

## **INTERIM FINAL RULES FOR SWAPS REPORTING**

October 15, 2010

To Our Clients and Friends:

Earlier this week, both the Commodity Futures Trading Commission (the “CFTC”) and the Securities and Exchange Commission (the “SEC”) adopted interim final rules for the reporting of swap transactions entered into before the enactment date (July 21, 2010) of the Dodd-Frank Act (“Pre-Enactment Swaps”). The interim final rules adopted by the CFTC were published in the Federal Register on October 14, 2010, and comments thereto must be submitted to the CFTC on or before November 15, 2010. The interim final rules adopted by the SEC have not been published in the Federal Register as of the date of this memorandum but can be found on the SEC website at <http://www.sec.gov/news/press/2010/2010-191.htm>.

### **REPORTING OF UNEXPIRED PRE-ENACTMENT SWAPS**

Sections 729 and 766 of the Dodd-Frank Act require the CFTC and the SEC, respectively, to adopt interim final rule for the reporting of Pre-Enactment Swaps that have not expired as of July 21, 2010. (For the purposes of this memorandum, the terms “swap” and “swaps” include security-based swaps.) The interim final rules adopted by both Commissions are similar and require a swap reporting party to submit to a registered swap data repository (a “SDR”) or to the appropriate Commission, with respect to all Pre-Enactment Swaps:

- a copy of the transaction confirmation in electronic form, if available, or in written form if there is no electronic copy of such Pre-Enactment Swap, and
- if available, the time the Pre-Enactment Swap was executed.

In addition, a party to a Pre-Enactment Swap must report to the appropriate Commission, on request, any information relating to such swap during the time the interim final rule is in effect. At this time, the Commissions expect that the information may include actual trade data, a description of a swap dealer’s counterparties or the total number of Pre-Enactment Swaps entered into by a swap dealer (including frequency and duration of such swaps).

Although the Dodd-Frank Act provides that the swaps reporting requirement is effective immediately as of its enactment date, both Commissions noted that, as of today, there is no registered SDR because the Commissions have not yet adopted registration and governing rules with respect to SDRs; further, the Commissions are not currently prepared to accept the

swap data. Therefore, the reporting requirements with respect to Pre-Enactment Swaps are to be interpreted as requirements for the relevant counterparties to retain all data and information relating to Pre-Enactment Swaps until the earlier of the enactment date of final rules with respect to such reporting or the effective registration of swap dealers, major swap participants and appropriate SDRs.

Pre-Enactment Swaps that have expired by July 21, 2010, and swaps entered into after July 21, 2010, are not covered by these interim final rules.

### **REPORTING PARTY**

Under the interim final rules, the following entities are subject to the reporting requirement:

- the swap dealer or the major swap participant, as the case may be, with respect to any swap in which only one of the parties is a swap dealer or a major swap participant,
- the swap dealer with respect to any swap between a swap dealer and a major swap participant, and
- with respect to all other swaps, the parties must elect one of them to be the reporting party.

### **RECORD RETENTION**

Both Commissions have adopted notes in the interim final rules requiring parties to Pre-Enactment Swaps to retain, in its existing format, all information and documents relating to the terms of such swaps, including but not limited to, any information necessary to identify the value of the swaps, the date and time of execution, pricing information, whether the swaps were accepted for clearing by any clearing organization, all modifications to the terms of the swaps and the final confirmation.

Please feel free to contact us with any questions.

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