

CFTC Issues Final Rules Regarding Agricultural Commodity Definition and Large Trader Reporting for Physical Commodity Swaps

The Commodity Futures Trading Commission (“CFTC”) on July 7, 2011 held a public meeting to consider several final rules under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). The CFTC approved final regulations regarding (1) an “agricultural commodity” definition, and (2) large trader reporting for physical commodity swaps.

Agricultural Commodity Definition

The Dodd-Frank Act amended the Commodity Exchange Act as amended (“CEA”) to (1) permit the CFTC to issue rules regarding transacting swaps in an “agricultural commodity,” and (2) require the CFTC to issue rules establishing speculative position limits for contracts involving an agricultural commodity. As neither Congress nor the CFTC had previously defined the term agricultural commodity, this rulemaking provides such a definition, which is necessary for the CFTC to fulfill its Dodd-Frank Act mandates.

The final rule¹ sets forth the following four categories within the agricultural commodity definition:

- Specifically itemized commodities that Congress has effectively declared to be agricultural commodities;²

- General definition (which effectively exempts from the definition of agricultural commodity “products that are produced through processing plant or animal-based inputs to create products largely used as industrial inputs”): “all other commodities that are, or once were, or are derived from, living organisms, including plant, animal and aquatic life, which are generally fungible, within their respective classes, and are used primarily for human food, shelter, animal feed, or natural fiber;”
- Catch-all category for items that “would generally be recognized as agricultural in nature” but do not necessary fit within the general definition, and would be

¹ FTC, Agricultural Commodity Definition , 76 Fed. Reg. 41048 (July 13, 2011), available at: <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-17626a.pdf>.

² The term “agricultural commodity” means “the following commodities specifically enumerated in the definition of a ‘commodity’ found in Section 1a of the [CEA]: wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, but not onions.”

dealt with by the CFTC on a case-by-case basis: “tobacco, products of horticulture, and such other commodities used or consumed by animals or humans as the [CFTC] may by rule, regulation, or order designate after notice and opportunity for hearing;” and

- Applicable indexes: “commodity-based indexes based wholly or principally on underlying agricultural commodities.”

Large Trader Reporting for Physical Commodity Swaps

The CFTC published final regulations³ creating “a system for reporting swap positions in swaps that are economically equivalent to regulated futures (and option) contracts,” enabling the CFTC to fulfill its regulatory responsibilities under the CEA. Forty-six physical commodities⁴ are covered by the regulations

³ CFTC, Final Regulations Regarding Large Trader Reporting for Physical Commodity Swaps, 17 CFR Parts 15 and 20, RIN 3038-AD17; as yet unpublished in the Federal Register, available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister070711e.pdf>; Fact Sheet available at: http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/ltr_factsheet_final.pdf; Q&A available at: http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/ltr_qa_final.pdf.

⁴ The “Covered Agricultural and Exempt Futures Contracts” include: Chicago Board of Trade (“CBOT”) Corn; CBOT Ethanol; CBOT Oats; CBOT Rough Rice; CBOT Soybean Meal; CBOT Soybean Oil; CBOT Soybeans; CBOT Wheat; Chicago Mercantile Exchange (“CME”) Butter; CME Cheese; CME Dry Whey; CME Feeder Cattle; CME Hard-

that will require approximately 100 clearing members, 100 swap dealers, and five clearing organizations to provide routine swap position reports that will be collected by the CFTC in order to conduct “effective market surveillance, enhance its transparency initiatives, and monitor compliance with any trading requirements of the [CEA].”



This update is authored by M. Holland West (+1 212 698 3527; holland.west@dechert.com) and Melanie C. Keene (+1 212 698 3673; melanie.keene@dechert.com).

wood Pulp; CME Lean Hogs; CME Live Cattle; CME Milk Class III; CME Non Fat Dry Milk; CME Random Length Lumber; CME Softwood Pulp; COMEX (“CMX”) Copper Grade #1; CMX Gold; CMX Silver; ICE Futures U.S. (“ICUS”) Cocoa; ICUS Coffee C; ICUS Cotton No.2; ICUS Frozen Concentrated Orange Juice; ICUS Sugar No. 11; ICUS Sugar No. 16; Kansas City Board of Trade (“KCBT”) Wheat; Minneapolis Grain Exchange (“MGEX”) Wheat; NYSE Liffe (“NYL”) Gold, 100 Troy Oz; NYL Silver, 5000 Troy Oz; New York Mercantile Exchange (“NYMEX”) Cocoa; NYMEX Brent Financial; NYMEX Central Appalachian Coal; NYMEX Coffee; NYMEX Cotton; NYMEX Crude Oil, Light Sweet; NYMEX Gasoline Blendstock (RBOB); NYMEX Hot Rolled Coil Steel; NYMEX Natural Gas; NYMEX No.2 Heating Oil, New York Harbor; NYMEX Palladium; NYMEX Platinum; NYMEX Sugar No. 11; NYMEX Uranium. Additionally, “for the purpose of reporting in futures equivalents, paired swaps and swaptions using commodity reference prices that are commonly known diversified indices with publicly available weightings may be reported as if such indices underlie a single futures contract with monthly expirations for each calendar month and year.” (See Sections 20.2 and 20.11).

