



**Monday, October 1, 2012**

**11:00 AM - 12:30 PM**

**1201 – Mamma Mia – There They Go Again:  
Dealing with Stricter Energy Regulators**

**Michael Auger**

*General Counsel*

U.S. Energy Services, Inc.

**Catherine Krupka**

*Partner*

Sutherland Asbill & Brennan LLP

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*Assistant General Counsel*

Northeast Utilities

**Joseph Limone**

*General Counsel -- North America*

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**Sarah Novosel**

*Senior Vice President and Managing Counsel*

Calpine Corporation

## Faculty Biographies

### **Michael Auger**

Michael J. Auger is the general counsel and corporate secretary of U.S. Energy Services, Inc. In this position he manages all legal issues for the company, including regulatory compliance, contracts, intellectual property, employment, M&A, and will provide guidance to the U.S. Energy executive team and board of directors.

Prior to joining U.S. Energy Services, Mr. Auger was in private practice where he represented corporations in all facets of law including employment, commercial litigation, contract and financial services and served as general counsel to DWS, Inc.

Mr. Auger is active in his local ACC Chapter and serves on the Career Management Committee. Mr. Auger also volunteers his time to pro bono efforts with the Volunteer Lawyers Network.

Mr. Auger received his JD from Rutgers School of Law-Camden and earned his BS from the University of South Dakota.

### **Catherine Krupka**

Catherine Krupka is a member of Sutherland's energy and environmental practice group and is chair of the power regulatory team. She advises commodities trading companies, including financial services companies, energy marketers and asset owners, on compliance and enforcement, agency regulation, and business transaction issues arising from trading physical and financial power, natural gas, emissions, crude and refined products.

Ms. Krupka represents market participants in audits and investigations before the Federal Energy Regulatory Commission (FERC), Commodity Futures Trading Commission (CFTC), North American Electric Reliability Corporation (NERC) and other agencies including conducting internal investigations, responding to agency inquiries, and negotiating the resolution of audit and investigatory matters related to power, natural gas, crude oil and liquids. She has worked extensively on agency implementation of the Dodd-Frank Act, including on CFTC rulemakings, and routinely advises companies on the application of the Dodd-Frank Act and impending regulations to their business. She also assesses internal practices and implements compliance programs to ensure conformity with state, FERC, CFTC, EPA, DOE, NERC and FTC policies and regulations, including those related to market manipulation, position limits and reporting, transaction and price reporting, greenhouse gas and other emissions reporting, document retention, interlocking officer and director positions, regional reliability standards, DOE efficiency standards, and the Public Utility Holding Company Act. Her compliance

practice includes developing compliance manuals, business practices, training programs and internal review protocols.

Ms. Krupka graduated from the Boston University School of Law and has an MBA and BS from the University of San Francisco.

### **Phyllis Lemell**

Phyllis E. Lemell is an assistant general counsel for Northeast Utilities, a Fortune 500 energy company with more than 3.5 million electric and gas customers in Connecticut, MA, and New Hampshire. For the past 11 years, Ms. Lemell's responsibilities include managing and coordinating legal support for all of NU's electric, gas and hydro-electric, and compliance-related regulatory matters at the Federal Energy Regulatory Commission. Previously, her responsibilities at NU included a wide variety of regulatory and transactional utility matters, including divestitures and wholesale power contracts.

Prior to joining NU, Ms. Lemell was an assistant attorney general representing the Connecticut Department of Public Utility Control and the Connecticut Siting Council.

Ms. Lemell is a member of the Connecticut and the Energy Bar Associations. She received a BA from Syracuse University and a JD from Syracuse College of Law.

### **Joseph Limone**

Joseph Limone has ten plus years' senior management experience and overall seventeen years' in commodity markets. His unique background encompasses both legal and business expertise in commodities having managed legal, front office, origination, credit, and operational groups.

### **Sarah Novosel**

*Senior Vice President and Managing Counsel*

Calpine Corporation



**Sutherland Asbill & Brennan LLP**

**Title VII – Wall Street Transparency and Accountability**

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## Title VII Regulatory Roadmap

Section-by-Section Listing of CFTC and SEC Regulatory Actions to Implement Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act

TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
712	Joint Rulemaking	CEA §1a and 1934 Act § 3(a)	Further definition of the terms “swap,” “security-based swap,” “swap dealer,” “security-based swap dealer,” “major swap participant,” “major security-based swap participant,” “eligible contract participant” and “security-based swap agreement.”	Mandatory Rulemaking	CFTC and SEC	360 days after enactment of the bill	<p><a href="#">Advanced Notice of Proposed Rulemaking</a> pertaining to all topics issued 8/13/10. Published in the Federal Register on 8/20/10. Comment period closed 9/20/10. See Sutherland's <a href="#">Legal Alert</a>.</p> <p><a href="#">Proposed Rules</a> on product definitions issued 4/27/11. Published in the Federal Register on 5/22/11. Comment period closed 7/22/11. See Sutherland's <a href="#">Legal Alert</a>.</p> <p>Final Rules on product definitions issued 7/10/12. Pending publication in the Federal Register. Effective date will be 60 days after publication in the Federal Register. See Sutherland's <a href="#">Legal Alert</a> and the CFTC's <a href="#">pre-publication release</a>.</p> <p>Treasury Department issued a <a href="#">Notice</a> in the Federal Register 10/28/10 seeking input on whether foreign exchange swaps and forwards should be regulated as swaps. Published in the Federal Register on 10/28/10. Comment period closed 11/29/10. See Sutherland's <a href="#">Legal Alert</a>.</p> <p>Treasury Department issued a <a href="#">Notice of Proposed Determination</a> on 4/29/11 to exempt foreign exchange swaps and forwards from the definition of a “swap”. Published in the Federal Register on 5/5/11. Comment period closed 6/6/11.</p> <p><a href="#">Proposed Rules</a> further defining the terms “swap dealer,” “major swap participant” and “eligible contract participant” issued 12/1/10. Published in the Federal Register on 12/21/10. Comment period closed 2/22/11. <b>Reopened comment period closed 6/3/11.</b> See Sutherland's <a href="#">Legal Alert</a>.</p> <p><a href="#">Final Rules</a> further defining the terms “swap dealer,” “major swap participant” and “eligible contract participant” issued 4/18/12.</p> <p>Published in the Federal Register on 5/23/12. <a href="#">Corrections</a> published in the Federal Register on 7/5/12. Effective 7/23/12, except for certain portions of the ECP definition, which will become effective on 12/31/12. Compliance with CFTC regulation 1.3(m)(8)(iii), which requires that a commodity pool be formed by a registered CPO, will apply with respect to commodity pools formed on or after 12/31/12.</p> <p>Comment period for interim final rule defining swaps that are for hedging physical positions and thus excluded from the swap dealer determination closed on July 23, 2012.</p> <p>See Sutherland's <a href="#">Legal Alert</a>.</p>

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Current as of August 9, 2012

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## TITLE VII – Wall Street Transparency and Accountability (governing derivatives)

Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
712	Joint Rulemaking	Not Specified	Rules and regulations regarding definitions necessary to protect the public.	Mandatory Rulemaking	CFTC and SEC	360 days after enactment of the bill	<p><a href="#">Proposed Rules</a> issued 4/27/11. Published in the Federal Register on 5/22/11. Comment period closed 7/22/11. See Sutherland's <a href="#">Legal Alert</a>.</p> <p>Final Rules on product definitions issued 7/10/12. Pending publication in the Federal Register. Effective date will be 60 days after publication in the Federal Register. See Sutherland's <a href="#">Legal Alert</a> and the CFTC's <a href="#">pre-publication release</a>.</p>
712	Joint Rulemaking	Not Specified	Rules governing the books and records required to be kept by swap data repositories for security-based swap agreements.	Mandatory Rulemaking	CFTC and SEC	360 days after enactment of the bill	<p><a href="#">Proposed Rules</a> issued 4/27/11. Published in the Federal Register on 5/22/11. Comment period closed 7/22/11. See Sutherland's <a href="#">Legal Alert</a>.</p> <p>Final Rules on product definitions issued 7/10/12. Pending publication in the Federal Register. Effective date will be 60 days after publication in the Federal Register. See Sutherland's <a href="#">Legal Alert</a> and the CFTC's <a href="#">pre-publication release</a>.</p>

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Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
712	Joint Rulemaking	Not Specified	Rules regarding the books and records required to be kept for security-based swap agreements.	Mandatory Rulemaking	CFTC and SEC	360 days after enactment of the bill	<p><a href="#">Proposed Rules</a> issued 4/27/11. Published in the Federal Register on 5/22/11. Comment period closed 7/22/11. See Sutherland's <a href="#">Legal Alert</a>.</p> <p>Final Rules on product definitions issued 7/10/12. Pending publication in the Federal Register. Effective date will be 60 days after publication in the Federal Register. See Sutherland's <a href="#">Legal Alert</a> and the CFTC's <a href="#">pre-publication release</a>.</p>
713	Portfolio Margining Conforming Changes	§20	Authority to ensure that securities held in a portfolio margining account carried as a futures account are customer property.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p>Addressed in <a href="#">Proposed Rules</a> pertaining to core principles for derivatives clearing organizations issued 12/1/10. Published in the Federal Register on 12/13/10. Comment period closed 2/11/11. <b>Reopened comment period closed 6/3/11.</b> See Sutherland's <a href="#">Legal Alert</a>. <a href="#">Final Rules</a> issued 10/18/11. Published in the Federal Register on 11/8/11. Effective 1/9/12, 5/7/12 and 11/8/12.</p>
714	Abusive Swaps	Not Specified	Rules for the collection of information concerning the markets for swaps and security-based swaps.	Permissive Rulemaking	CFTC and/or SEC	360 days after enactment of the bill	



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Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
714	Abusive Swaps	Not Specified	Rules necessary to issue a report on swaps/security-based swaps that are detrimental to the stability of, or participants in, the financial markets.	Permissive Rulemaking	CFTC and/or SEC	360 days after enactment of the bill	
716	Prohibition Against Federal Government Bailouts of Swaps Entities	Not Specified	Rules governing swap entities subject to the prohibition on government bailouts.	Mandatory Rulemaking	Prudential Regulator	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued on 11/10/10.</p> <p>Published in the Federal Register on 11/23/10.</p> <p>Comment period closed 1/24/11.</p> <p><b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Final rules</a> issued 1/11/12.</p> <p>Published in the Federal Register 1/19/12. <a href="#">Correction</a> published in the Federal Register 1/25/12.</p> <p>Effective 3/19/12; registration not mandatory until swap entity definitions are finalized and become effective. Voluntary registration prior to that time is permissible.</p> <p>See Sutherland's <a href="#">Legal Alert</a>. Also see the CFTC's <a href="#">delegation of authority order</a>, pursuant to which the National Futures Association will perform the registration functions.</p>
719	Studies	N/A	Study on the effects of position limits on trading on exchanges in the United States.	Study	CFTC	12 months after the imposition of position limits	





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Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
719	Studies	N/A	Study on the feasibility of requiring the use of standardized algorithmic descriptions for financial derivatives.	Study	CFTC and SEC	8 months after enactment of the bill	<a href="#">Request for Comments</a> issued on 12/2/10. Published in the Federal Register on 12/9/10. Comment period closed 12/31/10. <a href="#">Findings</a> were released on 4/8/11.
719	Studies	N/A	Study on swap, clearing house, and clearing agency regulation in the United States, Asia, and Europe.	Study	CFTC and SEC	18 months after enactment of the bill	<a href="#">Joint Report</a> issued 1/31/12.
719	Studies	N/A	Study on whether stable value contracts fall within the definition of a swap.	Study	CFTC and SEC	15 months after enactment of the bill	<a href="#">Request for Comments</a> issued on 8/19/11. Published in the Federal Register on 8/25/11. Comment period closed 9/26/11.

