

Wall Street Reform and Consumer Protection Act—Impact on Over-the-Counter Derivatives

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Introduction

The Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) represents the largest overhaul of the U.S. financial system since the Great Depression. Title VII of the Dodd-Frank Act, the Wall Street Transparency and Accountability Act (“Transparency and Accountability Act”, or “Act”), puts in place a number of new regulations on the \$600 trillion over-the-counter (“OTC”) derivatives market. The Act authorizes the Commodity Futures Trading Commission (“CFTC”) and the Securities and Exchange Commission (“SEC”) to establish a regulatory regime where a significant portion of OTC derivatives transactions will be subject to mandatory clearing and trading, and require reporting of derivative transactions to a registered swap data repository. “Swap dealers” and “major swap participants,” as defined in the Act, will be required to register with the CFTC and/or the SEC, to comply with new business conduct standards, and to meet new capital and margin requirements. The CFTC and SEC are also authorized to establish position limits on derivatives. A “push-out” provision in the Act prohibits certain insured depository institutions from obtaining federal bailout money if they engage in risky derivatives activities, unless they “push out” their derivatives activities to affiliates.

Major Provisions Impacting OTC Derivatives

The Transparency and Accountability Act creates parallel regimes for swaps and security-based swaps. The CFTC will have jurisdiction over swaps, swap dealers and major swap participants, and the SEC has jurisdiction over “security-based swaps,” “security-based swap dealers” and “major security-based swap participants.” The two agencies are to independently promulgate rules regarding transactions and participants within their respective sole jurisdictions after consulting with each other and the prudential regulators. They will jointly promulgate rules regarding “mixed swaps” and further define the terms “swap”, “security-based swap”, “swap-dealer”, “security-based swap dealer”, “major swap participant”, “major security-based swap participant” (collectively, “swap” “swap-dealer” and “major swap participant”), “eligible contract participant”, and “security-based swap agreement”.

What follows is a summary of a number of the more significant aspects of the Act on the OTC derivatives market.

1. Prohibition against Government Bailouts

The Act has a “push-out” provision that prohibits “federal assistance” to any “swaps entity” with respect to any swap or other activities of the swaps entity. “Federal assistance” is defined as the use of any advances from any Federal Reserve credit facility or discount window that is not part of a program or facility with broad-based eligibility under Section 13(3)(A) of the Federal Reserve Act, Federal Deposit Insurance Corporation insurance or guarantee for the purpose of (i) making any loan to, or purchase any stock, equity interest, or debt obligation of, any swaps entity; (ii) purchasing the assets of any swaps entity; (iii) guaranteeing any loan or debt issuance of any swaps entity; or (iv) entering into any assistance arrangement (including tax breaks), loss sharing, or profit sharing with any swaps entity. “Swaps entity” is defined as any swap dealer or major swap participant that is registered with the CFTC or SEC. This definition does not include any major swap participant that is an insured depository institution. However, an insured depository institution that is a swap dealer is considered a swaps entity and is not allowed to receive federal assistance, unless its activities are for hedging or risk mitigation purposes, or it acts as a swaps entity for swaps involving rates or reference assets that are permissible for investment by a national bank, other than un-cleared credit default swaps.

This push-out provision will prohibit certain insured depository institutions from getting federal bailouts for their risky swaps activities, and will force them to spin off their existing swap businesses into swap entity affiliates. This prohibition is scheduled to go into effect two years after the effectiveness of the Act, and insured depository institutions that are swaps entities are given an additional 24 months to divest the swaps entity or cease the swaps activities.

2. Definition of “Swap Dealer” and “Major Swap Participant”

The Act defines “swap dealer” as any person who holds itself out as a dealer in swaps; makes a market in swaps, regularly enters into swaps with counterparties as an ordinary course of business for its own account; or engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps. An insured depository institution will not be considered a swap dealer if it offers to enter into a swap with a customer in connection with originating a loan with that customer, which is intended, for example, to allow an insured depository institution to extend a fixed for floating interest rate swap on a term loan provided by the bank. This exception, however, does not apply to any “security-based swap dealer”. A person is excepted from the definition of “swap dealer” if it enters into swaps from its own account, either individually or in a fiduciary capacity, but not as a part of a regular business. A person will not fall into the definition of “swap dealer” if it engages in only *de minimis* swap dealing in connection with transactions with or on behalf of its customers.

