

**SUMMARY OF MAJOR PROVISIONS IN THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT (“DODD-FRANK ACT”)
WITH RESPECT TO REGULATION OF DERIVATIVES (UPDATED AND EXPANDED SEPTEMBER 29, 2010)**

<u>TOPIC</u>	<u>SUMMARY</u>
<i>Wall Street Transparency and Accountability Act</i>	<p>The Wall Street Transparency and Accountability Act of 2010, included as Title VII of the Dodd-Frank Act establishes a comprehensive framework for regulation of derivatives markets, including over-the-counter (“OTC”) transactions and new categories of market facilities and market professionals. This is accomplished through extensive amendments to the Commodity Exchange Act (“CEA”) and the Securities Exchange Act of 1934 (“Exchange Act”), as well as amendments to the Securities Act of 1933 (“Securities Act”), other federal securities laws, the Bankruptcy Code and other federal laws. The legislation was signed into law by the President on July 21, 2010.</p> <p>Certain provisions in other titles of the Dodd-Frank Act also affect derivatives activities. Section 619 of Title VI sets out limitations on proprietary trading by banks and bank affiliates, including trading of derivatives (the so-called Volcker Rule). (Title VII includes other restrictions on bank swaps activities.) Title VIII provides for enhanced federal oversight of systemically important payment, clearing and settlement systems by the Federal Reserve Board, CFTC and SEC.</p>
<i>Regulators</i>	<p><u>Commodity Futures Trading Commission (“CFTC”)</u>. The CFTC is given expanded authority under the CEA to regulate swaps other than security-based swaps. This authority includes regulation of swap dealers, major swap participants, clearing facilities for swaps, trading facilities for swaps (designated contract markets and swap execution facilities), swap data repositories, and non-cleared and OTC trading of swaps.</p> <p><u>Securities and Exchange Commission (“SEC”)</u>. The SEC is given expanded authority under the Exchange Act to regulate security-based swaps. This authority includes regulation of security-based swap dealers, major security-based swap participants, clearing facilities for security-based swaps, trading facilities for security-based swaps (national securities exchanges and security-based swap execution facilities), security-based swap data repositories, and non-cleared and OTC trading of security-based swaps.</p> <p><u>Prudential Regulators</u>. The “prudential regulators” are the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Farm Credit Administration and Federal Housing Finance Agency. The prudential regulators are given authority in lieu of the CFTC or SEC in certain areas relating to prudential oversight of banks that are swap dealers, security-based swap dealers, major swap participants or major security-based swap participants.</p> <p><u>Financial Stability Oversight Council (“Council”)</u>. The Council is comprised of the Treasury Secretary, Chairman of the Federal Reserve Board, Comptroller of the Currency, Chairman of the SEC, Chairman of the CFTC, the heads of certain other federal financial regulators and one independent member appointed by the President and approved by the Senate, along with five non-voting members including a state insurance commissioner, banking supervisor and securities commissioner. The Council is established pursuant to Title I, Sec. 111 of the Dodd-Frank Act. With respect to derivatives, the Council is responsible for coordinating the rulemaking of the banking agencies, CFTC and SEC with respect to bank proprietary trading and for mediating certain disagreements that may arise between the CFTC and SEC.</p>
<i>Effective Date</i>	<p>Unless otherwise specified, the provisions of Title VII take effect on the later of July 15, 2011 (360 days after the July 21, 2010 enactment date) or, where rulemaking is required, 60 days after publication of the final rules. Unless otherwise specified, the CFTC and SEC must adopt rules required under Title VII by July 15, 2011.</p>

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Swap Definition	<p><u>Definition.</u> The term “swap” is broadly defined to cover the following derivative structures:</p> <ul style="list-style-type: none"> • Options, including puts, calls, caps, floors, collars or similar options of any kind. • Event contracts, <i>i.e.</i>, contracts providing for the purchase, sale, payment or delivery (other than dividends on equity securities) which are dependent upon the occurrence, non-occurrence or extent of occurrence of an event or contingency associated with a potential financial, economic or commercial consequence. • Traditional swap structures where a fixed payment is exchanged for a floating payment on one or more scheduled dates, with payments linked to the value or level of one or more interest rates, other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures or other financial or economic interests or property of any kind or interest therein or based on the value thereof, and which transfers between the parties, in whole or in part, risk associated with a future change in the value or level of the foregoing without also conveying a current or future ownership interest in an asset. • Instruments that become commonly known to the trade as swaps or by more specific names linked to an underlying commodity or financial measure (<i>e.g.</i>, interest rate swaps, currency swaps, energy swaps, agricultural swaps and emissions swaps). • Any agreement, contract or transaction that is or in the future becomes commonly known to the trade as a swap. • Security-based swap agreements (as opposed to security-based swaps). • Any combination or permutation of, or option on, any of the foregoing. <p><u>Exclusions / Exemptions From Swap Definition.</u> The following derivatives are excluded:</p> <ul style="list-style-type: none"> • <u>Futures and Other CEA Regulated Contracts.</u> Futures and options on futures, security futures products, leverage contracts authorized under CEA §19, retail spot forex transactions described in CEA §2(c)(2)(C)(i) and retail commodity transactions described in new §2(c)(2)(D)(i). <p>The swap definition covers derivatives that are economically equivalent to cash-settled futures. The exclusion for futures arguably allows the legal classification and regulatory treatment of certain contracts to be dictated by whether they are labeled as swaps or futures. The definition also covers options, but the amendments do not change the CFTC’s plenary authority under other provisions of the CEA to regulate commodity options.</p> <ul style="list-style-type: none"> • <u>Physical Delivery Contracts:</u> Transactions for the sale of a <i>nonfinancial commodity or security</i> for deferred shipment or delivery are excluded from the swap definition, provided the parties <i>intend</i> to physically settle the transaction. <p>This appears to be a variation of the CEA forward contract exclusion from regulation as a futures contract for deferred shipment commercial merchandizing transactions where delivery routinely occurs between commercial parties. Questions may arise on how to demonstrate an intention to deliver. It is unclear whether commercial merchandizing transactions must now qualify for both the forward contract exclusion and this exclusion to safely fall outside the CEA. Other amendments to the CEA also raise issues regarding treatment of commercial transactions under the CEA. (See below.)</p>

