

August 4, 2010

## Wall Street Transparency and Accountability Act of 2010 Introduces Extended Period of Regulatory Uncertainty

### Introduction

When fully implemented, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 promises, in President Obama's words, "clearer accountability in supervision and regulation so that financial firms can operate under a coherent set of rules and expectations," and "certainty to everybody, from bankers to farmers to business owners to consumers." In the near term, however, the promise and the reality will be polar opposites. With the enactment of this legislation on July 21, the financial services industry is entering an extended period of regulatory uncertainty unlike any it has ever experienced.

Although Congress set the broad outlines of the new regulatory regime, it left the innumerable details to the several federal financial regulatory authorities. The challenge these agencies face is daunting. This is particularly true in the case of the Commodity Futures Trading Commission (CFTC), the Securities and Exchange Commission (SEC), and the bank regulatory agencies (the "prudential regulators"), as they develop rules to impose a comprehensive regulatory structure on the over-the-counter (OTC) derivatives markets, as required under Title VII of the legislation—The Wall Street Transparency and Accountability Act of 2010 (Title VII).

These agencies have been tasked, over the next 12 months, with conducting a half-dozen studies and adopting, in the aggregate, hundreds of rules, generally in coordination with each other and often jointly. In recognition of the tremendous time pressure they will be under and, perhaps, their lack of meaningful expertise in many of the areas in which they are required to promulgate rules, both the CFTC (at <http://www.cftc.gov/LawRegulation/OTCDerivatives/>) and the SEC (at <http://www.sec.gov/spotlight/regreformcomments.shtml>) have taken the unusual step of inviting members of the public and the industry to comment on issues that may be of particular interest to assist these agencies in preparing proposed rules.

In the meantime, since most rules adopted under Title VII will become effective 60 days after promulgation, the financial services industry and other financial market participants have little choice but to anticipate the details of the rules that will be adopted and make plans now to implement them, knowing that the final rules may be significantly different, which will exacerbate the operational and financial costs they will certainly incur.

If you would like to discuss Title VII in greater detail, or if you need assistance in preparing comments for submission to the CFTC or SEC, please contact your Katten Muchin Rosenman LLP attorney or any of the following members of the [Financial Services Practice](#):

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This Advisory highlights several of the more significant provisions of Title VII and, in particular, rulemakings that the CFTC, SEC and prudential regulators will be required to promulgate to implement Title VII and bring “coherence” and “certainty” to the OTC derivatives markets. Unless otherwise stated below, the rules are required to be promulgated no later than 360 days after the July 21, 2010, effective date of Title VII.

## I. Allocation of Jurisdiction Over Swaps and Security-Based Swaps

Title VII grants the CFTC jurisdiction over all swaps, as broadly defined, with the exception of security-based swaps. The SEC has jurisdiction over security-based swaps and joint jurisdiction with the CFTC over mixed swaps.

1. **Security-Based Swaps.** A “security-based swap” is any agreement, contract or transaction that is a swap and is based on: (i) an index that is a narrow-based security index, including any interest therein or on the value thereof; (ii) a single security or loan, including any interest therein or on the value thereof; or (iii) 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.
2. **Mixed Swaps.** A “mixed swap” is any security-based swap that is also based on the value of one or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence or extent of the occurrence of an event or contingency associated with a potential financial, economic or commercial consequence. Mixed swaps are deemed to be both security-based swaps and swaps.

The CFTC and SEC are authorized to adopt rules further defining the terms “swap” and “security-based swap.” In addition, the CFTC and the SEC, after consultation with the Board of Governors of the Federal Reserve, are required to adopt joint rules with respect to mixed swaps as necessary to carry out the purposes of Title VII.

