

CFTC expresses view that most state and local governmental swaps are exempt from Dodd-Frank Clearing Requirement

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This Advisory discusses the recent rulemaking commentary by the Commodity Futures Exchange Commission to the effect that most state and local governmental swaps are exempt from the clearing requirements of the Dodd-Frank statutes.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) amended the Commodity Exchange Act (the “CEA”), under the regulatory jurisdiction of the Commodity Futures Trading Commission (the “CFTC”), to require that certain interest rate exchange agreements; (“Swaps”), including Swaps of the type routinely executed by state and local government entities, must be cleared through derivatives clearing organizations unless otherwise exempted from clearing by the terms of the CEA. Those Swaps that are subject to a clearing requirement must also be executed on a designated contract market or swap execution facility (unless no such organization has made the particular Swap available to trade). Among other things, the requirement for clearing of Swaps was intended to bring to the Swap transactions the financial support of the clearing organization to secure the parties’ payment obligations (including security for and payment of termination fees). Requiring that swaps executed by state and local governmental entities be cleared and be executed on exchanges would impose numerous onerous requirements, including margin and collateralization requirements. As a result, state and local governmental entities and their trade associations have been seeking exemption from these requirements.

Practice

- Disclosure Counsel