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	<ul style="list-style-type: none"> • <u>Certain Options on Securities or Certificates of Deposit.</u> Options on securities, certificates of deposit, groups or indexes of securities or interests therein or based on the value thereof, which are subject to the Securities Act and the Exchange Act. • <u>Foreign Currency Options Listed on a National Securities Exchange.</u> This exclusion is consistent with regulation of currency options traded on a national securities exchange as securities. (Currency options are otherwise not regulated as securities.) • <u>Securities-Related Contracts.</u> (i) Contracts for the purchase or sale of one or more securities on a fixed basis that are subject to the Securities Act and the Exchange Act; (ii) contracts for the purchase or sale of one or more securities on a contingent basis that are subject to the Securities Act and the Exchange Act, unless predicated on the occurrence of a bona fide contingency reasonably expected to affect or be affected by the creditworthiness of a non-party; (iii) notes, bonds or evidence of indebtedness that are securities as defined in the Securities Act; and (iv) contracts that are based on a security and are entered into directly or through an underwriter by the issuer of the security for the purpose of capital raising, unless entered into to manage a risk associated with the capital raising. • <u>Transactions Backed by U.S. Government.</u> Contracts expressly backed by the full faith and credit of the U.S. and to which a Federal Reserve Bank, the federal government or a federal agency is a party. • <u>Security-Based Swaps.</u> Any security-based swap, other than a mixed swap. • <u>Identified Banking Products.</u> Identified banking products are excluded under other provisions, but may under certain circumstances become regulated as swaps (see below).
<i>Security-Based Swap Definition</i>	<p><u>Definition.</u> “Security-based swap” is defined to cover a swap that is based on:</p> <ul style="list-style-type: none"> • A narrow-based index of securities, including any interest therein or on the value thereof; • A single security or loan, including any interest therein or on the value thereof; or • The occurrence, nonoccurrence or extent of the occurrence of an event relating to a single issue or to the issuers of securities in a narrow-based security index, provided that the event directly affects the financial statements, condition or obligations of the issuer. This provision was presumably included to permit the SEC to regulate swaps on the occurrence of corporate actions and dividends as well as credit default swaps. <p><u>Exclusions From Security-Based Swap Definition:</u></p> <ul style="list-style-type: none"> • Options on securities or indexes of securities (as they are otherwise regulated by the SEC). • Swaps on Treasury securities and other exempted securities. • Identified banking products are excluded under other provisions, but may under certain circumstances become regulated as security-based swaps (see below).

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	<p><u>Treatment of Security-Based Swaps as Securities.</u> Currently, the SEC is precluded from regulating security-based swap agreements. To effectuate the new jurisdictional grant over security-based swaps to the SEC, the following changes are made:</p> <ul style="list-style-type: none"> • The definitions of “security” in the Securities Act and Exchange Act are amended to include security-based swaps. • The definitions of “security” in the Investment Company Act and the Investment Advisers Act are not amended. • The Securities Act is amended to provide that security-based swaps must be subject to a registration statement (prospectus) meeting the requirements of §10(a) if they are offered or entered into with any person that is not an eligible contract participant, notwithstanding Securities Act §3 (exempted securities) or §4 (exempted transactions). <p>The affect of these amendments is to require Securities Act registration of any security-based swap sold to a person that is not an eligible contract participant and to permit national securities exchanges and security-based swap trading facilities to trade security-based swaps that have been registered under both the Securities Act and the Exchange Act.</p>
<i>Mixed Swap Definition</i>	<p>A “mixed swap” is a contract that is both (i) a security-based swap and (ii) based on the value of one or more interest rates or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, nonoccurrence or the extent of occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence not related to a single company or issuer.</p> <p>Mixed swaps are regulated jointly by the CFTC and SEC.</p>
<i>Special Treatment of Security-Based Swap Agreements</i>	<p>The legislation differentiates between security-based swaps and security-based swap agreements. Both terms cover swaps on securities indices, but security-based swaps cover swaps on narrow-based indices and security based swap agreements cover swaps on broad-based indices. As a result, the SEC is still prohibited from registering or permitting a securities exchange from trading swaps on a broad-based index of securities. This is within the purview of the CFTC, which will regulate security-based swap agreements as swaps. The SEC, though, continues to have anti-fraud jurisdiction over such broad-based index swaps under Exchange Act §9 (manipulation of securities prices); Exchange Act §10 (manipulative and deceptive practices); §16 (public reporting by directors, officers and principal stockholders); and §20 (contemporaneous trader liability for insider trading); §21A (civil penalties for insider trading); and Securities Act §17 (fraudulent interstate transactions).</p>
<i>Special Provisions for Identified Banking Products Definition</i>	<p>“Identified banking product” is defined in the Legal Certainty for Bank Products Act by cross-reference to §206(a)(1) through (5) of the Gramm-Leach-Bliley Act. The term includes (i) deposit accounts, savings accounts, certificates of deposit or other deposit instruments issued by a bank; (ii) banker’s acceptances; (iii) letters of credit issued or loans made by a bank; (iv) debit accounts at a bank arising from a credit card or similar arrangements; and (v) certain loan participations offered to investors in which the bank or an affiliate participates.</p> <p>Identified banking products are excluded from regulation as swaps or security-based swaps, unless (i) the appropriate federal banking agency determines otherwise or no such agency regulates the product, (ii) the product would otherwise be covered by the definition of swap or security-based swap, and (iii) the product has become known to the trade as a swap or security-based swap or is structured to evade the CEA or Exchange Act, as applicable.</p>

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<p>Special Provisions for Foreign Exchange Swaps and Forwards</p>	<p>Foreign exchange swaps and foreign exchange forwards between eligible contract participants may be exempted from many of the requirements applicable to swaps (CEA anti-fraud and anti-manipulation provisions, trade reporting and certain other requirements would still apply) if the Secretary of the Treasury determines that they should not be regulated as swaps and are not structured to evade the bill. Treasury must consider certain prescribed factors in making its determination and must submit its written determination to Congress.</p>
<p>Swap Dealer & Security-Based Swap Dealer Definitions</p> <p>(See below for summary of applicable regulatory requirements)</p>	<p>Definition. A “swap dealer” or a “security-based swap dealer” (as applicable) is a person that:</p> <ul style="list-style-type: none"> (i) holds itself out as a dealer in swaps or security-based swaps; or (ii) makes a market in swaps or security-based swaps; or (iii) regularly enters into swaps or security-based swaps in the ordinary course of business for its own account; or (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps or security-based swaps. <p>A person may be designated as a swap dealer or security-based swap dealer, as applicable, for a single type, class or category of swap or security-based swap, and not for others.</p> <p>It would appear that a dealer in mixed swaps would be classified as both a swap dealer and a security-based swap dealer.</p> <p>Exclusions/Exemptions:</p> <ul style="list-style-type: none"> • De Minimus Exemption. A person that engages in a de minimus quantity of swap or security-based swap dealing in connection with transactions with or on behalf of customers is excluded. The CFTC and SEC are required (individually and not jointly) to adopt rules establishing the factors for granting a de minimum exemption. • Not Part of Regular Business. A person that buys or sells swaps for its own account, either individually or in a fiduciary capacity, but not as a part of a regular business, is also excluded. • In Connection with Loan Originations. A bank is excluded from the term swap dealer to the extent it offers to enter into swaps with customers in connection with originating loans with such customers.
<p>Major Swap Participant & Major Security-Based Swap Participant Definitions</p> <p>(See below for summary of applicable regulatory requirements)</p>	<p>Definition. A “major swap participant” or “major security-based swap participant” is defined as any person that is not a swap dealer or security-based swap dealer (as applicable) and is covered by one of the following:</p> <ul style="list-style-type: none"> (i) It maintains a substantial position in swaps or security-based swaps for any major category of swap or security-based swap as determined, respectively, by the CFTC or SEC, excluding: <ul style="list-style-type: none"> ○ positions held for hedging or mitigating commercial risk; and ○ positions maintained by any employee benefit plan under ERISA for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan.

