

FS Regulatory Brief

Dodd-Frank Swap Regulation Starts October 12, 2012

Or Does It?

August 2012 (updated August 22)

August 13, 2012 – The publication of a key rule in the Federal Register has set October 12, 2012, as the start date for Dodd-Frank regulation of swaps and swap dealers by the Commodity Futures Trading Commission (CFTC). On or after this date, firms that qualify as swap dealers or major swap participants (MSPs) must register and comply with several duties. This also is the start date for the phase-in of swap data reporting.

The October 12 deadline is consistent with our prior estimates of when swap dealer registration and swap regulation would begin. Whether any firms will register as dealers on this date is unclear, however. A close read of the two regulations that define swap dealer status and swap dealer registration deadlines has suggested to some that the deadline for all swap dealers, large and small, to register could extend to December 30, 2012 or later. When a swap dealer/MSP registers will impact the start of swap data reporting as well. This potential for delaying the start of swap regulation has the attention of many. The CFTC has not provided guidance on this matter, however.

Large dealer firms that know they must register under Dodd-Frank should continue to plan to register by October 12, 2012, or consider the business costs and benefits of delay, if their counsel concludes that later registration is possible.

This **FS Regulatory Brief** discusses the registration deadline issue in broad terms. It also explores the ramifications that different dealer registration deadlines will have on sell- and buy-side firms, including on the start of swap data reporting. We also provide updated timelines showing the key compliance dates for US swap dealers and foreign swap dealers below.

What is your registration deadline? Time for another close read

There are two CFTC regulations that determine whether an entity is a swap dealer (the Entity Definitions Rule) and when it must register (the Swap Dealer Registration rule). The Entity Definitions Rule contains a *de minimis* test which allows a firm to trade into—or just below—swap dealer status then wait until month-end plus 60 days to register. In the view of some, this means that no firm would have to register on October 12, 2012, and all can wait until year end to register. In our view, this is not the intended result for large dealers that know they need to register. A review of the two rule sets explains why.

Under the *de minimis* exemption, a firm does not become a swap dealer unless its swap dealing activities exceed \$8 billion gross notional overall or \$25 million gross notional with Special Entities (generally, pension plans and governmental agencies). Once either of these thresholds is passed, a firm has until month end plus 60 days to register with the CFTC.

The clock for measuring whether a dealing firm exceeds this threshold will start on October 12, 2012. This means that when business opens on that date, all dealing firms will be considered to have zero gross notional swap dealing trades for purposes of determining whether they are swap dealers.

For virtually all large dealer firms, this clock will also stop on October 12, 2012. Most, if not all, major dealers will trade swaps in excess of one or both threshold tests by the close of business on that day, if not by the next day.

The Swap Dealer Registration rule contains three triggers for a registration requirement by: (1) permitting registration on or after October 12, 2012, (2) requiring any entity that is a swap dealer on October 12, 2012, to register as a swap dealer, and (3) requiring any person who “intends to engage in business as a swap dealer” to apply to be registered “from and after” October 12, 2012.

Some may take the view that since a firm is not a swap dealer until its traded volumes exceed a *de minimis* threshold, it cannot be a swap dealer on October 12, 2012. Even if it becomes a swap dealer later that day (or the next), the *de minimis* threshold was not exceeded and registration would not be due under December 30, 2012, under the *de minimis* rule.

How this technical regulatory language impacts a specific firm is the province of counsel, of course. However, we believe that large dealer firms that will qualify as swap dealers on or shortly after October 12 should register by October 12, as a policy matter or closely consider the business costs and benefits to not doing so after consulting counsel.

Treating the *de minimis* test as a universal delay for all, including large dealer firms, appears inconsistent with the purpose of the *de minimis* test. That test seeks to allow smaller firms to deal swaps without incurring the full burdens of regulation. It was not cast as an overall general extension. Furthermore, the intent to register test cannot be ignored, although its meaning is unclear. Large firms working in industry groups on a standard

approach to implementing swap dealer duties (such as data reporting and external business conduct) could be viewed as intending to register.

We do not discount the need for many prospective swap dealers to have additional time to comply with their swap dealer duties under Dodd-Frank. Some may simply not be in a position to comply with all of the duties that arise on or shortly after October 12. Significantly, a firm that registers as a swap dealer or MSP on October 12 will have to begin reporting swaps data on that date (see below), and will have to comply with the swap dealer external business conduct rules by October 15, 2012. Delaying registration pushes back those compliance dates. Firms faced with this dilemma may wish to consult CFTC staff to seek some other form of redress.

What should swap dealers do next? Operational challenges abound

Whether registration is required in October or December, the timing is short. No doubt, it makes a big difference to have two more months before registering as a swap dealer. Staggered registrations means that all prospective swap dealers need to consider how to operationalize compliance and systems to classify expected future swap dealers as non-dealers short-term then be able to switch them to dealer status. Monitoring with whom a firm trades and when that status changes will become an even more important onboarding and pre-trade review task.

