

Derivatives - USA

Forward contracts with embedded volumetric optionality

Contributed by **Shearman & Sterling LLP**

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On May 12 2015 the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission, after consultation with the Board of Governors of the Federal Reserve System, jointly issued an interpretation concerning forward contracts with embedded volumetric optionality.

The interpretation clarifies certain aspects of the original CFTC proposal made in November 2014 and identifies when an agreement, contract or transaction would fall within the forward contract exclusions from the 'swap' and 'future delivery' definitions in the Commodity Exchange Act, allowing for forward contracts that provide for variations in delivery amount (ie, that contain embedded volumetric optionality).

Although the interpretation was issued jointly, it is solely an interpretation of the CFTC and does not apply to the exclusion from the swap and security-based swap definitions for security forwards or to the distinction between security forwards and security futures products. The [final interpretation](#) and an accompanying [fact sheet](#) can be accessed on the CFTC website.

For further information on this topic please contact [Donna M Parisi](#), [Geoffrey B Goldman](#) or [Azam H Aziz](#) at Shearman & Sterling LLP by telephone (+1 212 848 4000) or email (dparisi@shearman.com, geoffrey.goldman@shearman.com or aaziz@shearman.com). The Shearman & Sterling website can be accessed at www.shearman.com.

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Authors

Donna M Parisi



Geoffrey B Goldman



Azam H Aziz



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