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	<p>(ii) Its outstanding swaps or security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or U.S. financial markets.</p> <p>(iii) It is a financial entity that is highly leveraged relative to the amount of capital it holds, it is not subject to capital requirements established by a Federal banking agency and it maintains a substantial position in outstanding swaps in any major category of swap or security-based swap as determined, respectively, by the CFTC or SEC. The CFTC and SEC must each define what constitutes a “substantial position” at a level considered prudent for effective monitoring, management and oversight of entities that are systemically important or that can significantly impact the U.S. financial system.</p> <p>A person could be classified as a major swap participant for one type, class or category of swap or security-based swap but not for others.</p> <p><u>Exclusion From Major Swap Participant Definition:</u></p> <ul style="list-style-type: none"> • An entity is excluded from the definition of major swap participant (but not from the definition of major security-based swap participant) if its primary business is providing financing to facilitate the purchase or lease of products and it is using swaps for hedging underlying commercial risks related to interest rate or foreign currency exposure, provided that 90% or more of those exposures relate to financing the lease or purchase of products 90% or more of which are manufactured by its parent or another subsidiary of its parent.
<p><i>Clearing Requirement for Swaps & Security-Based Swaps</i></p>	<p>Within one year of enactment, the CFTC and SEC must adopt procedural rules for determining those categories, types or classes of swaps or security-based swaps that must be cleared through a clearing facility. The CFTC or SEC may reconsider a mandatory clearing determination on its own initiative or upon application of a counterparty, and the clearing requirement is stayed during the reconsideration process. Thus, the fact that a clearing facility may accept a swap for clearing does not, in and of itself, trigger the mandatory clearing requirement.</p> <p>If a swap or security-based swap is required to be cleared, it is unlawful to enter into a transaction in such instrument without submitting it to a clearing facility that is registered with the CFTC or SEC (as applicable) or that is exempt from such registration, unless the end user exception described below is available.</p> <p>When mandatory clearing applies, if one party to the transaction is a swap dealer, security-based swap dealer, major swap participant or major security-based swap participant and the other party is not, such other party controls the decision on where to clear the trade (assuming a choice of clearing facilities is available). If the end user exception is available to the other party, such party also controls the decision whether to invoke the exception from having the transaction cleared.</p> <p>When mandatory clearing does not apply but clearing is available, if one party to the transaction is a swap dealer, security-based swap dealer, major swap participant or major security-based swap participant and the other party is not, the other party may nonetheless require the trade to be cleared and also controls the decision where to clear the trade (assuming a choice of clearing facilities is available).</p>

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<p>Centralized Trading Requirement for Swaps & Security-Based Swaps</p>	<p>If a swap or security-based swap is required to be cleared, it must be traded on or through a CFTC- or SEC-regulated exchange (a designated contract market or national securities exchange) or swap execution facility, unless no such centralized market exists offering the instrument for trading.</p> <p>The CFTC and SEC may adopt rules defining the universe of swaps that may be executed on a swap execution facility or security-based swap execution facility, taking into account price and non-price requirements of counterparties and the goal of promoting trading of swaps on swap execution facilities and pre-trade price transparency in the swap market.</p>
<p>End User Exception from Mandatory Clearing and Centralized Trading Requirements</p>	<p>If a swap or security-based swap is subject to mandatory clearing, transactions in that instrument may nonetheless be exempt from clearing and centralized trading, if all of the following conditions are met:</p> <ul style="list-style-type: none"> (i) One of the parties is not a financial entity, <i>i.e.</i>, it is not a swap dealer or security-based swap dealer; major swap participant or major security-based swap participant; commodity pool; private fund as defined in §202(a) of the Investment Advisers Act; employee benefit plan under §§3(3) and (32) of ERISA; or a person predominantly engaged in banking or financial activities as defined under §4(k) of the Bank Holding Company Act; (ii) That party is using swaps to hedge or mitigate commercial risk; and (iii) That party can demonstrate to the CFTC or SEC, as applicable, how it generally meets its financial obligations associated with its non-cleared swaps or security-based swaps. <p>Under certain conditions, affiliates of end users may rely on the end user exception. The CFTC or SEC, as applicable, may exempt small banks, savings associations and farm credit unions from the term “financial entity.”</p> <p>If the end user is a public company whose securities are registered under §12 of the Exchange Act or that is required to file reports under §15(d) of the Exchange Act, its board must review and approve decisions to operate pursuant to the exception.</p> <p>The CFTC and SEC may adopt rules or issue interpretations to prevent abuse of the end user exception.</p>
<p>OTC Swaps & Security-Based Swaps / Changes to Definition of Eligible Contract Participant</p>	<p>To the extent that OTC trading of swaps or security-based swaps is permitted:</p> <ul style="list-style-type: none"> • Counterparties must be “eligible contract participants” as defined in the CEA, even when the end user exception is used. NOTE: The CEA definition of “eligible contract participant” has been amended to (i) increase the discretionary investment standard for a governmental entity to qualify from \$25M to \$50M and (ii) change the standard for an individual to qualify from a total assets test of \$10M, or \$5M if hedging, to a discretionary investments test at those levels. • Swaps in an agricultural commodity may only be entered into pursuant to rules adopted by the CFTC under its CEA §4(c) exemptive authority. Currently, such transactions are covered by the CFTC’s Part 35 Swaps Exemption Rules or, for options, the CFTC’s Part 32 Rules (which were not issued under the CFTC’s §4(c) exemptive authority). • Swaps between persons reasonably believed to be eligible contract participants are enforceable and not subject to rescission or recovery of payments based solely on failure of the transaction to meet the swap definition or to be cleared or traded in accordance with specified provisions. No comparable provision is added to the Exchange Act with respect to security-based swaps.

