

[Securities Regulation Daily Wrap Up, SWAPS—CFTC extends date for swap dealer registration de minimis threshold phase-in, \(Oct. 13, 2016\)](#)

Securities Regulation Daily Wrap Up

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The CFTC announced that it has approved an order establishing December 31, 2018, as the swap dealer registration de minimis threshold phase-in termination date. With the approval, the de minimis threshold will remain at \$8 billion.

Regulatory background. As explained in the [order](#), the Dodd-Frank Wall Street Reform and Consumer Protection Act directed the CFTC and the SEC to jointly further define the term "swap dealer" and to include a de minimis exception. The de minimis exception provides that a person shall not be deemed to be a swap dealer unless its swap dealing activity exceeds an aggregate gross notional amount threshold of \$3 billion subject to a phase-in period during which the gross notional amount threshold is set at \$8 billion.

Without further action by the [CFTC](#), the phase-in period was scheduled to terminate on December 31, 2017, at which time the de minimis threshold would decrease to \$3 billion. Firms would also be required under that scenario to start tracking their swap activity beginning on January 1, 2017, to determine whether their dealing activity over the course of the year would require them to register as swap dealers.

After review, the CFTC determined that it was prudent to extend the phase-in period by one year, which may provide additional time for more information to become available to reassess the de minimis exception.

The CFTC notes that prior to the termination of the phase-in period, the Commission may take further action regarding the de minimis threshold by rule amendment, order, or other appropriate action.

Commissioner statements. In a [statement](#) accompanying the order, CFTC Chairman Timothy Massad said that the swap registration requirement is a pillar of the framework for swap regulation mandated by Dodd-Frank. Congress required this framework because excessive risk related to over-the-counter derivatives contributed to the intensity of the worst financial crisis since the Great Depression, according to Massad. At the same time, Massad said, Congress recognized that derivatives play an important role in enabling businesses to hedge risk. Therefore, getting this framework right is very important.

Commissioner Sharon Bowen issued a concurring [statement](#) regarding the order. Bowen said that the CFTC has published its final staff report on the de minimis threshold and the nine month period of considering whether to change the threshold has formally begun. It is clear from the report, Bowen said, that the staff does not have sufficient data to make a fully informed decision. "I support this initiative to get additional data on this subject, and I do not support changing the threshold at this time," the statement said.

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