September 24, 2012

Via Electronic Submission

Stacy Yochum, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Request for an Extension of the Effective and Compliance Dates for Dodd-Frank Regulations Affecting Non-SD/MSP Energy Market Participants, or, in the Alternative, for No-Action Relief

Dear Ms. Yochum:

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**"), the Commodity Futures Trading Commission ("**CFTC**" or "**Commission**") has embarked on a fundamental, far-reaching and complex restructuring of the entire regulatory regime applicable to the financial and non-financial commodities markets. As further outlined herein, a number of rulemakings that are foundational to this new regulatory framework are still in a state of flux, pending the resolution of the Commission's requests for further comments on its interim final rules, interpretations and proposed exemptions, and industry participants' requests for clarifications. Edison Electric Institute ("**EEI**"), the American Gas Association ("**AGA**"), and the Electric Power Supply Association ("**EPSA**") (collectively the "**Joint Associations**") appreciate the Commissions' willingness to continue address issues and receive comments. In addition to carefully considering all of the complex issues, the Commission also needs to ensure that that implementation is done in a careful and deliberate manner which allows industry participants sufficient time to develop a comprehensive program to comply with the Commission's rules and regulations. Careful and deliberate implementation is also necessary so that uncertainty as to rules and regulations does not inadvertently disrupt the liquidity of the derivatives markets and the delivery of wholesale, non-financial commodities related to electric and gas operations, both of which could result in higher prices for consumers and commodity market participants. Moreover, to the extent regulatory uncertainty persists about the status of a transaction (*e.g.*, swap, option, forward) or its treatment by the Commission (*e.g.*, "dealing", "trading", or "hedging"), market participants may be deterred from engaging in certain transactions or activities. This, in turn, may increase the cost of effective risk management for commercial end-users of swaps and result in higher, more volatile energy prices for residential, commercial, and industrial customers.

The Join Associations and its members have been working diligently and have devoted substantial resources to comply with the Commission's Dodd-Frank Wall Street Reform and

Consumer Protection Act implementation regulations (the "**DFA Regulations**[1]"). We make this request, therefore, not to delay the process so that we can avoid compliance, but rather to avoid the unintended adverse consequences described above, the Joint Associations respectfully request, on behalf of their members, that the Commission defer the compliance dates applicable to all non-swap dealer/non-major swap participant ("**non-SD/MSP**") energy market participants for a minimum of 12 months after the Commission completes the rulemaking processes for the DFA Regulations. Deferring the compliance dates until all DFA Regulations have been finalized will enable our members to comply with the post-Dodd-Frank regulatory regime in a cost-effective, comprehensive manner.

The Joint Associations urge the Commission to consider that energy market participants need sufficient time, among other things, to:

- Prepare for compliance with scores of new and still uncertain recordkeeping and reporting requirements;
- Determine their status under the final entity definitions rule;
- Determine which transactions constitute swaps (using interim final guidance on the forward contract exclusion from swaps) and which swaps are subject to clearing or fall under the trade option exemption (still an interim final rule); and
- Determine whether certain rules apply or do not apply to their activities, and modify or upgrade existing computer systems (including design, testing and implementation) to comply with all applicable requirements, which are still evolving as discussed below.

The attached Appendix provides an illustrative list of the items on which action is still needed so that there is certainty for the Joint Associations' members as they begin the compliance process. The interrelationships between all the rules and regulations require that all are finalized and clarified before they can be correctly applied by market participants.. For example, Joint Associations will be submitting comments seeking clarity on what constitutes a "swap," and this information is necessary in order to calculate the gross notional value for the de minimis limit for purposes of the swap dealer definition. Despite their diligent and ongoing preparation efforts, the Joint Associations' members need additional time to ensure that their compliance procedures and practices and any process or transaction changes are designed and implemented thoughtfully, efficiently, and with the least possible disruption to their individual businesses and the broader markets.

The Joint Associations understand that there are several ways in which the Commission could phase-in compliance with DFA Regulations to support the efforts of energy market

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[1] As used in these comments, this term includes finalizing all proposed rules, interim final rules, and statutory interpretations and responding to all exemption requests and specific interpretation requests that have been submitted throughout the DFA rulemaking process.

participants to implement their compliance procedures. Based upon the experience of their members, the Joint Associations submit that it would be appropriate to provide a six-month period (the "**Transition Period**") after all of the DFA Regulations required to be promulgated by the CFTC have been published in the Federal Register ("**Final Publication Date**"). During the **Transition Period**, all market participants would have much needed time to design, implement, and test the information technology infrastructure necessary to comply with the DFA Regulations. At the close of the **Transition Period,** the Commission could provide:

- SD/MSP counterparties with **three months** to comply with applicable DFA regulations ("**Compliance Date One**");[2] and

- Non-SD/MSP counterparties with **six months** (for a total of 12 months from the Final Publication Date) to comply with applicable DFA regulations ("**Compliance Date Two**").

Under this implementation proposal, SD/MSPs generally would be required to comply with applicable DFA regulations within nine months after the Final Publication Date; non-SD/MSPs generally would be required to comply within 12 months after the Final Publication Date. The Joint Associations believe this or a substantially similar implementation schedule would provide market participants with sufficient time to comply with the new post-Dodd-Frank Act regulatory regime. Should the Commission decide to adopt a delayed implementation schedule, the Joint Associations would be willing to work with the Commission to develop a more detailed schedule incorporating all of the DFA Regulations. The Commission could also convene a technical conference to discuss feasible implementation dates based on the issuance of final rules and the incorporation of necessary software and process changes.

In the alternative, pursuant to Commission Rule 140.99, 17 C.F.R. § 140.99, the Joint Associations request that the Commission or the appropriate Divisions of the CFTC grant "no-action" relief to non-SD/MSP market participants for a period of one year after the compliance date of the last to-be-published DFA Regulation, during which there would be safe harbor for market participants provided that such participants continue to make good faith efforts to comply with the DFA Regulations.

