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## CFTC Proposes Further Delay in Compliance Dates for Dodd-Frank Derivatives Requirements

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**On May 10, 2012, the Commodity Futures Trading Commission (“CFTC”) proposed an order to further extend temporary relief from the effective dates of many new requirements for swaps under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) that otherwise would have taken effect on July 16, 2012 (the “Proposed Order”). The CFTC first granted temporary relief from the effectiveness of these requirements in a final order issued July 14, 2011 (the “July 14 Order”), which granted relief from compliance with most of the new requirements under Dodd-Frank through December 31, 2011.<sup>1</sup> On December 23, 2011, the CFTC extended this relief through July 16, 2012.**

**In the July 14 Order, the CFTC distinguished four categories of Dodd-Frank provisions. Certain provisions required a rulemaking to become effective (“Category 1 Provisions”) and so were not covered in the order. The CFTC granted market participants relief from certain self-effectuating provisions that either reference terms subject to further definition by the CFTC pursuant to Sections 712(d)(1) and 721(c) of Dodd-Frank (“Category 2 Provisions”) or repealed provisions of then current law (“Category 3 Provisions”). The CFTC did not extend relief to a certain number of self-effectuating Dodd-Frank provisions (“Category 4 Provisions”), and those provisions became effective in July 2011.**

<sup>1</sup> For a summary of the July 14 Order, you may wish to consult our client publication, “CFTC and SEC Relief with Respect to Dodd-Frank Effective Dates for Derivatives Regulation” (June 28, 2011).

## The Proposed Order

The Proposed Order would extend relief from compliance with Category 2 Provisions until the earlier of the effective date set forth in the final rule adopted by the CFTC further defining the relevant term, or December 31, 2012. Where the CFTC has adopted a final rule implementing a Dodd-Frank provision that sets forth a specific effective date or compliance date, the proposed exemption would not apply (although many of those final rules by their own terms tie compliance dates to the effectiveness of the swap definition rulemaking).

Now that the CFTC and SEC have issued a final rule defining the terms “swap dealer,” “major swap participant” and “eligible contract participant,”<sup>2</sup> the key remaining term subject to further definition for purposes of the July 14 Order is the definition of “swap.” Thus, the proposed relief for Category 2 Provisions would be limited to those that specifically reference and relate to the term “swap.”

The Proposed Order also extends the exemptions in the July 14 Order for Category 3 Provisions that in effect permitted market participants to continue to rely on the pre-Dodd-Frank exclusions and exemptions for derivatives transactions under old Commodity Exchange Act sections 2(d), 2(e), 2(g) and 2(h) and Part 35 of the CFTC regulations. This exemption would extend until the earlier of December 31, 2012, or such other compliance date as the CFTC specifies. The Proposed Order would, however, modify the exemption applicable to agricultural swaps to reflect final rules issued to amend Part 35 of the CFTC Rules, which would permit the clearing of agricultural swaps to the same extent as other swaps.<sup>3</sup> However, under the Proposed Order, agricultural swaps may only be entered into or executed bilaterally, on a designated contract market (“DCM”) or on a swap execution facility (“SEF”). (The Proposed Order thus does not change the pre-Dodd-Frank prohibition on platform-trading of agricultural swaps on an exempt commercial market (“ECM”) or exempt board of trade (“EBOT”).)

Finally, the Proposed Order supplants the ECM/EBOT Grandfather Order issued by the CFTC relieving ECMs, EBOTs and markets that relied on Section 2(d)(2) of the Commodity Exchange Act prior to Dodd-Frank (“Section 2(d)(2) Markets”) from compliance with new Dodd-Frank provisions. The relief detailed in the Proposed Order would constitute the sole basis of relief for such market participants. The Proposed Order provides that this relief will continue until the earlier of December 31, 2012, or the effective date of the DCM or SEF final rules, whichever is later, unless the ECM, EBOT or Section 2(d)(2) Market files a DCM or SEF 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.

As with the July 14 Order, the Proposed Order would not limit the CFTC’s anti-fraud or anti-manipulation authority, or apply to any Dodd-Frank provision or CFTC rule already in effect.

We will continue to keep clients updated on any developments concerning the implementation or effectiveness of the Title VII Dodd-Frank requirements.

<sup>2</sup> Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant” (Final Rule) (adopted April 18, 2012), *available at* <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister041812b.pdf> (last visited May 17, 2012).

<sup>3</sup> Agricultural Swaps, 76 Fed. Reg. 49,291 (Aug. 10, 2011) (to be codified at 17 C.F.R. pt. 35).

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.

If you wish to receive more information on the topics covered in this publication, you may contact your regular Shearman & Sterling contact person or any of the following:

**Azam H. Aziz**  
New York  
+1.212.848.8154  
[aaaziz@shearman.com](mailto:aaaziz@shearman.com)

**Geoffrey B. Goldman**  
New York  
+1.212.848.4867  
[geoffrey\\_goldman@shearman.com](mailto:geoffrey_goldman@shearman.com)

**Donna M. Parisi**  
New York  
+1.212.848.7367  
[dparisi@shearman.com](mailto:dparisi@shearman.com)

**Bradley K. Sabel**  
New York  
+1.212.848.8410  
[bsabel@shearman.com](mailto:bsabel@shearman.com)

**Donald N. Lamson**  
Washington, DC  
+1.202.508.8130  
[donald.lamson@shearman.com](mailto:donald.lamson@shearman.com)

**Gregg L. Rozansky**  
New York  
+1.212.848.4055  
[gregg.rozansky@shearman.com](mailto:gregg.rozansky@shearman.com)

**Jared R. Gianatasio**  
New York  
+1.212.848.4384  
[jared.gianatasio@shearman.com](mailto:jared.gianatasio@shearman.com)

**Alexandre Charles**  
New York  
+1.212.848.7472  
[alexandre.charles@shearman.com](mailto:alexandre.charles@shearman.com)