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Reporting of Non-Cleared Swaps & Security-Based Swaps	<p>If a swap or security-based swap is not cleared, it must be reported to a registered swap data repository or security-based swap data repository, as applicable, or, if no such entity will accept it, to the CFTC or SEC, as applicable. Currently, DTC's Direv/Serv service is the only swap repository in operation and it would be required to register both with the CFTC and SEC.</p> <p>The CFTC and SEC have to adopt rules for reporting of swaps and security-based swaps, including those entered into prior to enactment of the legislation and following enactment but prior to effectiveness of the reporting rules. The CFTC must also adopt interim reporting rules for pre-enactment swaps. It is expected that implementation of reporting (including interim reporting) will occur no sooner than July 2011, and probably later.</p>
Margin Requirements for Non-Cleared Swaps & Security-Based Swaps	<p>Swap dealers, security-based swap dealers, major swap participants and major security-based swap participants are subject to minimum initial and variation margin requirements to be prescribed by the appropriate regulator. For entities that are banks or otherwise subject to regulation by a prudential regulator, its prudential regulator is responsible for adopting these requirements.</p> <p>For swap dealers, security-based swap dealers, major swap participants and major security-based swap participants that are not subject to regulation by a prudential regulator, the CFTC or SEC, as applicable, will prescribe the requirements. The margin requirements they impose must be at least as strict as those of the prudential regulators.</p> <p>Regulators may permit use of noncash collateral as margin.</p>
Segregation Requirements for Non-Cleared Swaps & Security-Based Swaps	<p>At the request of its counterparty, a swap dealer, security-based swap dealer, major swap participant or major security-based swap participant is required to segregate margin posted by the counterparty in a segregated account carried by an independent third-party custodian. Such person must notify its counterparty at the start of the transaction that the counterparty may require segregation. Segregation does not apply to variation, or mark-to-market, payments (<i>i.e.</i>, it does apply to the "independent amount" under the ISDA credit support annex).</p> <p>The parties may make commercial arrangements allowing permissible investment of segregated funds and allocation of associated gains and losses.</p> <p>If segregation is not required, the swap dealer, security-based swap dealer, major swap participant or major security-based swap participant must report to the counterparty on a quarterly basis that its back office procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.</p>
Registration & Segregation Requirements for Clearing Intermediaries	<p>To hold customer funds deposited to margin, guarantee or secure a cleared swap, a firm must be registered with the CFTC as a futures commission merchant ("FCM"). The FCM and any third party receiving such funds from it (including a clearing facility), is generally required to hold the funds on a segregated basis. Separately, the legislation's expanded definition of FCM (see below) may raise an issue whether a swap dealer or major swap participant will have to register as an FCM if it holds a counterparty's collateral on uncleared swaps, but it is unclear whether that is intended or will be how the CFTC interprets the revised definition.</p> <p>To hold customer funds deposited to margin, guarantee or secure a cleared security-based swap, a firm must be registered with the SEC as a broker-dealer or security-based swap dealer. The firm and any third party receiving such funds from it (including a clearing facility), is generally required to hold the funds on a segregated basis.</p>

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<p><i>Requirements for Swap Dealers & Major Swap Participants</i></p>	<p>Swap dealers, security-based swap dealers, major swap participants and major security-based swap participants are subject to various requirements, including (among others) the following:</p> <ul style="list-style-type: none"> • They must register with the CFTC or SEC, as applicable. The rules to be adopted by the CFTC and SEC must provide for registration of such persons no later than one year from the date of enactment. This will be the first time that any category of proprietary trader will have to register with the CFTC as a dealer to trade any type of contract on a CFTC-regulated market. • They must meet minimum capital requirements set by the CFTC, SEC or their prudential regulator, as applicable. • They must meet minimum margin requirements for their non-cleared transactions as set by the CFTC, SEC or their prudential regulator, as applicable. • They may be required to segregate a counterparty's initial margin deposits on non-cleared transactions at the counterparty's request. • They must report non-cleared transactions to a swap data repository, a security-based swap data repository or to the CFTC or SEC, as applicable. • They will be subject to recordkeeping requirements, including, <i>e.g.</i>, maintaining books and records relating to their business, daily trading records and audit trail records. • They must conform to business conduct standards prescribed by the CFTC or SEC, as applicable, including standards regarding fraud or other abusive practices involving swaps, supervision of their swaps business, adherence to position limits and such other matters as the regulator determines appropriate. • They must provide disclosure to a counterparty (other than a swap dealer, security-based swap dealer, major swap participant or major security-based swap dealer) on the material risks and characteristics of the swap or security-based swap, the source and amount of any fees, the daily mark, any other material incentives or conflict of interest. • They must comply with standards regarding timely and accurate confirmation, processing, netting, documentation, and valuation of swaps and security-based swaps. • They must monitor their trading to prevent violations of applicable position limits. • They must establish robust and professional risk management systems adequate for managing their day-to-day business. • They must disclose to the CFTC or SEC, as applicable, and to their prudential regulator, if applicable, information concerning terms and conditions of their swaps or security-based swaps, and their trading operations and practices for such instruments, financial integrity protections relating to such instruments, and other information relevant for trading in such instruments.