I. The Joint Associations' Interest in the Requested Relief

EEI is the association of U.S. shareholder-owned electric companies. EEI's members serve 95 percent of the ultimate customers in the shareholder-owned segment of the U.S. electricity industry, and represent approximately 70 percent of the U.S. electric power industry. EEI also has more than 65 international electric companies as Affiliate members, and more than

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[2] The Joint Associations anticipate that the Commission would take into consideration the nature of the DFA Regulation (*i.e.*, entity-level or transaction-level requirement) in determining whether it should go into effect on Compliance Date One or Two. For example, the Joint Associations would expect all market participants to comply with spot-month position limits on Compliance Date One subject, however, to no-action relief for good faith compliance.

170 industry suppliers and related organizations as Associate members. EEI's members are physical commodity market participants that rely on swaps and futures contracts primarily to hedge and mitigate the commercial risk that they incur in operating their businesses. They are not financial entities.

The AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 71 million residential, commercial and industrial natural gas customers in the U.S., of which 92 percent — more than 65 million customers — receive their gas from AGA members. AGA is an advocate for local natural gas utility companies and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international gas companies and industry associates. Today, natural gas meets almost one-fourth of the United States' energy needs. Many gas utilities use a variety of financial tools, such as futures contracts traded on CFTC-regulated exchanges and over-the-counter energy derivatives, to hedge and mitigate the commercial risks associated with providing natural gas service, such as volatility in natural gas commodity costs. AGA members participate in the physical natural gas market and contract for pipeline transportation, storage and asset management pipeline services. They are not financial entities.

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for nearly 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers.

As users of commodity swaps, trade options and futures contracts to hedge commercial risk, the Joint Associations' members have a significant interest in a commercially reasonable and orderly implementation schedule for compliance with the DFA Regulations. If energy market participants, including non-SDs/MSPs and swap dealers, do not have (1) regulatory certainty about the treatment of their commodity transactions and swaps-related activities, and (2) sufficient time to prepare to comply with the DFA Regulations, the Joint Associations believe the energy markets could face severe and substantial disruptions. For example, continuing uncertainty about the regulatory status of common energy transactions, (*e.g.*, tolling agreements, and transportation, transmission, and storage contracts) due to ambiguities in the Product Definitions Rule could deter market participants from entering into, or lead them to reduce their reliance upon, these types of transactions that are vital to maintaining reliable and efficient electricity and gas markets.[3] Similarly, because the Commission has not yet finalized the Interim Final Rule ("**IFR**") in the Entity Definitions Final Rule defining "hedging" for purposes of excluding certain swaps transactions from "dealing" activity, market participants may refrain

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[3] *Further Definition of "Swap," Security-Based Swap," and "Security-Based Swap Agreement"; Missed Swaps; Security Based-Swap Agreement Recordkeeping*, 77 Fed. Reg. 48208 (August 13, 2012) ("**Product Definitions Final Rule**").

from entering into certain types of transactions in order to avoid legal uncertainty about the types of legitimate risk-mitigating transactions that the Commission may view as "dealing" activity.[4]

In addition to threatening substantial harm to the energy commodities markets, the Commission's complex Dodd-Frank implementation schedule substantially and unnecessarily increases compliance costs for commercial energy market participants like the Joint Associations' members. Instead of incurring a one-time implementation cost, as contemplated in the CFTC's cost studies, market participants are incurring on-going, unnecessary and duplicative costs as they make adjustments and incur sunk costs in response to changing Commission requirements. Extending the compliance dates for the DFA Regulations for non-SD/MSP counterparties would allow them to develop and implement the policies, procedures, and information technology systems necessary for compliance in an orderly and cost-effective manner, instead of requiring them constantly to modify and revise their new compliance procedures and systems.

For example, compliance with position limits in particular requires energy market participants to develop sophisticated information technology systems to categorize and monitor positions. Currently the Joint Associations' members are struggling with the categorization and treatment of trade options under position limits. Under the Position Limits Rule, certain enumerated hedge categories prohibit holding a physical-delivery Referenced Contract into the Spot Month.[5] Because the Staff has advised that physically-settled OTC options may be considered physical-delivery Referenced Contracts, market participants cannot hold trade options in the spot month under certain enumerated hedge categories. Therefore, prior to the last three trading days of a Referenced Contract, the option seller would be required to terminate the hedge transaction prior to the ability of the option buyer to exercise the option. This requirement frustrates the commercial intent of parties entering into trade options in the first place and is just one of the unintended consequences of requiring trade options to be subject to position limits.

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[4] *Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant,"* 77 Fed. Reg. 30596 (May 23, 2012) (the "**Entity Definitions Final Rule**"). EEI has previously submitted comments to the Commission addressing the impracticability and harms of limiting the definition of "hedging" in the swap dealer definition to hedges of physical positions. *See also* Comments on Interim Final Rule Excluding Swaps Entered Into for Hedging Physical Positions from Dealing Activity (RIN 3235-AK65) (July 23, 2012).

[5] For example, consider a power generation company entering into a Cal 13 Power Heat Rate Option where it sold an option to a power marketing counterparty to call on 100 MWs for each hour during each Business Day. Exercise of the option can be for any hour during the Business Day, but must be made for a minimum of 8 continuous hours and a maximum of 16 continuous hours and must be exercised by 08:30 am on the Business Day prior to the delivery day. The price to be paid is a fixed heat rate times the daily midpoint for gas delivered to Henry Hub for the corresponding flow date as published in the Gas Daily, Daily Price Survey.

In this case, the power generation company is hedging the extrinsic value of its gas burning power generation plant. The generation company determined that selling the option was a better hedge for the asset – locking in a margin spread between gas prices and power prices – than to sell the power into the spot market or to sell it forward at a fixed price. This example would constitute a hedge under enumerated hedges in CFTC Rule 151.1(a)(2)(i)(A) and (2)(viii) because it is a cross commodity hedge of the power to be produced from the generation facility. However, both of these enumerated hedges prohibit holding a physical-delivery Referenced Contract into the Spot Month.

II. Summary of the Joint Associations' Request

The practical implementation problems discussed above are only a few examples of the significant regulatory uncertainty that the Joint Associations' members face, even as they expend considerable effort and incur substantial expense to bring themselves into compliance with the DFA Regulations. Currently, all energy market participants face uncertainty stemming from several different sources, including:

- Numerous pending petitions for exemptive relief from various regulations that have not yet been published for public comment and/or granted;
- Ambiguous provisions and unresolved material issues in final and IFR rules that prevent market participants from developing, testing and implementing policies to comply with the Commission's new DFA Regulations;
- Numerous rules, or portions thereof, that have been issued as IFRs without further guidance. Although IFRs have the force of law and may be the "equivalent" of a final rule, they do not provide market participants with the same level of certainty as final rules, because they are still subject to modification. Moreover, IFRs embedded within a final rule prevent market participants from determining the full meaning and applicability of the final rule; and
- Proposed rules that have not yet been finalized.