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Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
721	Definitions	CEA §1a	Define by rule or regulation the term “substantial position” for purposes of the definition of “major swap participant.”	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Advanced Notice of Proposed Rulemaking</a> issued 8/13/10. Published in the Federal Register on 8/20/10. Comment period closed 9/20/10. <b>Reopened comment period closed 6/3/11.</b> See Sutherland’s <a href="#">Legal Alert</a>.</p> <p><a href="#">Proposed Rules</a> further defining the terms “swap dealer,” “major swap participant” and “eligible contract participant” issued 12/1/10. Published in the Federal Register on 12/21/10. Comment period closed 2/22/11. <b>Reopened comment period closed 6/3/11.</b> See Sutherland’s <a href="#">Legal Alert</a>.</p> <p><a href="#">Final Rules</a> further defining the terms “swap dealer,” “major swap participant” and “eligible contract participant” issued 4/18/12. Published in the Federal Register on 5/23/12. <a href="#">Corrections</a> published in the Federal Register on 7/5/12. Effective 7/23/12, except for certain portions of the ECP definition, which will become effective on 12/31/12. Compliance with CFTC regulation 1.3(m)(8)(iii), which requires that a commodity pool be formed by a registered CPO, will apply with respect to commodity pools formed on or after 12/31/12. Comment period for interim final rule defining swaps that are for hedging physical positions and thus excluded from the swap dealer determination closed on July 23, 2012. See Sutherland’s <a href="#">Legal Alert</a>.</p>

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Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
721	Definitions	CEA § 1a	Rules establishing factors for consideration regarding the de minimis exception from the definition of “swap dealer.”	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Advanced Notice of Proposed Rulemaking</a> issued 8/13/10. Published in the Federal Register on 8/20/10. Comment period closed 9/20/10. See Sutherland’s <a href="#">Legal Alert</a>.</p> <p><a href="#">Proposed Rules</a> further defining the terms “swap dealer,” “major swap participant” and “eligible contract participant” issued 12/1/10. Published in the Federal Register on 12/21/10. Comment period closed 2/22/11. <b>Reopened comment period closed 6/3/11.</b> See Sutherland’s <a href="#">Legal Alert</a>.</p> <p><a href="#">Final Rules</a> further defining the terms “swap dealer,” “major swap participant” and “eligible contract participant” issued 4/18/12. Published in the Federal Register on 5/23/12. <a href="#">Corrections</a> published in the Federal Register on 7/5/12. Effective 7/23/12, except for certain portions of the ECP definition, which will become effective on 12/31/12. Compliance with CFTC regulation 1.3(m)(8)(iii), which requires that a commodity pool be formed by a registered CPO, will apply with respect to commodity pools formed on or after 12/31/12.</p> <p>Comment period for interim final rule defining swaps that are for hedging physical positions and thus excluded from the swap dealer determination closed on July 23, 2012.</p> <p>See Sutherland’s <a href="#">Legal Alert</a>.</p>

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721	Definitions	CEA §1a	A rule to define the term “commercial risk” (which is included in the definition of “major swap participant”) or any other term included in an amendment to the CEA.	Permissive Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Advanced Notice of Proposed Rulemaking</a> issued 8/13/10. Published in the Federal Register on 8/20/10. Comment period closed 9/20/10. See Sutherland’s <a href="#">Legal Alert</a>.</p> <p><a href="#">Proposed Rules</a> further defining the terms “swap dealer,” “major swap participant” and “eligible contract participant” issued 12/1/10. Published in the Federal Register on 12/21/10. Comment period closed 2/22/11. <b>Reopened comment period closed 6/3/11.</b> See Sutherland’s <a href="#">Legal Alert</a>.</p> <p><a href="#">Final Rules</a> further defining the terms “swap dealer,” “major swap participant” and “eligible contract participant” issued 4/18/12. Published in the Federal Register on 5/23/12. <a href="#">Corrections</a> published in the Federal Register on 7/5/12. Effective 7/23/12, except for certain portions of the ECP definition, which will become effective on 12/31/12. Compliance with CFTC regulation 1.3(m)(8)(iii), which requires that a commodity pool be formed by a registered CPO, will apply with respect to commodity pools formed on or after 12/31/12. Comment period for interim final rule defining swaps that are for hedging physical positions and thus excluded from the swap dealer determination closed on July 23, 2012. See Sutherland’s <a href="#">Legal Alert</a>.</p>

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Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
721	Definitions	CEA §1a	A rule to further define the term “swap participant” to include transactions and entities that have been structured to evade the subtitle or an amendment made by the subtitle.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<a href="#">Advanced Notice of Proposed Rulemaking</a> issued 8/13/10. Published in the Federal Register on 8/20/10. Comment period closed 9/20/10. See Sutherland’s <a href="#">Legal Alert</a> .
723	Clearing for Swaps	CEA § 2	Rules for reviewing a derivatives clearing organization’s clearing of a swap that it has accepted for clearing.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<a href="#">Proposed Rule</a> issued 10/26/10. Published in the Federal Register on 11/2/10. Comment period closed 1/3/11. <b>Reopened comment period closed 6/3/11.</b>  <a href="#">Final Rule</a> issued 7/19/11. Published in the Federal Register on 7/26/11. Effective 9/26/11.  <a href="#">Proposed Rule</a> issued 9/8/11 pertaining to compliance with, and implementation of, the Dodd-Frank Act’s mandatory clearing and trading requirements. Published in the Federal Register on 9/20/11. Comment period closed 11/4/11.  <a href="#">Final Rule</a> issued 7/24/12. Published in the Federal Register on 7/30/12. Effective 9/28/12, but the phased compliance schedule will only apply if invoked by the CFTC when making a final mandatory clearing determination with respect to particular types of swaps.  CFTC’s <a href="#">first set of proposed mandatory clearing determinations</a> issued 7/24/12. Published in the Federal Register on 8/7/12. Public comment period closes 9/6/12.

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Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
723	Clearing for Swaps	CEA § 2	Rules necessary to prevent evasions of the mandatory clearing requirements.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	
723	Clearing for Swaps	CEA § 2	Rules for the reporting of non-cleared swaps.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Interim Final Rule</a> pertaining to the reporting of “transition swaps” issued 12/9/10. Published in the Federal Register on 12/17/10. Comment period closed 1/18/11.</p> <p><a href="#">Proposed rule</a> pertaining to the reporting of “transition swaps” issued 4/12/11. Comment period closed 6/9/11.</p> <p><a href="#">Final Rule</a> pertaining to the reporting of “historical” swaps issued 5/18/2012. Published in the Federal Register on 6/12/12. Effective 8/13/12.</p> <p>Compliance date 1: swap dealers and major swap participants must comply with respect to credit and interest rate swaps on the later of 7/16/12 or 60 calendar days after publication in the Federal Register of final rules to further define the term “swap”;</p> <p>Compliance date 2: swap dealers and major swap participants must comply with respect to equity, foreign exchange and other commodity swaps 90 days after compliance date 1;</p> <p>Compliance date 3: non-swap dealers and non-major swap participants must comply with respect to all swaps 90 days after compliance date 2.</p>

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723	Clearing for Swaps	CEA § 2	Rules to further define the end-user clearing exception.	Permissive Rulemaking	CFTC	360 days after enactment of the bill.	<p><a href="#">Proposed Rule</a> issued on 12/9/10. Published in the Federal Register on 12/23/10. Comment period closed 2/22/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Final Rule</a> issued 7/10/12. Published in the Federal Register on 7/17/12. Effective 8/16/12, but compliance will not be required until swaps become subject to the clearing requirement. See Sutherland's <a href="#">Legal Alert</a>.</p> <p><a href="#">Proposed Rule</a> to extend the end-user exception to certain cooperatives issued 7/10/12. Published in the Federal Register on 7/17/12. Public comment period will close on 8/16/12. See Sutherland's <a href="#">Legal Alert</a>.</p>
723	Clearing for Swaps	CEA § 2	Rules necessary to prevent abuse of the end-user clearing exception.	Permissive Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued on 12/9/10. Published in the Federal Register on 12/23/10. Comment period closed 2/22/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Final Rule</a> issued 7/10/12. Published in the Federal Register on 7/17/12. Effective 8/16/12, but compliance will not be required until swaps become subject to the clearing requirement. See Sutherland's <a href="#">Legal Alert</a>.</p> <p><a href="#">Proposed Rule</a> to extend the end-user exception to certain cooperatives issued 7/10/12. Published in the Federal Register on 7/17/12. Public comment period will close on 8/16/12. See Sutherland's <a href="#">Legal Alert</a>.</p>

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723	Clearing for Swaps	CEA § 2	Terms and conditions under which swaps may be entered into for agricultural commodities.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Advanced Notice of Proposed Rulemaking</a> issued 9/21/10. Published in the Federal Register on 9/28/10. Comment period closed 10/28/10.</p> <p><a href="#">Proposed Rule defining “agricultural commodity”</a> issued 10/26/10. Published in the Federal Register on 10/26/10. Comment period closed 11/26/10. <b>Reopened comment period closed 6/3/11.</b></p> <p>See Sutherland’s <a href="#">Legal Alert</a>.</p> <p><a href="#">Proposed Rule</a> regarding the treatment of agricultural swaps and options issued 1/20/11. Published in the Federal Register on 2/3/11. Comment period closed 4/4/11. <b>Reopened comment period closed 6/3/11.</b></p> <p>See Sutherland’s <a href="#">Legal Alert</a>.</p> <p><a href="#">Final Rules</a> defining “agricultural commodity” issued 7/7/11. Published in the Federal Register on 7/13/11; effective 9/12/11.</p> <p><a href="#">Final Rules</a> subjecting agricultural swaps to the same regulatory regime as non-agricultural swaps issued 8/4/11. Effective 12/31/11.</p> <p><a href="#">Final Rule</a> pertaining to commodity options issued 4/18/12. Published in the Federal Register on 4/27/12; effective 6/26/12 but compliance not required until 60 days after the term “swap” is further defined by the CFTC and SEC.</p> <p>Comment period in response to interim final rule establishing a trade option exemption closed on 6/26/12.</p> <p>See Sutherland’s <a href="#">Legal Alert</a>.</p>



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723	Clearing for Swaps	CEA § 2	Rules for reporting and recordkeeping of swaps excepted from the mandatory exchange trading requirement.	Permissive Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued on 12/9/10. Published in the Federal Register on 12/23/10. Comment period closed 2/22/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Final Rule</a> issued 7/10/12. Published in the Federal Register on 7/17/12. Effective 8/16/12, but compliance will not be required until swaps become subject to the clearing requirement. See Sutherland's <a href="#">Legal Alert</a>.</p> <p><a href="#">Proposed Rule</a> to extend the end-user exception to certain cooperatives issued 7/10/12. Published in the Federal Register on 7/17/12. Public comment period will close on 8/16/12. See Sutherland's <a href="#">Legal Alert</a>.</p>
723	Clearing for Swaps	CEA § 2	Swaps subject to the clearing requirement shall be executed on a designated contract market or swap execution facility.	Permissive Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 12/5/11. Published in the Federal Register on 12/14/11. Comment period closed 2/13/12.</p>
724	Segregation of Swaps	CEA §4s	Rules requiring swap dealers and major swap participants, at a counterparty's request, to segregate initial margin provided by a counterparty as security for an uncleared swap transaction.	Permissive Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 11/19/10. Published in the Federal Register on 12/3/10. Comment period closed 2/1/11. <b>Reopened comment period closed 6/3/11.</b></p>