What dates apply to the transaction level rules for dealers and the buy-side?

The transaction level rules regarding execution, clearing and swap data reporting have compliance dates that are now October 12, 2012, or are measured against that date. Swap data reporting is the most relevant near-term rule set.

Swap data reporting for swaps with registered swap dealer/MSPs begins on October 12, 2012, for interest rate swaps and credit swaps, and on January 10, 2013, for equity, foreign exchange and other swaps. Data reporting for swaps between all types of counterparties will begin on April 10, 2013. Whether a firm is a registered swap dealer/MSP or is trading with a registered swap dealer/MSP during these three phase-in periods will determine when its trades are reported to a swap data repository.

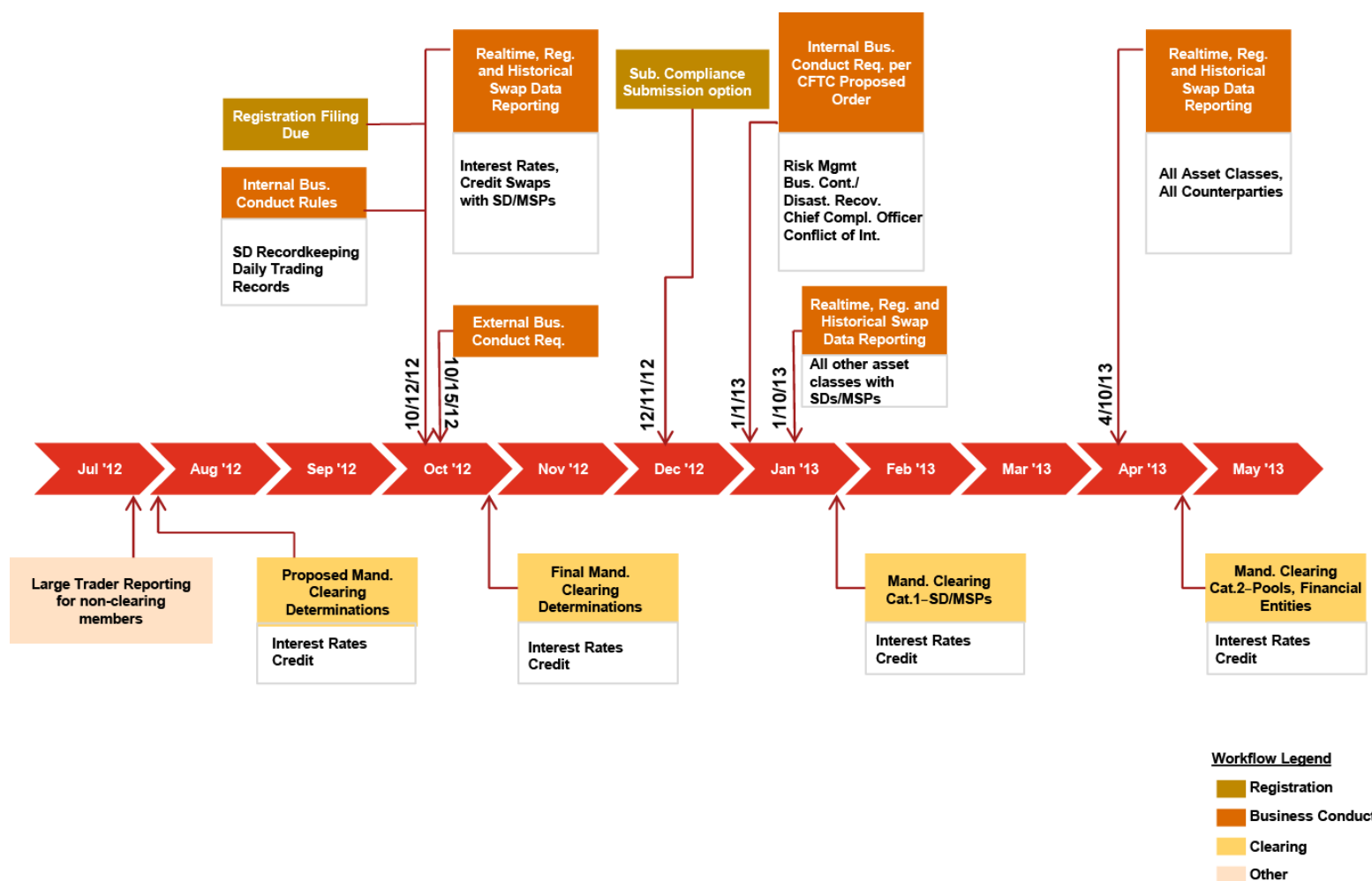
Clearing mandates for certain interest rate swaps and credit swaps also are in the works.

The deadlines for clearing are not tied to swap dealer registration, but swap dealer/MSPs are the first group that must clear. We have projected clearing by registered swap dealers for these products will begin in late January. If this remains the case, swap dealers delaying registration until December will not delay the start of the requirement to clear.

