

DIVISION OF CLEARING AND RISK ADVISORY

EFFECTIVE DATE OF THE CLEARING EXEMPTION FOR SWAPS BETWEEN CERTAIN AFFILIATED ENTITIES

On April 11, 2013, the Commodity Futures Trading Commission (Commission) published in the Federal Register the final rule “Clearing Exemption for Swaps Between Certain Affiliated Entities,” to exempt swaps between eligible affiliate counterparties within a corporate group from the clearing requirement under the Commodity Exchange Act (CEA or Act), enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).¹ The regulations include specific conditions, as well as reporting requirements, that eligible affiliate counterparties must satisfy in order to elect the inter-affiliate exemption from required clearing. The effective date of the rule, as listed in the Federal Register, was June 10, 2013.² The preamble to the final rule provides that “[t]he clearing requirement under section 2(h)(1)(A) of the CEA and part 50 of the Commission’s regulations shall not apply to a swap executed between affiliated counterparties that have the status of eligible affiliate counterparties, as defined in § 50.52(a), and elect not to clear such swap until the effective date of the rulemaking.”³ Due to certain requirements provided for by the Congressional Review Act,⁴ the effective date of the final rule has been automatically extended by operation of law, to June 18, 2013. Accordingly, the clearing requirement under section 2(h)(1)(A) of the CEA and part 50 of the Commission’s regulations shall not apply to a swap executed between affiliated counterparties that have the status of eligible affiliate counterparties under the final rule, until

¹ Clearing Exemption for Swaps Between Certain Affiliated Entities, 78 FR 21749 (Apr. 11, 2013).

² *Id.* at 21750.

³ *Id.* at 27769.

⁴ 5 U.S.C. § 801(a)(3)(A).

June 18, 2013, the new effective date of the final rule “Clearing Exemption for Swaps Between Certain Affiliated Entities.”

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