Due to the current substantial regulatory uncertainty, which is described in further detail below, the Joint Associations respectfully request that the Commission delay the compliance dates for the DFA Regulations for non-SD/MSPs and establish an orderly and reasonable compliance implementation period. Under the implementation schedule outlined above, market participants would have a six month **Transition Period** after the **Final Publication Date** to develop, implement and test necessary information technology systems; Joint Associations' non-SD/MSP members would have an additional six months from the end of the Transition Period to modify and perfect their business processes. Alternatively, the Joint Associations request that the Commission or its operating Divisions establish a good faith compliance period through "no-action" relief similar to the "no-action" relief that the Division of Market Oversight has granted in the past for large trader swaps reporting or the aggregation requirements of the Position Limits Rule.

III. Pending Petitions for Exemptive Relief

To our knowledge, there are at least six pending petitions for exemptive relief that the Commission has yet to act upon despite rapidly approaching compliance deadlines. More petitions will likely be filed before October 12, 2012. The following petitions for exemptive relief are of particular interest to the Joint Associations' members because they have a direct and significant impact on members' status under the entity definitions and their ability to hedge their commercial risk under Position Limits:

- **Proposed RTO / ISO Exemptive Order (and supplemental ISO/RTO petitions).** The Proposed Order would exempt from most CEA provisions and CFTC regulations any contract or transaction that is entered into pursuant to a tariff or rate schedule approved, or permitted to take effect, by FERC or by the applicable State authority. Until the Commission finalizes the Proposed Order, market participants face uncertainty as to the regulatory status of their transactions in RTO / ISO markets, which, in turn, creates uncertainty as to their own regulatory status as swap dealers. The Joint Associations' members regularly enter into these transactions and if they are deemed "swaps", it would have a significant impact on their ability to operate below *de minimis* thresholds. Clarification of the appropriate treatment of internal bilateral transactions ("**IBTs**") is also important to participants in the electricity markets.

- **Petition for Exemptive Relief Concerning *Bona Fide* Hedging Transactions.** Compliance with spot-month position limits for all market participants begins on October 12, 2012. Despite the importance of knowing the types of transactions that will qualify as *bona fide* hedges in advance of this date, the Commission has not yet ruled on, or published for public comment, the Petition.

- **Proposal to Exempt Certain Transactions Involving Not-for-Profit Electric Utilities.** The CFTC has published for public comment, but not yet acted upon, a petition to exempt certain non-financial energy derivative transactions between and amongst government-owned electric utilities and cooperatively-owned electric utilities from most of the requirements of the CEA. The entities eligible for the proposed relief are not-for-profit electric utilities (entities described under section 201(f) of the Federal Power Act) charged with a unique public-service mission of providing their customers with reliable, affordable electric energy. These utilities need regulatory certainty that their transactions are going to be exempted from most of the requirements of the CEA.

- **Petition to exclude "utility operations-related swaps" with Special Entities from the $25 Million *de minimis* threshold.** The Petition requests that the CFTC amend CFTC Rule 1.3(ggg)(4) to exclude "utility operations-related swaps" from the special entity *de minimis* threshold. The Petition has not yet been published for comment. Until this petition is ruled upon, market participants face regulatory uncertainty that their transactions with governmental utilities may trigger swap dealer registration if they exceed the $25 million *de minimis* threshold.

Until the above petitions for exemptive relief are finalized, it is difficult for the Joint Associations' members to develop internal processes and information technology systems that will enable compliance with the DFA Regulations. For example, until the Petition for Exemptive Relief Concerning *Bona Fide* Hedging Transactions is ruled upon, market participants cannot properly build into their position limits monitoring and reporting systems the types of transactions that should be tagged as *bona fide* hedges. Similarly, until market participants know which transactions will count toward the *de minimis* threshold, they cannot develop information

technology systems that enable them to track the notional value of their swaps transactions. It is critical that the Commission address each of these pending petitions prior to the applicable compliance dates in order to provide the Joint Associations' members with the guidance they need to implement effective compliance procedures and infrastructure.

IV. Upcoming Compliance Dates

The Joint Associations' members face a number of compliance deadlines this fall. Despite these fast-approaching deadlines, a significant number of critical issues remain unresolved, making it more difficult for members to achieve compliance.

De Minimis Thresholds. An important area of necessary relief for the Joint Associations' members relates to the date from which market participants must begin to calculate the aggregate gross notional amount of their swap "dealing" activities. The tracking of *de minimis* "dealing" activity is one of the costliest and high-risk compliance obligations required under the DFA Regulations and it has one of the earliest compliance dates ─ October 12, 2012. Further, this requirement will apply not only to swap dealers, but also to companies that are unlikely to register as swap dealers. The greatest risk for the Joint Associations' members is the current $25 million *de minimis* threshold for Special Entities, which leaves no room for error for commercial firms. The Commission has received petitions to amend, adjust or otherwise provide clarifying guidance relating to the scope of the special entity *de minimis* level, but has not responded to date. Adding to the compliance risk and uncertainty is the fact that the CFTC, despite industry requests, also has not provided clarifying guidance on the appropriate method to calculate notional value for *de minimis* purposes. In order to address the significant compliance risk presented by beginning the *de minimis* calculation in less than 30 days, the Joint Associations' members must materially alter their existing business practices and make significant expenditures to establish compliance protocols to track *de minimis* levels. This impacts not only the Joint Associations' members, but also impacts their counterparties, in particular special entity counterparties, and, in turn, the broader marketplace. Absent clarity on these outstanding issues —namely, the types of transactions and entities implicated by the *de minimis* thresholds — it is appropriate that the Commission delay the date upon which market participants' must begin to count their swap dealing transactions toward the *de minimis* thresholds.