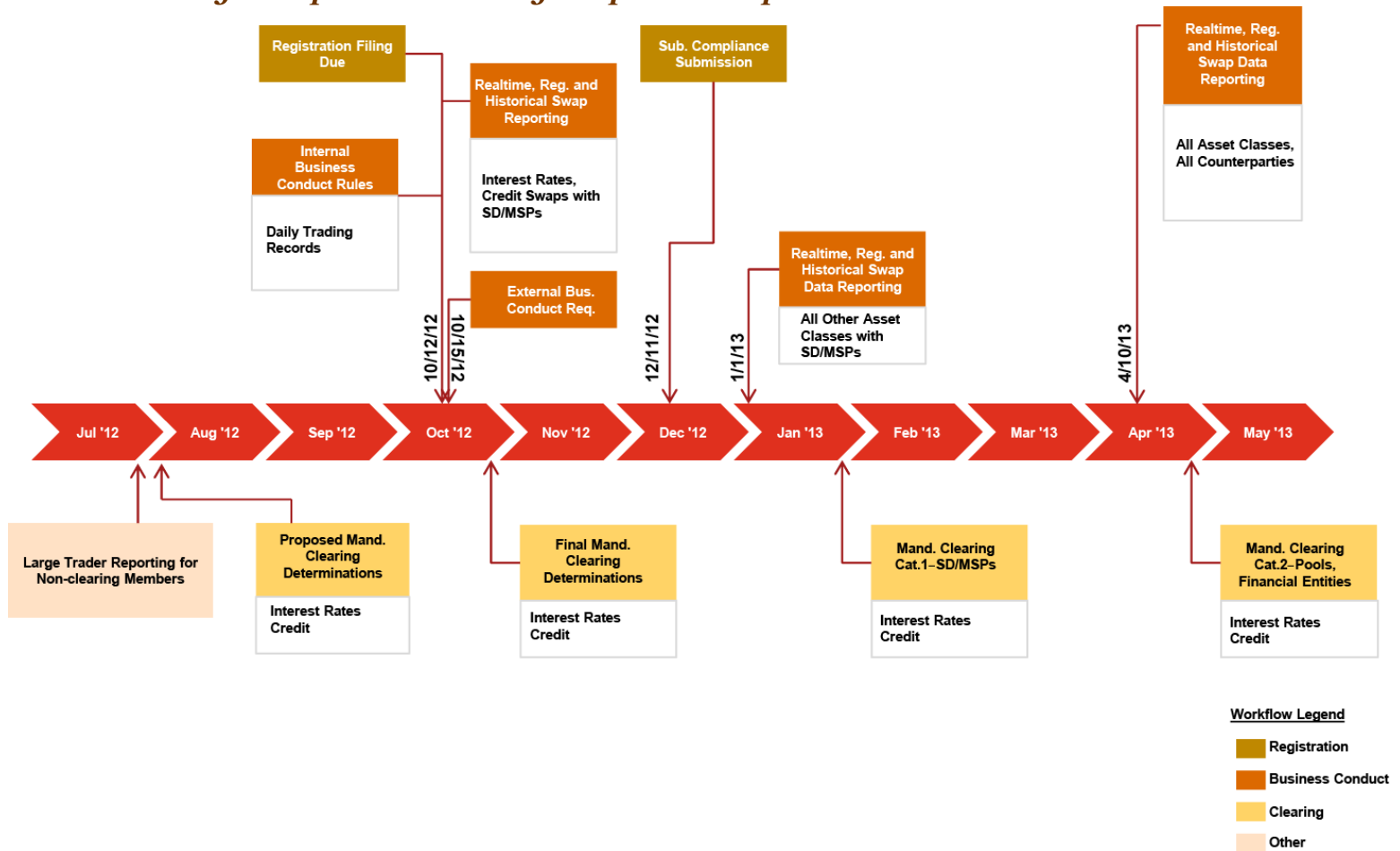
We will continue to follow the roll-out of CFTC regulation of swaps markets and provide insights into the business impact of regulatory driven change.

Key compliance deadlines

US swap dealers trading swaps with US or foreign persons in the United States (prudentially regulated)



Foreign swap dealers trading swaps with US persons



Additional information

Primary authors:

Richard Paulson	646 471 2519	richard.paulson@us.pwc.com
Ann Gonzalez	646 471 8371	ann.p.gonzalez@us.pwc.com
Margaret Paulsen	703 918 3027	margaret.paulsen@us.pwc.com
William Penner	703 918 4259	william.penner@us.pwc.com

For additional information about PwC's Financial Services Regulatory Practice and how we can help you, please contact:

Dan Ryan
Financial Services Regulatory Practice Chairman
646 471 8488
daniel.ryan@us.pwc.com

Alison Gilmore
Financial Services Regulatory Practice Marketing Leader
646 471 0588
alison.gilmore@us.pwc.com

www.pwcregulatory.com