

CFTC Extends Effective Date for Swap Regulation and Finalizes Certain Swap Data Recordkeeping and Reporting Requirements

December 22, 2011

On December 19 the Commodity Futures Trading Commission (CFTC) approved, by seriatim, amendments to a July 14, 2011 temporary exemptive relief order (the July 14 Order) pertaining to the effective date for swap regulation under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). The amendments to the July 14 Order were proposed in October and were subject to a 30-day public comment period. CFTC staff also revised a no-action relief letter pertaining to certain self-effectuating provisions of the Dodd-Frank Act that are not addressed by the July 14 Order or the amendments thereto.¹

The general effective date for Title VII of the Dodd-Frank Act was July 16, 2011 – 360 days after the Dodd-Frank Act's enactment. Recognizing that the vast majority of its rules were not finalized, the CFTC issued the July 14 Order to provide market participants with regulatory certainty regarding Title VII's applicability. The July 14 Order provides exemptive relief from certain provisions of the Dodd-Frank Act until the earlier of: (1) the effective date of certain CFTC final rules mandated by the Dodd-Frank Act; or (2) December 31, 2011.²

The amendments to the July 14 Order that were approved: (1) extend the potential expiration date of the July 14 Order from December 31, 2011, to July 16, 2012; and (2) add provisions to account for the repeal and replacement of Part 35 of the CFTC's regulations.³ The amendments to the July 14 Order became effective upon issuance and are substantively the same as when proposed, except that the final amendments contain technical changes to: (1) clarify that the exemptive relief does not operate to expand the pre-Dodd-Frank scope of transactions eligible to be transacted on either an exempt commercial market (ECM) or exempt board of trade (EBOT) to include transactions in agricultural commodities; and (2) indicate that the temporary exemptive relief will not expire until July 16, 2012 for agreements, contracts, and transactions that: (a) are executed on an ECM or an EBOT that is operating under the terms of a grandfather order issued by the CFTC on September 16, 2010;⁴ and (b) are cleared by a

¹ Certain self-effectuating provisions of the Dodd-Frank Act are not eligible for the exemptive relief granted by the July 14 Order. These include: (1) segregation requirements, applicable to swap dealers and major swap participants, with respect to collateral for uncleared swaps; (2) prohibitions against acting as a derivatives clearing organization without being registered as such with the CFTC; and (3) designation of a chief compliance officer by swap dealers and major swap participants. The CFTC staff issued a no-action relief letter on July 14 to clarify that compliance with these self-effectuating provisions will not be required until the earlier of: (a) the effective date of certain final rules; or (b) December 31, 2011. The revised no-action letter extends the July 14 no-action letter's potential expiration date from December 31, 2011 to July 16, 2012. A copy of the revised no-action letter is available [here](#).

² For additional information about the proposed amendments, see Sutherland's October 28, 2011 Legal Alert, available [here](#).

³ Existing Part 35 of the CFTC's regulations permits agricultural commodity swaps subject to certain restrictions. Earlier this year, the CFTC issued final rules that, as of December 31, 2011, will repeal and replace existing Part 35 so as to subject agricultural commodity swaps to the same regulatory regime that will be applicable to all other types of swaps. For more information, see Sutherland's August 15, 2011 Legal Alert, available [here](#).

⁴ Orders Regarding the Treatment of Petitions Seeking Grandfather Relief for Exempt Commercial Markets and Exempt Boards of Trade, 75 Fed. Reg. 56,513 (Sept. 16, 2010).

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CFTC-registered derivatives clearing organization. A pre-publication version of the amendments to the July 14 Order is available [here](#).

Certain Recordkeeping and Reporting Requirements Finalized

Also, the CFTC held an open meeting on December 20 at which it unanimously approved the issuance of two final rules pertaining to: (1) swap data recordkeeping and reporting; and (2) real-time reporting of swap transaction data. Once effective, compliance with the final rules will be phased in by asset class and counterparty type. The final rules do not address certain topics that were addressed in the CFTC's proposed recordkeeping and reporting rules, such as the final definition of block trades and large notional swaps and the final time delays for the public reporting thereof. The CFTC is expected to address such topics in subsequent rulemakings. Pre-publication drafts of the final rules, as well as fact sheets, Q&As and other information pertaining thereto, are accessible [here](#).

The next CFTC open meeting is scheduled for January 11, 2012 and a second meeting is tentatively scheduled for January 17, 2012. CFTC Chairman Gary Gensler indicated that final rulemakings pertaining to the following may be considered at these meetings:

- the segregation of cleared swaps customer collateral;
- the registration of swap dealers and major swap participants;
- external business conduct standards for swap dealers and major swap participants;
- internal business conduct standards for swap dealers and major swap participants;
- commodity pool operator and commodity trading advisor compliance obligations; and
- entity definitions.



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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