

**Summary of Key Differences in Pending OTC Derivatives Legislation**

“Frank Bill” passed by House Financial Services Committee on October 15, 2009 (Over-the-Counter Derivatives Markets Act of 2009)

“Peterson Bill” passed by House Agriculture Committee on October 21, 2009 (Derivative Markets Transparency and Accountability Act of 2009)

“Dodd Bill” released by Senator Dodd on November 10, 2009 (Restoring American Financial Stability Act of 2009 - Title VII)

<b>Clearing requirement for swaps</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>Frank: Exemption if neither party is a swap dealer or major swap participant.</p> <p>Peterson: Exemption if neither party is a swap dealer or major swap participant and party demonstrates its ability to meet financial obligations under swaps.</p> <p>Dodd: All swaps subject to clearing requirements and CFTC determination. Swaps not cleared must be reported.</p>	<p>All swaps must be submitted to a DCO for clearing. The DCO must submit any group, category, type or class of swaps it intends to accept for clearing to the CFTC. CFTC may require clearing, permit clearing or exempt swaps. Joint CFTC-SEC rulemaking required to identify swaps that should be accepted for clearing. Reporting requirement if swap not accepted for clearing.</p> <p>CFTC may exempt swap from clearing if: (i) no DCO will accept for clearing or, (ii) one of the counterparties (I) is not a swap dealer or major swap participant, and (II) does not meet the eligibility requirements of any DCO that clears swaps.</p>	<p>Clearing required if swap approved by CFTC for clearing (based on DCO core principles) and accepted by a DCO.</p> <p>Key exception to clearing requirement: if either party is not a swap dealer or major swap participant.</p>	<p>Clearing required if swap required by CFTC to be cleared (based on DCO core principles and other factors) and accepted by a DCO.</p> <p>Key exception to clearing requirement: if either party (a) is not a swap dealer or major swap participant; and (b) demonstrates ability to meet financial obligations under swaps to CFTC/SEC.</p>
<b>Fungible requirement</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>Frank and Peterson: DCOs must treat similar swaps as “economically equivalent”.</p> <p>Dodd: DCOs must treat similar swaps as “fungible”.</p>	<p>All swaps with the same terms and conditions are fungible and may be offset with each other by DCOs.</p>	<p>All swaps with the same terms and conditions must be treated as economically equivalent by DCOs.</p>	<p>All swaps with the same terms and conditions must be treated as economically equivalent by DCOs.</p>

<b>“Major swap participant” definition</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>Frank: Triggered by “substantial net position” or overall position that creates a risk of material adverse effect on capital of individual counterparties.</p> <p>Peterson: Triggered by “substantial net position” in swaps or if overall position creates a risk of adverse effect on financial stability of the U.S. banking system or financial markets.</p> <p>Dodd: Does NOT include “substantial net position” provision. Triggered by overall position creating credit exposure that could result in significant credit losses for its counterparties upon its default.</p>	<p>Any person who is not a swap dealer and whose outstanding swaps create net counterparty credit exposures (current or potential future) to other market participants that would expose those other market participants to significant credit losses in the event of the person’s default.</p>	<p>Any person who is not a swap dealer and (1) maintains a “substantial net position” in outstanding swaps, other than positions held primarily for “hedging, reducing, or otherwise mitigating commercial risk” or (2) whose outstanding swaps create substantial net counterparty exposure (current and potential future) that would expose counterparties to significant credit losses that could have a material adverse effect on capital of the counterparties. Once determined to be a major swap participant for one swap, entity becomes a major swap participant w/r/t all its swaps.</p>	<p>Any person who is not a swap dealer and (1) maintains a “substantial net position” in outstanding swaps, excluding positions held primarily for hedging, reducing, or otherwise mitigating commercial risk; or (2) whose outstanding swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets.</p> <p>An entity can be a major swap participant for one or more type of swaps.</p>
<b>“Substantial net position” definition</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>Frank: Determined jointly by the CFTC and the SEC. Threshold established to protect the financial system.</p> <p>Peterson: Determined by the CFTC. Threshold established to protect the financial system and determined by monitoring individual entities that are systemically important.</p>	<p>Not applicable.</p>	<p>To be jointly defined by CFTC and SEC at a threshold that is prudent for the effective monitoring, management and oversight of the financial system. Conflict resolved by Treasury.</p>	<p>Defined by CFTC (w/r/t major swap participants) at a threshold prudent for effective monitoring and oversight of entities that are systemically important or can significantly impact the financial system.</p>