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Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
724	Segregation of Swaps	CEA §4d	Rules and regulations pertaining to the segregation of customer collateral provided to futures commission merchants in connection with cleared swap transactions.	Permissive Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Advanced Notice of Proposed Rulemaking</a> issued 11/19/10. Published in the Federal Register on 12/2/10. Comment period closed 1/18/11.</p> <p><a href="#">Proposed Rules</a> issued 4/27/11. Published in the Federal Register on 6/9/11. <a href="#">Correction Notice</a> published in the Federal Register 6/16/11. Comment period closed 8/8/11.</p> <p>See Sutherland's <a href="#">Legal Alert</a>.</p> <p><a href="#">Final Rules</a> issued 1/11/12. Published in the Federal Register on 2/7/12.</p> <p>Effective 4/9/12; Compliance required with Part 22 by 11/8/12; compliance required with the Part 190 by 4/9/12. Prior to 11/8/12, the term “cleared swap”, for purposes of Part 190, limited to transactions where the rules or bylaws of a derivatives clearing organization require that such transactions, and any associated margin, be held in a separate account for cleared swaps only.</p> <p>See Sutherland's <a href="#">Legal Alert</a>.</p>
724	Segregation of Swaps	CEA § 4d	Rules and regulations governing the investment by futures commission merchants of money segregated for cleared swap contracts, including the designation of additional permitted investments.	Permissive Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 10/26/10. Published in the Federal Register on 11/3/10. Comment period closed 12/3/10.</p> <p><a href="#">Final Rule</a> issued 12/5/11. Published in the Federal Register on 12/23/11. Effective 2/21/11; compliance required 6/20/12.</p>


**TITLE VII – Wall Street Transparency and Accountability (governing derivatives)**

Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
725	Derivatives Clearing Organizations	CEA § 5b	Reporting, recordkeeping, public information and information requirements for derivatives clearing organizations.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 12/1/10. Published in the Federal Register on 12/15/10. Comment period closed 2/14/11. <b>Reopened comment period closed 6/3/11.</b> See Sutherland's <a href="#">Legal Alert</a>. <a href="#">Final Rules</a> issued 10/18/11. Published in the Federal Register on 11/8/11. Effective 1/9/12, 5/7/12 and 11/8/12.</p>

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## TITLE VII – Wall Street Transparency and Accountability (governing derivatives)

Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
725	Derivatives Clearing Organizations	CEA §5b	Rules establishing core principles and procedures for derivatives clearing organizations.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 12/1/10. Published in the Federal Register on 12/13/10. Comment period closed 2/11/11. <b>Reopened comment period closed 6/3/11.</b> See Sutherland's <a href="#">Legal Alert</a>. <a href="#">Proposed Rule</a> establishing risk management requirements for derivatives clearing organizations issued 12/16/10. Published in the Federal Register on 1/20/11. Comment period closed 3/21/11. <b>Reopened comment period closed 6/3/11.</b> <a href="#">Correction notice</a> issued 3/24/11; comment period <a href="#">extended</a> to 4/25/11. <a href="#">Final Rules</a> issued 10/18/11. Published in the Federal Register on 11/8/11. Effective 1/9/12, 5/7/12 and 11/8/12.</p> <p><a href="#">Proposed Rule</a> regarding requirements for processing, clearing and transfer of customer positions issued 2/24/11. Published in the Federal Register on 3/10/11. Comment period closed 4/11/11. <b>Reopened comment period closed 6/3/11.</b> <a href="#">Final Rule</a> regarding requirements for processing, clearing and transfer of customer positions issued 3/20/12. Published in the Federal Register on 4/9/12. <a href="#">Corrections</a> published in the Federal Register on 6/25/12. Effective 10/1/12. For FCMs, DCMs and DCOs, compliance is required on 10/1/12; For SDs and MSPs, compliance is required on the later of 10/1/12 and the date the registration rules become effective; for SEFs, compliance is required on the later of 10/1/12 and the date that rules implementing the core principles for SEFs become effective.</p>

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TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
725	Derivatives Clearing Organizations	CEA § 5b(c)	Rules or regulations governing the registration of derivatives clearing organizations.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 12/16/10. Published in the Federal Register on 1/20/11. Comment period closed 3/21/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Correction notice</a> issued 3/24/11; comment period <a href="#">extended</a> to 4/25/11.</p> <p><a href="#">Final Rules</a> issued 10/18/11. Published in the Federal Register on 11/8/11. Effective 1/9/12, 5/7/12 and 11/8/12.</p>
725	Derivatives Clearing Organizations	Not Specified	Rules mitigating conflicts of interest between swap dealers and major swap participants, and derivatives clearing organizations, boards of trade, or swap executions facilities in which they have a material debt or material equity investment.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 10/1/10. Published in the Federal Register on 10/14/10. Comment period closed 12/13/10. <b>Reopened comment period closed 6/3/11.</b></p> <p>Additional <a href="#">Proposed Rules</a> pertaining to governance requirements and conflict of interest core principles issued 12/9/10. Published in the Federal Register on 1/6/11. Comment period closed 3/7/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Final Rules</a> issued 10/18/11. Published in the Federal Register on 11/8/11. Effective 1/9/12, 5/7/12 and 11/8/12.</p>



TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
726	Conflicts of Interest for Derivatives Clearing Organizations	Not Specified	Rules governing ownership and control of derivatives clearing organizations, boards of trade, and swap executions facilities aimed at mitigating conflicts of interest.	Mandatory Rulemaking	CFTC	180 days after enactment of the bill	<a href="#">Proposed Rule</a> issued 10/1/10. Published in the Federal Register on 10/18/10. Comment period closed 11/17/10. <b>Reopened comment period closed 6/3/11.</b>
727	Public Reporting of Swap Transaction Data	CEA § 2(a)	Rules governing the real time public reporting of swap transaction and pricing data.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<a href="#">Proposed Rule</a> issued 11/19/10. Published in the Federal Register on 12/7/10. Comment period closed 2/7/11. <b>Reopened comment period closed 6/3/11.</b>  <a href="#">Final Rule</a> issued 12/20/11. Published in the Federal Register 1/9/12. <a href="#">Correction</a> published in the Federal Register 1/20/12. Effective 3/9/12; compliance phased in by asset class and counterparty type – please see page 1,228 of the adopting release. <a href="#">Proposed Rule</a> to establish appropriate minimum block sizes issued 2/23/12. Published in the Federal Register on 3/15/12. Comment period closed 5/14/12.  <a href="#">Proposed Rules</a> prohibiting the aggregation of orders to satisfy minimum block sizes or cap size requirements, and establishing eligibility requirements for parties to block trades issued on 6/20/12. Published in the Federal Register on 6/27/12. Comment period closed 7/27/12.



TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
727	Public Reporting of Swap Transaction Data	CEA § 2(a)	Rules, regulations, or orders delegating the CFTC's public reporting responsibilities.	Permissive Rulemaking	CFTC	360 days after enactment of the bill	
728	Swap Data Repositories	CEA § 20	Standards for data elements, data collection, and data standards for swap data repositories.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 11/19/10. Published in the Federal Register on 12/23/10. Comment period closed 2/22/11. <b>Reopened comment period closed 6/3/11.</b> <a href="#">Final Rules</a> issued 8/4/11. Published in the Federal Register on 9/1/11. Effective 10/31/11 but registration is not mandatory until the swap definition final rule becomes effective.</p>
728	Swap Data Repositories	CEA § 20	Rules governing annual reports that must be prepared by the chief compliance officer of a swap data repository.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 11/19/10. Published in the Federal Register on 12/23/10. Comment period closed 2/22/11. <b>Reopened comment period closed 6/3/11.</b> <a href="#">Final Rules</a> issued 8/4/11. Published in the Federal Register on 9/1/11. Effective 10/31/11 but registration is not mandatory until the swap definition final rule becomes effective.</p>

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## TITLE VII – Wall Street Transparency and Accountability (governing derivatives)

Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
728	Swap Data Repositories	CEA § 20	Rules governing swap data repositories and providing for additional duties to be placed on these entities.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 11/19/10. Published in the Federal Register on 12/23/10. Comment period closed 2/22/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Final Rules</a> issued 8/4/11. Published in the Federal Register on 9/1/11. Effective 10/31/11 but registration is not mandatory until the swap definition final rule becomes effective.</p>
729	Swap Data and Recordkeeping and Reporting Requirements	CEA §4r	Swap data reporting obligations for registered entities and swap counterparties.	Permissive Rulemaking.	CFTC	360 days after enactment of the bill.	<p><a href="#">Proposed Rule</a> issued 11/19/10. Published in the Federal Register on 12/8/10. Comment period closed 2/7/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Final Rule</a> issued 12/20/11. Published in the Federal Register on 1/13/12. Effective 3/13/12; compliance will be phased in by asset class and counterparty type – please see page 2,136 of the adopting release.</p>



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## TITLE VII – Wall Street Transparency and Accountability (governing derivatives)

Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
729	Reporting and Recordkeeping for Uncleared Swaps	CEA § 4r	Rules governing the time period for reporting to the CFTC swaps not accepted by swap data repositories.	Permissive Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 11/19/10. Published in the Federal Register on 12/8/10. Comment period closed 2/7/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Final Rule</a> issued 12/20/11. Published in the Federal Register on 1/13/12. Effective 3/13/12; compliance will be phased in by asset class and counterparty type – please see page 2,136 of the adopting release.</p>



TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
729	Reporting and Recordkeeping for Uncleared Swaps	CEA § 4r	An interim final rule providing for the reporting of each swap entered into before the date of enactment of the bill.	Mandatory Rulemaking	CFTC	90 days after enactment of the bill	<p><a href="#">Interim Final Rule</a> issued 10/1/10. Published in the Federal Register on 10/14/10. Comment period closed 11/15/10. See Sutherland's <a href="#">Legal Alert</a>. <a href="#">Proposed Rule</a> issued 4/12/11. Comment period closed 6/9/11.</p> <p><a href="#">Final Rule</a> pertaining to the reporting of “historical” swaps issued 5/18/2012. Published in the Federal Register on 6/12/12. Effective 8/13/12.</p> <p>Compliance date 1: swap dealers and major swap participants must comply with respect to credit and interest rate swaps on the later of 7/16/12 or 60 calendar days after publication in the Federal Register of final rules to further define the term “swap”;</p> <p>Compliance date 2: swap dealers and major swap participants must comply with respect to equity, foreign exchange and other commodity swaps 90 days after compliance date 1;</p> <p>Compliance date 3: non-swap dealers and non-major swap participants must comply with respect to all swaps 90 days after compliance date 2.</p>
730	Large Swap Trader Reporting	CEA § 4t	Rules providing an exception to the limits placed on swaps performing a significant price discovery function.	Permissive Rulemaking	CFTC	360 days after enactment of the bill	

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## TITLE VII – Wall Street Transparency and Accountability (governing derivatives)

Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
731	Registration and Regulation of Swap Dealers and Major Swap Participants	CEA § 4s	Rules providing for the registration of swap dealers and major swap participants.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued on 11/10/10. Published in the Federal Register on 11/23/10. Comment period closed 1/24/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Final rules</a> issued 1/11/12. Published in the Federal Register 1/19/12. <a href="#">Correction</a> published in the Federal Register 1/25/12.</p> <p>Effective 3/19/12; registration not mandatory until swap entity definitions are finalized and become effective. Voluntary registration prior to that time is permissible.</p> <p>See Sutherland's <a href="#">Legal Alert</a>. Also see the CFTC's <a href="#">delegation of authority order</a>, pursuant to which the National Futures Association will perform the registration functions.</p>

