

Upcoming Deadlines for Private Funds that Trade Swaps

April 9, 2013

Some of the key changes to the swaps markets contemplated by the Dodd-Frank Act are starting to take effect. Some key upcoming deadlines affecting private investment funds are highlighted below.

Obtain CICI by April 10, 2013: Any party to a swap who is neither a "swap dealer" nor a "major swap participant" must obtain a CFTC Interim Compliant Identifier or CICI (also sometimes referred to as a Legal Entity Identifier or LEI) at www.ciciutility.org by April 10, 2013. An investor can check www.ciciutility.org to see whether a CICI has been assigned. An investor must be prepared to provide a CICI to its counterparties for certain recordkeeping and reporting purposes for all new and existing swaps beginning April 10, 2013. The CICI can be obtained either by the entity that actually enters into the swap, or by an investment adviser or other authorized third party on its behalf.

Begin Clearing Certain Swaps on June 10, 2013: Swap counterparties are placed in three categories. Most private funds fall into "Category 2" and will be required to begin to clear certain credit default swaps and interest rate swaps entered into on or after June 10, 2013. Category 2 entities include private funds (other than "active funds" as defined below), commodity pools and financial entities (including entities predominantly engaged in activities that are in the business of banking or activities that are financial in nature). Swap dealers, major swap participants and active funds are classified as "Category 1" and were required to begin clearing certain covered swaps that they entered into on or after March 11, 2013.

An "active fund" is a private fund that is not a "third-party subaccount" and that has executed 200 or more swaps per month on average over the 12 months preceding September 11, 2012. A "third-party subaccount" is an account managed by an investment adviser that is independent of and unaffiliated with the account's beneficial owner or sponsor, and that is responsible for the documentation necessary for the account's beneficial owner to document swaps.

All other entities will be in "Category 3" and required to clear covered swaps entered into on or after September 9, 2013. This category includes "third-party subaccounts" and ERISA pension plans.

The mandatory clearing requirements initially apply to four classes of interest rate swaps and two classes of credit default swaps (CDS). The covered interest rate swap classes are:

- Fixed-to-floating swaps
- Basis swaps
- Forward rate agreements
- Overnight index swaps

The clearing determination for these interest rate swap classes covers swaps in major currencies and reference rates for multiple maturities.

The covered CDS classes are:

- USD-denominated untranched CDS indices referencing North American corporate credits
- Euro-denominated untranched CDS indices referencing European corporate credits

As a result of these deadlines, private fund managers that trade these products need to complete the necessary account documentation with their swap counterparties in order to be ready for mandatory clearing. The key documents are the Dodd-Frank Protocol Questionnaire and two related Addenda, published by the International Swaps and Derivatives Association (ISDA). These documents are not required, but were adopted by ISDA to provide a non-exclusive method for parties to provide certain additional information, representations and elections to their swap counterparties. Addendum I, which is available [here](#), confirms an investor's status as an "eligible contract participant" and "active fund." Addendum II, which is available [here](#), addresses certain elections under CFTC rules, an investor's U.S. person status, and status for certain purposes related to the second phase of mandatory clearing.

Private fund managers should contact their swap counterparties in order to determine if any additional documentation will be required, and should be aware that margin requirements for cleared swaps may change.

- **Arnold P. May**
Partner
- **Amanda H. Nussbaum**
Partner
- **Scott S. Jones**
Partner
- **Charles (Chip) Parsons**
Partner
- **Jamiel E. Poindexter**
Partner
- **Marc A. Persily**
Partner
- **Ira G. Bogner**
Managing Partner
- **Sarah K. Cherry**
Partner
- **Bruce L. Lieb**
- **Nigel van Zyl**
Partner
- **Mary B. Kuusisto**
Partner
- **David W. Tegeler**
Partner
- **David T. Jones**
Partner
- **Howard J. Beber**
Partner
- **Robin A. Painter**
Partner
- **Christopher M. Wells**

Partner

- **Stephen T. Mears**

Partner