Position Limits. Compliance with spot-month position limits, and other related regulatory requirements, begins on October 12, 2012. To date, CFTC Staff has provided insufficient publicly available implementation guidance to enable market participants to comply with the Position Limits Rule, including:

- The Joint Associations' members appreciate the Commission's decision proposed revisions to the current aggregation standard in the Aggregation Proposed Rule. However, until the Aggregation Proposed Rule is finalized, it is difficult for market participants to identify with certainty the affiliates with whom they may ultimately be required to aggregate their positions. This, in turn, complicates market participants' efforts to develop and install the required information technology infrastructure necessary to monitor position limits on a real-time basis across affiliates. Market participants also need greater clarity regarding the disaggregation of Referenced

Contract Positions of public utilities and their trading affiliates. In addition, although no-action relief has been provided, in order to claim the relief, market participants must satisfy significant regulatory obligations, including taking all necessary reasonable steps to ensure trading independence among disaggregated affiliates.

- New representations will be required for pass-through swaps. The Joint Associations' members will need to make certain representations to their counterparties that transactions are *bona fide* hedging transactions. Moreover, the Joint Associations are concerned that the narrower definition of *bona fide* hedging for purposes of position limits may have the unintended consequence of limiting the availability of the end-user clearing exception when our members rely on the two components of hedging or mitigating commercial risk other than the one available for *bona fide* hedging transactions. This result may occur if end-users are unable to find counterparties (most likely swap dealers) willing to enter into transactions that qualify as hedging or mitigating commercial risk for purposes of the end-user clearing exception, but which count toward position limits.

- As noted above, the application of position limits to trade options presents novel and highly complex problems for market participants. For example, because a hedge of a Referenced Contract with a Referenced Contract does not constitute a *bona fide* hedge (unless the first transaction is a pass-through swap), market participants may have difficulty hedging their trade option transactions.

- The lack of a publicly available and complete list of Referenced Contracts makes it difficult for market participants to determine which of their contracts are subject to position limits.

- The CFTC has provided no public guidance regarding how to complete Forms 404, 404A, and 404S. Consequently, market participants remain uncertain about how to, or to what extent they must, report their hedging transactions and underlying cash market positions.

Swap Data Reporting; Real-Time Reporting. The Joint Associations' members need additional time to develop the costly information technology systems necessary to report swap data in non-SD/MSP to non-SD/MSP transactions. Moreover, until the unresolved issues surrounding the definition of "swap" (discussed in greater detail below) are resolved, it is difficult for market participants to identify which transactions will need to be reported to swap data repositories ("**SDRs**"), and, if reporting is required, how the reporting should occur. For example, the data fields of Appendix 1 of Part 45 Swap Data Reporting Rules and of Appendix A to Part 43 Real Time Reporting Rules are not compatible with the terms of tolling agreements and other storage and capacity agreements that may be trade options under the Product Definitions Final Rule. It is difficult for market participants to understand if and how these energy products may need to be reported under Parts 43 and Part 45. In addition, because only two SDRs have been approved and no swap execution facility ("SEFs") has been approved it is difficult to plan for market-wide systems integration. Each SDR may have its own unique reporting requirements with respect to data coming from the Joint Associations members – which again will impact computer systems design, implementation and testing.

End-user Clearing Exception. Although the End-user Clearing Exception Rule has been finalized, substantial uncertainty exists over when a central hedging affiliate that acts as a principal (rather than as an agent for its affiliates) may elect the end-user exception to hedge the risks of affiliates. Moreover, until the Federal Reserve Board finalizes its proposed regulation to define what it means to be "predominantly engaged in financial activities," the ability of certain commercial companies that have traditionally been thought of as "end users" to elect the end-user clearing exception needs to be further considered.

V. Ambiguous Provisions in Final and IFR Rules

Energy market participants must comply with IFRs as if they were final rules, although the CFTC still accepts public comment on them. Many of the IFRs discussed below will become effective when the product definitions release and statutory interpretations become effective, *i.e.*, October 12, 2012. Despite the imminent compliance date of these IFRs, it appears very unlikely that the CFTC will issue final rules addressing these outstanding issues before October 12, 2012.[6] As a result, the Joint Associations' members, along with other market participants, will be forced to implement compliance regimes based upon assumptions of how the IFRs will ultimately be finalized. Undoubtedly these compliance programs, based upon the pending but changing conditions of the IFRs, will need to be modified, perhaps substantially, when and if the rule is finalized. As a result, by complying with IFRs, rather than final rules, the Joint Associations' members will incur considerable additional expense.

Definition of Swap. The products definition release contains multiple, complex and commercially impractical tests that market participants must apply to determine the regulatory status of many common energy products. For example, the proposed interpretation regarding forwards with embedded options, including the seven-part test for embedded volumetric options, requires further clarity to be workable for physical forward contracts for commodities related to gas and electric systems. In particular, the circumstances under which the seventh prong of the test may be satisfied, which requires that the exercise or non-exercise of the embedded optionality be due to factors "that are outside of the control of the parties," are unknowable to the offeror who has no control over, or knowledge about, why an offeree exercises its volumetric option. Failing the seven-part volumetric optionality test has a substantial impact on the compliance costs of the Joint Associations' members. For example, typically if a contract fails the seven-part volumetric optionality test, then for most Joint Association members, the contract may be a trade option subject to position limits and reporting obligations. Similarly, the "single payment" requirement of the three-part facilities test leads to inapposite results when applied to transportation, storage, asset management and tolling agreements, which typically have tiered fee structures either mandated by the Federal Energy Regulatory Commission or employed in the ordinary course of business based on longstanding industry practice. Agreements relying on this fee structure (and other standard capacity and transmission services contracts) frequently fail the

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[6] Even if the Commission finalized these IFRs by October 12, 2012, with 60-day effective dates, it would still be impossible to comply with them for many months.

facilities test because of their payment structures and likely would be deemed "trade options" under the products definition. Until the treatment of these products under CFTC regulations is resolved, market participants face substantial ambiguity as to which transactions will count toward their *de minimis* threshold and otherwise be subject to swaps regulation. Moreover, the release's "single payment" requirement distorts market participants' ability to rely on industry practices for delivering energy to wholesale customers and end users, and conflicts with FERC's requirements for the use of a two-part rate for jurisdictional service agreements.

