



Commodity Futures Trading Commission

Office of Public Affairs

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Final Rulemaking Regarding Agricultural Swaps

The Commodity Futures Trading Commission (CFTC or Commission) will consider adopting final rules which will generally authorize agricultural swaps to transact subject the same laws and rules applicable to all other swaps. The final rule is authorized by provisions of the Commodity Exchange Act (CEA or Act), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act. Among other things, the Dodd-Frank Act amended the CEA as follows:

- To prohibit swaps in an “agricultural commodity” (as that term is defined by the Commission) unless conducted pursuant to a rule or order adopted pursuant to the Commission’s authority in CEA section 4(c).
- NOTE: a Notice of Proposed Rulemaking, or NPRM, seeking comment on (1) proposed rules for swaps in an agricultural commodity and (2) proposed rules for commodity options, including agricultural options, was published for public comment on February 3, 2011; and a final definition of the term “agricultural commodity” was adopted by the Commission at a public meeting on July 7, 2011).

The final rules will repeal and replace Part 35 of the Commission’s regulations with rules generally permitting the transaction of swaps in an agricultural commodity subject to all rules and regulations applicable to any other swap

Part 35 was originally adopted in 1993 pursuant to CEA section 4(c) and 4c(b) and served as the exemptive authority for bilateral swaps activity prior to the Commodity Futures Modernization Act of 2000 (CFMA). After the enactment of the CFMA, which included several statutorily based exemptions for transacting bilateral swaps, Part 35 was only relevant for agricultural swaps – which were statutorily excluded from the CFMA’s general exemptions for bilateral swaps.

The Dodd-Frank Act removed or revised the bilateral swap exemptions added by the CFMA and also included a general prohibition on any swap in an agricultural commodity unless permitted under the Commission’s 4(c) exemptive authority (see CEA Section 4(c)). Therefore, new Part 35 will be adopted pursuant to CEA section 4(c) (and pursuant to CEA section 4c(b)) and will explicitly address swaps in an agricultural commodity.

- New Part 35 will permit the transaction of swaps in an agricultural commodity subject to all provisions of the CEA – and any rule, regulation, or order thereunder – applicable to all other swaps.
- New Part 35 will also explicitly provide that swaps in an agricultural commodity may transact on a swap execution facility (SEF) and/or designated contract market (DCM) to the same extent that any other swap may transact on a SEF and/or DCM.

The intention behind replacing existing Part 35 with a new Part 35 is to remove any need for distinguishing between an agricultural commodity and a non-agricultural commodity for the purpose of identifying the law applicable to a swap transaction.

The commodity options rules proposed on February 3, 2011 are still pending

At this time, the Commission is only finalizing the agricultural swaps piece of the proposed rules (repealing and replacing Part 35), and is continuing to review and consider the comments received on the proposed commodity options rules. Any final rules addressing commodity options will be issued at a later date.

The effective date of the final agricultural swaps rules will be December 31, 2011

Absent further Commission action, the repeal of existing Part 35 and the addition of new Part 35 (the new agricultural swaps rules) will both have an effective date of December 31, 2011.