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	<ul style="list-style-type: none"> • They must have internal systems and procedures to obtain information necessary to perform their functions described in the legislation, and must provide that information upon request to the CFTC or SEC, as applicable, and to their prudential regulator, if applicable. • They must implement procedures to prevent conflicts of interest. • They must designate a chief compliance officer to carry out certain specified functions including review of compliance with regulations, resolving conflicts of interest and establishing and testing compliance procedures. • They must file annual reports prepared and certified by their chief compliance officer summarizing the firm’s compliance with the law and regulations and with internal policy and procedures.
<p><i>Special Duties Owed by Swap Dealers, Security-Based Swap Dealer, Major Swap Participants & Major Security-Based Swap Participants to “Special Entities”</i></p>	<p>Swap dealers, security-based swap dealers, major swap participants and major security-based swap participants owe special duties when acting as an adviser or counterparty to a special entity. As defined, the term “special entity” includes a federal agency; a state, state agency, city, county, municipality or other state political subdivision; an employee benefit plan under §3 of ERISA; a government plan under §3 of ERISA; or an endowment, including one organized under §501(c)(3) of the Internal Revenue Code.</p> <p>When acting as an adviser to a special entity with respect to swaps or security-based swaps, they are expressly prohibited from engaging in certain fraudulent conduct. In addition, a swap dealer or security-based swap dealer has a duty to act in the best interests of the special entity, including to provide recommendations in the special entity’s best interests.</p> <p>When acting as a counterparty with a special entity, they must have a reasonable basis to believe that the special entity is represented by a qualified independent representative acting in the special entity’s best interests. Although not entirely clear, it appears that this requirement applies only with respect to special entities that are governmental entities. In addition, before initiating a swap transaction with a special entity, a swap dealer must disclose the capacity in which it is acting. The language is unclear whether the same requirement applies to a major swap participant when acting as a counterparty to a special entity.</p> <p>The foregoing obligations do not apply in connection with transactions initiated by a special entity on an exchange, swap execution facility or security-based swap execution facility or where the swap dealer, security-based swap dealer, major swap participant or major security-based swap participant does not know the counterparty’s identity.</p> <p>As noted above, a bank is not considered to be acting as a swap dealer when it enters into a swap with a customer in connection with originating a loan. Thus, in that context, the special duties described above would not apply to a bank.</p>
<p><i>Membership in a Self-Regulatory Organization</i></p>	<p>It appears that a registered swap dealer or major swap participant will also be required to become a member of a registered futures association, which is a self-regulatory organization with prescribed functions and responsibilities set out in the CEA. At present, the National Futures Association is the only association operating as a registered futures association.</p> <p>It does not appear, though, that a registered security-based swap dealer or major security-based swap participant is required to become a member of any securities industry self-regulatory organization; that issue may be addressed in the SEC’s rulemaking.</p>

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<i>Changes to Existing Registration Categories for Market Professionals</i>	<p>The CEA definitions for “futures commission merchant,” “introducing broker,” “commodity pool operator” and “commodity trading advisor” have been expanded to cover the same types of activities with respect to swaps that they perform with respect to futures. They have also been expanded to cover any person that registers in that capacity.</p> <p>The Exchange Act definition of “dealer” has been revised to exclude acting as a dealer for security-based swaps; such activity would be covered by the new definition for security-based swap dealer. There is no change to the Exchange Act definition of broker.</p>
<i>Regulation of Clearing Facilities for Swaps</i>	<p>A clearing facility for swaps must register with the CFTC as a derivatives clearing organization; a clearing facility for security-based swaps must register with the SEC as a clearing agency. However, either agency may grant an exemption from such registration, if it determines that the clearing facility is subject to comparable, comprehensive regulation and supervision by the other agency or by an appropriate government authority in the clearing facility’s home country.</p> <p>Clearing facilities are subject to various requirements. A clearing facility’s rules must treat swaps or security-based swaps submitted to it which have the same terms and conditions as economically equivalent and subject to offset against one another within the clearing facility. In addition, its rules must provide for non-discriminatory clearing of swaps or security-based swaps, as applicable, whether executed on a bi-lateral OTC basis or on or through the rules of an unaffiliated DCM or swap execution facility. The concept of cross-market fungibility represented by these provisions is new to the CEA framework and is not being extended to exchange-traded futures or options on futures. A separate provision may be an obstacle to achieving cross-market fungibility for swaps: a derivatives clearing organization may not be compelled to accept the counterparty credit risk of another clearing facility.</p> <p>The CFTC and SEC are given certain authority to pressure a clearing facility to accept a swap or security-based swap for clearing. Neither agency, though, may force a clearing facility to accept a swap or security-based swap or a group, category, type or class of swap or security-based swap for clearing if such instrument “would threaten the financial integrity” of the clearing facility. This standard implies, though, that the CFTC or SEC could force a clearing facility to accept a swap instrument for clearing if the agency determines that clearing the instrument would not threaten the clearing facility’s financial integrity.</p>
<i>Regulation of Exchanges and Swap Execution Facilities</i>	<p>A swap execution facility is a new category of centralized trading facility, which must be registered with the CFTC as a swap execution facility or with the SEC as a security-based swap execution facility, as applicable. However, either agency may grant an exemption from registration to a facility that is subject to comparable comprehensive regulation on a consolidated basis by the other one. In addition, the CFTC may exempt a swap execution facility from registration if it finds that the facility is subject to such regulation by a prudential regulator or by a foreign regulator in the facility’s home country. The SEC is not given comparable exemptive authority.</p> <p>A swap execution facility or security-based swap execution facility may only list swap instruments and must limit participation on its markets to eligible contract participants. A designated contract market may list swaps and a national securities exchange may list security-based swaps, without having to impose such a limitation on permissible market participants.</p> <p>A market such as the Intercontinental Exchange (“ICE”) which has been operating under the CEA as an exempt commercial market for trading contracts on energy or other excluded commodities (as defined in the CEA) must either become a designated contract market or swap execution facility. A market operating under the CEA as an exempt board of trade faces the same</p>

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	choice. However, an exempt commercial market or exempt board of trade may petition the CFTC within 60 days of the July 21, 2010 enactment date for approval to continue operating under the prior CEA provisions governing them, which the CFTC may grant for up to one year beyond the July 15, 2011, effective date.
Regulation of Swap Data Repositories	A “swap data repository” is a centralized recordkeeping facility that collects and maintains trade information or records on swap transactions and positions. A swap data repository for swaps must register with the CFTC in that capacity. A swap data repository for security-based swaps must register as a security-based swap data repository with the SEC. A swap data repository for swaps and security-based swaps must register with both the CFTC and SEC. A clearing facility may register as a swap data repository or security-based swap data repository.
Real-Time Public Reporting of Swap Transactions	The CFTC and SEC are required to adopt rules to make swap transaction data including price and volume, but not the identities of the parties, publicly available on a real-time basis, to enhance price discovery for swaps and security-based swaps. Real-time public reporting means reporting of the transaction data “as soon as technologically practicable after the time at which the swap transaction has been executed.” Real-time public reporting will apply to both cleared and uncleared, OTC transactions. The amendments are silent on whether the CFTC or SEC should try to consolidate price and volume data from the various market facilities they regulate into consolidated streams of market data for swaps or for security-based swaps.
Position Limits	<p><u>CFTC Authority:</u></p> <p><u>General Authority to Impose Limits on Contracts.</u> The CFTC may impose speculative position limits on:</p> <ul style="list-style-type: none"> • Futures, options and options on futures traded on a designated contract market (this is not new); • Swaps traded on a designated contract market; • Swaps traded on a swap execution facility; • OTC swaps that perform or affect a significant price discovery function with respect to a CFTC-regulated market or clearing facility; and • Contracts traded on a foreign board of trade that settle against contracts traded on a CFTC-regulated market, if the contracts may be traded by persons located in the U.S. via direct access to the foreign market’s electronic trading system; the CFTC’s authority to impose limits is indirect, through its procedures for determining whether to permit a foreign board of trade to provide direct access to its markets to persons located in the U.S. <p><u>Aggregate Limits Across Markets.</u> The CFTC is directed to impose aggregate limits across such markets for economically equivalent contracts; depending upon where a swap trades, the CFTC may first have to determine if the swap performs or affects a significant price discovery function with respect to a CFTC-regulated market or clearing facility.</p> <p><u>Required Position Limits for Contracts on Agricultural and Energy Commodities.</u> The CFTC is required to establish position limits for futures, options and options on futures on physical commodities, <i>i.e.</i>, agricultural commodities or exempt commodities, including notably energy commodities, which are traded on a designated contract market, along with aggregate limits on such contracts and on swaps that are economically equivalent to such contracts. The CFTC has to establish limits on contracts on exempt commodities within 180 days of enactment and on agricultural commodities within 270 days of enactment.</p>

