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CFTC Proposes Order Providing Exemptive Relief from Certain Dodd-Frank Provisions

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The Commodity Futures Trading Commission has proposed to issue an order (the Proposed Order) providing temporary relief from certain swap-related provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act that would otherwise take effect on July 16, 2011. The CFTC proposal, which describes the scope of the proposed exemptive relief but does not include the actual text of the Proposed Order, groups the provisions of Title VII as to which the CFTC has regulatory responsibility into four broad categories:

1. provisions that, by their terms, do not take effect without the adoption of implementing rules;
2. self-effectuating provisions that include references to terms that require further definition;
3. self-effectuating provisions that do not reference terms requiring further definition and that repeal current provisions of the Commodity Exchange Act (CEA); and
4. other self-effectuating provisions.

The Proposed Order would provide relief for categories 2 and 3 above. The remaining provisions will take effect either on (1) July 16 (in the case of category 4 above), or (2) upon the effective date of the applicable final implementing rules, which can be no earlier than 60 days following their adoption (in the case of category 1 above).

With respect to "category 2" provisions, the Proposed Order would temporarily exempt persons from complying with many provisions of the CEA that reference the terms "swap," "swap dealer," "major swap participant," or "eligible contract participant," each of which is subject to further rulemaking by the CFTC.

With respect to "category 3" provisions, the Proposed Order would temporarily exempt specified over-the-counter transactions in exempt and excluded commodities, effectively preserving the current regulatory safe harbors applicable to such transactions.

The Proposed Order includes a "sunset" provision, which provides that the exemptive relief will expire upon the earlier of either (1) December 31, 2011, or (2) the effective date of the applicable

final rules. If necessary, the CFTC may extend the period beyond December 31. The details of the relief provided by the Proposed Order will be the subject of a forthcoming Katten *Client Advisory*.

The Proposed Order will be open to public comment for a period of 14 days after its publication in the *Federal Register*.

A copy of the Proposed Order and documents identifying the provisions of the Dodd-Frank Act that fall within category 1 and category 4 may be found [here](#).

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