<b>Capital requirements for swap dealers and major swap participants</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>All bills require agencies to set capital requirements for swap dealers and major swap participants.</p> <p>Frank: Higher requirements for non-cleared swaps.</p> <p>Peterson: Standards set as appropriate.</p> <p>Dodd: Requirements for non-cleared swaps must be “substantially higher”.</p>	<p>FIRA (a new regulator under this bill) in consultation with the CFTC, SEC will set requirements for bank swap dealers and major swap dealers for which FIRA is the primary regulator. The CFTC and the SEC in consultation with FIRA will set requirements for swap dealers and major swap participants for which FIRA is not the primary regulator.</p> <p>Capital requirement will be “substantially higher” for non-cleared swaps. CFTC and SEC standards must be at least as strict as those set by FIRA.</p>	<p>Prudential Regulators to establish requirement for banks, Fed for bank holding companies and SEC and CFTC for non-bank swap dealers and major market participants. Capital requirement will be higher for non-cleared swaps. Agency and Fed standards must be at least as strict as those set by Prudential Regulators.</p>	<p>As appropriate to (1) help ensure the safety and soundness of the swap dealer and major swap participant and (2) mitigate the risk associated with the non-cleared swaps.</p> <p>For non-bank swap dealers and major swap participants which do not have a Prudential Regulator – set by the CFTC. For bank swap dealers and major swap participants which have a Prudential Regulator – set by the Prudential Regulator.</p>

<b>Margin requirements</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>Frank: Required for non-cleared swaps between dealers and major swap participants. Optional for end-users.</p> <p>Peterson: Required as appropriate.</p> <p>Dodd: Initial and variation margin requirements for non-cleared swaps. Hedging exemption by rule or order.</p>	<p>Initial and variation margin requirements for bank swap dealers and major swap participants on non-cleared swaps. Non-bank rules must be as strict. CFTC, SEC and FIRA must jointly prescribe rules.</p> <p>FIRA may grant an exemption from margin requirements for effective hedges under GAAP in respect of a party that is a non-financial firm (and neither a swap dealer nor a major swap participant), but must first consult with the Agency for Financial Stability, the CFTC and the SEC. CFTC may grant an exemption to non-FIRA regulated swap dealers and major swap participants in consultation with other agencies.</p> <p>Agencies may permit the use of noncash collateral.</p> <p>If any party to an exempt swap per above (only w/r/t FIRA regulated entities), requests that the swap be margined, the swap will be margined.</p>	<p>For non-bank swap dealers and major swap participants that do not have a Prudential Regulator – set by the SEC and the CFTC.</p> <p>For bank swap dealers and major swap participants that have a Prudential Regulator – set by the Prudential Regulator.</p> <p>SEC and CFTC to establish requirements as least as strict for non bank swap dealers and major market participants.</p> <p>Prudential Regulators may, but are not obligated to establish a requirement for transactions with end-users. If such requirement is established, it must permit non-cash collateral.</p>	<p>As appropriate (1) to help ensure the safety and soundness of the swap dealer and major swap participant and (2) for the risk associated with the non-cleared swaps.</p> <p>For non-bank swap dealers and major swap participants that do not have a Prudential Regulator – set by the CFTC.</p> <p>For bank swap dealers and major swap participants that have a Prudential Regulator – set by the Prudential Regulator.</p> <p>End-Users: No explicit authority to set requirements granted.</p>