Definition of Swap Dealer. On October 12, 2012, energy market participants must begin to count the gross notional amount of swaps transactions that might be considered swap dealing activity toward the *de minimis* thresholds for purposes of swap dealer registration. Despite the proximity of the October 12th date, the CFTC has not finalized the definition of "hedging" for purposes of excluding certain swaps transactions from "dealing" activity in the IFR. Many commenters have recommended that the Commission adopt the same definition of "hedging" in the swap dealer definition as the Commission has adopted in the end-user clearing exception final rule and MSP definition.[7] Until this IFR is finalized, non-SDs/MSPs face legal uncertainty about the status of their hedging transactions to hedge commercial, but not physical, risk under the swap dealer definition. As a consequence, commercial end-users may be deterred from engaging in legitimate risk mitigation transactions because of concerns that regulators might interpret their swaps activity as "dealing." From an operational perspective, the multiple definitions of hedging will increase the costs of compliance with DFA Regulations for market participants as a single transaction will need to be tracked against multiple hedge definitions.

Furthermore, as discussed above, the CFTC has provided no public guidance concerning the calculation of the gross notional amount of swap transactions for purposes of the *de minimis* threshold and market participants have different views about how it should be calculated.[8] Given that there currently is not an industry-consensus view of how gross notional amount should be calculated, market participants need further guidance from the CFTC prior to the October 12th date. Finally, in addition to the uncertainty surrounding the definition of swap dealer, the Commission has also created uncertainty for the Joint Associations' members regarding the definition of ECP by promising to address numerous interpretive issues related to ECP status at a later, unspecified date.[9]

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[7] *See* Coalition of Physical Energy Companies, Letter to David A. Stawick, Secretary of the Commission, Regarding Comments on Interim Final Rule – CFTC Regulation 17 C.F.R. § 1.3(ggg) (RIN 3235-AK65) at 3 (July 23, 2012); EEI, Letter to David A. Stawick, Secretary of the Commission, Regarding Comments on Interim Final Rule Excluding Swaps Entered Into for Hedging Physical Positions from Dealing Activity (RIN 3235-AK65) (July 23, 2012).

[8] *See* American Petroleum Institute, Commodity Markets Council, EEI, EPSA, NGSA, and Independent Petroleum Association of America, Letter to David A. Stawick, Secretary of the Commission, Regarding Comments on "Notional Amount" Calculation Methodology under Swap Dealer *De Minimis* Determination (RIN 3235-AK65) and Other CFTC Regulations at 3 (September 20, 2012).

[9] *Entity Definitions Final Rule*, 77 Fed. Reg. at 30647 n.596.

Commodity Options. Despite the approaching compliance date, the CFTC has provided no further guidance regarding the three-part trade option test or the manner in which market participants should comply with the regulatory obligations that are conditions of the exemption. As discussed above, non-SD/MSPs are struggling to determine the proper way to identify, track and report trade options under the position limits rule. Without guidance, it will be difficult for market participants to design the necessary systems to monitor and, if necessary, report trade options transactions.

VI. Proposed Rules Not Yet Finalized

Non-SD/MSPs also face uncertainty due to the number of proposed rules that have not yet been finalized, including:

- **Inter-Affiliate Clearing Exemption.** The Commission has proposed a clearing exemption for majority-owned affiliates that meet certain conditions. Non-SDs/MSPs and their affiliates need certainty regarding the conditions for claiming this exemption from the mandatory clearing requirement. As proposed, the conditions that the CFTC would place upon affiliates in order to claim the exemption are burdensome, costly, and not justified given the minimal, if any, risk posed by inter-affiliate risk transfers. The Joint Associations urge the Commission to finalize the rule prior to making any mandatory clearing determinations and to minimize the burdens of the exemption's conditions.

- **Margin.** Once the margin rule is finalized, non-SDs/MSPs likely will need to revise their swap trading relationship documentation with SD/MSPs to include (or revise existing) credit support arrangements. The creation or renegotiation of these credit agreements will take significant amounts of time and market participants should be given sufficient time to approach and negotiate these important documents with their counterparties.

- **SEF Rules.** These final rules will establish a critical piece of the market infrastructure that has not previously existed. Until these rules are finalized, it is difficult for market participants to make informed compliance decisions because they lack a full understanding of how the markets will function in the future. For example, it is unclear whether CME ClearPort will still be available to non-SDs/MSPs or whether voice brokers will continue to act as trade intermediaries.

Until all DFA Regulations are finalized, it is difficult for market participants to make informed, cost-effective compliance decisions. The Joint Associations respectfully submit that deferring compliance dates for non-SD/MSPs until all proposed regulations are finalized will enhance market participant's ultimate ability to comply and will eliminate unnecessary costs caused by regulatory uncertainty.

VII. In the Alternative, the CFTC Should Establish a Good-Faith Compliance Period for Non-SDs/MSPs through No-Action Relief

If the Commission decides to maintain the current implementation schedule, EEI respectfully requests that the appropriate divisions of the Commission grant no-action relief, pursuant to Commission Rule 140.99, 17 C.F.R. § 140.99, to non-SD/MSPs that comply in good faith with DFA Regulations through and including Compliance Date 2.[10] The Joint Associations' members have taken substantial steps to comply with the DFA Regulations as they become effective and will continue to do so. However, given the monumental scale of the undertaking and the iterative nature of the implementation process where the compliance requirements of market participants are continually evolving, the Joint Associations' members will inevitably (1) find that they are unable to comply in a timely manner because of systems limitations, or (2) discover after-the-fact that they inadvertently are not in compliance, with certain DFA Regulations. For these reasons, the Joint Associations respectfully request that the relevant divisions of the Commission grant no action relief to non-SD/MSPs conditioned upon their continuing efforts to comply in good faith with DFA Regulations. The Division of Market Oversight ("DMO") has used a similar approach to address implementation issues related to swaps' large trader reporting and the aggregation requirements of the Position Limits Rule. The Joint Associations respectfully submit that no-action relief is appropriate for non-SD/MSPs that actively work to bring themselves into compliance with DFA Regulations, but are not able to achieve full compliance due to the challenges and uncertainties of the implementation process.

Similar to the prior no-action relief provided by DMO, non-SD/MSPs would provide notice to the Commission and relevant divisions of their decision to rely upon the relief and would provide a general description of their efforts to achieve compliance. During the period of no-action relief, non-SD/MSPs energy market participants would continue to devote time and resources toward developing and testing information technology systems and developing new compliance policies and procedures. No-action relief also would provide the Joint Associations' members with additional time to seek guidance from the Commission about their compliance obligations. The ability to receive both formal and informal guidance from the Commission is particularly important given that many DFA Regulations are silent or ambiguous over the obligations of market participants.

