

## Update on the Dodd-Frank Act

12<sup>th</sup> Annual Gas and Power Institute  
August 15-16, 2013

### Topics for Discussion

#### 1. Rules/Orders

- CICI Number Requirement
- Clearing Requirement Under CEA 2(h)
- Clearing Exemption for Swaps Between Certain Affiliates
- Exempt ISO/RTO Transactions
- Exemption for Transactions for Swaps Between FPA § 201(f) Entities
- Anti-Disruptive Trading Practices Authority – Interpretive Guidance and Policy Statement

## 2. No-Action Letters

- No-Action Letter No. 12-17, Guarantors as ECPs
- No-Action Letter No. 12-06, 12-41, and 13-08, No Action Relief for Trade Options
- No-Action Letter No. 13-09, No Action Relief for Relief for Inter-Affiliate Swaps
- No-Action Letter No. 13-10, No Action Relief for Relief with Respect to the Compliance Date of 4-10-13 for reporting obligations under Parts 43, 45 and 46
- No-Action Letters No. 12-36, 13-24, and 13-30, No Action Relief from the Clearing Requirement for Swaps Entered into by Cooperatives

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## 3. Judicial Decisions

- ISDA/SIFMA v. U.S. CFTC
- American Petroleum Institute, et al. v. Securities and Exchange Commission

## 4. Industry Compliance Forms

- ISDA Keepwell and Exclusionary Provisions
- ISDA October Protocol / IECA Amendment
- ISDA March Protocol / IECA Amendment
- IECA End User to End User Representations and Reporting Agreement
- IECA Annual Information Filing

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# I. FINAL RULES/ORDERS

I. Final Rules/Order

II. No-Action Letters

III. Judicial Decisions

IV. Industry Compliance Forms

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## Final Rule – Swap Data Recordkeeping and Reporting Requirements (CICI numbers)

- 17 CFR 45, published 1/13/12
  - 77 Fed Reg 2186
- All swap parties must have a CICI before **April 10, 2013**
  - SDs, SDRs, DCMs, and DCOs had a deadline of December 31, 2012
- “CICI” – CFTC Interim Compliance Identifier
- Available at [www.ciciutility.org](http://www.ciciutility.org)

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## Final Rule – Clearing Requirement Determination Under Section 2(h) of the CEA

- 17 CFR 50, published 12/13/12
- All parties other than end users electing the end-user exception to clearing, must clear a § 50.4 swap
  - Must clear as soon as technologically practicable and no later than the end of the day of execution
  - Submission to a registered FCM or a DCO clearing member satisfies this requirement

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- § 50.4 swaps
  - certain interest rate swaps, and
  - certain credit default swaps
- Exceptions
  - Do not have to clear if a swap is not offered for clearing by any DCO
  - Do not have to disentangle non-clearable swap components from clearable swap components if a transaction includes both

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## Final Rule – Clearing Exemption for Swaps Between Certain Affiliated Entities

- 17 CFR Part 50, published 4/11/13
  - 78 Fed Reg 21750
  - Effective June 10, 2013
- Clearing is not required if:
  - The counterparties report their financials on a consolidated basis;
  - One party owns the other or they are owned by a common third party;
  - Both counterparties comply with the rule conditions;
  - The swap is subject to a centralized risk management program that is reasonably designed to monitor and manage the risks associated with the swap;
  - One of the parties reports the trade information to an SDR; and
  - If one affiliate is non-US, certain other requirements are met.

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## Final Order - Exemption of Specified Transactions in ISO / RTO Markets

- CEA § 4(c)(6)(A)-(B): CFTC can exempt from the CEA any transactions otherwise entered into pursuant to a FERC-regulated or State-regulated tariff if the CFTC finds the exemption is consistent with public interest and the purposes of the CEA
- February 2012: CAISO, PJM, MISO, ISO-NE, NYISO and ERCOT petitioned CFTC for an exemptive order under CEA § 4(c)
- August 2012: CFTC issued a Proposed Order granting relief for certain transactions regulated by ISO/RTO markets

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[Hallmarks of a Robust Compliance Program for Energy Companies; plus Dodd-Frank Update 2013](#)

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12<sup>th</sup> Annual Gas and Power Institute session  
"Dodd-Frank Update"