

# CFTC Action to Defer Effective Date for Swaps Regulation

**June 16, 2011**

On June 14, 2011, the Commodity Futures Trading Commission (“CFTC”) issued a proposed order (the “CFTC Order”) that would delay the effective date of many swap trading provisions of the Dodd-Frank Act until no later than December 31, 2011. On June 15, 2011, the Securities and Exchange Commission (“SEC”) issued an Exemptive Order granting similar temporary relief for security-based swap transactions. The deferred operable dates also would affect the margin requirements recently proposed by the Federal Reserve and prudential regulators for bank swap dealers and prudentially regulated institutions.

The CFTC Order would grant transitional relief from those provisions of the Dodd-Frank Act that reference the terms “swap,” “swap dealer,” “major swap participant,” or “eligible contract participant,” which have not, as yet, been definitively defined by the CFTC and the SEC. Recognizing that final rulemakings on the definitions will not be in place by July 16, 2011 (the general effective date of the Dodd-Frank Act), and in an effort to provide certainty to market participants as to the requirements that will apply to swap transactions as of that date, the CFTC proposes to temporarily exempt persons and entities from complying with those requirements of the Dodd-Frank Act that specifically relate to the referenced terms. The relief applies only to those provisions or portions of provisions that are dependent upon terms yet to be further defined. Provisions of the Dodd-Frank Act that do not reference such terms, or that otherwise require a rulemaking, are outside the scope of the CFTC Order. (A list of these provisions will be published on the CFTC’s Website.) The CFTC Order emphasizes that the relief is temporary and will not extend beyond the effective date of the applicable final rule defining the relevant terms, or December 31, 2011, whichever is earlier.

The CFTC Order also proposes to temporarily exempt certain transactions in exempt or excluded commodities (certain financial and energy commodities) that would have become subject to the Commodity Exchange Act on July 16, 2011, pending repeal or amendment of existing CFTC regulations affecting such transactions. The temporary exemption also will expire upon the earlier of the repeal of the regulations or December 31, 2011.

The interim relief does not limit the authority of the CFTC or the SEC under the antifraud and anti-manipulation rules of the federal commodities and securities laws. The CFTC Order, once published, will remain open for public comment for 14 days. While the SEC relief took immediate effect, comments may be provided until July 6, 2011.

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