3. **Foreign Exchange Swaps and Forwards.**<sup>1</sup> Foreign exchange swaps and foreign exchange forwards will be considered swaps, unless the Secretary of the Treasury makes a written determination that either foreign exchange swaps or foreign exchange forwards or both: (i) should not be regulated as swaps, and (ii) are not structured to evade Title VII in violation of any rule promulgated by the CFTC.<sup>2</sup>

## II. Registration and Regulation of Swap Dealers, Security-Based Swap Dealers, Major Swap Participants and Major Security-Based Swap Participants

Title VII requires (i) swap dealers and major swap participants to be registered with, and subject to regulation by, the CFTC, and (ii) security-based swap dealers and major security-based swap participants to be registered with, and subject to regulation by, the SEC. Registration with one agency does not exempt any entity from registration with the other. Similarly, banks that fall within the definition of a swap dealer, major swap participant, security-based swap dealer or security-based swap participant are not exempt from registration.

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<sup>1</sup> A “foreign exchange swap” is a transaction that solely involves the exchange of two different currencies on a specific date at a fixed rate agreed at the inception of the contract, and a reverse exchange of the same two currencies at a date further in the future and at a fixed rate agreed at the inception of the contract covering the exchange. A “foreign exchange forward” is a transaction that solely involves the exchange of two different currencies on a specific future date at a fixed rate agreed upon at the inception of the contract covering the exchange.

<sup>2</sup> In determining whether foreign exchange swaps should be regulated as swaps under the Act or whether such swaps are structured to evade the Act, the Secretary of the Treasury must take into account: (i) whether imposing mandatory exchange trading and clearing requirements on foreign exchange swaps and foreign exchange forwards would create systemic risk, lower transparency or threaten the financial stability of the United States; (ii) whether foreign exchange swaps and foreign exchange forwards are already subject to a regulatory scheme that is materially comparable to that established by this Act for other classes of swaps; (iii) the extent to which bank regulators of participants in the foreign exchange market provide adequate supervision, including capital and margin requirements; (iv) the extent of adequate payment and settlement systems; and (v) the use of a potential exemption of foreign exchange swaps and foreign exchange forwards to evade otherwise applicable regulatory requirements.

1. **Definitions.** Each of these categories is defined in some detail in Title VII. Nonetheless, the CFTC and SEC are authorized to adopt rules defining swap dealers and major swap participants, and security-based swap dealers and major security-based swap participants, respectively. To assure regulatory consistency and comparability to the extent practicable, the agencies are instructed to consult with each other and coordinate such definitions (and consider the views of the prudential regulators).

The more challenging rulemaking for the agencies will be defining major swap participants and major security-based swap participants. Under Title VII, a “major swap participant” is defined to mean:

*A person that is not a swap dealer<sup>3]</sup> and: (i) maintains a substantial position in swaps for any of the major swap categories as determined by the [CFTC], excluding (I) positions held for hedging or mitigating commercial risk; and (II) positions maintained by any employee benefit plan . . . for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan; or (ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the US banking system or financial markets; or (iii)(I) is a financial entity,<sup>[4]</sup> other than an entity predominantly engaged in providing financing for the purchase of an affiliate’s merchandise or manufactured goods, that is highly leveraged relative to the amount of capital it holds and is not subject to capital requirements established by an appropriate federal banking agency; and (II) maintains a substantial position in outstanding swaps in any major swap category as determined by the [CFTC].*

A “major security-based swap participant” is similarly defined.

The CFTC and SEC must each define the terms “commercial risk,” “substantial counterparty exposure” and “substantial position.” The agencies’ interpretations of these terms will determine whether an entity that is not a swap dealer is simply a customer or an entity required to be registered and subject to comprehensive regulation as described immediately below.

2. **Capital and Margin Requirements.** The CFTC, SEC and prudential regulators must adopt rules imposing capital requirements on swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. In addition, the agencies are instructed to impose initial and variation margin requirements with respect to all swaps that are not cleared through a derivatives clearing organization or a securities clearing agency.<sup>5</sup> To the maximum extent practicable, the agencies and prudential regulators must establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of non-cash collateral.<sup>6</sup>
3. **Business Conduct Standards.** The CFTC and SEC are required to adopt rules establishing business conduct standards for swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. The standards must address: (i) fraud, manipulation and other abusive practices involving swaps (including swaps that are offered but not entered into); (ii) diligent supervision of the business of the registered swap dealer and major swap participant; (iii) adherence to all applicable position limits; and (iv) such other matters as the agencies determine to be appropriate.<sup>7</sup>

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<sup>3</sup> A “swap dealer” is any person that holds itself out as a swap dealer, makes a market in swaps, regularly engages in the purchase and sale of swaps in the ordinary course of a business, or engages in activity causing the person to be commonly known as a dealer or market maker in swaps. A “security-based swap dealer” is similarly defined. The agencies may adopt rules exempting from registration as a swap dealer or security-based swap dealer an entity that engages in *de minimis* transactions with customers.