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TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
731	Regulation of Swap Dealers	CEA § 4s	Rules governing swap dealers and major swap participants, including rules that limit their activities.	Permissive Rulemaking	CFTC	360 days after enactment of the bill	<p>On 10/19/10 the CFTC issued a <a href="#">Proposed Rule</a> subjecting swap dealers and major swap participants to Part 160 of the CFTC's regulations pertaining to the privacy of consumer financial information. Published in the Federal Register on 12/27/10. Comment period closed 12/27/10. <b>Reopened comment period closed 6/3/11.</b></p> <p>On 10/19/10 the CFTC issued a <a href="#">Proposed Rule</a> requiring: (1) CFTC registrants to provide consumers with the opportunity to prohibit affiliates from using information about them for marketing solicitations; and (2) to require CFTC registrants that possess or maintain consumer report information in connection with their business activities to develop and implement a written program for the disposal of such information. Published in the Federal Register on 10/27/10. Comment period closed 12/27/10.</p> <p><a href="#">Proposed Rules</a> establishing external business conduct standards issued 12/9/10.</p> <p>Published in the Federal Register on 12/22/10. Comment period closed 2/22/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Final Rules</a> issued 1/11/12.</p> <p>Published in the Federal Register on 2/17/12.</p> <p>Effective 4/17/12; Compliance required on the later of 180 days after the effective date of the rules or the date on which swap dealers or major swap participants are required to apply for registration with the CFTC.</p> <p>See Sutherland's <a href="#">Legal Alert</a>.</p> <p><a href="#">Proposed Rule</a> to clarify that each swap dealer, major swap participant, and other CFTC registrant with whom an associated person is associated is required to supervise the associated person and is jointly and severally responsible for the activities of the associated person issued and published in the Federal Register on 6/15/12. Comment period closes 8/14/12.</p>



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Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
731	Capital and Margin Requirements for Swap Dealers and Major Swap Participants	CEA § 4s	Rules imposing capital and margin for swap dealers and major swap participants that are banks.	Mandatory Rulemaking	Prudential Regulator, in consultation with CFTC and SEC	360 days after enactment of the bill	<a href="#">Proposed Rules</a> issued by the Prudential Regulators on 4/12/11. Published in the Federal Register 5/11/11. Comment period closed 6/24/11; -- extended through 7/11/11. See Sutherland's <a href="#">Legal Alert</a> .
731	Capital and Margin Requirements for Swap Dealers and Major Swap Participants	CEA § 4s	Rules imposing capital and margin for swap dealers and major swap participants that are <u>not</u> banks.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	Margin requirements <a href="#">Proposed Rules</a> issued on 4/12/11. Published in the Federal Register 4/28/11. Comment period closed 7/11/11. Comment period reopened until 9/14/12. See Sutherland's <a href="#">Legal Alert</a> .  Capital requirements <a href="#">Proposed Rules</a> issued 4/27/11. Published in the Federal Register 5/12/11. Comment period closed 7/11/11. See Sutherland's <a href="#">Legal Alert</a> .

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Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
731	Reporting and Recordkeeping for Swap Dealers and Major Swap Participants	CEA § 4s	Rules governing reporting and recordkeeping for swap dealers and major swap participants.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 12/1/10.</p> <p>Published in the Federal Register on 12/9/10.</p> <p>Comment period closed 2/7/11. <b>Reopened comment period closed 6/3/11.</b></p> <p>See Sutherland's <a href="#">Legal Alert</a>.</p> <p><a href="#">Final Rules</a> issued 2/23/12.</p> <p>Published in the Federal Register on 4/3/12.</p> <p>Effective 6/4/12. SDs and MSPs that are regulated by a Prudential Regulator or are SEC registrants must comply by the later of 7/2/12 or the date they are required to apply for registration; SDs and MSPs that do not fall in either category must comply by the later of 9/30/12 or the date they are required to apply for registration.</p>
731	Daily Trading Records for Swap Dealers and Major Swap Participants	CEA § 4s	Rules governing daily trading records for swap dealers and major swap participants.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 12/1/10.</p> <p>Published in the Federal Register on 12/9/10.</p> <p>Comment period closed 2/7/11. <b>Reopened comment period closed 6/3/11.</b></p> <p>See Sutherland's <a href="#">Legal Alert</a>.</p> <p><a href="#">Final Rules</a> issued 2/23/12.</p> <p>Published in the Federal Register on 4/3/12.</p> <p>Effective 6/4/12. SDs and MSPs that are regulated by a Prudential Regulator or are SEC registrants must comply by the later of 7/2/12 or the date they are required to apply for registration; SDs and MSPs that do not fall in either category must comply by the later of 9/30/12 or the date they are required to apply for registration.</p>

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Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
731	Business Conduct Standards for Swap Dealers and Major Swap Participants	CEA § 4s	Rules governing business conduct standards for swap dealers and major swap participants.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p>On 10/19/10 the CFTC issued a <a href="#">Proposed Rule</a> subjecting swap dealers and major swap participants to Part 160 of the CFTC's regulations pertaining to the privacy of consumer financial information. Published in the Federal Register on 12/27/10. Comment period closed 12/27/10. <b>Reopened comment period closed 6/3/11.</b></p> <p>On 10/19/10 the CFTC issued a <a href="#">Proposed Rule</a> requiring: (1) CFTC registrants to provide consumers with the opportunity to prohibit affiliates from using information about them for marketing solicitations; and (2) to require CFTC registrants that possess or maintain consumer report information in connection with their business activities to develop and implement a written program for the disposal of such information. Published in the Federal Register on 10/27/10. Comment period closed 12/27/10. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Proposed Rules</a> establishing external business conduct standards issued 12/9/10.</p> <p>Published in the Federal Register on 12/22/10. Comment period closed 2/22/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Final Rules</a> issued 1/11/12.</p> <p>Published in the Federal Register on 2/17/12.</p> <p>Effective 4/17/12; Compliance required on the later of 180 days after the effective date of the rules or the date on which swap dealers or major swap participants are required to apply for registration with the CFTC.</p> <p>See Sutherland's <a href="#">Legal Alert</a>.</p>

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TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
731	Documentation Standards for Swap Dealers and Major Swap Participants	CEA § 4s	Rules governing documentation standards for swap dealers and major swap participants.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rules</a> establishing confirmation, portfolio reconciliation and portfolio compression requirements issued 12/16/10. Published in the Federal Register on 12/28/10. Comment period closed 2/28/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Proposed Rules</a> establishing swap trading relationship documentation requirements for swap dealers and major swap participants issued 1/13/11. Published in the Federal Register on 2/8/11, Comment period closed 4/11/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Proposed Rule</a> requiring swap dealers and major swap participants to include an orderly termination provision in their swap trading relationship documentation. Published in the Federal Register on 2/8/11. Comment period closed 4/11/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Proposed Rule</a> issued 9/8/11 pertaining to compliance with, and implementation of, trading documentation and margining requirements. Published in the Federal Register on 9/20/11. Comment period closed 11/4/11.</p>



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Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
731	Duties of Swap Dealers and Major Swap Participants	CEA § 4s	Rules governing swap dealers and major swap participants with respect to (1) monitoring trading, (2) establishing risk management procedures, (3) disclosing information related to swap transactions, (4) establishing internal procedures for obtaining information required by the CFTC, (5) implementing systems to mitigate conflicts of interest, and (6) refraining from taking part in anticompetitive or trade-restraining activities.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> regarding the implementation of conflict-of-interest policies and procedures issued 11/10/10.</p> <p>Published in the Federal Register on 11/23/10; Comment period closed 1/24/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Proposed Rule</a> establishing and governing duties issued 11/10/10.</p> <p>Published in the Federal Register on 11/23/10. Comment period closed 1/24/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Proposed Rules</a> governing the duties and responsibilities of chief compliance officers for swap dealers and major swap participants issued 11/10/10.</p> <p>Published in the Federal Register on 11/19/10. Comment period closed 1/18/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Final Rules</a> with respect to all issued 2/23/12.</p> <p>Published in the Federal Register on 4/3/12. Effective 6/4/12.</p> <p><i>Risk management program:</i> SDs and MSPs that are regulated by a Prudential Regulator or are SEC registrants must comply by the later of 7/2/12 or the date they are required to apply for registration; SDs and MSPs that do not fall in either category must comply on the later of 9/30/12 or the date they are required to apply for registration.</p> <p><i>Business continuity plan:</i> SDs and MSPs that are regulated by a Prudential Regulator or are SEC registrants must comply by the later of 9/30/12 or the date they are required to apply for registration; SDs and MSPs that do not fall in either category must comply on the later of 12/29/12 or the date they are required to apply for registration.</p> <p><i>Diligent supervision, conflicts of interest policies, availability of information and antitrust:</i> SDs and MSPs must comply by the later of 6/4/12 or the date on which they are required to apply for registration.</p>

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Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
731 732	Conflicts of Interest	CEA §§ 4s, 4dd	Rules and regulations governing the duties and responsibilities of chief compliance officers for swap dealers, major swap participants and futures commission merchants.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 11/10/10.</p> <p>Published in the Federal Register on 11/19/10.</p> <p>Comment period closed 1/18/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Final Rules</a> issued 2/23/12.</p> <p>Published in the Federal Register on 4/3/12. Effective 6/4/12.</p> <p>SDs and MSPs that are regulated by a Prudential Regulator or are SEC registrants must hire a CCO by the later of 9/30/12 or the date they are required to apply for registration. SDs and MSPs that do not fall in either category must hire a CCO by the later of 3/19/13 and the date they are required to apply for registration.</p> <p>FCMs that are registered with the CFTC and are regulated by a Prudential Regulator or are SEC registrants must comply by 9/30/12; FCMs that are registered with the CFTC but do not fall within either category must comply by 3/19/13; FCMs that are not registered with the CFTC must comply upon registration with the CFTC.</p>

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Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
732	Conflicts of Interest	CEA §4d	Implementation of conflicts of interest systems and procedures by futures commission merchants and introducing brokers.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 11/10/10. Published in the Federal Register on 11/17/10. Comment period closed 1/18/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Final Rules</a> issued 2/23/12. Published in the Federal Register on 4/3/12.</p> <p>FCMs and IBs that are already registered with the CFTC must comply by 6/4/12, except that FCMs need not comply with respect to the clearing activities requirements until the later of 6/4/12 or the date that SDs and MSPs are required to apply for registration; FCMs and IBs that are not registered with the CFTC as of 6/4/12 need not comply until the later of their registration or the date on which SDs and MSPs are required to apply for registration</p>
733	Swap Execution Facilities	CEA § 5h	Rules defining the universe of swaps that can be executed on a swap execution facility.	Permissive Rulemaking	CFTC and SEC	360 days after enactment of the bill	
733	Swap Execution Facilities	CEA §5h	Core principles for swap execution facilities.	Permissive Rulemaking	CFTC	360 days after enactment of the bill.	<p><a href="#">Proposed Rules</a> issued 12/16/10. Published in the Federal Register on 1/7/11. Comment period closed 3/8/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Proposed Rules</a> pertaining to conflict of interest core principles issued 12/9/10. Published in the Federal Register on 1/6/11. Comment period closed 3/7/11. <b>Reopened comment period closed 6/3/11.</b></p>

Current as of August 9, 2012

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## TITLE VII – Wall Street Transparency and Accountability (governing derivatives)

Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
733	Swap Execution Facilities	CEA § 5h	Rules governing data collection and reporting requirements for swap execution facilities.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<a href="#">Proposed Rules</a> pertaining to conflict of interest core principles issued 12/9/10. Published in the Federal Register on 1/6/11. Comment period closed 3/7/11. <b>Reopened comment period closed 6/3/11.</b>
733	Swap Execution Facilities	CEA § 5h	Rules governing annual reports that must be prepared by the chief compliance officer of a swap execution facility.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	

