Prudential Regulators Re-Open Comment Period for Proposed Capital and Margin Requirements

October 8, 2012

On September 26, the "Prudential Regulators," which are, collectively, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency, re-opened the public comment period for Proposed Rules that were issued last year that, when adopted, will establish capital and uncleared swaps margin collection requirements for swap dealers and major swap participants (Proposed Rules). Comments in response to the Proposed Rules are due on November 26. Market participants who are concerned about the amount of the initial and variation margin they would be required to collect or post, as well as the type of collateral that could be used to satisfy these requirements, should take this opportunity to comment, or reinforce their prior comments, on the Proposed Rules.

The re-opening of the public comment period for the Proposed Rules is intended to allow market participants more time to "analyze the issues and prepare their comments" in light of a consultative document on uncleared swaps margin requirements published by the Basel Committee on Banking Supervision and the International Organization of Securities Commissions earlier this year (the IOSCO Report). The IOSCO Report recommends the development of consistent global standards for uncleared swaps margin requirements for consideration by members of the G-20. Comments in response to the IOSCO Report were due on September 28.

The Prudential Regulators' re-opening of the public comment period for the Proposed Rules follows the Commodity Futures Trading Commission's (CFTC) re-opening of the public comment period for its proposed uncleared swaps margin rules, which was also prompted by the publication of the IOSCO Report. The CFTC's re-opened comment period closed on September 14.

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Prudential Regulators' uncleared swaps margin requirements would apply to those swap dealers and major swap participants that are regulated by a Prudential Regulator, and the CFTC's uncleared swaps margin requirements would apply to non-bank swap dealers and major swap participants. The Prudential Regulators and the CFTC are required to consult each other in adopting the uncleared swaps margin requirements and, once adopted, the requirements must be comparable. The Securities and Exchange Commission (SEC) is also required to adopt uncleared swaps margin requirements that would apply to non-bank security-based swap dealers and non-bank major security-based swap participants. The SEC has not yet proposed its margin requirements.

■ ■ ■

If you have any questions about this Legal Alert, or the Proposed Rules comments process, 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

Jacob Dweck	202.383.0775	jacob.dweck@sutherland.com
Catherine M. Krupka	202.383.0248	catherine.krupka@sutherland.com
David T. McIndoe	202.383.0920	david.mcindoe@sutherland.com
R. Michael Sweeney, Jr.	202.383.0921	michael.sweeney@sutherland.com
Paul B. Turner	713.470.6105	paul.turner@sutherland.com
Warren N. Davis	202.383.0133	warren.davis@sutherland.com
William H. Hope II	404.853.8103	william.hope@sutherland.com
Meltem F. Kodaman	202.383.0674	meltem.kodaman@sutherland.com
Mark D. Sherrill	202.383.0360	mark.sherrill@sutherland.com
Cheryl I. Aaron	202.383.0917	cheryl.aaron@sutherland.com
Doyle Campbell	212.389.5073	doyle.campbell@sutherland.com
Meghan R. Gruebner	202.383.0933	meghan.gruebner@sutherland.com
Alexander S. Holtan	202.383.0926	alexander.holtan@sutherland.com
Raymond A. Ramirez	202.383.0868	ray.ramirez@sutherland.com