2017, respectively, the Securities Industry and Financial Markets Association (SIFMA) and The Futures Industry Association (FIA), membership organizations representing many firms that would be affected by the Proposal, requested a 60-day extension of the comment period. In support of their requests, SIFMA and FIA explained that firms have extensive work to do in order to calculate the effect on their activities of the different types of proposed capital requirements. SIFMA further explained that the initial comment period overlaps with firms' year-end accounting and reporting cycles as well as with the deadline for firms' compliance with the Commission's uncleared swaps margin rules, resulting in a significant drain on their resources. SIFMA and FIA noted that given the complexity of the Proposal it will require significant time beyond the Commission's initial March 16 comment deadline to fully assess the potential impact of the Proposal on firms' operations.

In light of the foregoing, and in response to the SIFMA and FIA requests, by this Federal Register release the Commission is extending the comment period for the Proposal for 60 days, until May 15, 2017.

Issued in Washington, DC, on March 13, 2017, by the Commission.

Robert N. Sidman,

Deputy Secretary of the Commission.

NOTE: The following appendix will not appear in the Code of Federal Regulations.

**Appendix to Capital Requirements of Swap Dealers and Major Swap Participants –
Commission Voting Summary**

On this matter, Acting Chairman Giancarlo and Commissioner Bowen voted in the affirmative. No Commissioner voted in the negative.

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