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TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
735	Designated Contract Markets	CEA §5	Core principles for designated contract markets.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rules</a> issued 12/1/10. Published in the Federal Register on 12/22/10. Comment period closed 2/22/11. <b>Reopened comment period closed 6/3/11.</b> <a href="#">Second comment period</a> closed 4/18/11. See Sutherland's <a href="#">Legal Alert</a>.</p> <p>Additional <a href="#">Proposed Rules</a> pertaining to governance requirements and conflict of interest core principles issued 12/9/10. Published in the Federal Register on 1/6/11. Comment period closed 3/7/11. <b>Reopened comment period closed 6/3/11.</b> <a href="#">Final Rules</a> issued 5/10/12. Published in the Federal Register on 6/19/12. <a href="#">Corrections</a> published in the Federal Register on 6/25/12. Effective on 8/20/12. Compliance will be generally required by contract markets that have obtained designation on or prior to 6/19/12 by 10/17/12. DCMs will not have to comply with rule 38.151(a), however, which requires a member or market participant seeking access to a market to consent to the DCM's jurisdiction, until 2/16/13 – this will not apply for new members and market participants.</p>

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## TITLE VII – Wall Street Transparency and Accountability (governing derivatives)

Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
737	Position Limits on Commodity Contracts	CEA § 4a(a)	Rules establishing limits on the amount of positions held by any person for futures or options on commodities.	Mandatory Rulemaking	CFTC	180 days after enactment of the bill for exempt commodities  270 days after enactment of the bill for agricultural commodities	<p><a href="#">Proposed Rule</a> issued 1/13/11. Published in the Federal Register on 1/26/11. Comment period closed 3/28/11.</p> <p><a href="#">Final Rule</a> issued 10/18/11. Published in the Federal Register on 11/18/11. Effective 1/17/12. Compliance with spot-month and non-spot-month legacy limits required 60 days after “swap” is further defined. Until then, market participants are to continue to comply with Part 150 of the CFTC’s regulations and any applicable DCM limits. The compliance date for non-spot-month non-legacy “reference contracts” will be set forth via CFTC order approximately 12 months after the collection of swap positional data.</p> <p><a href="#">Proposed Rule</a> to modify the CFTC’s policy for aggregation in the final position limits rule issued 5/18/12. Published in the Federal Register 5/30/12. Comment period closed 6/29/12.</p> <p><a href="#">Temporary no-action relief</a> from aggregation requirements issued 7/24/12.</p> <p>On 10/19/10 the CFTC issued a <a href="#">Proposed Rule</a> establishing an interim position reporting system to enable it to enforce aggregate position limits. Published in the Federal Register on 11/2/10. Comment period closed 12/2/10.</p> <p><a href="#">Final Rules</a> to establish a large trader reporting system for physical commodity swaps were issued on 7/7/11 and were published in the Federal Register on 7/22/11. Effective 9/20/11; Compliance required by SDs and MSPs 60 days after effective date of final entity definition rules.</p>

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TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
737	Position Limits on Commodity Contracts	CEA § 4a(a)	Rules establishing limits on the amount of positions held by any person with respect to swaps that are economically equivalent to futures or options on commodities.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 1/13/11. Published in the Federal Register on 1/26/11. Comment period closed 3/28/11.</p> <p><a href="#">Final Rule</a> issued 10/18/11. Published in the Federal Register on 11/18/11.</p> <p>Effective 1/17/12. Compliance with spot-month and non-spot-month legacy limits required 60 days after “swap” is further defined. Until then, market participants are to continue to comply with Part 150 of the CFTC’s regulations and any applicable DCM limits. The compliance date for non-spot-month non-legacy “reference contracts” will be set forth via CFTC order approximately 12 months after the collection of swap positional data</p> <p><a href="#">Proposed Rule</a> to modify the CFTC’s policy for aggregation in the final position limits rule issued 5/18/12. Published in the Federal Register 5/30/12. Comment period closed 6/29/12.</p> <p><a href="#">Temporary no-action relief</a> from aggregation requirements issued 7/24/12.</p> <p>On 10/19/10 the CFTC issued a <a href="#">Proposed Rule</a> establishing an interim position reporting system to enable it to enforce aggregate position limits. Published in the Federal Register on 11/2/10. Comment period closed 12/2/10.</p>

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TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
737	Position Limits on Commodity Contracts	CEA § 4a(a)	Rules establishing aggregate limits for positions held each month across exchanges, foreign boards of trade, and swaps that perform a significant price discovery function.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 1/13/11. Published in the Federal Register on 1/26/11. Comment period closed 3/28/11.</p> <p><a href="#">Final Rule</a> issued 10/18/11. Published in the Federal Register on 11/18/11.</p> <p>Effective 1/17/12. Compliance with spot-month and non-spot-month legacy limits required 60 days after “swap” is further defined. Until then, market participants are to continue to comply with Part 150 of the CFTC’s regulations and any applicable DCM limits. The compliance date for non-spot-month non-legacy “reference contracts” will be set forth via CFTC order approximately 12 months after the collection of swap positional data.</p> <p><a href="#">Proposed Rule</a> to modify the CFTC’s policy for aggregation in the final position limits rule issued 5/18/12. Published in the Federal Register 5/30/12. Comment period closed 6/29/12.</p> <p><a href="#">Temporary no-action relief</a> from aggregation requirements issued 7/24/12.</p> <p>On 10/19/10 the CFTC issued a <a href="#">Proposed Rule</a> establishing an interim position reporting system to enable it to enforce aggregate position limits. Published in the Federal Register on 11/2/10. Comment period closed 12/2/10.</p>



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## TITLE VII – Wall Street Transparency and Accountability (governing derivatives)

Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
737	Position Limits on Commodity Contracts	CEA § 4a(a)	Rules or regulations enumerating factors to be considered by the CFTC in determining whether a swap performs a significant price discovery function.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 1/13/11. Published in the Federal Register on 1/26/11. Comment period closed 3/28/11.</p> <p><a href="#">Final Rule</a> issued 10/18/11. Published in the Federal Register on 11/18/11.</p> <p>Effective 1/17/12. Compliance with spot-month and non-spot-month legacy limits required 60 days after “swap” is further defined. Until then, market participants are to continue to comply with Part 150 of the CFTC’s regulations and any applicable DCM limits. The compliance date for non-spot-month non-legacy “reference contracts” will be set forth via CFTC order approximately 12 months after the collection of swap positional data.</p> <p><a href="#">Proposed Rule</a> to modify the CFTC’s policy for aggregation in the final position limits rule issued 5/18/12. Published in the Federal Register 5/30/12. Comment period closed 6/29/12.</p> <p><a href="#">Temporary no-action relief</a> from aggregation requirements issued 7/24/12.</p> <p>On 10/19/10 the CFTC issued a <a href="#">Proposed Rule</a> establishing an interim position reporting system to enable it to enforce aggregate position limits. Published in the Federal Register on 11/2/10. Comment period closed 12/2/10.</p>

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TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
cl	Position Limits on Commodity Contracts	CEA § 4a(a)	Rules or regulations providing exemptions from position limits.	Permissive Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 1/13/11. Published in the Federal Register on 1/26/11. Comment period closed 3/28/11.</p> <p><a href="#">Final Rule</a> issued 10/18/11. Published in the Federal Register on 11/18/11.</p> <p>Effective 1/17/12. Compliance with spot-month and non-spot-month legacy limits required 60 days after “swap” is further defined. Until then, market participants are to continue to comply with Part 150 of the CFTC’s regulations and any applicable DCM limits. The compliance date for non-spot-month non-legacy “reference contracts” will be set forth via CFTC order approximately 12 months after the collection of swap positional data</p> <p><a href="#">Proposed Rule</a> to modify the CFTC’s policy for aggregation in the final position limits rule issued 5/18/12. Published in the Federal Register 5/30/12. Comment period closed 6/29/12.</p> <p><a href="#">Temporary no-action relief</a> from aggregation requirements issued 7/24/12.</p> <p>On 10/19/10 the CFTC issued a <a href="#">Proposed Rule</a> establishing an interim position reporting system to enable it to enforce aggregate position limits. Published in the Federal Register on 11/2/10. Comment period closed 12/2/10.</p>

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## TITLE VII – Wall Street Transparency and Accountability (governing derivatives)

Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
738	Foreign Boards of Trade	CEA § 4(b)	Rules and regulations requiring the registration with the CFTC of foreign boards of trade that provide direct access to U.S. persons.	Permissive Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 11/10/10. Published in the Federal Register on 11/19/10. Comment period closed 1/18/11. <b>Reopened comment period closed 6/3/11.</b></p> <p><a href="#">Final Rule</a> issued 12/5/11. Published in the Federal Register on 12/23/11. Effective 2/21/11.</p>
742	Retail Commodity Transactions	CEA § 2(c)	Rules and regulations specifying the length of time allowed for delivery of commodities that are excepted from CFTC jurisdiction over retail commodity transactions.	Permissive Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Interim Final Rules</a> issued 7/13/11. Published in the Federal Register on 7/15/11. Comment period closed 9/13/11.</p> <p><a href="#">Proposed Interpretation</a> issued 12/2/11. Published in the Federal Register 12/14/11. Comment period closed 2/13/12.</p>
747	Antidisruptive Practices Authority	CEA § 4c(a)	Rules and regulations necessary to prohibit disruptive trading practices.	Permissive Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Advanced Notice of Proposed Rulemaking</a> issued 10/26/10. Published in the Federal Register on 11/2/10. Comment period closed 1/3/11.</p> <p><a href="#">Proposed Interpretive Order</a> issued 2/24/11. Published in the Federal Register on 3/18/11. Comment period closed 5/17/11.</p>



TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
748	Commodity Whistleblower Incentives and Protection	CEA § 23	A study on whether the Freedom of Information Act exemption provided to the CFTC regarding whistleblowers aids whistleblowers in disclosing information.	Study	CFTC	30 months after enactment of the bill	<p><a href="#">Proposed Rules</a> issued on 11/10/10. Published in the Federal Register on 12/6/10. Comment period closed 2/4/11.</p> <p><a href="#">Final Rules</a> issued on 8/4/11. Published in the Federal Register on 8/25/11. Effective 10/24/11.</p>
748	Commodity Whistleblower Incentives and Protection	CEA § 23	Rules and regulations necessary to implement the whistleblower provisions.	Mandatory Rulemaking	CFTC	270 days after enactment of the bill	<p><a href="#">Proposed Rules</a> issued on 11/10/10. Published in the Federal Register on 12/6/10. Comment period closed 2/4/11.</p> <p><a href="#">Final Rules</a> issued 8/4/11. Published in the Federal Register on 8/25/11 ; effective 10/24/11.</p>
750	Study on Oversight of Carbon Markets	N/A	A study on the oversight of existing and prospective carbon markets.	Study	CFTC Dept. of Agriculture SEC EPA FERC FTC EIA	180 days after enactment of the bill	<p><a href="#">Notice and Request for Comment</a> issued 11/19/10. Published in the Federal Register on 11/26/10. Comment period closed 12/17/10.</p> <p><a href="#">Findings</a> were released 1/18/11.</p>


**TITLE VII – Wall Street Transparency and Accountability (governing derivatives)**

Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
753	Anti-Manipulation Authority	CEA § 6(c)	Rules and regulations prohibiting manipulation and false information in the swap and commodity markets.	Mandatory Rulemaking	CFTC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 10/26/10. Published in the Federal Register on 11/3/10. Comment period closed 1/3/11.</p> <p><a href="#">Final Rules</a> issued 7/7/11. Published in the Federal Register 7/14/11; effective 8/15/11.</p>