* * * * *

[10] "Compliance Date 2" is the date that is 12 months after the publication in the Federal Register of all DFA Regulations required to be promulgated by the CFTC.

Please contact us at the numbers below if you have any questions about the Joint Associations' requests for (1) an orderly implementation schedule with deferred compliance dates for non-SD/MSPs energy market participants; or (2) in the alternative, no-action relief.

Respectfully submitted,

Richard F. McMahon, Jr.
Vice President
Edison Electric Institute
701 Pennsylvania Avenue, N.W.
Washington, DC 20004
Phone: (202) 508-5571
Email: rmcmahon@eei.org

Melissa Mitchell
Director of Regulatory Affairs and Counsel
Electric Power Supply Association
1401 New York Avenue, N.W., 12th Floor
Washington, DC 20005
Phone: (202) 349-0151
Email: mmitchell@epsa.org

/s/
Arushi Sharma
Associate Counsel, Energy & Environment
American Gas Association
400 N. Capitol St., NW | Washington DC 20001
202.824.7120 | asharma@aga.org

Attachment

I hereby certify that the material facts upon which the Joint Associations' no-action request are based are true and complete to the best of my knowledge, information, and belief.[11]

Lopa Parikh
Director, Federal Regulatory Affairs for Energy Supply

[11] In addition, I hereby agree that, if any time prior to issuance of a no-action letter, any material statement made in this letter ceases to be true and complete, I will ensure that Commission Staff is informed promptly in writing of all materially changed facts and circumstances.

cc: Honorable Gary Gensler, Chairman
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott D. O'Malia, Commissioner
Honorable Mark P. Wetjen, Commissioner
Dan Berkovitz, General Counsel

ATTACHMENT

Non-SD/MSP Dodd-Frank Compliance Issues[1]

Applicable Rule	Compliance Dates[2]	Summary of Requirement Applicable to Non-SD/MSPs
Pending, But Not Yet Granted, Exemptions		
Proposed Order and Request for Comment on a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act - 77 FR 52138	If the transactions under the Proposed Order are not exempt, market participants may need to treat these transactions as swaps subject to all other applicable CFTC swap regulations.	The Proposed Order would exempt from most CEA provisions and CFTC regulations any contract, or transaction that is entered into pursuant to a tariff or rate schedule approved or permitted to take effect by FERC or by the applicable State authority. The subject transactions include the following products: financial transmission rights, day-ahead and real-time energy transactions, forward capacity transactions (including generation, demand response, and energy efficiency), and reserve or regulation transactions. **Issues**: Pending finalization of this order, market participants face uncertainty as to the regulatory status of many of their products, which, in turn, may create uncertainty as to their own regulatory status as SDs. Comments on the Proposed Order must be submitted by September 27, 2012.
In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by ISO New England Inc. (Apr. 30, 2012) - ISO New England Request for Supplemental Order (not yet published for comment) **In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by California Independent System Operator Corporation (May 30, 2012) – CAISO Request for Supplemental Order** (not yet published for comment)	*See* above.	The CFTC is currently reviewing two supplemental petitions regarding ISO/RTO products. ISO NE has filed a supplemental request for an exemption from CFTC regulation for "internal bilateral transactions" ("IBTs"). CAISO has filed a similar request for ''inter-scheduling coordinator trades'' or ''inter-SC trades.''

[1] Note that for purposes of this chart, we have referred to non-SDs/MSPs, rather than end users, because the guidance herein applies regardless of whether a market participant is using swaps to hedge or mitigate commercial risk, or trading swaps for profit. Additional requirements apply in order to meet the terms of the end-user exception from clearing.

[2] Note that the compliance dates included in this table are the earliest possible dates.

Applicable Rule	Compliance Dates[2]	Summary of Requirement Applicable to Non-SD/MSPs
Petition for Commission Order Granting Exemptive Relief for Certain Bona Fide Hedging Transactions Under Section 4A(A)(7) of the CEA (not yet published for comment)	October 12, 2012: Spot-month position limits become effective	The Working Group of Commercial Energy Firms requested an order granting exemptive relief from position limits for certain transactions that would be treated as bona fide hedges. **Issue:** Requested exemption has not been published for comment.
Proposal to Exempt Certain Transactions Involving Not-for-Profit Electric Utilities – 76 FR 52138	N/A	The CFTC is currently reviewing , and has published for public comment, a proposal to exempt certain non-financial energy derivative transactions between and amongst government-owned electric utilities and cooperatively-owned electric utilities from most of the requirements of the CEA. The entities eligible for the proposed relief are not-for-profit electric utilities (entities described under section 201(f) of the Federal Power Act) charged with a unique public service mission of providing their customers with reliable, affordable electric energy. The National Rural Electric Cooperative Association ("NRECA"), the American Public Power Association ("APPA"), the Large Public Power Council ("LPPC"), the Transmission Access Policy Study Group ("TAPS"), and Bonneville Power Administration ("BPA") filed the original petition requesting the exemptive relief. Comments on the proposed exemption are due by September 24, 2012.
Petition for Rulemaking to Amend CFTC Regulation 1.3(ggg)(4) (not yet published for comment)	October 12, 2012: Market participants begin to register as SDs	Petition requests that the CFTC amend CFTC Regulation 1.3(ggg)(4) to provide an exclusion to the special entity *de minimis* threshold in the Swap Dealer Definition Final Rule for "utility operations-related swaps." The APPA, LPPC, TAPS, BPA, and the American Public Gas Association ("APGA") filed the petition with the CFTC. **Issue:** The requested petition has not yet been published for comment. Until this petition is ruled upon, market participants face regulatory uncertainty that their transactions with governmental utilities may trigger swap dealer registration if they exceed the $25 million *de minimis* threshold.
Upcoming Compliance Dates		
Position Limits for Futures and Swaps - 76 FR 71626	Oct. 12, 2012	Compliance date for spot-month limits for 28 Core Referenced Futures Contracts and economic equivalent Referenced Contracts, non-spot-month limits for legacy agricultural Referenced Contracts, DCM / SEF spot-month limits, aggregation requirements associated with such limits,

