Lessons learned
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Don't panic – yet. For power and utilities (P&U) companies, the time to comply with Dodd-Frank regulations is running out. Lessons learned from companies that have already started the process can help ensure preparations are on track. Johnny Molina reports.

With a number of Dodd-Frank regulations already in effect and complete regulations set for implementation later this year, it is not quite panic time for P&U companies – but it is getting close. Organizations must prepare now if they are to ensure compliance with these complex new rules. The good news is that lessons learned from the sector’s “early movers,” and from Ernst & Young’s experience of supporting them, can help draw a roadmap for the way forward.

**Lesson 1: Understand the complexity**

While many P&U companies originally saw Dodd-Frank chiefly as an issue for the financial services industry, or for swap dealers (SDs) and major swap participants (MSPs), most now realize that the new regulations will affect them as well because they use over-the-counter derivatives. Dodd-Frank significantly alters the derivatives market, and every company that transacts in this market will be impacted.

However, even companies that began preparing early are finding that the complexities and nuances of the new rules, including those around physical transactions, need more time and resources than originally anticipated. Proper preparation will include:

- Determining how each company will operate under Dodd-Frank
- Building a multidisciplinary implementation team that includes representatives from the business, legal, risk management, finance, IT and accounting departments; it is important to involve the legal team right from the beginning
- Identifying hardware and software requirements to manage and report data to new swap data repositories (SDRs)
- Defining policies and procedures and implementing a control infrastructure to achieve compliance
- Providing formal training to educate commercial personnel on new operating protocols, documentation and deal capture standards for executing swap transactions and dealing with various counterparties

**Lesson 2: The timeline for implementation varies among the rules**

The default process for Dodd-Frank regulations is that once a final rule is published in the Federal Register, companies have 60 days to comply. However, for most of the rules, the timeline is less clear-cut, with nuances, frequent updates and interdependencies complicating the efforts to attain compliance.

Utilities must realize that all of their operations must now be driven by the obligations outlined under Dodd-Frank and the requirements that will come into effect from April. They must ensure they know exactly what they need to do to comply, that they are in a position to do it, and that they can confidently report back to their Boards regarding the actions taken. Under such pressure, it is crucial for companies to have compliance programs that prioritize and manage implementation efforts.

New obligations for P&U companies, most of which are end users in the commodities marketplace, include:

**Already in effect:** Record-keeping obligations for pre-enactment and transition swaps/historical swaps are already in effect, and end users should be taking appropriate steps to make sure the required records are being maintained.
End users should also have done analysis around “book-out” transactions to support precluding these transactions from the swap definition.

10 April 2013: Additional record-keeping obligations take effect for end users for swaps from this day forward.

10 April 2013: Reporting requirements take effect from this date onward for end users acting as the reporting party.

1 May 2013: SD/MSP business conduct rules come into effect. These rules will indirectly impact end users because SDs/MSPs will require updates to existing International Swaps and Derivatives Association (ISDA) or other documentation to incorporate new disclosures and will require counterparty representations.

Late 2013–early 2014: Mandatory clearing and the end-user exception to clearing for commodities swaps is anticipated to take effect.

Lesson 3: Start thinking about data
Data represents a major Dodd-Frank challenge for P&U companies. The new rules will substantially change the way data is captured, stored and ultimately retrieved to meet reporting obligations. Key data and reporting issues include:

- New data fields to capture and record the required unique identifiers on a transactional basis
- Connectivity to one or multiple SDRs
- Linking data to provide an audit trail to enable the reconstruction of each swap transaction

The first step in this process is to understand the capabilities of existing IT systems. Upgrading these systems to ensure compliance is likely to require significant investment, both in new IT systems and in the alteration of existing ones. And, with less time for compliance many P&U companies are implementing interim IT solutions while also planning for longer term, more sustainable systems to manage data.

Lesson 4: A good governance structure is a must
Given the complexities involved in Dodd-Frank compliance, P&U companies will need a well-defined program management model. We are working with companies throughout the sector to build new operating models and develop new policies and procedures that will ensure compliance across the transaction life cycle going forward. This is an area of Dodd-Frank compliance that is particularly time-consuming, but is essential for successful implementation.

Lesson 5: Additional resources can make a big difference
The complexities and effort involved in preparing for Dodd-Frank mean that many P&U companies will need support to achieve compliance on time and in an efficient and sustainable manner. At Ernst & Young, we are working with many in the sector to provide both strategic guidance and hands-on support, from initial assessment through to the design and implementation of tailored solutions. The challenges of Dodd-Frank are considerable, but Ernst & Young can provide companies with a competitive advantage in understanding and implementing compliance.

Johnny Molina
Commodities Markets practice, Houston
+ 1 713 750 1367
johnny.molina@ey.com

Johnny Molina is an Executive Director in Ernst & Young LLP's Commodities Markets practice in Houston with more than 18 years of experience in the energy, commodities and financial services industries. He leads our Dodd-Frank derivatives reform initiatives for Power & Utilities, and is focused on serving the business transformation needs of companies that have commodity trading or hedging operations.
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