

Chairman Gensler Outlines Timeline for Finalizing and Implementing the Commodity Futures Trading Commission's Dodd-Frank Rulemakings

March 18, 2011

In a speech (a copy of which can be found [here](#)) at the recent Futures Industry Association (FIA) conference held in Boca Raton, Florida, earlier this week, Commodity Futures Trading Commission (CFTC) Chairman Gary Gensler laid out his new "best case" plan for proposing the remaining rules to be promulgated by the CFTC under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and then finalizing all of the CFTC's Dodd-Frank rulemakings. An outline of Chairman Gensler's plan can be found [here](#).

Under Chairman Gensler's best case scenario, the CFTC will issue all except one¹ of its proposed rules by the end of April 2011 and will finalize its rules in three phases between the Spring of 2011 and the Fall of 2011. Chairman Gensler also acknowledged concerns regarding the need to sequence and delay the effective dates of the CFTC's final rules to allow market participants time to prepare for, and adopt to, the new requirements imposed by the rules. Chairman Gensler's new plan is a departure from his original goal of actually finalizing all of the CFTC's Dodd-Frank rulemakings during the first half of 2011.

CFTC Rules to be Proposed. At this time, the CFTC has yet to propose rules in five areas for which the Dodd-Frank Act requires CFTC rulemakings. These areas include: capital and margin requirements, the definitions of "swap" and "security-based swap," collateral segregation requirements for cleared swaps, testing and supervision requirements, and the Volcker Rule. The CFTC is also planning to propose conforming changes to several of its existing regulations. Earlier this week, the CFTC published notices of two open meetings, one on March 30, 2011 and one on April 7, 2011, to consider some of these proposed rulemakings. Information about which proposed rulemakings or other matters the CFTC will consider at these meetings will be published in the Federal Register one week before each meeting.

Final CFTC Rules. The Federal Register has now published all of the CFTC's proposed rulemakings to date and one proposed interpretive order issued by the CFTC. A list of all of these proposals, including the date that each proposal was published in the Federal Register and the date by which comments must be submitted for each proposal, is available [here](#). Comment periods remain open for 15 of these proposals.

In his speech, Chairman Gensler stated that the CFTC will begin to issue final rules within the next few months based on comments it has received regarding those proposed rules for which the comment period has closed. Several key rulemakings, including the definitions of "swap dealer" and "major swap participant," the end-user clearing exception and the process for review of swaps for mandatory clearing are scheduled to be issued in the CFTC's first group of final rules. According to Chairman Gensler's new plan, other significant rulemakings, including position limits, swap data recordkeeping and reporting requirements and collateral segregation for uncleared swaps, are scheduled to be issued in late Summer or early Fall of 2011.

¹ The joint rulemaking by the CFTC, the Securities and Exchange Commission, and the banking regulators on the so-called "Volcker Rule," which prohibits banking entities from proprietary trading and from maintaining specified relationships with hedge funds and private equity funds, may not be proposed until a later date.

Implementation of Final CFTC Rulemakings. In his speech earlier this week, Chairman Gensler also discussed implementation of the CFTC's final rules and specifically noted that mandatory clearing for swaps will not take effect until the Fall of 2011 at the absolute earliest. Chairman Gensler noted that the CFTC has a great deal of flexibility in setting effective dates for its rulemakings and specifically said that the CFTC is considering whether to phase in effective dates for certain rules based on asset class and/or type of market participant.

Comment Periods. Today the CFTC published a notice in the Federal Register re-opening the comment period for its proposed rule on Core Principles and Other Requirements for Designated Contract Markets until April 18, 2011.² The additional period for public comment is meant to give market participants a chance to respond to off-market volume data that the CFTC referenced in the supplemental information for this proposed rule but which was only recently made available to the public on the CFTC's Web site.³

In his recent speech, Chairman Gensler did not mention re-opening any other closed comment periods or opening a general comment period once all of the CFTC's proposed rules have been issued. To the extent that the CFTC chooses (or is forced by Congress) to open any such additional comment periods, it would most likely delay Chairman Gensler's new plan for finalizing and implementing the CFTC's Dodd-Frank rulemakings.



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

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² This proposed rule was issued at the CFTC's open meeting on December 1, 2010, and was originally published in the Federal Register on December 22, 2010. The initial comment period for this proposed rule closed on February 22, 2011.

³ See footnote 96 to the Supplemental Information at 75 Fed. Reg. 80589. The off-market volume data and a copy of the proposed rule are available on the CFTC's [Web site](#).