

CFTC Issues Sixth Series of Proposed Rules Under Dodd-Frank Including Rules to Further Define Swap Entities

December 2, 2010

The Commodity Futures Trading Commission (CFTC) issued its sixth series of proposed rules under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) at an open meeting held yesterday, Wednesday, December 1, 2010. The proposed rules:

- Further define the terms “swap dealer,” “major swap participant” and “eligible contract participant.”
- Amend existing rules and establish new rules to govern the trading and execution of swaps on designated contract markets (DCMs).
- Establish reporting, recordkeeping, public information and information requirements for derivatives clearing organizations (DCOs).
- Establish reporting, recordkeeping and daily trading records requirements for swap dealers and major swap participants.
- Amend CFTC regulations to clarify procedures to be followed by DCOs, as well as to streamline the DCO application process and the process by which DCOs submit rules to permit portfolio margining of futures and securities in a futures account.

During yesterday’s meeting CFTC Chairman Gary Gensler again emphasized the important role that public comments play in the rulemaking process. In particular, Chairman Gensler encouraged members of the public to participate in a public roundtable on capital and margin requirements scheduled for December 10, 2010. Chairman Gensler posed a series of questions about capital and margin that he would like the public to address during the roundtable, revealing his personal view about margin in the process. According to Chairman Gensler, uncleared swaps entered into between financial entities pose more risk to the financial system than those where one of the parties is a non-financial entity. Chairman Gensler’s comments seem to suggest the possibility of a broad end-user exemption with respect to capital and margin requirements for uncleared over-the-counter swaps.

Yesterday’s proposed rules, along with proposed rules announced at the CFTC’s November 19, 2010 meeting, will be published in the Federal Register in the coming weeks.¹ In the interim, please access the CFTC’s fact sheets and Q&As below.

Future CFTC meetings are scheduled for December 9 and December 16, 2010. The CFTC will release information about the rulemaking proposals that will be considered at these meetings at least one week in advance of each meeting. Based on Chairman Gensler’s comments at yesterday’s meeting, it is anticipated that proposed rules pertaining to external business conduct standards for swap dealers and major swap participants, a clearing exemption for end users, and rules pertaining to swap execution

¹ It should be noted that the CFTC’s proposed rules further defining the terms “swap dealer,” “major swap participant” and “eligible contract participant” must be adopted verbatim by the Securities and Exchange Commission (SEC) before they are published in the Federal Register. The SEC is scheduled to vote on the proposed rules this Friday, December 3, 2010. If the SEC makes any changes to the proposed rules before adopting them, the SEC revisions will have to be adopted by the CFTC before the proposed rules are published.

facilities will be considered at the CFTC's December 9 open meeting. Chairman Gensler also indicated that proposed rules pertaining to position limits, additional internal business conduct standards for swap dealers and major swap participants (relating to documentation) and risk management requirements for DCOs will be considered at the CFTC's December 16 open meeting.

Please contact one of the Sutherland attorneys listed below if you would like more information about these or other Dodd-Frank proposed rulemakings. We will continue to monitor the implementation of Dodd-Frank and will keep you updated on key events.

Proposed Rule Fact Sheets and Q&As

- [Fact Sheet](#) and [Q&A](#) on proposed rules regarding core principles and other requirements for DCMs
- [Fact Sheet](#) and [Q&A](#) on proposed rule regarding definitions, procedures and core principles for DCOs
- [Fact Sheet](#), [Q&A](#) and [explanatory chart](#) on proposed rules establishing reporting, recordingkeeping, public information and information sharing requirements for DCOs
- [Fact Sheet](#) and [Q&A](#) on proposed rule establishing reporting, recordkeeping and daily trading records requirements for swap dealers and major swap participants
- [Fact Sheet](#) and [Q&A](#) on proposed rules further defining the terms “swap dealer,” “major swap participant” and “eligible contract participant”



If you have any questions about this development, please feel free to contact any of 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