

# CLIENT UPDATE

## CFTC GRANTS TEMPORARY NO-ACTION RELIEF FOR NON-CLEARING MEMBER SWAP DEALERS FROM SECTION 20.4

### NEW YORK

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On July 17, 2012, the Commodity Futures Trading Commission (the “CFTC”) granted temporary no-action relief to non-clearing member swap dealers (“NCSDs”) from application of Section 20.4 of the CFTC regulations, which requires such entities to submit daily reports regarding physical commodity swaps and swaptions. Absent such relief, NCSDs would have been required to comply with Section 20.4 by July 23, 2012, the effective date of the final regulations further defining the term “swap dealer.” The no-action letter indicates that since persons who are swap dealers (“SDs”) are otherwise required to apply to be registered as SDs by the effective date of the final regulations further defining the term “swap” (the “Swap Dealer Registration Application Date”), market participants have raised concerns that Part 20 of the CFTC regulations imposes reporting requirements on SDs before they are required to register as SDs with the National Futures Association.

The no-action letter provides that the Division of Market Oversight of the CFTC (the “Division”) will not recommend that the CFTC commence an enforcement action against a NCSD for failure to submit Section 20.4 reports until 60 days after the Swap Dealer Registration Application Date (the “Part 20 Swap Dealer Compliance Date”). Any entity relying on this relief must state that it is doing so in an email to the Division at [submissions@cftc.gov](mailto:submissions@cftc.gov) and [SwapsLTR@cftc.gov](mailto:SwapsLTR@cftc.gov), no later than the Swap Dealer Registration Application Date.

Additionally, with respect to any NCSD that (1) is not an affiliate of a bank holding company, (2) is not a CFTC-registered futures commission merchant or an affiliate thereof, (3) is not registered with the Securities and Exchange Commission as a broker or dealer and is not an affiliate of a broker or dealer, (4) is not supervised by any Federal prudential regulator and (5) has limited resources or lacks experience reporting transactions to the CFTC (the "Section 20.10(e) requirements"), the no-action letter provides that the Division will not recommend that the CFTC commence an enforcement action for failure to submit Section 20.4 reports until six months after the Part 20 Swap Dealer Compliance Date. Any NCSD that intends to rely on this relief must submit an email to the Division at [submissions@cftc.gov](mailto:submissions@cftc.gov) and [SwapsLTR@cftc.gov](mailto:SwapsLTR@cftc.gov) no later than the Part 20 Swap Dealer Compliance Date, certifying that it meets the Section 20.10(e) requirements and describing with specificity: (1) the resource limitations or lack of experience in reporting transactions to the CFTC that cause it to be unable to submit fully compliant Section 20.4 reports by the Part 20 Swap Dealer Compliance Date, (2) the arrangements that are being made for submitting fully compliant reports and (3) the anticipated date of full compliance with the requirements of Part 20 of the CFTC regulations, as prescribed by the Division.

Please do not hesitate to contact us if you have any questions.

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July 19, 2012