<b>Collateral segregation</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>Frank: Required for cleared swaps; required for non-cleared swaps if counterparty requests. Requires independent third party custodian.</p> <p>Peterson: Swaps dealers are required to “set aside” mandated margin for non-cleared swaps plus other amounts per CFTC rules. Segregation required for cleared security-based swaps and upon request for non-cleared security-based swaps. Custodian need not be independent.</p> <p>Dodd: Required for cleared swaps; required for non-cleared swaps if counterparty requests. Requires independent third party custodian.</p> <p>No bill distinguishes between segregation of initial vs. variation margin, but Peterson indicated that this will be addressed.</p>	<p>Cleared transactions: Required if collateral held by a swap dealer, futures commission merchant or DCO. Must be treated as customer property.</p> <p>Non-cleared transactions: Required from swap dealers if requested by counterparty.</p> <p>Segregation requires independent third party custodian.</p>	<p>Cleared transactions: Required if collateral held by a swap dealer, security-based swap dealer or clearing agency, futures commission merchant or DCO. Must be treated as customer property.</p> <p>Non-cleared transactions: Requirement for swap dealers if requested by counterparty. If no request, swap dealers to report quarterly to their counterparties that their procedures for margin requirements comply with the parties’ agreement.</p> <p>Segregation requires independent third party custodian.</p>	<p>Non-cleared swaps: Swap dealer must comply with set-aside requirements to be established by CFTC for mandated margin, other amounts.</p> <p>Cleared <i>security-based</i> swaps: Segregation required.</p> <p>Non-cleared <i>security-based</i> swaps: Dealer must segregate margin with a custodian if requested by counterparty.</p>

<b>Position limits</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>Frank: SEC authority for security-based swap agreements.</p> <p>Peterson: SEC authority for security-based swap agreements. Futures – Required of CFTC. Includes requirement for bona fide hedge exemption demonstration.</p> <p>Dodd: CFTC/Futures are treated similar to Peterson. No requirement for simultaneously imposition of requirements. SEC can limit listed securities and security-based swaps.</p>	<p>Position limits may be imposed on (i) contracts listed by designated markets; (ii) contracts traded on a FBOT that provide members and other participants in the US with access to its electronic trading and order matching system; and (iii) swaps that perform or affect a significant price discovery function with respect to regulated markets; CFTC has broad exemptive authority.</p> <p>SEC has authority to establish position limits for listed securities and security-based swaps that perform a significant price discovery function.</p>	<p>Swaps: Position limits may be imposed on (i) swaps that perform or affect a significant price discovery function; (ii) contracts listed by designated markets; or (iii) contracts traded on a FBOT that provide members and other participants in the US with access to its electronic trading and order matching system. CFTC has broad exemptive authority.</p> <p>Futures: Not addressed.</p> <p>SEC does not have authority to establish position limits for listed securities, but does for any security-based swaps and security-based swap agreements. May require SRO to adopt rules re: positions held by its members or its members' clients</p>	<p>Swaps: CFTC may set limits on positions affecting a significant price discovery function w/r/t a regulated entity. Aggregated position limits for all economically equivalent contracts on all venues must be imposed simultaneously. CFTC has broad exemptive authority. Futures: Requires CFTC to set speculative position limits as appropriate. Hedge exemption requires demonstration that counterparty is hedging bona fide risk.</p> <p>SEC does not have authority to establish position limits for listed securities, but does for any security-based swaps. May require SRO to adopt rules re: positions held by its members or its members' clients</p>

