

MEMO# 26618

October 26, 2012

CFTC Adapts Existing Regulations to Incorporate Swaps

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 69-12
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 59-12
INVESTMENT ADVISER MEMBERS No. 39-12
SEC RULES MEMBERS No. 98-12 RE: CFTC ADAPTS EXISTING REGULATIONS TO
INCORPORATE SWAPS

The Commodity Futures Trading Commission (“CFTC”) has adopted a number of conforming amendments to its existing regulations to reflect the new regulation of swaps. [\[1\]](#) Specifically, the amendments update definitions to reflect changes to the Commodity Exchange Act (“CEA”) made by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”); incorporate new terms added by the Dodd-Frank Act; and remove regulations and references that have become obsolete as a result of the Dodd-Frank Act. In addition, the amendments add swaps, swap markets (e.g., designated contract markets, swap execution facilities), and swap entities (e.g., swap dealers, major swap participants, etc.) to numerous definitions and regulations. Finally, the amendments include substantive changes that align requirements or procedures across futures and swap markets. This memorandum briefly notes three items that may be of particular interest to members.

Incorporation of Swaps

The definition of “commodity interest” has been expanded to incorporate swaps. [\[2\]](#) This change automatically extends coverage to swaps wherever commodity interests are referenced in CFTC regulations.

The CFTC has also added “swap” to the definitions of “client,” “commodity pool operator” (“CPO”), and “commodity trading advisor” (“CTA”). Separately, the CFTC has also taken the opportunity to harmonize the definition of CPO with that of CTA by including language related to commodity options and leveraged transactions and added new items to the list of covered transactions. [\[3\]](#)

Allocation of Bunched Orders

The CFTC amended procedures pertaining to the post-execution allocation of bunched orders. [4] Under the amended rules, “eligible account managers” can allocate the bunched orders post-execution similarly to how they allocate orders for futures.

Definition of “Physical”

The CFTC has removed the definition of “physical,” and as a result, the term will have the meaning dictated by the context of the individual regulation in which the term appears. The CFTC clarified that it had not intended to apply the definition to circumstances such as the definition of “physically” settled. Although some commenters had requested that the CFTC interpret “physical” for purposes of the term “physically settled” within the forward exclusion for swaps, the CFTC declined to do so in this adopting release.

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endnotes

[1] Adaptation of Regulations to Incorporate Swaps (October 16, 2012), available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister101612.pdf>.

[2] The CFTC adopted a final definition of the term “swap” in August. See Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48207 (August 13, 2012), available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister071012c.pdf>. For further discussion, see ICI Memorandum No. 26360 (August 1, 2012) available at http://www.ici.org/my_ici/memorandum/memo26360.

[3] Commodity options were authorized under §4(c) of the CEA and leveraged transactions under §19 of the CEA. The definitions of CPO and CTA now include contracts, agreements or transactions as described in §§ 2(c)(2)(C)(i) and (2)(c)(2)(D)(i) of the CEA.

[4] See §1.35(a) (redesignated (b)(5)) of the CEA.