<sup>4</sup> A “financial entity” includes swap dealers, security-based swap dealers, major swap participants, major security-based swap participants, commodity pools, private funds, employee benefit plans and banking or financial institutions.

<sup>5</sup> Initial and variation margin for cleared swaps will be established by the relevant derivatives clearing organization or securities clearing agency, subject to the oversight of the CFTC or SEC, as appropriate.

<sup>6</sup> Further, the capital and margin rules imposed should: (i) help ensure the safety and soundness of the swap dealer or major swap participant, and (ii) be appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

4. **Conflicts of Interest.** Swap dealers, major swap participants, security-based swap dealers and security-based swap participants are required to implement conflict-of-interest systems and procedures that: (i) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or swap, or acting in a role of providing clearing activities or making determinations as to accepting clearing customers, are separated by appropriate informational partitions within the firm from the review, pressure or oversight of persons whose involvement in pricing, trading or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in the Act; and (ii) address such other issues as the CFTC or SEC determines to be appropriate.
5. **Heightened Business Conduct Standards.** Separately, a swap dealer or security-based swap dealer that provides advice regarding a swap to a counterparty that is a governmental agency, pension plan, 501(c)(3) endowment or retirement plan (each, a “Special Entity”) has a fiduciary duty to the governmental agency, pension plan, endowment or retirement plan. A swap dealer must exercise reasonable efforts to obtain such information about the Special Entity as is necessary to make a reasonable determination that any swap recommended by the swap dealer is in the best interest of the Special Entity.
6. **Recordkeeping and Reporting Requirements.** Title VII requires the CFTC and SEC to adopt rules requiring swap dealers, major swap participants, security-based swap dealers and major security-based swap participants to comply with various reporting and recordkeeping requirements. These entities must also comply with rules prescribed by the agencies relating to the timely and accurate confirmation, processing, netting, documentation and valuation of all swaps.

### III. Segregation of Customer Funds; Bankruptcy Protections

1. **Cleared Swaps.** Any person that accepts customer funds in connection with cleared swaps or cleared security-based swaps must be registered with the CFTC as a futures commission merchant (FCM) or with the SEC as a broker-dealer or security-based swap dealer, as appropriate, and must hold funds in a segregated account comparable to the customer segregated account for customer futures and options on futures transactions executed on a designated contract market. The CFTC may adopt rules authorizing funds held in connection with cleared swaps to be held in the same account as funds relating to customer futures and options on futures transactions.<sup>8</sup>

Title VII further provides that cleared swaps will be deemed to be “commodity contracts” under the Bankruptcy Code and amends the definition of this term in the Bankruptcy Code to include transactions that are cleared by a derivatives clearing organization. The purpose of these latter amendments is to ensure that customers trading cleared swaps receive a priority in the event of an FCM default that is comparable to the priority provided to customers trading futures executed on a designated contract market. It similarly provides that security-based swaps will be deemed securities under the Bankruptcy Code, and that an account, other than a portfolio margining account, holding such swaps will be deemed a “securities account,” and extends the customer property protections to any collateral or margin provided that is subject to the segregation requirement.

2. **Uncleared Swaps.** A swap dealer, major swap participant, security-based swap dealer or major security-based swap participant must notify its counterparty at the beginning of a transaction that the counterparty has the right to require segregation of the funds or other property supplied to margin, guarantee or secure the obligations of the counterparty.