Applicable Rule	Compliance Dates[2]	Summary of Requirement Applicable to Non-SD/MSPs
		new definition of *bona fide* hedging and procedure for reporting hedging positions in excess of the applicable limit, and position visibility levels. **Issues:** • Insufficient implementation guidance from CFTC Staff to enable market participants to be fully compliant by the compliance date; new representation required for pass-through swaps (may effectively narrow the scope of the end-user clearing exception). • Because there is not a publicly available list of Referenced Contracts, market participants are having difficulty determining which of their contracts are subject to position limits. • CFTC has provided no guidance regarding how to complete Forms 404, 404A, and 404S. • Market participants need greater clarity regarding the disaggregation of Referenced Contract Positions of public utilities and their trading affiliates.
Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'' – 77 FR 30596 **Note:** The part of this final rule addressing the definition of "hedging" in the swap dealer definition was issued on an interim final basis.	October 12, 2012: Market participants begin to count the gross notional amount of their swap transactions toward the *de minimis* threshold for purposes of swap dealer registration. A person must be registered as a swap dealer by the date that is two months following the end of the month in which the person's swap dealing activities first exceed the *de minimis* threshold (*e.g.*, if a person exceeds the *de minimis* level in October, it must register by December 31, 2012).	The SEC and CFTC joint final rule establishes the definitions of "swap dealer", "major swap participant" , and "eligible contract participant" that are necessary to implement many Dodd-Frank regulations. Market participants may begin to register as swap dealers as early as October 12, 2012, although the CFTC has recently clarified that market participants have until two months after the month in which they exceed the $8 billion *de minimis* level (or $25 million in the case of special entities) to register as a swap dealer. **Issues:** • **Definition of "hedging":** The SEC and CFTC issued a joint IFR regarding the definition of "hedging" for purposes of excluding certain swaps transactions from "dealing" activity under the swap dealer definition. The comment period for the IFR regarding the definition of "hedging" closed on July 23, 2012 and no further guidance has been provided. • **Special entity *de minimis* threshold:** Market participants must start counting "dealing" swaps with special entities on October 12, 2012. • **Aggregate gross notional amount:** CFTC has provided no public guidance concerning how to calculate the gross notional

Applicable Rule	Compliance Dates[2]	Summary of Requirement Applicable to Non-SD/MSPs
		amount of swap transactions and industry participants have different views about how it should be calculated. • **ICE transition to futures and possible ClearPort conversion to ex-pit futures execution:** Beginning on October 12, 2012, market participants must track and manage cleared swaps despite the fact that the majority of these transactions will no longer be swaps beginning in 2013. This requirement places a significant burden on energy companies, who must develop compliance controls and policies during these few interim months to ensure that they remain below *de minimis* SD registration thresholds.
External Business Conduct Standards – 77 FR 9734	October 15, 2012 for some requirements; December 31, 2012 for others	**October 15, 2012:** Market participants who have submitted their SD application to the NFA may be required to comply with certain External Business Conduct Standard Rule requirements, including: prohibition on fraud, manipulation, and other abusive practices [23.410(a), (b)]; fair dealing [23.433]; daily marks [23.431(d)]; diligence requirement with respect to swaps recommended to a CP (but not the suitability requirement) [23.434(a)(1)]; and restrictions on political contributions [23.451]. **December 31, 2012:** SDs must begin to comply with the following requirements: KYC requirements [23.402]; confidential treatment of CP information [23.410(c)]; verification of eligibility, including ECP and special entity [23.430]; material risk, characteristics, and conflicts of interest disclosures [23.431(a)-(c)]; clearing disclosures [23.432]; CP-suitability and related safe harbor [23.434(a)(2), (b), (c)]; and acting as advisor or CP to a special entity [23.440, 23.450]. **Issue:** Although non-SD/MSPs are not subject to external business conduct standard requirements, they will be asked by SDs to negotiate and revise their swap documentation with SDs (and MSPs, where applicable).
Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for SD/MSPs (unofficial version)	Swap Trading Relationship Documentation – December 31, 2012	SDs, SBSDs, MSPs, MSBSPs, or private funds (that are "active funds" but are not third-party subaccounts) must comply with swap trading relationship documentation requirements. **Issue:** Although non-SD/MSPs are not subject to swap trading relationship documentation rules, they will need to negotiate and revise their swap documentation with SD/MSPs to include various new representations.

Applicable Rule	Compliance Dates[2]	Summary of Requirement Applicable to Non-SD/MSPs
Commodity Options - 77 FR 25320	January 1, 2013[3]	All market participants, including non-SDs/MSPs, should implement policies to comply with the reporting and recordkeeping obligations that apply to options, including trade options. *See* below for discussion of IFR on trade options.
Swap Data Recordkeeping and Reporting Requirements (Part 45) - 77 FR 2136 **Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps (Part 46) -** 77 FR 35200	April 10, 2013 for all asset classes.	Despite the April 10, 2013 compliance date, because SD/MSP reporting CPs must begin complying with SDR and historical swap reporting for some asset classes on October 12, 2012, non-SD/MSPs may receive requests for additional swap data prior to April 10, 2013. **Reporting Obligations:** Under Part 45, for certain transactions between non-SDs/MSPs, the CP which is designated as the "reporting CP" must report "creation data" and "continuation data" to an SDR. For historical swaps, non-SD/MSPs that are designated as the "reporting CP" must make initial data reports to the SDR. The format and the amount of data that must be reported varies depending upon when the historical swap was executed and if it has expired. **Recordkeeping Obligations:** Under Part 45, non-SD/MSPs must keep full, complete, and systematic records, together with all pertinent data and memoranda, with respect to each swap in which the non-SD/MSP is a CP (including all records indicating that with respect to a swap, the non-SD/MSP is able to elect the clearing exception). Under Part 46, non-SD/MSPs must gather the information and documentation relating to the terms of the historical swap transactions that were in the non-SD/MSP's possession on or after the various historical swaps recordkeeping deadlines (the CFTC has established multiple cut-offs depending upon when the swap was executed and if it has expired).
Real-Time Public Reporting of Swap Transaction Data - 77 FR 1182	April 10, 2013	Non-SD/MSPs must report a publicly reportable swap transaction in real-time if such transaction is executed off-facility (*i.e.*, not on a SEF or DCM).