<b>Reporting requirement</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>Frank: No automatic exemption for reporting of non-cleared swaps.</p> <p>Peterson: Exemption for parties that are not swap dealers or major swap participants.</p> <p>Dodd: No automatic exemption for reporting of non-cleared swaps.</p>	<p>Non-cleared swaps must be reported by both parties. Swaps entered into before enactment must be reported within 180 days of effective date. Swaps entered into after the date of enactment must be reported within 90 days of effective date.</p>	<p>Same as Dodd.</p>	<p>Same as Dodd. Exception if either party is not a swap dealer or major swap participant and demonstrates ability to meet financial obligations.</p>
<b>Registration of DCOs</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>Frank: Dual registration may be required.</p> <p>Peterson: Exempt if registered with SEC or CFTC, as appropriate.</p> <p>Dodd: Dual registration may be required.</p>	<p>DCO must register with CFTC. CFTC may exempt a DCO if subject to comparable supervision by SEC, FIRA (new regulator under bill) or foreign regulator.</p>	<p>Unless exempted DCO would have to be registered with SEC and CFTC. No automatic exemption. Dual registration required even if entity is already registered as an organization, agency or bank. SEC and CFTC may exempt if comparably regulated by the other, a Prudential Regulator or foreign entity.</p>	<p>Registration required. Automatic exemption for DCOs already registered with SEC. SEC and CFTC may exempt if DCO is comparably regulated by the other.</p>

<b>CFTC exemptive authority</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>Frank: CFTC and SEC have broad exemptive authority.</p> <p>Peterson: CFTC has no exemptive authority re bank capital and margin requirements. No exemptive authority for SEC.</p> <p>Dodd: CFTC has limited exemptive authority re clearing and exchange trading requirements.</p>	<p>CFTC will not have exemptive authority with respect to swap-related provisions of the bill except as expressly authorized.</p> <p>CFTC/SEC may exempt swaps from clearing and exchange trading if not accepted for clearing by a DCO or either party is not a swap dealer or major swap participant (subject to DCO eligibility requirements and CFTC/SEC/AFS approval).</p>	<p>Permits CFTC and SEC to exempt individuals and transactions from any provision of the Act. No restriction on existing authority.</p> <p>CFTC may exempt a swap dealer or major swap participant from prudential requirements of the bill if comparably regulated.</p>	<p>CFTC may exempt swap dealers or major swap participant for clearing, exchange trading and reporting. SEC is precluded. No exemption from prudential requirements.</p>
<b>Grandfathering of existing swaps</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>Frank: Exemption from clearing, exchange trading, capital and margin requirements.</p> <p>Peterson: Exemption from clearing.</p> <p>Dodd: No specific exemptions included.</p>	<p>NA</p>	<p>Exemption from clearing, exchange trading, capital and margin requirements for swaps if entered within 90 days after the effective date if either party is not a swap dealer or major swap participant. 180 days for clearing of security-based swaps.</p>	<p>Exemption from clearing if reported within 180 days of effective date. Exemption for swaps that become clearable if reported within 90 days of effective date.</p>

<b>FBOT</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>Frank and Dodd: CFTC authority to require registration if access is provided in the US.</p> <p>Peterson: Does not include authority to require FBOT registration.</p>	<p>Similar registration requirement as the Frank Bill.</p> <p>Requirements for direct access to linked contracts similar to Peterson.</p>	<p>CFTC may require FBOT registration if it provides to members and participants in the US access to the electronic trading and order matching system.</p> <p>Direct access through an FBOT to linked contracts requires the FBOT (i) to establish comparable position limits; (ii) to have authority to unwind positions to prevent manipulation, excessive speculation, etc.; and (iii) to make available certain information on a daily basis.</p>	<p>Direct access through an FBOT to linked contracts requires the FBOT (i) to establish comparable position limits; (ii) to have authority to unwind positions to prevent manipulation, excessive speculation, etc.; (iii) to make available certain information on a daily basis; (iv) to provide information to the Commission regarding large trader positions on the contract; and (v) to provide the CFTC with information necessary to publish reports on aggregate trader positions on the contract.</p>
<b>Jurisdictional disputes</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>Frank: Requires CFTC-SEC joint rulemaking. Treasury handles disputes.</p> <p>Peterson: CFTC-SEC authority bifurcated. DC Circuit handles disputes.</p> <p>Dodd: Requires CFTC-SEC joint rulemaking. AFS handles disputes.</p>	<p>CFTC and SEC must jointly develop rules. Agency for Financial Stability writes rules if CFTC and SEC cannot agree.</p> <p>FIRA develops some rules for bank entities.</p>	<p>CFTC and SEC must jointly develop many rules. Treasury writes rules if CFTC and SEC cannot agree.</p>	<p>No joint rulemaking required, consultation required. Agency may make jurisdictional challenges in DC Circuit.</p>

