

## CFTC PROPOSES AMENDMENTS TO TEMPORARY EXEMPTIVE RELIEF

November 3, 2011

To Our Clients and Friends:

Last week, the Commodity Futures Trading Commission (the “CFTC”) released a proposed order to further extend and expand the temporary exemptive relief granted pursuant to its July 14, 2011 final order (the “July 14 Order”) for a number of swap regulatory requirements under the Commodity Exchange Act (the “CEA”). Comments to these proposed amendments must be submitted on or before November 25, 2011.

### THE JULY 14 ORDER

In the July 14 Order, the CFTC grouped the provisions of the Dodd-Frank Act into four categories and granted temporary exemptive relief from the initial effective date of July 16, 2011, to two of those categories:

- “Category 2” Provisions. Self-effectuating provisions that reference terms (*e.g.*, “swap,” “swap dealer,” “major swap participant” or “eligible contract participant”) requiring further definition by the CFTC or the Securities and Exchange Commission are exempted from compliance until the earlier of December 31, 2011, or the effective date of their definitional rulemaking.
- “Category 3” Provisions. Provisions of the CEA that, as a result of the repeal of certain exclusions and exemptions under the CEA, would apply to transactions in certain commodities that used to be excluded or exempt from the CFTC’s regulatory oversight prior to the Dodd-Frank Act (typically, financial, energy and metals commodities) are exempted from compliance until the earlier of December 31, 2011, or the repeal, withdrawal or

replacement of Part 35 of the CEA.<sup>1</sup> The exemptive relief was limited to transactions in exempt and excluded commodities only.

#### PROPOSED AMENDMENTS TO THE JULY 14 ORDER

The October 25 proposed amendments to the July 14 Order are:

- with respect to “Category 2” provisions, to extend the potential latest expiry date of the exemption from compliance with self-effectuating provisions that reference terms requiring further definition to the earlier of July 16, 2012, or the effective date of the final rules defining such terms; and
- with respect to “Category 3” provisions:
  - to extend the potential latest expiry date of the exemption from compliance with the provisions of the CEA applicable to transactions in excluded or exempt commodities to the earlier of July 16, 2012, or such other compliance date as may be determined by the CFTC; and
  - to expand the scope of the July 14 Order to exempt also any transaction that fully meets the conditions in Part 35 as in effect on December 31, 2011, as the July 14 Order did not cover these transactions (notably, transactions in agricultural commodities) because they were already exempt under Part 35, and such exemptions under Part 35 would become unavailable after December 31, 2011.

In furtherance of the same goals that guided the July 14 Order, the CFTC proposes the amendments to the July 14 Order to address the possibility that the rulemaking further defining referenced terms may not be effective as of December 31, 2011, and the CFTC is striving to

---

<sup>1</sup> Part 35 exempts from the CEA “swap agreements” if (1) they are entered into by “eligible swap participants”; (2) they are not part of a fungible class of agreements standardized as to their material economic terms; (3) the creditworthiness of any party having an actual or potential obligation under the swap agreement would be a material consideration in entering into or determining the terms of the swap agreement, including pricing, costs or credit enhancement terms; and (4) they are entered into or traded on a multilateral transaction execution facility.

ensure that current market practices are not unduly disrupted during the transition to the new regulatory regime.

\* \* \*

Please feel free to contact us with any questions.

Byungkwon Lim  
+1 212 909 6571  
blim@debevoise.com

Emilie T. Hsu  
+1 212 909 6884  
ehsu@debevoise.com

Pankita D. Naik  
+1 212 909 6771  
pdnaik@debevoise.com