The Act defines “major swap participant” as any person who is not a swap dealer, and (i) maintains a “substantial position in swaps” other than positions held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan for the primary purpose of hedging or mitigating risk; (ii) whose outstanding swaps create “substantial counterparty exposure” that could have serious adverse effects on the financial stability of the United States banking system or financial market; or (iii) that is a financial entity that is “highly leveraged” relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency, and maintains a “substantial position” in outstanding swaps in any major swap category as determined by the CFTC or SEC. The CFTC and SEC are to define by rule or regulation the term “substantial position in swaps.” The definition will not include an entity whose primary business is providing financing, and

uses derivatives for the purpose of hedging underlying commercial risk related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company. This exemption does not apply to major security-based swap participant.

3. Mandatory Clearing and Exchange Trading

In the Act, swaps are to be submitted for clearing by a regulated clearing organization, if the CFTC or SEC determined that they are required to be cleared. The CFTC and SEC are to review different types of swaps and provide public comment period before making a determination about which swaps are to be cleared. Clearing organizations are required to submit to the CFTC or SEC any swap they plan to accept for clearing and to provide notice to their members of the submission. The CFTC or SEC will review each submission and determine whether the swap is required to be cleared.

Clearing will not be required for any swap where one of the counterparties to the swap (i) is not a "financial entity"; (ii) is using swaps to hedge or mitigate commercial risk; and (iii) notifies the CFTC or SEC how it generally meets its financial obligations associated with entering into non-cleared swaps. "Financial entity" is defined as a swap dealer; a major swap participant; a commercial pool; a private fund; an employee benefit plan; or a person predominately engaged in activities that are in the business of banking, or in activities that are financial in nature. The CFTC or SEC will consider whether to exempt small banks, farm credit systems institutions and credit unions with total assets of \$10,000,000,000 or less from being classified as "financial entities". The definition of "financial entity" does not include any entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risk related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company. This exemption does not apply to security-based swap.

Clearing will not be required for an affiliate of a person that is exempted from the clearing requirement only if the affiliate, acting as an agent, uses the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity. The affiliate must not be a swap dealer, a major swap participant, an issuer that would be an investment bank, a commodity pool, or a bank holding company with over \$50,000,000,000.

The Act requires cleared swaps to be traded on a board of trade designated as a contract market or a security exchange, or a swap execution facility. Trading is not required if no board of trade or security exchange, or swap execution facility makes the swaps available for trading.

4. Public Reporting of Swap Transaction Data

To enhance price discovery in the OTC derivatives market, the Act authorizes the CFTC and SEC to make swap transaction, including pricing and volume data, available to the public as soon as technically practical after the swap transaction is executed. Each swap, whether cleared or not, will be required to be reported to a registered swap data repository. In case there is no swap data repository that would accept the swap, the swap needs to be reported to the CFTC or SEC. The CFTC and SEC are to promulgate rules for real-time public reporting for transactions that are subject to mandatory clearing requirement. For transactions that are not subject to mandatory clearing requirement, the

rules will require real-time public reporting in a manner that does not disclose the business transactions and market positions of any person.

5. Business Conduct Standards for Swap Dealer and Major Swap Participant

In the Act, swap dealers and major swap participants are required to register with the CFTC or SEC and conform with the business conduct standards made by the CFTC or SEC. The business conduct standards will require a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant, disclose to any counterparty that is not a swap dealer or major swap participant material information regarding the swap transaction, and communicate in a fair and balanced manner based on fair dealing and good faith.

If a swap dealer or major swap participant acts as an advisor for a “special entity”, which includes Federal agency, State, State agency, city, county, municipality, employee benefit plan, governmental plan, or endowment, it will owe fiduciary duties to the special entity. If a swap dealer or major swap participant offers to enter or enters into a swap with a special entity, it will have a reasonable basis of belief that the special entity has an independent representative to watch out for its interest.

6. Capital and Margin Requirements

The Act imposes capital requirements on swap dealers and major swap participants and minimum initial and variation margin requirements for un-cleared swaps. Prudential regulators, in consultation with the CFTC and SEC, will adopt rules to set capital and margin requirements on swap dealers and major swap participants that are banks. The CFTC or SEC will set capital and margin requirements for swap dealers and major swap participants that are not banks. The standards to follow for setting such capital and margin requirements are “to help ensure the safety and soundness of the swap dealer or major swap participant, and to be appropriate for the risk associated with the non-cleared swap held as a swap dealer or major swap participant.” Non-cash collateral can be used to meet margin requirements, if the use is “consistent with preserving the financial integrity of markets trading swaps and the stability of the United States financial system.”