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TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
761	Definitions	1934 Act § 3(a)	Rules or regulations further defining the term “substantial position” for purposes of the definition of “major security-based swap participant.”	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<p><a href="#">Advanced Notice of Proposed Rulemaking</a> issued 8/13/10. Published in the Federal Register on 8/20/10. Comment period closed 9/20/10. See Sutherland’s <a href="#">Legal Alert</a>.</p> <p><a href="#">Proposed Rules</a> defining “swap dealer,” “security-based swap dealer,” “major swap participant,” “major security-based swap participant” and “eligible contract participant” issued 12/3/10. Published in the Federal Register on 12/21/10. Comment period closed 2/22/11.</p> <p><a href="#">Final Rules</a> further defining the terms “swap dealer,” “major swap participant” and “eligible contract participant” issued 4/18/12. Published in the Federal Register on 5/23/12. <a href="#">Corrections</a> published in the Federal Register on 7/5/12. Effective 7/23/12, except for certain portions of the ECP definition, which will become effective on 12/31/12. Compliance with CFTC regulation 1.3(m)(8)(iii), which requires that a commodity pool be formed by a registered CPO, will apply with respect to commodity pools formed on or after 12/31/12.</p> <p>Comment period for interim final rule defining swaps that are for hedging physical positions and thus excluded from the swap dealer determination closed on July 23, 2012.</p> <p>See Sutherland’s <a href="#">Legal Alert</a>.</p>

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TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
761	Definitions	1934 Act § 3(a)	Rules establishing factors for consideration regarding the de minimis exception from the definition of “security-based swap dealer.”	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<p><a href="#">Advanced Notice of Proposed Rulemaking</a> issued 8/13/10. Published in the Federal Register on 8/20/10. Comment period closed 9/20/10. See Sutherland’s <a href="#">Legal Alert</a>.</p> <p><a href="#">Proposed Rules</a> defining “swap dealer,” “security-based swap dealer,” “major swap participant,” “major security-based swap participant” and “eligible contract participant” issued 12/3/10. Published in the Federal Register on 12/21/10. Comment period closed 2/22/11.</p> <p><a href="#">Final Rules</a> further defining the terms “swap dealer,” “major swap participant” and “eligible contract participant” issued 4/18/12. Published in the Federal Register on 5/23/12. <a href="#">Corrections</a> published in the Federal Register on 7/5/12. Effective 7/23/12, except for certain portions of the ECP definition, which will become effective on 12/31/12. Compliance with CFTC regulation 1.3(m)(8)(iii), which requires that a commodity pool be formed by a registered CPO, will apply with respect to commodity pools formed on or after 12/31/12.</p> <p>Comment period for interim final rule defining swaps that are for hedging physical positions and thus excluded from the swap dealer determination closed on July 23, 2012.</p> <p>See Sutherland’s <a href="#">Legal Alert</a>.</p>

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TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
761	Definitions	1934 Act § 3(a)	A rule to define the term “commercial risk” (which is included in the definition of “major security-based swap participant”) or any other term included in an amendment to the 1934 Act.	Permissive Rulemaking	SEC	360 days after enactment of the bill	<p><a href="#">Advanced Notice of Proposed Rulemaking</a> issued 8/13/10. Published in the Federal Register on 8/20/10. Comment period closed 9/20/10. See Sutherland’s <a href="#">Legal Alert</a>.</p> <p><a href="#">Proposed Rules</a> defining “swap dealer,” “security-based swap dealer,” “major swap participant,” “major security-based swap participant” and “eligible contract participant” issued 12/3/10. Published in the Federal Register on 12/21/10. Comment period closed 2/22/11.</p> <p><a href="#">Final Rules</a> further defining the terms “swap dealer,” “major swap participant” and “eligible contract participant” issued 4/18/12. Published in the Federal Register on 5/23/12. <a href="#">Corrections</a> published in the Federal Register on 7/5/12. Effective 7/23/12, except for certain portions of the ECP definition, which will become effective on 12/31/12. Compliance with CFTC regulation 1.3(m)(8)(iii), which requires that a commodity pool be formed by a registered CPO, will apply with respect to commodity pools formed on or after 12/31/12.</p> <p>Comment period for interim final rule defining swaps that are for hedging physical positions and thus excluded from the swap dealer determination closed on July 23, 2012.</p> <p>See Sutherland’s <a href="#">Legal Alert</a>.</p>



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## TITLE VII – Wall Street Transparency and Accountability (governing derivatives)

Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
761	Definitions	1934 Act § 3(a)	Rules to define the terms “security-based swap,” “security-based swap dealer,” “major security-based swap participant,” and “eligible swap participant” for the purpose of including transactions and entities that have been structured to evade the subtitle or the amendments made by the subtitle.	Permissive Rulemaking	SEC	360 days after enactment of the bill	<p><a href="#">Advanced Notice of Proposed Rulemaking</a> issued 8/13/10. Published in the Federal Register on 8/20/10. Comment period closed 9/20/10. See Sutherland’s <a href="#">Legal Alert</a>.</p> <p><a href="#">Proposed Rules</a> on product definitions issued 4/27/11. Published in the Federal Register on 5/22/11. Comment period closed 7/22/11. See Sutherland’s <a href="#">Legal Alert</a>.</p> <p>Final Rules on product definitions issued 7/10/12. Pending publication in the Federal Register. Effective date will be 60 days after publication in the Federal Register. See Sutherland’s <a href="#">Legal Alert</a> and CFTC’s <a href="#">pre-publication release</a>.</p> <p><a href="#">Proposed Rules</a> defining “swap dealer”, “security-based swap dealer,” “major swap participant,” “major security-based swap participant” and “eligible contract participant” issued 12/3/10. Published in the Federal Register on 12/21/10. Comment period closed 2/22/11.</p> <p><a href="#">Final Rules</a> further defining the terms “swap dealer,” “major swap participant” and “eligible contract participant” issued 4/18/12. Published in the Federal Register on 5/23/12. <a href="#">Corrections</a> published in the Federal Register on 7/5/12. Effective 7/23/12, except for certain portions of the ECP definition, which will become effective on 12/31/12. Compliance with CFTC regulation 1.3(m)(8)(iii), which requires that a commodity pool be formed by a registered CPO, will apply with respect to commodity pools formed on or after 12/31/12.</p> <p>Comment period for interim final rule defining swaps that are for hedging physical positions and thus excluded from the swap dealer determination closed on July 23, 2012.</p> <p>See Sutherland’s <a href="#">Legal Alert</a>.</p>



TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
763	Clearing for Security-Based Swaps	1934 Act § 3C	Rules for a derivatives clearing organization's submission of swaps that it seeks to accept for clearing.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<p><a href="#">Proposed Rules</a> issued 12/15/10. Published in the Federal Register on 12/30/10. Comment period closed 2/14/11.</p> <p><a href="#">Final Rules</a> issued 6/28/12. Published in the Federal Register 7/13/12. <a href="#">Correction</a> published 7/25/12. Effective and compliance required 8/13/12, except for rules related to SEC rule 19b-4, which will be effective and for which compliance will be required 12/10/12.</p>
763	Clearing for Security-Based Swaps	1934 Act § 3C	Rules for reviewing a derivatives clearing organization's clearing of a swap that it has accepted for clearing.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<p><a href="#">Proposed Rules</a> issued 12/15/10. Published in the Federal Register on 12/30/10. Comment period closed 2/14/11.</p> <p><a href="#">Final Rules</a> issued 6/28/12. Published in the Federal Register 7/13/12. <a href="#">Correction</a> published 7/25/12. Effective and compliance required 8/13/12, except for rules related to SEC rule 19b-4, which will be effective and for which compliance will be required 12/10/12.</p>
763	Clearing for Security-Based Swaps	1934 Act § 3C	Rules necessary to prevent evasions of the mandatory clearing requirements.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<p><a href="#">Proposed Rules</a> issued 12/15/10. Published in the Federal Register on 12/30/10. Comment period closed 2/14/11.</p>
763	Clearing for Security-Based Swaps	1934 Act § 3C	Rules for the reporting of non-cleared swaps.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<p><a href="#">Proposed Rule</a> issued 11/19/10. Published in the Federal Register on 12/2/10. Comment period closed 1/18/11.</p>
763	Clearing for Security-Based Swaps	1934 Act §3C	End user exception to mandatory clearing of security-based swaps.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<p><a href="#">Proposed Rules</a> issued 12/15/10. Published in the Federal Register on 12/21/10. Comment period closed 2/4/11.</p>



TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
763	Clearing for Security-Based Swaps	1934 Act § 3C	Rules necessary to prevent abuse of the end-user clearing exception to mandatory clearing of security-based swaps.	Permissive Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rules</a> issued 12/15/10. Published in the Federal Register on 12/21/10. Comment period closed 2/4/11.
763	Clearing Agencies	1934 Act § 3C	Rules governing the annual report to be submitted by the chief compliance officer of a clearing agency.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rules</a> issued 3/2/11. Published in the Federal Register on 3/16/11. Comment period closed 4/29/11.
763	Clearing Agencies	1934 Act § 3C	Rules governing persons registered as clearing agencies for security-based swaps.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rules</a> issued 3/2/11. Published in the Federal Register on 3/16/11. Comment period closed 4/29/11.
763	Security-Based Swap Execution Facilities	1934 Act § 3D	Rules governing the regulation of security-based swap execution facilities.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rule</a> issued 2/2/11. Published in the Federal Register on 2/28/11. Comment period closed 4/4/11.
763	Security-Based Swap Execution Facilities	1934 Act § 3D	Requirements for data collection and reporting by security-based swap execution facilities.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rule</a> issued 2/2/11. Published in the Federal Register on 2/28/11. Comment period closed 4/4/11.
763	Security-Based Swap Execution Facilities	1934 Act § 3D	Rules governing the annual report to be submitted by the chief compliance officer of a security-based swap execution facility.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	



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Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
763	Segregation of Collateral for Cleared Security-Based Swaps	1934 Act § 3E	Rules, regulations, or orders providing exceptions from the segregation requirements for certain collateral.	Permissive Rulemaking	SEC	360 days after enactment of the bill	
763	Segregation of Collateral for Cleared Security-Based Swaps	1934 Act § 3E	Rules or regulations governing permitted investments for collateral from cleared security-based swaps.	Permissive Rulemaking	SEC	360 days after enactment of the bill	
763	Segregation of Collateral for Uncleared Security-Based Swaps	1934 Act § 3E	Rules or regulations governing the segregation of collateral for uncleared security-based swaps.	Permissive Rulemaking	SEC	360 days after enactment of the bill	
763	Prevention of Fraud, Manipulation and Deceptive Conduct in Security-Based Swaps	1934 Act § 9	Rulemaking authority to prevent fraud, manipulation and deceptive conduct in security-based swaps.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rule</a> issued 11/3/2010. Published in the Federal Register on 11/8/10. Comment period closed 12/23/10.
763	Position Limits for Security-Based Swaps	1934 Act § 10B	Rules establishing limits on the size of positions in any security-based swap that may be held by any person.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	
763	Position Limits for Security-Based Swaps	1934 Act § 10B	Rules or regulations providing exemptions from position limits.	Permissive Rulemaking	SEC	360 days after enactment of the bill	

## SUTHERLAND

TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
763	Position Limits for Security-Based Swaps	1934 Act § 10B	Rules or regulations requiring self-regulatory organizations to establish position limits on security-based swaps held or executed by their members.	Permissive Rulemaking	SEC	360 days after enactment of the bill	
763	Large Trader Reporting	1934 Act § 10B	Rules or regulations governing the reporting of positions by certain large traders.	Permissive Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Final Rule</a> issued 7/26/11, published in the Federal Register 8/3/11; effective 10/3/11.  Compliance dates: December 1, 2011 for the requirement that large traders identify to the SEC pursuant to Rule 13h–1(b) and April 30, 2012 for broker-dealers to maintain records, report, and monitor large trader activity pursuant to Rule 13h–1(d), (e), and (f).
763	Public Availability of Security-Based Swap Data	1934 Act § 10B	Real time reporting of security-based swap transaction data.	Mandatory Rulemaking	SEC	360 days after enactment of the bill.	<a href="#">Proposed Rule</a> issued 11/19/10. Published in the Federal Register on 12/2/10. Comment period closed 1/18/11.
763	Public Availability of Security-Based Swap Data	1934 Act § 10B	Rules providing for the public availability of transaction and price data for security-based swaps.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rule</a> issued 11/19/10. Published in the Federal Register on 12/2/10. Comment period closed 1/18/11.
763	Public Availability of Security-Based Swap Data	1934 Act § 10B	Rules, regulations, or orders delegating the public reporting responsibilities of the SEC for security-based swaps.	Permissive Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rule</a> issued 11/19/10. Published in the Federal Register on 12/2/10. Comment period closed 1/18/11.