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<sup>7</sup> Title VII further provides that the business conduct requirements must: (i) establish a duty to verify that any counterparty meets the eligibility standards for an eligible contract participant; (ii) require disclosure to any counterparty (other than another swap registrant) of (a) the material risks and characteristics of the swap; (b) any material incentives or conflicts of interest; (c) for cleared swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization or securities clearing agency; and (d) for uncleared swaps, receipt of the daily mark of the transaction from the swap dealer or the major swap participant; (iii) establish a duty to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and (iv) establish such other standards and requirements as are appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of Title VII.

<sup>8</sup> The CFTC and SEC are also authorized to adopt rules regarding permitted investments of such funds.

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If the counterparty requests, the dealer or participant must segregate such funds or other property for the benefit of the counterparty and maintain the funds or other property in a segregated account separate from its own property. The segregated account must be carried by an independent third-party custodian and must be designated as a segregated account being held for and on behalf of the counterparty.

If the counterparty does not choose to require segregation, a dealer or participant must notify the counterparty on a quarterly basis that its back-office procedures relating to margin and collateral satisfy the requirements set forth in any agreement between the parties.<sup>9</sup>

#### IV. Mandatory Clearing and Execution

1. **Mandatory Clearing.** All swaps and security-based swaps that are required to be cleared must be submitted for clearing to the appropriate derivatives clearing organization or securities clearing agency. As an initial matter, the CFTC will determine which swaps are required to be cleared, and the SEC will determine which security-based swaps are required to be cleared. The agencies, on an ongoing basis, are required to review each swap (and security-based swap), or any group, category, type or class of swaps to make a determination as to whether the swap or group, category, type or class of swaps (or security-based swaps) should be required to be cleared.<sup>10</sup> The CFTC and SEC must provide at least a 30-day public comment period prior to determining that any swap or group, category, type or class of swaps should be required to be cleared.

A derivatives clearing organization or securities clearing agency must submit for prior approval to the CFTC or the SEC, as appropriate, each swap (or security-based swap), or any group, category, type or class of swaps (or security-based swaps) that it plans to accept for clearing and provide notice to its members of such submission. The CFTC and SEC must provide at least a 30-day public comment period prior to determining that any such swap (or security-based swap), or group, category, type or class of swaps (or security-based swaps) should be required to be cleared.

The CFTC and SEC must adopt rules establishing the procedures by which a derivatives clearing organization or securities clearing agency must submit for approval the swap (or security-based swap), or any group, category, type or class of swaps (or security-based swaps) that it intends to clear. Further, the CFTC and SEC must adopt rules for reviewing a derivatives clearing organization's or securities clearing agency's clearing of any such transactions.

Subject to any rule or regulation prescribed by the CFTC, a derivatives clearing organization, and subject to any rule or regulation prescribed by the SEC, a securities clearing agency for security-based swaps, will have reasonable discretion in establishing the manner by which the derivatives clearing organization or securities clearing agency complies with each applicable core principle. Membership and participation requirements must be objective, publicly disclosed and permit fair and open access.

2. **Exemption from Mandatory Clearing.** A swap or security-based swap is not required to be submitted for clearing if one of the counterparties (i) is not a financial entity; (ii) is using swaps or security-based swaps to hedge or mitigate commercial risk; and (iii) notifies the CFTC or SEC, as appropriate, how it generally meets its financial obligations associated with entering into non-cleared swaps. A "financial entity" includes swap dealers, security-based swap dealers, major swap participants, major security-based swap participants, commodity pools, private funds, employee benefit plans and banking or financial institutions.

The CFTC and SEC may adopt rules to prevent abuse of this exemption. Use of this exemption is solely at the discretion of the counterparty.

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<sup>9</sup> The requirement to segregate initial margin does not apply to variation margin payments or preclude any commercial arrangement regarding the investment of segregated funds or other property in accordance with CFTC or SEC rules.

<sup>10</sup> If the CFTC or SEC determines that a swap or security-based swap is required to be cleared but no derivatives clearing organization or securities clearing agency offers to clear such instrument, the CFTC or SEC, as appropriate, must investigate, publicly report and take such action as may be necessary and in the public interest.