[3] The CFTC issued no-action relief extending compliance with the trade option rule through Dec. 31, 2012.

Applicable Rule	Compliance Dates[2]	Summary of Requirement Applicable to Non-SD/MSPs
End-User Exception to the Clearing Requirement for Swaps - 77 FR 42560	With respect to any swap subject to a CFTC mandatory clearing determination, compliance is required at the time the exception is relied upon.	Interest Rates/CDS: CFTC has issued a proposed mandatory clearing determination for interest rates and CDS swap transactions; following finalization of the determination, there will be a phased-in compliance period depending on CP type. Non-SD/MSPs wishing to elect the end-user clearing exception should expect their CPs to request the non-SD/MSP to represent as to its eligibility to elect the exception, including representations that the electing CP is: not a financial entity; hedging or mitigating commercial risk; able to meet its financial obligations with respect to non-cleared swaps; and has secured Board approval (which may be a general approval) to elect the exception (applicable to non-SD/MSPs that are "SEC filers" only). Non-SD/MSPs that are reporting CPs for a transaction must provide notice to the applicable SDR that the end-user exception is being elected and that the CP claiming the election is eligible to do so.
Interim Final Rules ("IFRs") Yet To Be Finalized		
Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping – 77 FR 48208	October 12, 2012	**Issues:** • The CFTC requested comments on the Interpretation in the Swap Final Rule regarding the seven-part test for determining whether contracts with embedded volumetric options are forward contracts or options (and, if the latter, whether they are trade options). The comment period on the Interpretation closes on October 12, 2012. • Under the IFR for Trade Options and the Interpretation regarding the seven-part test for volumetric options, beginning on October 12, 2012, market participants must perform a costly and burdensome legal review of every transaction to determine its regulatory status. The Interpretation's volumetric option test is too complex and part seven of the test should be eliminated. • Ambiguity exists regarding the regulatory status of many common energy products. For example, market participants need clarification regarding the possible classification of gas transportation and storage contracts with two-part, tariff-mandated pricing as options (and possibly trade options). Additional clarification is also necessary regarding the treatment of other contracts, such as asset management agreements, tolling agreements, capacity contracts, and transmission services

Applicable Rule	Compliance Dates[2]	Summary of Requirement Applicable to Non-SD/MSPs
		contracts. The Swap Final Rule's treatment of these contracts is inconsistent with industry practice and interferes with FERC jurisdiction. • **Book-out Documentation:** The forward contract interpretation in the definition of swap requires market participants to ensure that book-out agreements "are separate, individually negotiated, new agreements" and provides that in order to claim the forward contract exclusion, an oral agreement to "book-out" a transaction "must be followed in a commercially reasonable timeframe by a confirmation in some type of written or electronic form."
Commodity Options - 77 FR 25320	January 1, 2013; first Form TO filing for trade options entered into between January 1, 2013 and December 31, 2013 must be made on or before March 1, 2014	The CFTC issued an IFR providing an exemption for options on physical commodities that are intended to be physically settled if exercised ("**Trade Option Exemption**"), subject to certain counterparty eligibility and reporting requirements. The comment period for the IFR closed on June 26, 2012 and no further guidance has been provided. **Issues**: Systems not in place for tracking position limits on trade options.
Proposed Rules Yet to be Finalized		
Clearing Exemption for Swaps Between Certain Affiliated Entities – 77 FR 50425	N/A	The proposed rule would allow swaps between majority-owned affiliates to be exempted from the Dodd-Frank Act's mandatory clearing requirement, subject to certain conditions. Non-SD/MSPs who also qualify for the end-user clearing exception would be able to elect not to clear swaps pursuant to either the end-user clearing exception or the proposed inter-affiliate clearing exemption. Comments are due by September 20, 2012.
Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements Under Section 4s of the CEA – 76 FR 58176	N/A	Establishes the compliance schedule for swap trading relationship documentation and margin requirements for uncleared swaps. The CFTC recently finalized the compliance schedule for trading relationship documentation, but has not yet finalized the compliance schedule for margining requirements.[4] Although non-SD/MSPs are not required to comply with Section 4s requirements, they will nevertheless have to revise their swap trading relationship documentation with SD/MSPs by the applicable compliance date.

[4] The CFTC finalized the compliance schedule for swap trading relationship documentation in the Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants Final Rule (not yet published in the Federal Register), *available at* http://www.cftc.gov/LawRegulation/DoddFrankAct/Dodd-FrankFinalRules/ssLINK/federalregister082712.

Applicable Rule	Compliance Dates[2]	Summary of Requirement Applicable to Non-SD/MSPs
		In addition, the compliance schedule for the trade execution requirement applicable to all market participants originally proposed in the *Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA* has not yet been finalized.[5]
Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants – 76 FR 23732 **Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy – 76 FR 75432**	N/A	Although non-SD/MSPs are not subject to specific margin requirements, because of the margin requirements applicable to SD/MSPs, non-SD/MSPs will likely have to enter into, or revise existing, credit support agreements with SD/MSPs. Non-SD/MSPs also would have the right to require that any initial margin which they may post to guarantee uncleared swaps be held by an independent third-party custodian.
Core Principles and Other Requirements for Swap Execution Facilities – 76 FR 1214	N/A	Establishes the registration and operation of swap execution facilities ("**SEFs**") and the listing, trading and execution of swaps on SEFs. In addition to finalizing the rules governing SEFs, the CFTC also has not finalized Core Principle 9 (relating to the execution of transactions) of the Core Principles of Designated Contract Market ("DCMs") Final Rule. **Issues**: Until these rules are finalized, it is difficult for market participants to make informed compliance decisions because they lack a full understanding of how the markets will function in the future. For example, it is unclear whether CME ClearPort will still be available to non-SDs.
Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available To Trade – 76 FR 77728	N/A	Establishes the process by which DCMs and SEFs will make swaps "available to trade" as set forth in CEA Section 2(h)(8) in order to facilitate the trade execution requirement.

[5] The CFTC finalized the compliance schedule for the clearing requirement on July 24, 2012. *See* Swap Transaction Compliance and Implementation Schedule: Clearing Requirement under Section 2(h) of the CEA – 77 FR 44441.