Practice group contacts

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Karen L. Anderberg
London
+44 20 7184 7313
karen.anderberg@dechert.com

David L. Ansell
Washington, D.C.
+1 202 261 3433
david.ansell@dechert.com

Margaret A. Bancroft
New York
+1 212 698 3590
margaret.bancroft@dechert.com

Sander M. Bieber
Washington, D.C.
+1 202 261 3308
sander.bieber@dechert.com

Stephen H. Bier
New York
+1 212 698 3889
stephen.bier@dechert.com

Thomas C. Bogle
Washington, D.C.
+1 202 261 3360
thomas.bogle@dechert.com

Julien Bourgeois
Washington, D.C.
+1 202 261 3451
julien.bourgeois@dechert.com

Kevin F. Cahill
Orange County
+1 949 442 6051
kevin.cahill@dechert.com

Christopher D. Christian
Boston
+1 617 728 7173
christopher.christian@dechert.com

Elliott R. Curzon
Washington, D.C.
+1 202 261 3341
elliott.curzon@dechert.com

Douglas P. Dick
Washington, D.C.
+1 202 261 3305
douglas.dick@dechert.com

Ruth S. Epstein
Washington, D.C.
+1 202 261 3322
ruth.epstein@dechert.com

Joseph R. Fleming
Boston
+1 617 728 7161
joseph.fleming@dechert.com

Brendan C. Fox
Washington, D.C.
+1 202 261 3381
brendan.fox@dechert.com

Robert M. Friedman
New York
+1 212 649 8735
robert.friedman@dechert.com

David M. Geffen
Boston
+1 617 728 7112
david.geffen@dechert.com

David J. Harris
Washington, D.C.
+1 202 261 3385
david.harris@dechert.com

Christopher P. Harvey
Boston
+1 617 728 7167
christopher.harvey@dechert.com

Robert W. Helm
Washington, D.C.
+1 202 261 3356
robert.helm@dechert.com

Richard M. Hervey
New York
+1 212 698 3568
richard.hervey@dechert.com

Richard Horowitz
New York
+1 212 698 3525
richard.horowitz@dechert.com

Jane A. Kanter
Washington, D.C.
+1 202 261 3302
jane.kanter@dechert.com

Geoffrey R.T. Kenyon
Boston
+1 617 728 7126
geoffrey.kenyon@dechert.com

Matthew Kerfoot
New York
+1 212 641 5694
matthew.kerfoot@dechert.com

Robert H. Ledig
Washington, D.C.
+1 202 261 3454
robert.ledig@dechert.com

Angelyn Lim
Hong Kong
+852 3518 4718
angelyn.lim@dechert.com

George J. Mazin
New York
+1 212 698 3570
george.mazin@dechert.com

Gordon L. Miller
Washington, D.C.
+1 202 261 3467
gordon.miller@dechert.com

Jack W. Murphy
Washington, D.C.
+1 202 261 3303
jack.murphy@dechert.com

John V. O'Hanlon
Boston
+1 617 728 7111
john.ohanlon@dechert.com

Reza Pishva
Washington, D.C.
+1 202 261 3459
reza.pishva@dechert.com

Edward L. Pittman
Washington, D.C.
+1 202 261 3387
edward.pittman@dechert.com

Jeffrey S. Poretz
Washington, D.C.
+1 202 261 3358
jeffrey.poretz@dechert.com

Jon S. Rand
New York
+1 212 698 3634
jon.rand@dechert.com

Robert A. Robertson
Orange County
+1 949 442 6037
robert.robertson@dechert.com

Keith T. Robinson
Washington, D.C.
+1 202 261 3438
keith.robinson@dechert.com

Kevin P. Scanlan

New York
+1 212 649 8716
kevin.scanlan@dechert.com

Jeremy I. Senderowicz

New York
+1 212 641 5669
jeremy.senderowicz@dechert.com

Frederick H. Sherley

Charlotte
+1 704 339 3100
frederick.sherley@dechert.com

Michael L. Sherman

Washington, D.C.
+1 202 261 3449
michael.sherman@dechert.com

Stuart Strauss

New York
+1 212 698 3529
stuart.strauss@dechert.com

Patrick W. D. Turley

Washington, D.C.
+1 202 261 3364
patrick.turley@dechert.com

Brian S. Vargo

Philadelphia
+1 215 994 2880
brian.vargo@dechert.com

Thomas P. Vartanian

Washington, D.C.
+1 202 261 3439
thomas.vartanian@dechert.com

M. Holland West

New York
+1 212 698 3527
holland.west@dechert.com

Jennifer Wood

London
+44 20 7184 7403
jennifer.wood@dechert.com

Anthony H. Zacharski

Hartford
+1 860 524 3937
anthony.zacharski@dechert.com

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