## SUTHERLAND

TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
763	Public Availability of Security-Based Swap Data	1934 Act § 10B	Standards specifying the data elements to be collected for each security-based swap.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rule</a> issued 11/19/10. Published in the Federal Register on 12/2/10. Comment period closed 1/18/11.
763	Security-Based Swap Data Repositories	1934 Act § 10B	Rules governing the registration of security-based swap data repositories.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rule</a> issued on 11/19/10. Published in the Federal Register on 12/10/10. Comment period closed 1/24/11.
763	Security-Based Swap Data Repositories	1934 Act § 10B	Rules establishing duties of security-based swap data repositories.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rule</a> issued on 11/19/10. Published in the Federal Register on 12/10/10. Comment period closed 1/24/11.
763	Security-Based Swap Data Repositories	1934 Act § 10B	Rules regarding core principles of security-based swap data repositories.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rule</a> issued on 11/19/10. Published in the Federal Register on 12/10/10. Comment period closed 1/24/11.
763	Security-Based Swap Data Repositories	1934 Act § 10B	Rules governing the annual report to be prepared by the chief compliance officer of a security-based swap data repository.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rule</a> issued on 11/19/10. Published in the Federal Register on 12/10/10. Comment period closed 1/24/11.
764	Registration and Regulation of Security-Based Swap Dealers and Major Security-Based Swap Participants	1934 Act § 15F	Provide for the registration of security-based swap dealers and major security swap participants.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rules</a> issued on 10/12/11. Published in the Federal Register 10/24/11. Comment period closed 12/19/11.

## SUTHERLAND

TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
764	Regulation of Security-Based Swap Dealers and Major Security-Based Swap Participants	1934 Act §15F	Rules governing security-based swap dealers and major security-based swap participants, including rules that limit their activities.	Permissive Rulemaking	SEC	360 days after enactment of the bill	<p><a href="#">Advanced Notice of Proposed Rulemaking</a> issued 8/13/10. Published in the Federal Register on 8/20/10. Comment period closed 9/20/10. See Sutherland's <a href="#">Legal Alert</a>.</p> <p><a href="#">Proposed Rules</a> defining “swap dealer,” “security-based swap dealer,” “major swap participant,” “major security-based swap participant” and “eligible contract participant” issued 12/3/10. Published in the Federal Register on 12/21/10. Comment period closed 2/22/11.</p> <p><a href="#">Final Rules</a> further defining the terms “swap dealer,” “major swap participant” and “eligible contract participant” issued 4/18/12. Published in the Federal Register on 5/23/12. <a href="#">Corrections</a> published in the Federal Register on 7/5/12. Effective 7/23/12, except for certain portions of the ECP definition, which will become effective on 12/31/12. Compliance with CFTC regulation 1.3(m)(8)(iii), which requires that a commodity pool be formed by a registered CPO, will apply with respect to commodity pools formed on or after 12/31/12.</p> <p>Comment period for interim final rule defining swaps that are for hedging physical positions and thus excluded from the swap dealer determination closed on July 23, 2012.</p> <p>See Sutherland's <a href="#">Legal Alert</a>.</p>


**TITLE VII – Wall Street Transparency and Accountability (governing derivatives)**

Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
764	Capital and Margin Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants	1934 Act §15F	Rules imposing capital and margin for security-based swap dealers and major security-based swap participants that are banks.	Mandatory Rulemaking	Prudential Regulator, in consultation with CFTC and SEC	360 days after enactment of the bill	<a href="#">Proposed Rules</a> issued by the Prudential Regulators on 4/12/11. Published in the Federal Register 5/11/11. Comment period closed 6/24/11 – extended to 7/11/11. See Sutherland's <a href="#">Legal Alert</a> .
764	Capital and Margin Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants	1934 Act §15F	Rules imposing capital and margin for security-based swap dealers and major security-based swap participants that are <u>not</u> banks.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	
764	Reporting and Recordkeeping for Security-Based Swap Dealers and Major Security-Based Swap Participants	1934 Act §15F	Rules governing reporting and recordkeeping security-based swap dealers and major security-based swap participants.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	



## SUTHERLAND

TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
764	Daily Trading Records for Security-Based Swap Dealers and Major Security-Based Swap Participants	1934 Act §15F	Rules governing daily trading records for security-based swap dealers and major security-based swap participants.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	
764	Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants	1934 Act §15F	Rules governing business conduct standards for security-based swap dealers and major security-based swap participants.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rules</a> issued 6/29/11. Comment period closed 8/29/11. See Sutherland's <a href="#">Legal Alert</a> and <a href="#">Pre-publication Release</a> . <a href="#">Correction</a> published in the Federal Register 8/3/11.
764	Documentation Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants	1934 Act §15F	Rules governing documentation standards for security-based swap dealers and major security-based swap participants.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rule</a> issued 1/14/11. Published in the Federal Register on 1/21/11. Comment period closed 2/22/11.
764	Duties of Security-Based Swap Dealers and Major Security-Based Swap Participants	1934 Act §15F	Rules governing duties of security-based swap dealers and major security-based swap participants.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rule</a> regarding the establishment of policies and procedures required to ensure compliance with applicable reporting obligations issued 11/19/10. Published in the Federal Register on 12/2/10. Comment period closed 1/18/11.

Current as of August 9, 2012

## SUTHERLAND

TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
764	Duties of Security-Based Swap Dealers and Major Security-Based Swap Participants	1934 Act §15F	Rules governing security-based swap dealers and major security-based swap participants with respect to (1) monitoring trading, (2) establishing risk management procedures, (3) disclosing information related to swap transactions, (4) establishing internal procedures for obtaining information required by the SEC, (5) implementing systems to mitigate conflicts of interest, and (6) refraining from taking part in anticompetitive or trade-restraining activities.	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rules</a> issued 6/29/11. Comment period closed 8/29/11. See Sutherland's <a href="#">Legal Alert</a> and the SEC's <a href="#">Pre-publication Release</a> . <a href="#">Correction</a> published in the Federal Register 8/3/11.
764	Annual Reports of Security-Based Swap Dealers and Major Security-Based Swap Participants	1934 Act §15F	Rules governing the annual report to be submitted by the chief compliance officer of a security-based swap dealer or major security-based swap participant	Mandatory Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rules</a> issued 6/29/11. Comment period closed 8/29/11. See Sutherland's <a href="#">Legal Alert</a> and the SEC's <a href="#">Pre-publication Release</a> . <a href="#">Correction</a> published in the Federal Register 8/3/11.
765	Conflicts of Interest	Not Specified	Rules on the ownership of clearing agencies, security-based swap execution facilities, and national securities exchanges intended to mitigate the effects of conflicts of interest.	Mandatory Rulemaking	SEC	180 days after enactment of the bill	<a href="#">Proposed Rule</a> issued 10/13/10. Published in the Federal Register on 10/26/10. Comment period closed 11/26/10. <a href="#">Second comment period</a> closed 4/29/11.



TITLE VII – Wall Street Transparency and Accountability (governing derivatives)							
Section	Title	Existing Law Added to/ Amended	To Provide	Mandatory/ Permissive Rulemaking or Study	Regulator(s) Assigned	Due Date	Status
766	Reporting and Recordkeeping	1934 Act § 13A	An interim final rule providing for the reporting of each security-based swap entered into before the date of enactment of the bill.	Mandatory Rulemaking	SEC	90 days after enactment of the bill	<a href="#">Interim Final Rule</a> issued on 10/13/10. Published in the Federal Register on 10/20/10. Comment period closed 12/20/10.
766	Security-Based Swap Beneficial Ownership	1934 Act § 13A	Rules specifying when a person is deemed to have acquired a beneficial ownership in an equity security based on the purchase or sale of a security-based swap.	Permissive Rulemaking	SEC	360 days after enactment of the bill	<a href="#">Proposed Rules</a> issued 3/17/11. Published in the Federal Register on 3/22/11. Comment period closed 4/15/11.
767	State Gaming and Bucket Shop Laws	1934 Act § 28(a)	Rules, regulations, or orders specifying that particular swaps should be subject to state bucket shop laws.	Permissive Rulemaking	SEC	360 days after enactment of the bill	



## **Top Ten Questions to Ask When Thinking About Compliance**



## Ten Questions to Ask When Thinking About Compliance

May 2010

**Karen Redford**, Vice President of Legal and Regulatory Affairs, Bangor Hydro Electric  
**Catherine M. Krupka**, Sutherland Asbill & Brennan LLP

Energy companies are subject to increasing oversight from a broad array of regulators. Part of the challenge of managing the legal and reputational risk that can arise from such oversight is ensuring that the company has built a culture of compliance. The other part of the challenge for corporate counsel is knowing what constitutes an appropriate culture of compliance. There is no single answer to this question because companies are different. The following questions are intended to help corporate counsel assess what may or may not be missing at their own companies and to anticipate the kinds of questions regulators are asking on a more frequent basis.

### 1. Do You Really Have a Compliance Program?

This might seem like an odd question, but not all companies can answer “yes.” Taking into account that the details of a compliance program will vary based on company size, location, lines of business and other factors, an energy company compliance program should include:

- The conscious adoption of a formal program shaped around a company’s business that is intended to promote business activities that comport with the law.
- A statement from senior management that the company expects all employees to comply with the laws applicable to their business activities.
- The identification of compliance resources available to oversee and assist employees, including an independent senior compliance officer and legal resources.
- Policies and procedures that address the areas of law most applicable to the company and provide guidance on how to find additional help.
- Implementation of the compliance program in a way that ensures that all employees are aware of it.

Every company should undertake an honest assessment of whether its compliance program contains each of these elements. That will be the first step in ensuring that the company has developed and implemented a robust compliance program and thus can demonstrate that it has built a firm culture of compliance.

## 2. What Is Your Level of Commitment to Compliance?

Many companies have taken some steps to create a compliance program, such as preparing a compliance manual, but some stop there. Compliance programs work best when they are integrated into the corporate culture and are living programs. Factors that indicate a high level of commitment to compliance include:

- Senior management, business group heads and others in supervisory roles routinely set a tone that the company is committed to compliance.
- Ownership of the compliance obligation at the front office/operational level and acceptance of the compliance group as providing an integral, complementary oversight function.
- Independent compliance officers that have access to senior management and board members, including clear escalation paths that encourage compliance personnel to raise concerns without facing barriers or retaliation.
- A budget specifically for compliance and sufficient headcount to support the company's program.
- Compliance staff members who are visible and approachable with excellent internal relationships.
- An open-door policy that encourages employees to ask questions or raise concerns about potential non-compliance involving company employees or other market participants.
- Regular and detailed training on core compliance areas, including agency and market rules, and ad hoc sessions as hot topics arise.
- Internal hotlines or other means for employees to report concerns.