7. Position Limits

The CFTC is authorized to establish limits on the amount of positions, other than bona fide hedge positions, that may be held by any person in future contracts, options on future contracts or commodities traded on or subject to the rules of a designated contract market. In setting such position limits, the CFTC will ensure trading on foreign boards of trade in the same commodity will be subject to comparable limits and that any limits to be imposed by the CFTC will not cause price discovery in the commodity to shift to trading on the foreign boards of trade. The CFTC is authorized to set limits on the aggregate number or amount of positions in contracts based on the same underlying commodity that may be held by any person, including any group or class of traders, for each month.

The SEC is authorized to establish limits on the size of the positions in any security-based swap that may be held by any person. The SEC may require any person to aggregate positions in (i) any security-based swap and any security or loan or group of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related, and any other instrument relating to such security or loan or group or index of securities or loans; or (ii) any security-based swap and any security or group or index of securities,

the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap and any other instrument relating to the same security or group or index of securities. The SEC may conditionally or unconditionally exempt any person or any transaction from the position limits.

8. Definition of "Swap" and "Security-Based Swap"

"Swap" is defined as any agreement, contract, or transaction (i) that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, etc.; (ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence; (iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more interest or other rates, currencies, commodities, etc., and that transfers, as between the parties of the transaction, in whole or in part, the financial risk associated with a future change in any value or level without also conveying a current or future direct or indirect ownership interest in an asset or liability that incorporates the financial risk so transferred, including an interest rate swap, a currency swap, a foreign exchange swap, an equity swap, a credit default swap, a weather swap, an energy swap, a metal swap, and a commodity swap, etc.; (iv) that is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap; (v) any security-based swap agreement of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein; or (vi) that is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v). Foreign exchange swaps and foreign exchange forwards are to be considered "swaps" unless the Secretary of the Treasury makes a written determination that they should not be regulated as swaps, and they are not structured to evade the Act.

"Swap" does not include (i) any contract of sale of a commodity for future delivery or leverage contract; (ii) any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled; (iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities that is subject to the Securities Act of 1933 ("the Securities Act") and the Securities Exchange Act of 1934 ("the Exchange Act"); (iv) any put, call, straddle, option, or privilege relating to a foreign currency entered into on a national securities exchange; (v) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a fixed basis; (vi) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a contingent basis that is subject to the Securities Act and the Exchange Act, unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction; (vii) any note, bond, or evidence of indebtedness that is a security; (viii) any agreement, contract, or transaction that is based on a security, and entered into directly or through an underwriter by the issuer for the purpose of raising capital, unless such agreement, contract, or transaction is entered into to manage a risk associated with capital raising; (ix) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the Federal Government, or a Federal agency, and (x) any security-based swap.

“Security-based swap” means any agreement, contract, or transaction that is a swap, and is based on an index that is a narrow-based security index, 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 issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer. Security-based swap does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because such agreement, contract, or transaction references, is based upon, or settles through the transfer, delivery, or receipt of an exempted security, unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.

Conclusion

While the legislative portion of the financial reform is completed, the CFTC, SEC and prudential regulators now face the daunting task of conducting required studies, reports and writing specific rules to implement the Act. There are a host of open issues for the regulators to address in their rulemaking process. For example, certain key terms in the Act, such as “swap” “swap-dealer” “major swap Participant” and “mixed swap” needs to be further defined. In addition, the regulators need to roll out rules on which type of swap transactions are subject to clearing, and set specific capital and margin requirements and position limits. Given the fact that the CFTC and SEC have 360 days after the enactment of the Act to promulgate the required rules, the real impact of the Act on the OCT derivatives market is yet to be seen.

| | Major Provisions | Effective Date |
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| <p>Regulatory Authority (Sections 712 and 713)</p> | <ul style="list-style-type: none"> ▪ The CFTC has jurisdiction over swaps and swap market participant. The SEC has jurisdiction over security-based swaps and security-based swap market participants. If conflicts arise, each commission can petition the U.S. Court of Appeals for the D.C. Circuit to resolve discrepancies. ▪ The CFTC and SEC share jurisdiction over mixed swaps and jointly define the terms “swap” “swap-dealer” and “major swap participant”. If conflicts arise, the Financial Stability Oversight Council will resolve dispute. | <p>The CFTC and SEC are required to promulgate rules within 360 days after the enactment of the Act.</p> |