3. **Mandatory Execution.** All swaps and security-based swaps that are required to be cleared must be executed, as appropriate, on a designated contract market or swap execution facility, or a national securities exchange or security-based swap execution facility.<sup>11</sup>

A “swap execution facility” is defined to mean a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that (i) facilitates the execution of swaps between persons, and (ii) is not a designated contract market.<sup>12</sup> Swap execution facilities must be registered with the CFTC or SEC, as appropriate, and comply with certain core principles set out in Title VII, relating, among other things, to enforcement, position limits, emergency powers, recordkeeping and reporting, and conflicts of interest. The CFTC and SEC are authorized to adopt rules prescribing the manner in which swap execution facilities must comply with the core principles.

4. **Conflicts of Interest.** Within 180 days of enactment of Title VII, the CFTC and SEC are required to adopt rules, which may include numerical limits on the control of, or the voting rights with respect to, any derivatives clearing organization or securities clearing agency that clears swaps or security-based swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading, by a bank holding company with total consolidated assets of \$50,000,000,000 or more; a nonbank financial company supervised by the Federal Reserve Board; an affiliate of such a bank holding company or nonbank financial company; or a swap dealer, major swap participant, security-based swap dealer, major security-based swap participant or associated person thereof.<sup>13</sup>

## V. Swap and Security-Based Swap Data Repositories

Title VII requires all swaps and security-based swaps (both cleared and uncleared) to be reported to a registered swap data repository or the appropriate agency. A swap data repository must be registered with the CFTC or SEC, as appropriate, and must comply with the rules these agencies adopt governing their conduct. A swap data repository is required to accept, maintain and make available swap data as prescribed by the appropriate agency, and is subject to inspection and examination.

The CFTC and SEC must issue interim final rules, within 90 days after the enactment of the Act, requiring swaps and security-based swaps to be reported to a registered swap data repository or the appropriate agency. Each swap or security-based swap that is entered into before the date of enactment of Title VII must be reported to a registered swap data repository or the appropriate agency within 30 days after adoption of such rules or at such later time as the agencies determine. If one of the parties to these transactions is a swap dealer or security-based swap dealer, then the dealer is responsible for reporting the transaction; otherwise, the parties must select the person that will be responsible for reporting.

The Act also requires the agencies to issue rules requiring the real-time public reporting of swaps. For swaps that are not cleared but which are reported to a swap data repository or an agency, the repository or agency must make available aggregate data on such swap trading volumes and positions in a manner that does not disclose the business transactions and market positions of any person.

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<sup>11</sup> This requirement does not apply if no exchange or swap execution facility has made the swap available for trading.

<sup>12</sup> The CFTC and SEC may promulgate rules defining the universe of swaps that can be executed on a swap execution facility.

<sup>13</sup> The CFTC and SEC, as appropriate, must adopt rules if they determine that such rules are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote competition or mitigate conflicts of interest in connection with a swap dealer or major swap participant's conduct of business with, a DCO, contract market or swap execution facility that clears or posts swaps or makes swaps available for trading and in which such swap dealer or major swap participant has a material debt or equity investment.

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## VI. Restrictions on Bank Proprietary Trading

Title VII prohibits federal assistance to any swaps entity with respect to any swap, security-based swap or other activity of the swaps entity. A “swaps entity” is defined to include any swap dealer, security-based swap dealer, major swap participant or major security-based swap participant that is registered as such with the CFTC or SEC.<sup>14</sup> Federal assistance includes advances from any Federal Reserve credit facility or discount window that is not part of a program with broad-based eligibility under the Federal Reserve Act and Federal Deposit Insurance Corporation insurance or guarantees.

The practical effect of this provision is to force banks to spin off, or “push out,” their swaps dealing activities to their affiliates. Title VII permits these activities to be conducted by such affiliates so long as the affiliate is part of a bank or savings and loan holding company that is supervised by the Federal Reserve Board and such affiliates conduct such activity in accordance with Sections 23A and 23B of the Federal Reserve Act<sup>15</sup> and any other requirements prescribed by the Board, the CFTC or the SEC.

