

CFTC Re-Proposed Margin Rules for Uncleared Swaps

Proposed Definition of Financial End User

Financial end user means:

- (i) A bank holding company or an affiliate thereof; a savings and loan holding company; or a nonbank financial institution supervised by the Board of Governors of the Federal Reserve System under Title I of the Dodd-Frank Act;
- (ii) A depository institution; a foreign bank; a Federal credit union or State credit union as defined in section 2 of the Federal Credit Union Act; an institution that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act; an industrial loan company, an industrial bank, or other similar institution described in section 2(c)(2)(H) of the Bank Holding Company Act;
- (iii) An entity that is state-licensed or registered as—
 - (A) A credit or lending entity, including a finance company; money lender; installment lender; consumer lender or lending company; mortgage lender, broker, or bank; motor vehicle title pledge lender; payday or deferred deposit lender; premium finance company; commercial finance or lending company; or commercial mortgage company; except entities registered or licensed solely on account of financing the entity's direct sales of goods or services to customers;
 - (B) A money services business, including a check casher; money transmitter; currency dealer or exchange; or money order or traveler's check issuer;
- (iv) A regulated entity as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 and any entity for which the Federal Housing Finance Agency or its successor is the primary federal regulator;
- (v) Any institution chartered and regulated by the Farm Credit Administration in accordance with the Farm Credit Act of 1971;
- (vi) A securities holding company; a broker or dealer; an investment adviser as defined in section 202(a) of the Investment Advisers Act of 1940; an investment company registered with the SEC under the Investment Company Act of 1940;
- (vii) A private fund as defined in section 202(a) of the Investment Advisers Act of 1940; an entity that would be an investment company under section 3 of the Investment Company Act of 1940 but for section 3(c)(5)(C); or an entity that is deemed not to be an investment company under section 3 of the Investment Company Act of 1940 pursuant to Rule 3a-7 of the SEC;

- (viii) A commodity pool, a commodity pool operator, a commodity trading advisor, or a futures commission merchant;
- (ix) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974;
- (x) An entity that is organized as an insurance company, primarily engaged in writing insurance or reinsuring risks underwritten by insurance companies, or is subject to supervision as such by a State insurance regulator or foreign insurance regulator;
- (xi) An entity that is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in loans, securities, swaps, funds or other assets for resale or other disposition or otherwise trading in loans, securities, swaps, funds or other assets;
- (xii) A [non-U.S.] person that would be a “financial entity”¹ if it were organized under the laws of the United States or any State thereof; or
- (xiii) Any other entity that [the CFTC] determines should be treated as a financial end user.

Financial end user does *not* include any counterparty that is:

- (i) A sovereign entity;
- (ii) A multilateral development bank;
- (iii) The Bank for International Settlements;
- (iv) An entity that is exempt from the definition of financial entity pursuant to section 2(h)(7)(C)(iii) of the [Commodity Exchange] Act and implementing regulations (i.e., captive finance companies); or
- (v) An affiliate that qualifies for the exemption from clearing pursuant to section 2(h)(7)(D) of the [Commodity Exchange] Act (i.e., hedging or treasury affiliates).

¹ In the release and proposed rule text, the CFTC seems to use the terms “financial end user” and “financial entity” interchangeably. Financial entity is defined in section 2(h)(7)(C) of the Commodity Exchange Act and is used for various purposes in existing CFTC rules under Title VII of the Dodd-Frank Act. In some cases in the re-proposal, the CFTC uses “financial entity” where it appears from the context that the CFTC may have intended to use “financial end user.” We have followed the language of the CFTC release, but where we believe the CFTC intended to refer to a financial end user rather than a financial entity, we include “financial entity” in quotation marks.