

CFTC and SEC Seek Public Input on the Timetable for Effective Dates of Final Rules to Implement Title VII of the Dodd-Frank Act

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Earlier this week the Commodity Futures Trading Commission (CFTC) announced that it will host, jointly with the Securities and Exchange Commission (SEC), a public roundtable to solicit market participants' views on the effective dates of final rules to implement Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank or the Act) and a schedule for compliance with such rules. The CFTC also began accepting public comments on these issues via its Web site. These initiatives aim to ensure that market participants have sufficient time to develop policies, procedures, systems and processes needed to comply with the new regulatory requirements.

Both CFTC Chairman Gary Gensler and CFTC General Counsel Dan Berkovitz cited the public roundtable and public comment period in response to concerns raised by lawmakers during Congressional oversight hearings held this week.¹ Specifically, lawmakers voiced concern with the sequence in which the CFTC has proposed rules to implement Dodd-Frank and the volume of proposed rulemakings issued to date. According to lawmakers these issues have precluded market participants from meaningfully participating in the rulemaking process. Echoing a [comment letter](#) submitted to the CFTC and SEC by several market participants, lawmakers urged the CFTC to implement final rules in a meaningful and well thought-out way. Several other issues were also raised during the Congressional hearings, including:

- Inconsistencies between the CFTC's proposed rules and those of other regulators. As examples, lawmakers cited the SEC's proposed rules pertaining to swap execution facilities and [proposed rules](#) issued jointly by Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency (collectively referred to as the Prudential Regulators) that establish margin requirements for uncleared swaps. Both Chairman Gensler and General Counsel Berkovitz responded by citing the CFTC's efforts to work with other regulators, including the SEC, the Prudential Regulators and foreign regulators. They also stated that the CFTC will continue to work with these other regulators to harmonize final rules, but noted that in some instances the CFTC's rules will differ from other regulators' rules due to differences in product characteristics.
- Whether the cost-benefit analyses contained in the CFTC's proposed rules to date adequately address whether such rules' benefits justify their costs. In response, General Counsel Berkovitz stated that the CFTC conducted the cost-benefit analyses in accordance with the Commodity Exchange Act and the Administrative Procedure Act. In addition, he noted that the CFTC is considering whether to adopt practices described in an [Executive Order](#) issued by President

¹ Chairman Gensler testified before the Senate Committee on Banking, Housing and Urban Affairs on Tuesday, April 12 – his prepared remarks are available [here](#). General Counsel Berkovitz testified before the Subcommittee on General Farm Commodities and Risk Management of the House Committee on Agriculture on Wednesday, April 13 – his prepared remarks are available [here](#).

Barack Obama in January that applies to federal agencies falling within a federal executive department (i.e., those headed by a Cabinet secretary).²

- Whether the CFTC will be able to complete rulemakings required by Dodd-Frank by July 16, 2011, the deadline contained in Title VII of the Act (as well as the Act's effective date). Both Chairman Gensler and General Counsel Berkovitz stated that the CFTC intends to finalize many of its rules by the July deadline, but they acknowledged that some rules may be finalized later. Accordingly, General Counsel Berkovitz explicitly indicated that the CFTC will not seek an extension of the deadline from Congress; Congress may still choose to extend the deadline on its own, however. Notably, General Counsel Berkovitz did not provide a substantive answer when asked about the effect on market participants of a lag between the issuance of final CFTC rules and the effective date of the statute.

The CFTC/SEC public roundtable will be a two-day event that will be held on May 2 and 3, 2011, from 9:30 a.m. to 4:00 p.m. each day. The roundtable will provide market participants the opportunity to comment on the "mosaic" of proposed rules issued by the CFTC.³ Both Chairman Gensler and General Counsel Berkovitz indicated that all of the CFTC's proposed rules to implement Dodd-Frank will be issued by that date. At least three proposed rulemakings remain outstanding, including (1) capital requirements for swap dealers and major swap participants, (2) segregation of cleared swap customers' collateral; and (3) product definitions. The roundtable will also afford market participants an opportunity to comment on whether the CFTC's final rules should be phased-in according to product class, market participant status (i.e., whether the market participant is an end-user, swap dealer or major swap participant), whether policies and procedures will need to be put in place to ensure compliance with new requirements, and the speed with which market infrastructure can meet the new requirements.

Market participants should consider participating in the CFTC/SEC roundtable; additional information about the roundtable is available [here](#). Market participants that are unable to participate in the roundtable should consider submitting comments about the effectiveness of the CFTC's final rules via the CFTC's public comment file, which is accessible [here](#).⁴ The deadline for submission of public comments is June 10, 2011.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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² The Executive Order does not apply to independent agencies like the CFTC.

³ Proposed rules issued to date by the CFTC and SEC are accessible via Sutherland's [Title VII Regulatory Roadmap](#).

⁴ In either case, market participants should note that Chairman Gensler has outlined a proposed timeline for the issuance of final rules. See Sutherland's [Legal Alert](#).

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