The push-out requirements noted above are subject to exceptions for: (i) hedging and risk mitigation activities that relate to the bank’s business; (ii) acting as swap dealer for rates and assets that are permitted investments under the federal banking laws;<sup>16</sup> and (iii) acting as a swap dealer for certain cleared credit default swaps.

The push-out requirements come into effect two years after the effective date of Title VII and are subject to a transition period that may last for up to 24 months thereafter.

## VII. Position Limits

The CFTC is required to establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based on the same underlying commodity (as defined by the CFTC) that may be held by any person, including any group or class of traders, for each contract month across: (i) contracts listed by designated contract markets; (ii) with respect to an agreement, contract or transaction that settles against, or in relation to, any price (including the daily or final settlement price) of one or more contracts listed for trading on a registered entity, contracts traded on a foreign board of trade that provides members or other participants located in the United State with direct access to the electronic trading and order matching system of the foreign board of trade; and (iii) swaps that perform or affect a significant price discovery function with respect to a regulated entity.

A foreign board of trade that lists for trading an agreement, contract or transaction that settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on a registered entity may not provide participants located in the United States direct access to the board of trade’s electronic trading and order-matching system, unless the CFTC determines, among other things, that the foreign board of trade, or the foreign futures authority that oversees the foreign board of trade, adopts position limits (including related hedge exemption provisions) for

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<sup>14</sup> However, the term “swaps entity” does not include a major swap participant or major security-based swap participant that is a bank. This term also does not include a bank that is in conservatorship or receivership, or a bridge bank operated by the FDIC.

<sup>15</sup> In general, Section 23A prohibits a bank from initiating a “covered transaction” with an affiliate if, after the transaction, (i) the aggregate amount of the bank’s covered transactions with that particular affiliate would exceed 10 percent of the bank’s capital stock and surplus, or (ii) the aggregate amount of the bank’s covered transactions with all affiliates would exceed 20 percent of the bank’s capital stock and surplus. Covered transactions include loans and other extensions of credit to an affiliate, investments in the securities of an affiliate, purchases of assets from an affiliate, and certain other transactions that expose the bank to the risks of its affiliates. Section 23B generally requires that certain transactions, including all covered transactions, be on market terms and conditions (Market Terms Requirement). In addition to covered transactions, the Market Terms Requirement applies to: (i) any sale of assets by the bank to an affiliate; (ii) any payment of money or furnishing of services by the bank to an affiliate; (iii) any transaction in which an affiliate acts as agent or broker for the bank or any other person if the bank is a participant in the transaction; and (iv) any transaction by the bank with a third party if an affiliate has a financial interest in the third party or an affiliate is a participant in the transaction.

<sup>16</sup> These assets include U.S. government and government agency securities (including asset-backed securities insured by a government agency), general obligation bonds issued by states or their political subdivisions, and corporate bonds.

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the agreement, contract or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the one or more contracts against which the agreement, contract or transaction traded on the foreign board of trade settles.

## VIII. Portfolio Margining

Title VII amends the Commodity Exchange Act and the Securities Exchange Act of 1934 to facilitate the use of portfolio margining. In general, Title VII instructs the CFTC and SEC to issue rules or exemptive orders as necessary to permit customers that hold portfolio margin positions at a joint FCM/broker-dealer to choose whether such positions will be carried in a futures account or a securities account. Thus, portfolio margin customers may have the same ability to choose the customer protection regime that applies to their portfolio margin accounts that is currently available to customers that engage in single stock futures transactions.

Title VII also directs the CFTC to ensure that portfolio margin positions held in a futures account are subject to the same customer protection regime that applies to futures contracts. Similarly, a person that holds portfolio margin positions in a securities account at a joint FCM/BD should receive the benefits of the protections that are available to customers under the Securities Investor Protection Act.

## Conclusion

This Advisory only highlights several of the many issues that the federal financial regulators, the financial services industry and all financial market participants will have to tackle in the year ahead to implement Title VII. The challenges that will confront all affected parties in the effort to achieve a rational and coherent regulatory regime for the OTC derivatives markets are substantial.

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