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	<p><u>Exemptions.</u> The CFTC may grant exemptions from its speculative position limits, and must adopt a rule defining bona fide hedging for purposes of a hedge exemption, based on language in the legislation. That language covers positions that (i) represent a substitute for positions taken through physical marketing channels, and are economically appropriate to reduce risks in conduct or management of a commercial enterprise arising from; or (ii) reduce risks resulting from a swap position executed with a counterparty that would constitute a hedge position for the counterparty under the foregoing standard.</p> <p><u>Study.</u> The CFTC is directed to study the effects of its position limits and whether they cause trading to move off-shore. The report must be presented to Congress within 12 months of the CFTC's imposition of such position limits.</p> <p><u>SEC Authority:</u></p> <p>The SEC may impose position limits on:</p> <ul style="list-style-type: none"> • security-based swap contracts, and may require a person to aggregate such positions with: <ul style="list-style-type: none"> ○ positions in any security, loan or group of securities or loans on which the security-based swap is based or to which it references or is related and to any other instrument relating to such security, loan or group of securities or loans; and ○ positions in any security or group or index of securities the price, yield, value or volatility of which, or of which an interest therein, is the basis for a material term of the security-based swap, and to any other instrument relating to such security or group or index of securities. <p>The SEC may grant exemptions from its speculative position limits.</p> <p><u>Markets:</u></p> <p>A designated contract market and swap execution facility must adopt position limits or position accountability for each contract it makes available for trading. Position limits must be no higher than those imposed by the CFTC. The same statutory requirement does not apply to a national securities exchange or security-based swap execution facility, but the SEC has the authority to direct a self-regulatory organization to adopt position limits for security-based swaps.</p> <p>If ICE continues to operate under the CEA as an exempt commercial market for one year beyond July 15, 2011 (see above), the energy contracts it offers which have been designated by the CFTC as significant price discovery contracts will likely continue to be subject to the position limits or position accountability standards that ICE has been required to adopt for such contracts, at least until such time as the CFTC may impose its own limits on such contracts.</p>
<p><i>Changes to CEA Exemptions and Exclusions</i></p>	<p><u>Eliminated.</u></p> <ul style="list-style-type: none"> • The exemptions added to the CEA in 2000 for bi-lateral transactions between eligible contract participants involving commodities other than agricultural commodities have been removed, but may be relied upon on an interim basis until the superseding provisions regulating swaps take effect on July 15, 2011. <ul style="list-style-type: none"> ○ The CFTC, though, may grant requests to extend the exemption under CEA §2(h) for transactions involving energy or other exempt commodities for up to one year beyond the July 15, 2011, effective date. The CFTC has received numerous petitions requesting such relief from energy market participants, but has decided not to consider such

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	<p>requests at this time. It will revisit the issue in the future after the terms of its regulations for OTC swaps are better known, and any relief it grants will not be limited to persons that filed petitions.</p> <ul style="list-style-type: none"> • Reliance on the CFTC's Part 35 swaps exemption for agricultural swaps is under consideration by the CFTC, which has issued an advance notice of rulemaking requesting comments on appropriate regulation of agricultural swaps, including agricultural options (which are currently subject to the CFTC's Part 32 Rules and may not be traded pursuant to Part 35.) <p><u>Retained.</u></p> <ul style="list-style-type: none"> • <u>Treasury Amendment.</u> The exclusion set out in CEA §2(c)(1) has been retained, but in a much narrower form. As revised, no provision of the CEA with the exception of those regulating clearing and providing for state law preemption of state gaming and bucket shop laws, applies to agreements, contracts or transactions in the instruments that are listed, which include government securities and foreign currencies, provided, however, that the exclusion does not apply to (i) swaps, (ii) exchange-traded futures, options or options on futures on the listed instruments (other than options on a security or index of securities or options on foreign currencies traded on a securities exchange) or (iii) OTC retail forex. • <u>Forward Contract Exclusion.</u> The forward contract exclusion which excludes deferred delivery contracts from regulation as futures remains. • <u>Qualifying Hybrid Instruments.</u> The exemption under CEA §2(f) for a hybrid instrument that is predominantly a security (as defined in this section) remains. <p><u>New.</u></p> <ul style="list-style-type: none"> • As noted above, transactions for the sale of a nonfinancial commodity or security for deferred shipment or delivery where the parties intend to physically settle the transaction would be excluded from regulation as swaps.
<p><i>Issues for Commercial Commodity Transactions</i></p>	<p>The legislation adds certain provisions to the CEA that could impact cash market commercial transactions in physical commodities. Much will depend upon how the CFTC and the courts interpret and apply the new provisions.</p> <p><u>Delivery Requirements to Fall Outside the CEA.</u> The primary issue is whether it is sufficient to comply with the forward contract exclusion alone for a deferred delivery commercial merchandizing transaction to fall outside the CEA. As long interpreted by the CFTC and courts, the forward contract exclusion excludes from regulation as futures under the CEA contracts for the sale and physical delivery of a cash commodity between commercial counterparties in a position to make or take delivery, where the parties intend to make delivery, delivery is deferred for reasons of commercial convenience or necessity and delivery routinely occurs.</p> <p>Although the forward contract exclusion still exists, the separate exclusion from the swap definition for the sale of a nonfinancial commodity or security for deferred shipment or delivery where the transaction is intended to be physically settled raises the prospect that commercial merchandizing transactions may have to qualify for both the forward contract exclusion and this exclusion to safely fall outside the CEA, since swaps include transactions that are economically equivalent to futures. The terms of the exclusion from the swap definition suggest that it is intended to be a counterpart to the forward contract exclusion from classification as a futures contract, although narrower in scope in that it is limited to nonfinancial commodities or securities. Ideally, to avoid disruption of cash markets for nonfinancial commodities, the CFTC will interpret the two in the same manner, consistent with the interpretation of the forward contract exclusion. Senators Chris Dodd and Blanche Lincoln, in a June 30,</p>

