



CLIENT ALERT

November 4, 2010

New Recordkeeping Requirements for Swaps

The Commodity Futures Trading Commission (“CFTC”) recently issued an interim final rule (the “Rule”) requiring the reporting of swap transactions that were open as of July 21, 2010, the date of enactment of the Dodd-Frank Act (“Pre-Enactment Unexpired Swaps”). Comments on the Rule will be accepted by the CFTC until November 15, 2010.

Because the rules for swap data repositories (“SDRs”) and reporting have not yet been issued, counterparties to Pre-Enactment Unexpired Swaps currently are obligated only to keep records with respect to Pre-Enactment Unexpired Swaps. This recordkeeping requirement applies to all counterparties to Pre-Enactment Unexpired Swaps, whether or not they will eventually be the reporting party.

What you should know about the Rule:

Timing: The Rule requires reporting of certain information relating to Pre-Enactment Unexpired Swaps to a registered SDR or to the CFTC within 60 days after an SDR becomes registered under Section 21 of the CEA or by the compliance date to be established by the permanent reporting rules under Section 2(h)(5) of the Commodity Exchange Act (“CEA”), whichever occurs first.

Reporting Party: Where only one counterparty to a Pre-Enactment Unexpired Swap is a swap dealer or major swap participant, that party will be the reporting party. Where one counterparty to a Pre-Enactment Unexpired Swap is a swap dealer and the other counterparty is a major swap participant, the swap dealer will be the reporting party. Where neither counterparty is a swap dealer or major swap participant, the counterparties to the transaction shall select who will report the transaction.

Reporting Obligation: Upon implementation of the Rule, the reporting party will be required to report the following information: (i) a copy of the Pre-Enactment Unexpired Swap confirmation, in electronic form if available, or in written form if there is no electronic copy; (ii) the time the transaction was executed, if available; and (iii) any additional information as the CFTC may request, which may include actual, as well as, summary trade data. Pursuant to the Dodd-Frank Act, the information reported to SDRs will be made publicly available in a manner that does not disclose the business transactions and market positions of any person.



Data Retention

Currently there are no registered SDRs to accept swap data, and the CFTC is not prepared to accept swap data. In addition, the CFTC has not adopted rules governing the registration of, nor provided guidance as to which entities will be, swap dealers or major swap participants. Therefore, the Rule is accompanied by an interpretive note (the “Note”) stating that in order to comply with the Rule parties should simply retain all information pertaining to Pre-Enactment Unexpired Swaps until such time as reporting can be effected, including.

- (i) any information necessary to identify and value the transaction;
- (ii) the date and time of execution of the transaction;
- (iii) information relevant to the price of the transaction;
- (iv) whether the transaction was accepted for clearing and, if so, the identity of such clearing organization;
- (v) any modification(s) to the terms of the transaction; and
- (vi) the final confirmation of the transaction.

The Note clarifies that this information should be retained, to the extent it exists, in its existing format. Therefore, parties are not required to create new records. However, once the reporting obligation is implemented, the CFTC may request information in summary form.

If you have any questions regarding the Rule or other Dodd-Frank Act related issues, please contact one of the following:

Lauren Teigland-Hunt	+1 212 269 1002	lteigland@teiglandhunt.com
GuyLaine Charles	+1 212 269 1016	gcharles@teiglandhunt.com
Karen Sinai	+1 212 269 5375	ksinai@teiglandhunt.com

Teigland-Hunt LLP
127 West 24th Street, 4th Fl, New York, NY 10011
www.teiglandhunt.com

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