| | Major Provisions | Effective Date |
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| <p>Definition of "Swap" (Section 721)</p> | <ul style="list-style-type: none"> ▪ Put, call, cap, floor, collar, or similar options. ▪ Transaction that provides for purchase, sale, payment, or delivery that is dependent on the occurrence or nonoccurrence of any event. ▪ Interest rate swap, rate floor, basis swap, currency swap, equity swap, debt swap, credit spread, debt swap, credit default swap, weather swap, metal swap, commodity swap, etc. ▪ Transaction commonly known to the trade as a swap. ▪ Any combination or permutation of the any of the above mentioned transactions. ▪ Foreign exchange swaps and foreign exchange forwards, unless the Secretary of the Treasury determines that they are not swaps. <p><u>Exceptions:</u></p> <ul style="list-style-type: none"> ▪ Contract of sale of a commodity for future delivery or for deferred shipment. ▪ Pull, call, straddle, option, etc, on any security, certificate of deposit, or group or index of securities, or entered into on a national security exchange that is subject to the Securities Act and the Exchange Act. ▪ Any note, bond, or evidence of indebtedness that is a security. ▪ Any transaction based on a security and entered into directly or through an underwriter to raise capital, other than to manage a risk. ▪ Any transaction with a counterparty as a Federal Reserve bank, Federal Government, or a Federal agency. ▪ Any security-based swaps. | <p>The CFTC and SEC will further define the term within 360 days after the enactment of the Act.</p> |

| | Major Provisions | Effective Date |
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| <p>Definition of “Security-Based Swap” (Section 761)</p> | <ul style="list-style-type: none"> ▪ Any agreement, contract, or transaction that is a swap, and is based on an index that is a narrow-based security index; a single security or loan; or the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer. <p><u>Exceptions:</u></p> <ul style="list-style-type: none"> ▪ Any agreement, contract, or transaction that meets the definition of a security-based swap only because such agreement, contract, or transaction references, is based upon, or settles through the transfer, delivery, or receipt of an exempted security, unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option. | <p>The CFTC and SEC are to further define the term within 360 days after the enactment of the Act.</p> |
| <p>Definition of “Swap Dealer” (Sections 721 and 761)</p> | <ul style="list-style-type: none"> ▪ A person who holds itself out as a dealer in swaps; makes a market in swaps, regularly enters into swaps with counterparties as an ordinary course of business for its own account; or engage in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps. <p><u>Exceptions:</u></p> <ul style="list-style-type: none"> ▪ An insured depository institution which offers to enter into a swap with a customer in connection with originating a loan with that customer. This exception, however, does not apply to the definition of “security-based swap dealer”. ▪ A person who enters into swaps from its own account, either individually or in a fiduciary capacity, but not as a part of a regular business. ▪ A person who engages in a de minimis quantity of swap dealing with or on behalf of its customers. | <p>The CFTC and SEC are to further define the term within 360 days after the enactment of the Act.</p> |

| | Major Provisions | Effective Date |
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| <p>Definition of “Major Swap Participant” (Sections 721 and 761)</p> | <ul style="list-style-type: none"> ▪ A person who is not a swap dealer, and maintains a “substantial position in swaps” other than positions held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan for the primary purpose of hedging or mitigating risk directly associated with the operation of the plan; whose outstanding swaps create “substantial counterparty exposure” that could have serious adverse effects on the financial stability of the United States banking system or financial market; or that is a financial entity that is “highly leveraged” relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency, and maintains a “substantial position” in outstanding swaps. <p><u>Exception:</u></p> <ul style="list-style-type: none"> ▪ An entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risk related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company. This exemption does not apply to major security-based swap participant. | <p>The CFTC and SEC are to further define the term within 360 days after the enactment of the Act.</p> |
| <p>Prohibition Against Bailouts (Section 716)</p> | <ul style="list-style-type: none"> ▪ Registered swap dealers and major swap participants are not allowed to receive government bailouts. <p><u>Exceptions:</u></p> <ul style="list-style-type: none"> ▪ Insured depository institution that is a major swap participant. ▪ Insured depository institution that is a swap dealer, whose activities are for hedging or risk mitigation purpose, or act as a swaps entity for swaps involving rates or reference assets permissible for investment by a national bank, including cleared credit default swaps. | <p>2 years following the effective date of the Act.</p> <p>Insured depository institutions that are swap entities are given an additional 24 months to divest the swaps entity or cease the swaps activities.</p> |