<b>“Swap” definition</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
Bills are similar in scope/exclusions. Scope covers swaps, options, certain forwards; excludes certain securities transactions, options, foreign exchange.	Very broad. Includes any transactions based on the value of a financial or economic interest or that becomes “known to the trade” as a swap. Excludes, amongst others, foreign exchange swaps and foreign exchange forwards. Does not exclude mixed swaps. [typo in bill reference in the definition of swaps to section 38(c), should be 68(c)].	Very broad. Includes any transactions based on the value of a financial or economic interest or that becomes “known to the trade” as a swap. Excludes, amongst others, foreign exchange swaps and foreign exchange forwards.	Broad. Includes any transactions based on the value of a financial or economic interest or that becomes “known to the trade” as a swap.  Excludes certain foreign exchange forwards and mixed swaps.
<b>“Swap dealer” definition</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
Frank and Dodd: Persons who engage in the derivatives business for their own account and as part of their regular business.  Peterson: Persons w/r/t which derivatives are a “significant part” of their business”.	Same as Frank.	Person engaged in business of buying and selling swaps for own account as part of a regular business.	Person who, as a significant part of its business: (1) holds itself out as dealer of swaps; (2) makes a market in swaps; (3) regularly engages in the purchase and resale of swaps in the ordinary course of business; or (4) engages in any activity causing the person to be commonly known as a dealer or market maker in swaps.

<b>“Security-based swaps” definition</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>Frank and Dodd: Excludes swaps based on government securities.</p> <p>Peterson: Broader exemption for government securities and other “exempted securities” under SEA.</p>	Same as Frank.	<p>Swaps based (i) on a narrow-based security index, (ii) a single security or loan, or (iii) a single name security or narrow based CDS index.</p> <p>Includes mixed swaps.</p> <p>Excludes swaps based on government securities.</p> <p>As securities, security-based swaps will be exempt from registration and disclosure requirements under the 33 Act.</p>	<p>Swaps (i) primarily based on a narrow-based security index, (ii) primarily based on a single security or loan, or (iii) primarily based on a single-name security or narrow-based CDS index.</p>
<b>“Swap execution facility” and “alternative swap execution facility” requirements</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>Frank: No specific limit on ag commodities.</p> <p>Peterson: No ag swaps permitted absent CFTC rule.</p> <p>Dodd: No specific limit on ag commodities.</p>	<p>“Alternative swap execution facility” must comply with core principles similar to Frank bill. Requirement to establish rules for ensuring the financial integrity of swaps including the clearance and settlement of the swaps pursuant to CEA. Subject to dual registration.</p>	<p>“Swap execution facility” must comply with core principles requiring compliance with rules, avoidance of manipulation, reporting of information, etc. Requirement to establish rules for ensuring the financial integrity of swaps including the clearance and settlement of the swaps pursuant to CEA. Subject to dual registration.</p>	<p>“Alternative swap execution facility” must comply with core principles similar to Frank bill. Requirement to establish rules for ensuring the financial integrity of swaps including the clearance and settlement of the swaps pursuant to CEA. Ag swaps may not be listed unless permitted by CFTC. Subject to dual registration.</p>
<b>Further definitions</b>			
<b>Key Difference</b>	<b>Dodd Bill</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<p>Frank and Dodd: Joint rulemaking.</p> <p>Peterson: Divided between agencies.</p>	CFTC and SEC to jointly adopt further definitions.	CFTC and SEC to jointly adopt further definitions.	Additional terms to be defined by agencies separately.