

[Securities Regulation Daily Wrap Up, SWAPS—CFTC releases preliminary report on threshold for swap dealer registration, \(Nov. 18, 2015\)](#)

Securities Regulation Daily Wrap Up

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CFTC staff issued a much-anticipated preliminary report looking at the threshold of swap dealing activity above which market participants must register as swap dealers with the CFTC. The report found that if the registration threshold for swap dealing activity is lowered from \$8 billion to \$3 billion, as is scheduled to happen at the end of 2017, many more entities would have to register as swap dealers. The [report](#) discussed the possible effects of changing the threshold amount and potential alternative approaches, but did not make any recommendations. The CFTC [asked](#) for public comment on the report.

CFTC Commissioner J. Christopher Giancarlo [warned](#) that a drop in the threshold would cause many non-financial companies to cut back on risk-hedging activities with their customers. In turn, this would limit risk-management options for end-users and consolidate marketplace risk in a few large swap dealers. Giancarlo urged that cleared swaps should not be counted toward the de minimis threshold and that the Commission should vote to consider alternatives to the automatic lowering of the threshold.

Effects of de minimis threshold. The Dodd-Frank Act introduced registration requirements for swap dealers and directed the CFTC to further define the term “swap dealer,” including an exemption from registration for entities that engage in a de minimis quantity of swap dealing. The CFTC adopted Regulation 1.3(ggg) to implement this provision with a phase-in period. Currently, participants engaging in \$8 billion in aggregate gross notional amount of swap dealing activity over a twelve-month period must register, but this amount is scheduled to automatically drop to \$3 billion on December 31, 2017 unless the CFTC amends the rule.

According to the report, a de minimis threshold for registration provides regulatory certainty, allows for limited ancillary dealing by end users, and encourages new participants in the swap markets. Focusing on data for interest rate and credit default swaps, the report found that at the \$8 billion threshold there are 129 swap dealing entities and, if the threshold dropped to \$3 billion, an additional 83 entities would potentially have to register. However, even though many more entities would need to register, only one to two percent more activity would be covered by swap dealer regulation, as measured by various metrics.

Alternative approaches. In addition to a single gross notional threshold approach to the de minimis exception, the preliminary report also considered a number of alternatives.

- One approach would use a notional de minimis threshold specific to each asset class. Staff noted that the Commission stated when it adopted Regulation 1.3(ggg) that having multiple thresholds by asset class could increase costs and reduce regulatory certainty. It might also need more staff time and resources to monitor and enforce.
- A multi-factor approach would consider some combination of gross notional swap dealing activity, counterparty count, and transaction count. The Commission originally proposed counterparty and transaction count provisions but ultimately did not include these in the final rule because this type of standard could produce arbitrary results by giving disproportionate weight to a series of smaller transactions or counterparties.
- A multi-tiered regulatory approach would impose less rigorous regulation for small and mid-sized banks and entities that do not exceed the \$8 billion threshold. Staff said that an assessment of the advantages and disadvantages of a multi-tiered de minimis exception was beyond the scope of the preliminary report, but identified factors that would need to be examined if this approach is considered.

- Finally, staff considered the possible exclusion of swaps executed on a swap execution facility (SEF) or designated contract market (DCM) and/or cleared swaps from an entity's de minimis calculation. Staff explained that after a swap is cleared, the swap between the counterparties is extinguished and risk mitigation is handled by the clearing organization. Therefore, swap dealer regulation may be of limited value for swaps that are executed on a SEF or DCM and/or cleared.

Public comments. The report posed a number of specific questions for input by the public. Comments must be received by January 19, 2016.

RegulatoryActivity: ClearanceSettlement Derivatives DoddFrankAct FinancialIntermediaries Swaps