

## Corporate & Financial Weekly Digest

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### CFTC Seeks Comment Regarding Agricultural Swaps

*Co-authored by [Joshua A. Penner](#)*

The Commodity Futures Trading Commission has published an Advanced Notice of Proposed Rulemaking seeking public comment regarding the appropriate regulatory treatment of agricultural swaps.

The Dodd-Frank Wall Street Reform and Consumer Protection Act provides that “swaps” (which are defined to include options) in an “agricultural commodity” (as defined by the CFTC) are prohibited unless entered into pursuant to a rule, regulation or order of the CFTC adopted pursuant to section 4(c) of the Commodity Exchange Act (CEA), the CFTC’s general exemptive authority.

The CFTC notes that, under the current regulatory framework, Part 35 of its Regulations permits bilateral over-the-counter agricultural swaps between eligible counterparties subject to certain requirements, while Part 32 of the Regulations separately permits certain counterparties to enter into “agricultural trade options,” also subject to certain requirements.

Because Part 35 of the CFTC Regulations was promulgated under the CFTC’s exemptive authority under Section 4(c) of the CEA, the swaps exemption under Part 35 continues to be effective pursuant to Section 723(c)(3) of the Dodd-Frank Act. However, Part 32 of the CFTC Regulations, which was promulgated under the CFTC’s plenary authority regarding commodity options under Section 4c(b) of the CEA, has been superseded by Dodd-Frank, and the CFTC must therefore promulgate new regulations concerning options on agricultural commodities.

The CFTC is seeking comment on the appropriate conditions, restrictions or protections to be included in any CFTC regulation or order governing the trading of agricultural swaps and agricultural options, as well as information regarding the current market in agricultural swaps and options and the impact of clearing requirements on the current market.

The *Federal Register* release concerning the proposed rulemaking, including the method for submitting comments, can be found [here](#).