

## Corporate & Financial Weekly Digest

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### **CFTC Proposes Order Providing Exemptive Relief from Certain Dodd-Frank Provisions**

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The Commodity Futures Trading Commission has issued an Order, essentially in the form proposed, providing temporary relief from certain swap-related provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act that would otherwise take effect on July 16. The Federal Register release accompanying the Order groups the provisions of Title VII as to which the CFTC has regulatory responsibility into four broad categories:

1. provisions that, by their terms, do not take effect without the adoption of implementing rules;
2. self-effectuating provisions that include references to terms that require further definition;
3. self-effectuating provisions that do not reference terms requiring further definition and that repeal current provisions of the Commodity Exchange Act (CEA); and
4. other self-effectuating provisions.

The Order provides relief for categories 2 and 3 above. The remaining provisions will take effect either on (1) July 16 (in the case of category 4 above), or (2) upon the effective date of the applicable final implementing rules, which can be no earlier than 60 days following their adoption (in the case of category 1 above).

With respect to category 2 provisions, the Order temporarily exempts persons from complying with many provisions of the CEA that reference the terms "swap," "swap dealer," "major swap participant" or "eligible contract participant," each of which is subject to further rulemaking by the CFTC.

With respect to category 3 provisions, the Order temporarily exempts specified over-the-counter transactions in exempt and excluded commodities, effectively preserving the current regulatory safe harbors applicable to such transactions.

The Order includes a "sunset" provision, which provides that the exemptive relief will expire upon the earlier of either (1) December 31, or (2) the effective date of the applicable final rules. If necessary, the CFTC may extend the period beyond December 31.

Concurrently, the CFTC staff has adopted a no-action position with respect to three provisions of the CEA that take effect on July 16 and for which exemptive relief is not available: (1) Section 4s(l), which requires swap dealers and major swap participants to segregate collateral with respect to certain uncleared swaps; (2) Section 4s(k), which specifies the duties of a chief compliance officer for swap dealers and major swap participants; and (3) Section 5b(a), which prohibits any clearing organization from clearing swaps unless it is registered with the CFTC.

A copy of the Order, which includes charts identifying the provisions of the Dodd-Frank Act that fall within each category above, and the no-action position may be found [here](#).

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