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	<p>2010 letter to Representatives Barney Frank and Colin Peterson, state that Congress encourages the CFTC to clarify through rulemaking that the exclusion from the swap definition is intended to be consistent with the forward contract exclusion.</p> <p>New provisions have also been added that appear to impose an exchange-trading requirement on a defined class of retail commodity transactions. Although the provisions appear to be directed at practices where retail customers are offered spot contracts where the delivery obligation is rolled, they have potential implications for legitimate cash market transactions.</p> <ul style="list-style-type: none"> • The provisions apply to any contract in a commodity that is offered to or entered into with a person that is not an eligible contract participant or eligible commercial entity, if it is offered or entered into on a leveraged, margined or financed basis by the offeror or the counterparty, or by a person acting in concert with the offeror or counterparty. • However, certain contracts are excluded, including, notably, any contract of sale that (i) results in actual delivery within 28 days or such other longer period as the CFTC may determine by rule based upon typical commercial practice in the cash or spot market for the commodity; or (ii) creates an enforceable obligation to deliver between parties that have the ability to make or take delivery in connection with their respective lines of business. • These provisions appear to result in a backdoor imposition of additional delivery tests for a commercial merchandizing transaction to fall outside the scope of the CEA when the transaction is margined, leveraged or financed and one of the commercial parties is not an eligible contract participant or eligible commercial entity, even if the transaction would be covered by the forward contract exclusion. • For the purpose of the new retail commodity transaction provisions, an eligible commercial entity is deemed to include an agricultural producer, packer, or handler for commodity contracts in connection with its line of business. This may mitigate the potential disruptive impact of these provisions on agricultural forward contracts, but for other commercial merchandizing contracts caught under these provisions, the counterparties will have to meet the more stringent standards to qualify as an eligible contract participant or eligible commercial entity. • The section of the legislation adding the retail commodity provisions does not specify an effective date. Under the default standard set out elsewhere, this should mean that the provisions take effect no sooner than July 15, 2011. <p>Commodity Options. The amendments do not make any changes to the CFTC’s authority under CEA §4c(b) to determine whether and on what terms to permit trading of commodity options. The CFTC adopted its Part 32 Rules for OTC commodity options pursuant to that authority. Commodity options, though, are also expressly covered by the swap definition, and swaps are governed by a different set of statutory provisions. It would seem reasonable to conclude that the CFTC’s Part 32 Rules and the CFTC’s authority to adopt them are unaffected, as the legislation also provides that CEA §4c(b) applies to swaps.</p>
Retail Forex	<p>Retail forex refers to OTC trading of foreign currency futures, options or options on futures transactions or of leveraged or margined spot foreign currency transactions (including so-called “rolling spot”) with persons that are classified as retail because they are not eligible contract participants. The CEA requires that the counterparty to a retail customer on forex transactions must be covered by one of several enumerated categories of permissible counterparty. In 2008, the CFTC was given explicit authority to adopt rules governing the retail forex activities of those counterparties subject to its regulation and certain other persons offering retail forex services. The legislation amends these provisions. Of note:</p>

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	<p><u>Shortened List of Permissible Counterparties.</u> The amendments narrow the list of firms that are permitted to be a counterparty to a retail customer on forex transactions. Non-U.S. financial institutions, insurance companies and their regulated affiliates and subsidiaries, and investment bank holding companies have been removed from the list. The shortened list now includes U.S. financial institutions; broker-dealers registered with the SEC and material affiliates of such broker-dealers; registered FCMs that are primarily engaged in traditional FCM activities and material affiliates of such FCMs; financial holding companies (as defined in the Bank Holding Company Act) and firms that register with the CFTC (pending adoption of the CFTC’s retail forex rules) as retail foreign exchange dealers.</p> <p><u>Eligible Contract Participants.</u> As noted above, the legislation amends the definition of eligible contract participant in a manner that makes it more restrictive for a governmental entity or an individual to qualify. As revised, an individual must have discretionary investments of \$10M, or \$5M if hedging, to qualify, which replaces the total assets tests. Also, for purposes of the retail forex provisions only, a commodity pool with total assets exceeding \$5M that is formed and operated by a regulated CPO will not qualify as an eligible contract participant on that basis if it has any investors that are not eligible contract participants.</p> <p><u>Rulemaking/Potential Ban on Certain Forex Trading.</u> The amendments prohibit a permissible counterparty from entering into foreign currency futures, options or options on futures – <i>but not leveraged foreign currency spot transactions</i> – with retail customers except pursuant to rules adopted by its federal regulator.</p> <ul style="list-style-type: none"> • The relevant federal agencies are the CFTC, SEC, federal banking agencies, the National Credit Union Association and the Farm Credit Administration, with respect to permissible counterparties they regulate. • The rules they adopt have to prescribe “appropriate requirements” with respect to disclosure, recordkeeping, capital and margin, reporting, business conduct, documentation and such other standards as the agency determines necessary. • The rules they adopt must treat foreign currency futures, options or options on futures <i>and all contracts that are functionally or economically similar thereto</i> in a similar manner; presumably, this standard was added to assure that the rules will cover leveraged currency spot transactions. • The CFTC is directed to adopt its rules within 90 days after enactment, because it had proposed rules pending at the time. The CFTC adopted its retail forex rules on August 26, 2010. The rules take effect on October 18, 2010. • If rules have not been proposed, the legislation is silent on when the provisions take effect. Assuming the default standard applies, the provisions will take effect on the later to occur of July 15, 2011 or 60 days after final adoption of rules by the appropriate regulator. If that is the case, the absence of rules may not operate as a ban.
<i>CFTC vs. FERC/State Jurisdiction</i>	<p>The amendments do not limit or affect the statutory authority of the Federal Energy Regulatory Commission (“FERC”) or of a state regulatory authority as defined in §3(21) of the Federal Power Act with respect to transactions (i) entered into pursuant to a tariff or rate schedule approved by FERC or a state regulatory authority; which transactions (ii) (A) are not executed on a designated contract market, swap execution facility or other trading facility or cleared by a CFTC-regulated clearing facility, or (B) are traded or cleared on a facility that is owned or operated by a regional transmission organization or independent system operator. The foregoing provisions do not limit the CFTC’s authority over such transactions, and thus it appears that such activities would be subject to the concurrent jurisdiction of FERC or a state regulatory authority, on the one hand, and the CFTC, on the other hand.</p>

