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NEWSLETTER

Pay-to-Play Spotlight: CFTC Releases Final Pay-to-Play Rule for Swap Dealers

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Giving more than 180 days advance notice before the rule becomes operational, the Commodity Futures Trading Commission (CFTC) on February 17, 2012, published its final pay-to-play rule for swap dealers. The advance notice serves two purposes: (1) to allow affected persons time to implement the necessary policies and procedures; and (2) to allow the CFTC and the Securities and Exchange Commission (SEC) to agree on a regulatory definition of swap dealer.

The CFTC's final rule differs from its proposed rule in that (a) the rule now only covers swap dealers and does not cover major swap participants or counterparties to municipal swaps; and (b) the language used in the rule clarifies that the pay-to-play prohibition applies to any contribution made for the purpose of obtaining state or local government business.

Like the SEC rule for investment advisers and Municipal Securities Rulemaking Board Rule G-37 for broker-dealers in the municipal bond industry, the CFTC's rule prohibits swap dealers from doing business with a state or locality for two years after the dealer or certain of its personnel make a prohibited contribution to officials or candidates with pertinent authority in that jurisdiction. There are exceptions for de minimis contributions made by individuals. There also are restrictions related to indirect contributions through PACs and the like, and related to the solicitation and coordination of contributions to covered officials and state and local party committees.

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