

# info@spiegelmc

## CFTC

*In this issue:*

## CLIENT ALERT: THE NEW ERA OF A CFTC-REGULATED ENERGY INDUSTRY BEGINS

---

As you know, the Commodity Futures Trading Commission (“CFTC”) has spent a great deal of time since the 2010 passage of the massive Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) gearing up for a new regulatory program that extends to the energy industry. Many of the rules established to implement the Dodd-Frank Act were finalized in 2012 with implementation now scheduled to happen in 2013. While it is always possible that there will be further delays, it is important to be prepared for the day implementation begins.

Municipal and cooperative utilities, which may engage in CFTC-regulated transactions, such as swaps or trade options, should be particularly alert to the following deadlines.

### LEGAL ENTITY IDENTIFIER

To the extent your utility engages in “real” swaps (settled financially rather than by physical delivery), you will need a Legal Entity Identifier (“LEI”) both to enter into new transactions and to fulfill recordkeeping and reporting obligations for new, existing and historical swaps. A global LEI system has not yet been established, but until it is, counterparties must use CFTC Interim Compliance Identifiers (“CICI”). CICIs are being issued by the Depository Trust & Clearing Corporation (“DTCC”) and SWIFT. You can check your CICI status or register for a CICI online at <https://www.ciciutility.org/>. Even for physical commodity transactions or options, it is likely that many counterparties will routinely request your CICI.

➤ **DEADLINE: April 10, 2013**

## REPORTING AND RECORDKEEPING

Although municipal and cooperative utilities should all qualify as commodity “end-users” (because you use or sell the commodity in your business), even end-users have some compliance obligations. If you are identified in swap documentation as a reporting counterparty (small utilities should avoid assuming that obligation if possible), you must begin complying with the CFTC’s new reporting regime on April 10, 2013. Recordkeeping and reporting obligations apply to historical and transition swaps (those in effect on July 21, 2010 and those executed after July 21, 2010 but before April 10, 2013) and also include real-time reporting of new transactions. Counterparties should be identified in recordkeeping and reporting by the unique identifier discussed above. Transactions with Swap Dealer (“SD”) or Major Swap Participant (“MSP”) counterparties are already required to be reported, though these entities also have the obligation to do the reporting.

- **DEADLINE: April 10, 2013**

## ISDA PROTOCOLS

SD and MSP counterparties that enter into “real” swaps with Special Entities (government-owned entities) must comply with certain business conduct standards by May 1, 2013. If your municipal utility wishes to continue engaging in “real” swaps after that date, you will have to execute a version of the ISDA protocol (and potential protocol amendments) for each counterparty. This requirement likely applies to tribal utilities as well, but it does not affect cooperative utilities, although as a practical matter, transactions that qualify as “real” swaps should be transacted under arrangements that have been updated to meet current Dodd-Frank requirements, which generally means some form of the ISDA protocols.

- **DEADLINE: May 1, 2013**

## CLEARING OF SWAPS—Registration as End-Users

The first of the clearing requirements, applicable to energy industry swaps where one counterparty is an SD, will begin on March 11, 2013. Swaps between two non-financial entities will be subject to mandatory clearing through an exchange or trading platform beginning September 9, 2013. However, municipal and cooperative utilities can take advantage of the end-user exception to the clearing requirement, subject to several conditions. Utilities that elect this exception must file annually to state that they are not financial entities and that they are using swaps for the purpose of hedging or mitigating commercial risk, and to indicate how they are generally meeting their financial obligations on non-cleared swaps.

- **DEADLINE: You will most likely have to file before entering into a new transaction that would otherwise be subject to the mandatory clearing requirement.**

## TRADE OPTIONS REPORTING

It is important to be aware of the requirements for trade options, as some common energy industry transactions may arguably be considered trade options subject to CFTC jurisdiction. If your counterparty already must report swaps (because it is a Swap Dealer, for instance), then you have no special reporting requirements. However, if neither you nor your counterparty is already required to report swaps at the time of a transaction, then you must file an annual report called the Form TO on any otherwise unreported options you exercise this year. The Form TO, which can be found at the end of the Commodity Options Rule ([click here](#)), must be submitted by March 1 following the end of any calendar year during which you enter into one or more unreported trade options.

➤ **DEADLINE: March 1, 2014**

---

FOR MORE INFORMATION OR FOR ADVICE ON TRANSACTIONS THAT MAY FALL UNDER CFTC JURISDICTION, PLEASE CONTACT ONE OF THE ATTORNEYS LISTED BELOW:

[Lisa Dowden](#)

202.879.2046

[lisa.dowden@spiegelmc.com](mailto:lisa.dowden@spiegelmc.com)

[Melissa Birchard](#)

202.879.4015

[melissa.birchard@spiegelmc.com](mailto:melissa.birchard@spiegelmc.com)

---

[www.spiegelmc.com](http://www.spiegelmc.com)