

CFTC to Create a Position Reporting System for Certain Physical Commodity Swaps

October 21, 2010

The Commodity Futures Trading Commission (CFTC) issued a notice of proposed rulemaking on October 19, 2010, calling for the creation of a reporting system for derivatives deemed “economically equivalent” to commodity futures related to certain specified energy, metals and agricultural commodities. The proposed system’s structure will be analogous to the CFTC’s current large trader reporting system for commodity futures and options contracts traded on designated contract markets (DCMs). The proposed reporting system is intended as a transitional tool through which the CFTC may collect swap positions data until swap data repositories become operational. At this time, the final text of the proposed rule has not been published in the Federal Register. However, the CFTC staff provided a summary of the rule when it was presented to the commissioners at an open meeting held on October 19, 2010. In addition, the CFTC has issued a [fact sheet](#) and a [Q&A](#) discussing the proposed rule.

This proposed rule is separate from the recently issued interim final rule regarding retention of swap transaction data for future reporting.¹

Under the proposed reporting system, positions in swaps that are economically equivalent to regulated futures and options contracts are reportable to the CFTC. The proposed rule contains a list of 46 commodities futures contracts that are listed on DCMs. Positions in swaps that are linked to any of these 46 commodities futures contracts must be reported to the CFTC if they meet a reporting threshold of 50 futures contracts in one month. To calculate one’s reportable position, a firm must convert its swap positions into futures equivalents; the proposed rule will contain numerous examples of how to accomplish this conversion. Position reports are to be made daily to the CFTC either by clearing organizations (for cleared swaps) or swap dealers (for uncleared swaps).

The proposed reporting system is intended to provide the CFTC with data on economically equivalent swaps and will facilitate the CFTC’s enforcement of aggregate position limits (as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act). The CFTC will tentatively meet on November 30, 2010, to vote on proposed speculative position limits for exempt and agricultural commodities.

Members of the public are invited to comment on the proposed rule once it is published in the Federal Register; a comment period remains to be established. The CFTC hopes that the proposed reporting system will be operational within six to ten months of the publication of a final rule.

Please contact one of the Sutherland attorneys listed below if you would like more information about the CFTC’s proposed reporting system or if you would like advice on and/or assistance in preparing comments in response to the notice of proposed rulemaking.

We will continue to monitor the implementation of the Dodd-Frank Act through the rulemaking process and will keep you updated on key events.

¹ For information about this interim final rule, see Sutherland’s Legal Alert dated October 5, 2010, “[CFTC Issues Interim Final Rule With Respect to Reporting Requirements for Pre-Enactment Swaps](#).”

■ ■ ■

If you have any questions about this development, please feel free to contact the attorneys listed below or the Sutherland attorney with whom you regularly work.

James M. Cain	202.383.0180	james.cain@sutherland.com
Paul B. Turner	713.470.6105	paul.turner@sutherland.com
Warren N. Davis	202.383.0133	warren.davis@sutherland.com
Catherine M. Krupka	202.383.0248	catherine.krupka@sutherland.com
William H. Hope II	404.853.8103	william.hope@sutherland.com
Mark D. Sherrill	202.383.0360	mark.sherrill@sutherland.com
Ann M. Battle	202.383.0842	ann.battle@sutherland.com
Michael W. Brooks	202.383.0863	michael.brooks@sutherland.com
Doyle Campbell	212.389.5073	doyle.campbell@sutherland.com
Meltem F. Kodaman	202.383.0674	meltem.kodaman@sutherland.com
Raymond A. Ramirez	202.383.0868	ray.ramirez@sutherland.com