

**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)**

vs.

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

	<b>Key Difference</b>	<b>Frank Bill</b>	<b>Peterson Bill</b>
<b>Clearing requirement for swaps</b>	Both bills provide that clearing requirement is not applicable if a party to a trade is neither a swap dealer nor a major swap participant; however, Peterson also requires such a party to demonstrate its ability to meet financial obligations under swaps.	Clearing required if swap approved by CFTC for clearing (based on DCO core principles) and accepted by a DCO. Key exception to clearing requirement: if either party is not a swap dealer or major swap participant.	Clearing required if swap required by CFTC to be cleared (based on DCO core principles and other factors) and accepted by a DCO. 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.
<b>Exchange/facility trading requirement for swaps</b>	Under both bills swaps that are subject to clearing requirements must be traded/ executed on a registered exchange (DCM) or a swap execution facility (SEF). Peterson bill includes exception where no DCM/SEF lists the swap for trading; Frank bill provides that trading requirement can be met via reporting if swap is not listed on a DCM/SEF.	Swap dealers and major swap participants must execute swaps subject to clearing requirements on a DCM/SEF.  If swap or security-based swap is required to be cleared but is not available for trading on an exchange/ facility, counterparties must meet recordkeeping and reporting requirements.  Exchange-trading required for all trades with non-eligible contract participants.	Swaps that are subject to clearing requirements must be executed on a DCM/SEF.  Exception: trading requirement does not apply if swap is not listed for trading on any DCM/SEF.  Agricultural swaps that would be subject to trading requirements will not be permissible without CFTC rulemaking.
<b>“Major swap participant” definition</b>	Both bills define based on “substantial net position” in swaps. However, in Frank bill this term looks to whether positions create a risk of material adverse effect on capital of individual counterparties, whereas Peterson is based on risk of	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	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

	adverse effect on financial stability of the U.S. banking system or financial markets.	(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.	financial stability of the U.S. banking system or financial markets.  An entity can be a major swap participant for one or more type of swaps.
<b>“Substantial net position” definition</b>	Frank: Determined jointly by the CFTC and the SEC. Threshold established to protect the financial system.  Peterson: Determined by the CFTC. Threshold established to protect the financial system and determined by monitoring individual entities that are systemically important.	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.	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.
<b>Reporting requirement</b>	Frank: no automatic exemption for reporting of non-cleared swaps.  Peterson: exemption for parties that are not swap dealers or major swap participants.  SEC and CFTC required to make available to the public aggregate data on swap and security based swap trading volumes and positions.	Non-cleared swaps must be reported. 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.	Same. Exception if either party is not a swap dealer or major swap participant and demonstrates ability to meet financial obligations.
<b>Capital requirements for swap dealers and major swap participants</b>	Both bills require CFTC and SEC to set capital requirements for swap dealers and major swap participants but use different approaches.	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	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.  For non-bank swap dealers and major swap participants which do not have a Prudential

		least as strict as those set by Prudential Regulators.	Regulator – set by the CFTC. For bank swap dealers and major swap participants which have a Prudential Regulator – set by the Prudential Regulator.
<b>Margin requirements</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>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>	<p>Frank: required for cleared swaps; required for non-cleared swaps if counterparty requests. Requires <i>independent</i> 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>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>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 swaps</i>: Dealer must segregate margin with a custodian if requested by counterparty.</p>

	Neither bill distinguishes between initial vs. variation margin, but Peterson indicated that this will be addressed	Segregation requires independent third party custodian.	
<b>Position limits</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>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.</p> <p>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>Grandfathering of existing swaps</b>	<p>Frank: exemption from clearing, exchange trading, capital and margin requirements.</p> <p>Peterson: exemption from clearing.</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.	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.

<b>FBOT</b>	<p>Frank: 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>Both provide that existing FBOTs will have 180 day grace period from effective date before they become subject to provisions.</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>Registration of DCOs</b>	<p>Frank: dual registration may be required.</p> <p>Peterson: exempt if registered with SEC or CFTC, as appropriate.</p>	<p>Unless exempted DCO would have to be registered with SEC and CFTC. No 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>Unless exempted DCO would have to be registered with SEC and CFTC.. SEC and CFTC may exempt if DCO is comparably regulated by the other.</p>
<b>CFTC/SEC exemptive authority</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>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>SEC is precluded. CFTC may exempt swap dealers or major swap participant for clearing, exchange trading and reporting. No exemption from prudential requirements.</p>
<b>Jurisdictional disputes</b>	<p>Frank: requires CFTC-SEC joint rulemaking. Treasury handles disputes.</p> <p>Peterson: CFTC-SEC authority bifurcated. DC Circuit handles disputes.</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>	Bills are similar in scope/exclusions. Scope covers swaps, options, certain forwards; exclude certain securities transaction/s 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.	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>“Security-based swaps” definition</b>	Frank: Excludes swaps based on government securities. Provides that mixed swaps (security plus other elements) will be jointly regulated by SEC and CFTC.  Peterson: Broader exemption for government securities and other “exempted securities” under SEA.	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. Includes mixed swaps. Excludes swaps based on government securities. As securities, security-based swaps will be exempt from registration and disclosure requirements under the 33 Act.	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.
<b>“Swap dealer” definition</b>	Frank: 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”.	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>“Swap execution facility” and “alternative swap execution facility” definition</b>	Both bills provide that swap execution facility must meet core principles.  Frank: no specific limit on ag commodities.  Peterson: no ag swaps permitted absent CFTC rule.	“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.	“Alternative swap execution facility” must comply with core principles similar to Frank bill such as compliance with rules, avoidance of manipulation, monitoring of trades, etc. 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.

<b>Further definitions</b>	Frank: joint rulemaking.  Peterson: divided between agencies.	CFTC and SEC to jointly adopt further definitions.	Additional terms to be defined by agencies separately.
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