

October 26, 2011

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## CFTC Extended Relief with Respect to Dodd-Frank Effective Dates for Derivatives

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**On October 18, 2011, the Commodity Futures Trading Commission (“Commission”) voted 5-0 to propose an order<sup>1</sup> (the “Proposed Order”) extending the temporary exemptive relief provided under the Commission’s July 14, 2011 order (“July Final Order”) to delay the effective date of most of the new requirements under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”).<sup>2</sup> Most of the requirements of Title VII of Dodd-Frank were originally due to take effect on July 16, 2011. For many requirements that depend on additional rulemaking (including key definitions), the July Final Order delayed effectiveness until the earlier of the effective date of the final rule further defining the relevant term or December 31, 2011. The Proposed Order amends the July Final Order by extending the temporary relief until the earlier of the effective date of the final rule further defining the relevant term or July 16, 2012.**

The July Final Order further provided relief that in effect extended certain pre-Dodd-Frank exclusions and exemptions for derivatives under the Commodity Exchange Act (“CEA”) and the Commission’s Part 35 regulations despite the repeal of those CEA exemptions and exclusions as of the general effective date of July 16, 2011. The Proposed Order would extend that temporary relief until the earlier of July 16, 2012 or such other compliance date as may be determined by the Commission. The extension of relief does not impact the nature of the relief provided by the July Final Order; rather it simply extends the status quo to July 16, 2012 at the latest. Similarly, the Commission underscored the fact that the Proposed Order would not limit in any way the Commission’s ability to pursue fraud and manipulation. The Proposed Order responds to significant concern among market participants that the legal status of OTC derivatives as of December 31, 2011, would be uncertain if the full Dodd-Frank framework were not implemented by that time.

<sup>1</sup> Effective Date of Swap Regulation, 76 Fed. Reg. 65,999, 66,004 (October 25, 2011).

<sup>2</sup> For further information regarding the Commission’s July Final Order you may wish to refer to our prior publication on this topic, available at: <http://www.shearman.com/cftc-and-sec-relief-with-respect-to-dodd-frank-effective-dates-for-derivatives-regulation-06-28-2011/>.

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On June 15, 2011, the US Securities and Exchange Commission (“SEC”) released an order granting temporary relief from compliance with new Dodd-Frank requirements relating to security-based swaps (“SBS”) that were originally due to take effect July 16, 2011 (“SEC Order”). The SEC Order did not include a specific termination date. Consequently, it will be unnecessary for the SEC to grant additional temporary relief from compliance with new Dodd-Frank requirements relating to SBS. We will continue to keep clients updated on any developments.

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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