| | Major Provisions | Effective Date |
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| <p>Mandatory Clearing</p> <p>(Sections 723 and 763)</p> | <ul style="list-style-type: none"> ▪ Swaps will be required to be submitted for clearing to the extent the CFTC or SEC require as much. ▪ The CFTC or SEC will review each class or category of swap and provide public comment period before determining whether clearing is required. ▪ Clearing organizations are required to submit swaps they plan to clear to the CFTC or SEC for review. <p><u>Exceptions:</u></p> <ul style="list-style-type: none"> ▪ One of the counterparty is not an financial entity, is using swaps for hedging, and notifies the CFTC or SEC how it meets its financial obligations. ▪ Affiliate of a person that qualifies for an exception may be exempted only if it acts on behalf of the person and uses the swaps to hedge risks. The affiliate must not be a swap dealer, a major swap participant, an issuer that would be an investment bank, a commodity pool, or a bank holding company with over \$50,000,000,000. | <p>The later of 360 days after the enactment of the Act or if rulemaking is required, 60 days after publication of the final rules.</p> <p>Swaps entered into prior to the enactment of the Act are exempt from the clearing requirement, if they are reported to a registered swap data repository or the CFTC or SEC no later than 180 days after the effective date of the Act.</p> <p>Swaps entered after the date of enactment of the Act but before the application of the clearing requirement are exempt from the clearing requirement, if they are reported to a registered swap data repository or the CFTC or SEC no later than the later of 90 days after the enactment of the Act, or such other time after entering into the swaps.</p> |

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| <p>Mandatory Trading (Sections 723 and 763)</p> | <ul style="list-style-type: none"> ▪ Cleared swaps will be required to be traded on a board of trade designated as a contract market or a security exchange, or a swap execution facility. <p><u>Exemption:</u></p> <ul style="list-style-type: none"> ▪ No board of trade or security exchange, or swap execution facility makes the swaps available for trading. | <p>The later of 360 days after the enactment of the Act or if rulemaking is required, 60 days after publication of the final rules.</p> |
| <p>Public Reporting of swap Transaction Data (Sections 723 and 763)</p> | <ul style="list-style-type: none"> ▪ Each swap, whether cleared or not, has to be reported to a registered swap data repository. ▪ Real-time public reporting is required for both cleared and un-cleared swap transactions. | <p>Swaps entered into before the date of the enactment of the Act shall be reported to a registered swap data repository or the CFTC or SEC no later than 180 days after the effective date of the Act.</p> <p>Swaps entered into after the date of the enactment shall be reported to a registered swap data depository or the CFTC or SEC no later than the later of 90 days after such effective date or such other time after entering into the swaps.</p> |

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| <p>Business Code Standards for Swap Dealer and Major Swap Participant (Sections 731 and 764)</p> | <ul style="list-style-type: none"> ▪ A swap dealer or major swap participant has a duty to verify that any counterparty meets the eligibility standards for an eligible contract participant, disclose to any counterparty that is not a swap dealer or major swap participant material information regarding the transaction and communicate in a fair and balanced manner based on fair dealing and good faith. ▪ When acting as an advisor, a swap dealer or major swap participant is not allowed to defraud a special entity. A swap dealer also shall have a fiduciary duty to act in the best interest of the special entity. ▪ When offering to enter or enter into a swap with a special entity, a swap dealer or major swap participant needs to have a reasonable basis of belief that the special entity has an independent representative to watch out for its interest. | <p>The CFTC and SEC shall adopt the business code standards within 360 days after the enactment of the Act.</p> |
| <p>Capital and Margin Requirements (Sections 731 and 764)</p> | <ul style="list-style-type: none"> ▪ Prudential regulators, in consultation with the CFTC and SEC, will set capital and margin requirements for swap dealers and major swap participants that are banks. ▪ The CFTC or SEC will set capital and margin requirements for swap dealers and major swap participants that are not banks. ▪ Non-cash collateral can be used to meet margin requirements. | <p>The later of 360 days after the enactment of the Act or if rulemaking is required, 60 days after publication of the final rules.</p> |
| <p>Position Limits (Sections 737 and 763)</p> | <ul style="list-style-type: none"> ▪ The CFTC is authorized to establish limits on the amount of positions, other than bona fide hedge positions, held by any person in future contracts, options on future contracts or commodities traded on or subject to the rules of a designated contract market. ▪ The CFTC is authorized to set limits on the aggregate number or amount of positions in contracts based on the same underlying commodity that may be held by any person, for each month. ▪ The SEC is authorized to establish limits on the size of the positions in any security-based swap that may be held by any person. ▪ The SEC may require any person to aggregate positions in any security-based swap and any security or loan or group of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related, and any other instrument relating to such security or loan or group or index of securities or loans; or any security-based swap and any security or group | <p>The later of 360 days after the enactment of the Act or if rulemaking is required, 60 days after publication of the final rules.</p> |

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| | <p>or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap and any other instrument relating to the same security or group or index of securities.</p> <p><u>Exception:</u></p> <ul style="list-style-type: none"> ▪ The SEC may conditionally or unconditionally exempt any person or any transaction from the position limits. | |

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If you have any questions concerning these developing issues, please do not hesitate to contact the following Paul Hastings Palo Alto lawyer:

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