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	<p>The CFTC is authorized to exempt from CEA-regulation transactions entered into pursuant to a tariff or rate schedule approved or permitted to take effect by FERC or by a state regulatory authority, or between entities described in section 201(f) of the Federal Power Act. It is directed to grant such exemptions if it determines that the exemption would be consistent with the public interest and the purposes of the CEA.</p> <p>The amendments do not limit or affect any statutory enforcement authority of the FERC pursuant to §222 the Federal Power Act and the §4A of the Natural Gas Act that existed prior to the date of enactment of this legislation.</p> <p>Within 180 days of enactment of the bill, the CFTC and FERC are required to enter into: (i) a Memorandum of Understanding to establish procedures to resolve conflicts concerning overlapping jurisdiction and to avoid conflicting or duplicative regulation; and (ii) a Memorandum of Understanding to share information upon request when either of them is conducting an investigation into potential manipulation, fraud, or market power abuse in markets subject to their oversight. Shared information is subject to limits on disclosure applicable to the agency originally holding the information.</p> <p>The amendments do not resolve the ongoing dispute over whether the CFTC’s exclusive jurisdiction to regulate futures markets bars FERC from bringing an enforcement action under its anti-manipulation authority relating to trading of energy futures on the New York Mercantile Exchange.</p>
<i>Regulation of Energy and Emissions Markets</i>	<p>The legislation establishes a 9 member Energy and Environmental Advisory Committee to be appointed by the CFTC. The committee is authorized to conduct public meetings, submit reports and make recommendations to the CFTC and “otherwise serve as a vehicle for discussion and communication on matters of concern to exchanges, firms, end users, and regulators regarding energy and environmental markets and their regulation” by the CFTC.</p> <p>The legislation also creates an interagency working group that is directed to study oversight of existing and prospective carbon markets to assure efficient, secure and transparent spot and derivatives markets for carbon. The working group is comprised of the Chairman of CFTC, who chairs the working group, the Secretary of Agriculture, the Secretary of the Treasury, the Chairman of the SEC, the Administrator of the EPA, the Chairman of the FERC and the Administrator of the Energy Information Administration. The working group is required to consult with exchanges, clearinghouses, SROs, major carbon market participants, consumers and the general public as appropriate. It must submit its report to Congress within 180 days of enactment of the legislation, including recommendations for oversight of carbon markets.</p>
<i>CFTC and SEC: A Forced Alliance</i>	<p>The CFTC and SEC are given expansive authority to adopt rules to implement the new statutory provisions and to issue interpretations of such provisions, including to prevent evasion of legislative objectives. Consistent with the regulatory tenor of the legislation, each agency’s authority to grant exemptions from statutory requirements has been constrained.</p> <p>For the many areas where they are required to adopt separate rules with respect to swaps, the CFTC and SEC are directed to consult with one another and with the prudential regulators before commencing a rulemaking or issuing an order, to assure “regulatory consistency and comparability, to the extent possible.”</p> <p>The CFTC and SEC are also required to adopt rules jointly in certain areas (e.g., rules regulating mixed swaps, books and records requirements for swap data repositories, further definition of various defined terms added with respect to swaps), often in consultation with the Federal Reserve Board or other prudential regulators. The joint rules they adopt must be “comparable</p>

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	<p>to the maximum extent possible, taking into consideration differences in instruments and in the applicable statutory requirements.” If they fail to adopt joint rules in certain areas in a timely manner, the CFTC or SEC may request the Council to resolve the dispute. The CFTC and SEC must also jointly issue interpretations, in consultation with the Federal Reserve Board, with respect to statutory provisions where they are required to issue joint rules.</p> <p>The legislation includes procedures for resolving the regulatory status of novel derivative products.</p> <p>If one agency believes that the other has issued any rule or order overstepping its jurisdictional bounds, including any order with respect to a novel derivative product, it may seek to have the action reviewed and set aside by the Court of Appeals for the District of Columbia.</p> <p>The CFTC and SEC have commenced their rulemaking activities.</p> <ul style="list-style-type: none"> • The CFTC has identified 30 areas of rulemaking, grouped under the headings: Comprehensive Regulation of Swap Dealers and Major Swap Participants; Clearing; Trading; Data; Particular Products; Enforcement; Position Limits and Other Titles. • The SEC has identified 8 broad areas of rulemaking under Title VII: Definitions; Security-Based Swap Dealers and Major Security-Based Swap Participants; Mandatory Clearing of Security-Based Swaps, End-User Exception and Security-Based Swap Clearing Agencies; Mandatory Exchange Trading and Swap Execution Facilities; Governance and Conflict of Interest Controls for Clearing Agencies, Swap Execution Facilities and Exchanges; Swap Data Repositories; Real-Time Reporting and Anti-Manipulation Protections. <p>The CFTC and SEC issued a joint advance notice of rulemaking requesting comments on key definitions in the legislation, specifically, swap, security-based swap, security-based swap agreement, mixed swap, swap dealer, security-based swap dealer, major swap participant, major security-based swap participant and eligible contract participant. The comment deadline was September 20, 2010.</p> <p>The CFTC has issues an advance notice of rulemaking requesting comments on appropriate regulation of trading of agricultural swaps, including OTC swaps currently traded pursuant to the CFTC’s Part 35 Rules, OTC options currently traded pursuant to the CFTC’s Part 32 Rules and exchange-traded agricultural swaps. The comment deadline is October 28, 2011.</p> <p>Both agencies are also generally encouraging interested parties to submit views in advance of publication of proposed rules for comment, so that the agencies may consider such input as they develop proposed rules. Submission may be filled electronically via links provided on the CFTC and SEC websites. They have also been holding public roundtable meetings on specific rulemaking topics.</p>
Joint CFTC-SEC Studies	<p>The CFTC and SEC are directed to conduct joint studies on the following topics:</p> <p><u>Algorithmic Product Descriptions (for Risk Management Use)</u>. They must study the feasibility of requiring “the derivatives industry to adopt standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives” that would “facilitate computerized analysis of individual derivative contracts and to calculate net exposures to complex derivatives.” They are directed to coordinate the study with international financial institutions and regulators. Their report must be submitted to their respective oversight committees in the House and Senate within 8 months of enactment of the legislation.</p>

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	<u>International Swap Regulation.</u> They are directed to study regulation of swaps and clearing facilities in the U.S., Asia and Europe, to identify areas of similar regulation and areas where regulation could be harmonized. Their report must be submitted to their respective oversight committees in the House and Senate within 18 months of enactment of the legislation.

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