

§ 23.505

17 CFR Ch. I (4–1–17 Edition)

Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5390(c)(9)(A), or 12 U.S.C. 1821(e)(9)(A); and

(iv) An agreement between the swap dealer or major swap participant and its counterparty to provide notice if either it or its counterparty becomes or ceases to be an insured depository institution or a financial company.

(6) The swap trading relationship documentation of each swap dealer and major swap participant shall contain a notice that, upon acceptance of a swap by a derivatives clearing organization:

(i) The original swap is extinguished;

(ii) The original swap is replaced by equal and opposite swaps with the derivatives clearing organization; and

(iii) All terms of the swap shall conform to the product specifications of the cleared swap established under the derivatives clearing organization's rules.

(c) *Audit of swap trading relationship documentation.* Each swap dealer and major swap participant shall have an independent internal or external auditor conduct periodic audits sufficient to identify any material weakness in its documentation policies and procedures required by this section and Commission regulations. A record of the results of each audit shall be retained.

(d) *Recordkeeping.* Each swap dealer and major swap participant shall maintain all documents required to be created pursuant to this section in accordance with §23.203 and shall make them available promptly upon request to any representative of the Commission or any applicable prudential regulator, or with regard to swaps defined in section 1a(47)(A)(v) of the Act, to any representative of the Commission, the Securities and Exchange Commission, or any applicable prudential regulator.

[77 FR 55960, Sept. 11, 2012]

§ 23.505 End user exception documentation.

(a) *For swaps excepted from a mandatory clearing requirement.* Each swap dealer and major swap participant shall obtain documentation sufficient to provide a reasonable basis on which to believe that its counterparty meets the statutory conditions required for

an exception from a mandatory clearing requirement, as defined in section 2h(7) of the Act and §50.50 of this chapter. Such documentation shall include:

(1) The identity of the counterparty;

(2) That the counterparty has elected not to clear a particular swap under section 2h(7) of the Act and §50.50 of this chapter;

(3) That the counterparty is a non-financial entity, as defined in section 2h(7)(C) of the Act;

(4) That the counterparty is hedging or mitigating a commercial risk; and

(5) That the counterparty generally meets its financial obligations associated with non-cleared swaps. *Provided*, that a swap dealer or major swap participant need not obtain documentation of paragraphs (a)(3), (4), or (5) of this section if it obtains documentation that its counterparty has reported the information listed in §50.50(b)(1)(iii) in accordance with §50.50(b)(2) of this chapter.

(b) *Recordkeeping.* Each swap dealer and major swap participant shall maintain all documents required to be obtained pursuant to this section in accordance with §23.203 and shall make them available promptly upon request to any representative of the Commission or any applicable prudential regulator, or with regard to swaps defined in section 1a(47)(A)(v) of the Act, to any representative of the Commission, the Securities and Exchange Commission, or any applicable prudential regulator.

[77 FR 55960, Sep. 11, 2012, as amended at 78 FR 21046, Apr. 9, 2013]

§ 23.506 Swap processing and clearing.

(a) *Swap processing.* (1) Each swap dealer and major swap participant shall ensure that it has the capacity to route swap transactions not executed on a swap execution facility or designated contract market to a derivatives clearing organization in a manner acceptable to the derivatives clearing organization for the purposes of clearing; and

(2) Each swap dealer and major swap participant shall coordinate with each derivatives clearing organization to

which the swap dealer, major swap participant, or its clearing member submits transactions for clearing, to facilitate prompt and efficient swap transaction processing in accordance with the requirements of §39.12(b)(7) of this chapter.

(b) *Swap clearing.* With respect to each swap that is not executed on a swap execution facility or a designated contract market, each swap dealer and major swap participant shall:

(1) If such swap is subject to a mandatory clearing requirement pursuant to section 2(h)(1) of the Act and an exception pursuant to 2(h)(7) is not applicable, submit such swap for clearing to a derivatives clearing organization as soon as technologically practicable after execution of the swap, but no later than the close of business on the day of execution; or

(2) If such swap is not subject to a mandatory clearing requirement pursuant to section 2(h)(1) of the Act but is accepted for clearing by any derivatives clearing organization and the swap dealer or major swap participant and its counterparty agree that such swap will be submitted for clearing, submit such swap for clearing not later than the next business day after execution of the swap, or the agreement to clear, if later than execution.

Subpart J—Duties of Swap Dealers and Major Swap Participants

SOURCE: 77 FR 20205, Apr. 3, 2012, unless otherwise noted.

§ 23.600 Risk Management Program for swap dealers and major swap participants.

(a) *Definitions.* For purposes of subpart J, the following terms shall be defined as provided.

(1) *Affiliate.* This term means, with respect to any person, a person controlling, controlled by, or under common control with, such person.

(2) *Business trading unit.* This term means any department, division, group, or personnel of a swap dealer or major swap participant or any of its affiliates, whether or not identified as such, that performs, or personnel exercising direct supervisory authority over the performance of any pricing (excluding

price verification for risk management purposes), trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of a registrant.

(3) *Clearing unit.* This term means any department, division, group, or personnel of a registrant or any of its affiliates, whether or not identified as such, that performs, or personnel exercising direct supervisory authority over the performance of any proprietary or customer clearing activities on behalf of a registrant.

(4) *Governing body.* This term means:

(1) A board of directors;

(2) A body performing a function similar to a board of directors;

(3) Any committee of a board or body; or

(4) The chief executive officer of a registrant, or any such board, body, committee, or officer of a division of a registrant, provided that the registrant's swaps activities for which registration with the Commission is required are wholly contained in a separately identifiable division.

(5) *Prudential regulator.* This term has the same meaning as section 1a(39) of the Commodity Exchange Act and includes the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Association, and the Federal Housing Finance Agency, as applicable to the swap dealer or major swap participant.

(6) *Senior management.* This term means, with respect to a registrant, any officer or officers specifically granted the authority and responsibility to fulfill the requirements of senior management by the registrant's governing body.

(7) *Swaps activities.* This term means, with respect to a registrant, such registrant's activities related to swaps and any product used to hedge such swaps, including, but not limited to, futures, options, other swaps or security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives.

(b) *Risk management program—(1) Purpose.* Each swap dealer and major swap participant shall establish, document, maintain, and enforce a system of risk