

## CFTC Adopts Second Amended July 14 Exemptive Relief Order Pertaining to the Effective Date for Swap Regulation

July 6, 2012

On July 3, the Commodity Futures Trading Commission (CFTC) issued a final order to amend, for a second time, a temporary exemptive relief order that the CFTC issued on July 14, 2011, pertaining to the effective date for swap regulation (the July 14 Order).

Generally, the provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) were scheduled to become effective on July 16, 2011 – 360 days after the Dodd-Frank Act's enactment.<sup>1</sup> Recognizing that its rules to implement Title VII would not be finalized by this date, the CFTC issued the July 14 Order with the goal of providing regulatory certainty regarding Title VII's applicability to market participants. In effect, the July 14 Order preserved the status quo for over-the-counter swaps until the earlier of the effective date of certain key final rules<sup>2</sup> or December 31, 2011.

The CFTC amended the July 14 Order in December of last year to: (1) extend its sunset date to the earlier of the effective date of certain key final rules or July 16, 2012; and (2) account for the repeal and replacement of Part 35 of the CFTC's rules, which governs agricultural swaps.<sup>3</sup> The second amended July 14 Order: (1) extends the sunset date of the July 14 Order to the earlier of the issuance of certain final rules or December 31, 2012; (2) removes references to "swap dealers," "major swap participants" and "eligible contract participants" in light of the issuance of final rules on April 18, 2012 to further define those terms;<sup>4</sup> (3) stipulates that agricultural swaps may be cleared like any other types of swaps;<sup>5</sup> and (4) removes references to a "Grandfather Order" for exempt commercial markets (ECM) and exempt boards of trade (EBOT).<sup>6</sup>

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<sup>1</sup> See § 754 of the Dodd-Frank Act.

<sup>2</sup> Among others, rules to further define the terms "swap," "swap dealer," "major swap participant" and "eligible contract participant."

<sup>3</sup> For more information about the first amended July 14 Order, please see Sutherland's December 22, 2011 Legal Alert, "[CFTC Extends Effective Date for Swap Regulation and Finalizes Certain Swap Data Recordkeeping and Reporting Requirements.](#)"

<sup>4</sup> Thus, the exemptive order no longer provides relief as it once did until those terms were further defined. For information about these final rules, please see Sutherland's April 19, 2012 Legal Alert, "[CFTC and SEC Define 'Swap Dealer' and 'Major Swap Participant.'](#)" The CFTC and the Securities and Exchange Commission have yet to finalize the definition of "swap" and "security-based swap." These definitions are expected to be finalized during this calendar quarter but will not be effective until at least 60 days following their publication in the Federal Register.

<sup>5</sup> This is intended to ensure consistency between the July 14 Order and final CFTC rules issued last year that amended part 35 of the CFTC's regulations to treat swaps in the same manner as other types of swaps. See [Agricultural Swaps, 76 Fed. Reg. 49,291 \(Aug. 10, 2011\)](#).

<sup>6</sup> Title VII of the Dodd-Frank Act requires that swaps be transacted on a designated contract market (DCM) or swap execution facility (SEF). DCMs and SEFs must apply to the CFTC for registration and, once registered, are subject to CFTC oversight. In contrast, ECMs and EBOTs are not registered with the CFTC. The CFTC issued an order permitting ECMs and EBOTs to continue operating until July 16, 2012, at which time they would be required to register as DCMs or SEFs. The second amended July 14 Order will permit ECMs and EBOTs to continue operating until the later of December 31, 2012 or the effective date of final CFTC rules with respect to DCMs and SEFs, unless an ECM or EBOT files a DCM or SEF registration application on or before the effective date of the DCM or SEF final rules, in which case the relief shall remain in place during the pendency of the application.

Although it has yet to be published in the Federal Register, the second amended July 14 Order became effective upon issuance. A [pre-publication draft of the second amended July 14 Order](#) is available on the CFTC's [website](#).



*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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