In sum, compliance is not a “one shot” proposition. It requires an ongoing commitment by the company and its management.

## 3. Do You Know Your Regulators?

Most energy companies are aware of their primary federal and state energy regulators. For example, power and natural gas companies find it hard to forget about the Federal Energy Regulatory Commission, the North American Electric Reliability Corporation, or local public utility commissions. However, other regulators may be interested in your energy activities. These can include:

- The Department of Energy for things like Energy Information Administration reporting requirements, efficiency standards, and import and export licenses for natural gas and power.

- The Commodity Futures Trading Commission for energy futures and options trading on platforms like NYMEX and ICE, as well as manipulation and fraud arising from physical trading activities.
- The Environmental Protection Agency for facility permits, emissions reporting and trading, water protection, and greenhouse gas regulation. States have comparable regulators.
- The Federal Trade Commission for fraud or deceptive conduct related to petroleum products.
- The Federal Communications Commission for telecommunications systems used to support dispatch, SCADA system management, and other operations.
- Railroad and other commissions that oversee parts of the industry that use rights of way.
- The Treasury Department, the Commerce Department and the Customs Service, which oversee trade sanctions, anti-boycott rules, and shipping requirements that can impact energy products like crude oil or liquefied natural gas.

Legal and Compliance should review the energy products the company makes or trades and in what jurisdictions to identify the key regulators for each. The company's compliance program should address the requirements of each material regulator, including authorizations/permits, fraud and manipulation rules, reporting, record keeping and other requirements.

#### **4. Do You Know the Markets in Which Your Company Operates?**

Companies also should be aware of the role that market operators, reliability coordinators or self-regulatory organizations might play in their business activities. For example, the power markets include independent system operators and regional transmission organizations that have rules and market monitors with oversight responsibility. The same is true for NYMEX and ICE. In addition, many agency investigations and enforcement actions are being initiated by referrals coming from these markets. Thus, a good compliance program will include procedures that direct employees to know the rules of the markets in which they operate. The company also should have an understanding of what the market rules require of the company, including compliance with price caps, reporting requirements, record keeping, and position and accountability limits.

If the company uses third parties to manage its market activity (*e.g.*, asset managers, schedulers, or operations and maintenance service providers), it should take reasonable steps to ensure that the agent also is meeting the compliance obligations it has assumed on the company's behalf.

#### **5. What Are Your Competitors or Fellow Utilities Doing?**

Every compliance program must be shaped to fit a specific company. There is no such thing as a "one size fits all" program. However, regulators do form impressions of what a compliance program should look like based on the experience they gain from their enforcement, auditing and other functions. A company's interaction with other businesses, including through ACC, as well as regulators (*e.g.*, through technical conferences), can help it stay abreast of what other

companies are doing to improve their compliance efforts and can allow your company to keep up with the rest of the pack. Return the favor by sharing your own experience.

## **6. What Role Does Human Resources Play in Encouraging Compliance?**

Good employees tend to mean reduced compliance risk. Yet companies can forget to use their Human Resources departments to help create a culture of compliance. For example, Human Resources can:

- Help assess whether a potential hire has a disciplinary history that raises compliance flags.
- Work with a new employee's supervisors to ensure that the employee completes all requisite training prior to engaging in business activity for the company. This would include ensuring that the employee agrees to comply with the company's compliance policies and procedures, understands the compliance resources available, and agrees to comply with the laws applicable to his/her business activities.
- Help develop performance review forms and practices that ensure that a commitment to compliance is one of the factors considered.
- Maintain records of employee compliance, including annual attestations that the employee is aware of the laws applicable to his/her business activities and agrees to comply with them, training attendance sheets, and disciplinary action summaries.

Some companies elect to have these functions performed by supervisors or compliance personnel. This is an acceptable approach. However, institutionalizing some aspects of these functions with Human Resources can improve the likelihood that the company will retain records of its actions and add another layer of support for achieving compliance.

## **7. What Message Does Your Compensation Plan Send?**

Companies should be asking whether their compensation plans send the right message. It is important to emphasize that making a profit is perfectly legitimate, and personnel should be rewarded for their success. However, when non-compliance is not penalized in an appropriate manner when it occurs, and when bonuses, raises and promotions are handed out without regard to the company's commitment to compliance with all applicable laws, some employees are bound to discount the importance of the requirement.

Companies can also look for hints of what may constitute an acceptable program by reviewing regulator decisions related to the programs of other utilities. A company can find out what is acceptable by what the regulators prescribe, and what is not acceptable by what they correct or penalize.



## 8. What Is a Supervisor's Compliance Function?

Compliance should be the responsibility of every company employee. This mantra's primary goal is to make sure all employees keep themselves in line. However, the company also should convey the message that people in an official or unofficial supervisory role are accountable for keeping their teams in line. For example, a mid-level person responsible for gas nominations needs to watch out for junior personnel performing related tasks. This includes making sure that employees feel free to ask questions; reviewing reports for signs of potentially problematic behavior (e.g., trade reports showing unusual profits or losses, changes in trading patterns, etc.); or investing time in on-the-job training. A good compliance plan makes certain that employees understand and "own" the program, including by committing to oversee the work of others, even informally, and encouraging employees to step in if compliance commitments are in jeopardy.

## 9. Does Your Training Program Do the Job?

No employee can achieve the level of compliance that the company expects unless he/she has been provided the tools to succeed. These tools can be provided through a robust training program. Training will help employees understand the requirements applicable to the company and how to achieve compliance. Thus, a robust training program will help avoid violations in the first place. However, should a violation occur, the training program will help demonstrate to regulators that the violation is an isolated event, not one indicative of a lax compliance culture. Accordingly, all relevant employees – front, mid and back office – should receive appropriate training.

Like compliance programs in general, there is no "off the shelf" training program that is appropriate for all companies, and each company must develop a training program appropriate for its size and business activities. But at a minimum, the training program should include the following elements:

- Initial training in the relevant subject matter areas upon the employee's hiring or transfer to a new position.
- Periodic updates or "refreshers"; these should include annual training sessions (or at other appropriate intervals), plus additional sessions covering important developments in the law as they arise.
- Use of training exercises, such as "hypotheticals," so that the employee can understand the application of the law and other compliance principles in practical, "day to day" scenarios.
- Documentation of the training sessions and who attended.
- Participation by management, legal and compliance personnel, both to ensure that they all receive the substantive training, but also to visibly demonstrate to other employees the company's commitment to compliance.

- Attendance at training as a requirement of each employee's job. The company should have systems for following up with employees who missed training and offering make-up sessions to get 100% attendance.

## 10. Do You Know Whether You Are Succeeding?

Companies should follow a written plan that ensures they undergo regular, honest assessments of their compliance efforts and that the compliance program remains up-to-date. Such assessments should include:

- An annual internal review of the company's compliance plan and manuals.
- Periodic internal audits of specific compliance practices. Depending on the practice, the company might want to involve outside experts.
- An annual review of the company's compliance staffing and budget to ensure it is right-sized to reflect changes in the business and that the company has the right expertise for its business.
- Review of regulatory agency audit and investigation orders related to other companies to see if your company might have issues comparable to those addressed in the orders.
- "Post-mortem" reviews on compliance issues to determine what worked well, what could have been prevented, how processes can be improved and other ways to learn from good and bad compliance experiences.
- An annual review of surveillance tools, including whether they target the right areas and are calibrated properly, whether reports are circulated to the right people, whether the company is generating the right reports, and whether supervisors and compliance personnel are using the reports.
- An annual review of training programs to ensure that the right topics are being covered, that the programs are up-to-date, and that the applicable employees are attending the right training sessions.

The information in this Top Ten should not be construed as legal advice or legal opinion on specific facts and should not be considered representative of the views of its authors, its sponsors, and/or the ACC. This Top Ten is not intended as a definitive statement on the subject addressed. Rather, it is intended to serve as a tool providing practical advice and references for the busy in-house practitioner and other readers.

## **Excerpt from FERC's 2010 Policy Statement**

132 FERC ¶ 61,216  
 UNITED STATES OF AMERICA FEDERAL  
 ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinohoff, Chairman;  
 Marc Spitzer, Philip D. Moeller,  
 John R. Norris, and Cheryl A. LaFleur.:

Enforcement of Statutes, Orders, Rules,  
 and Regulations

Docket No. PL10-4-000

REVISED POLICY STATEMENT ON PENALTY GUIDELINES

(Issued September 17, 2010)

1. The Commission issues this Revised Policy Statement on Penalty Guidelines to address comments we received on our Policy Statement on Penalty Guidelines, which we issued on March 18, 2010.<sup>1</sup> In addition to addressing these comments, the Commission describes modifications we have made to the Penalty Guidelines based on the comments. The Penalty Guidelines, in their modified form, are attached to this Revised Policy Statement.<sup>2</sup> Enforcement staff will hold a technical conference one year from the issuance of these modified Penalty Guidelines to discuss how they have worked and to permit comments and questions from the industry.

2. The modified Penalty Guidelines will play a significant role in our determinations of civil penalties and will add greater fairness, consistency, and transparency to our enforcement program. These Penalty Guidelines continue to base penalties on the same factors as those present in our policy statements on enforcement,<sup>3</sup> but do so in a more focused manner by assigning specific and

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<sup>1</sup> *Enforcement of Statutes, Orders, Rules, and Regulations*, 130 FERC ¶ 61,220 (2010) (Policy Statement on Penalty Guidelines).

<sup>2</sup> The Penalty Guidelines will apply to any pending investigation where our Office of Enforcement staff (Enforcement staff or staff) and the organization have not yet entered into settlement negotiations.

<sup>3</sup> *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 50-71 (2008) (Revised Policy Statement); *Enforcement of Statutes, Orders,*

(continued...)

Docket No. PL10-4-000

transparent weight to each factor. For example, we will continue to base penalties on the seriousness of the violation, measured in large part by the harm or risk of harm caused, an organization's efforts to remedy the violation, as well as other culpability factors, such as senior-level involvement, prior history, compliance, self-reporting, and cooperation.<sup>4</sup> While these factors remain the same, organizations will now know with more certainty how each is applied. At the same time, the modified Penalty Guidelines do not restrict our discretion to make an individualized assessment based on the facts presented in a given case.

3. Further, our Penalty Guidelines are still modeled on the United States Sentencing Guidelines (Sentencing Guidelines), though we have departed from certain sections of that model based on some commenters' recommendations and have made some important modifications to specific sections of the Penalty Guidelines.

4. The following points highlight our responses to some of the commenters' recommendations:

- We continue to believe that it is appropriate to model the Penalty Guidelines on the Sentencing Guidelines.
- We clarify that the Penalty Guidelines will not affect Enforcement staff's exercise of discretion to close investigations or self-reports without sanctions.
- The Penalty Guidelines will apply to violations of the Reliability Standards only in the Commission's Part 1b investigations and enforcement actions. We will not apply the Penalty Guidelines to our review of NERC's Notices of Penalty.
- We accept the commenters' recommendation to reduce the base violation level for reliability violations from sixteen to six and to increase the risk of harm enhancements for reliability violations.

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*Rules, and Regulations*, 113 FERC ¶ 61,068, at P 17-27 (2005) (2005 Policy Statement).

<sup>4</sup> Compare Penalty Guidelines §§ 1C2.3, 2A1.1, 2B1.1 with Revised Policy Statement, 123 FERC ¶ 61,156 at P 54-68.

**PART B - DISGORGING GAIN FROM VIOLATIONS AND EFFECTIVE COMPLIANCE PROGRAM**

**2. EFFECTIVE COMPLIANCE PROGRAM**

**§1B2.1. Effective Compliance Program**

(a) To have an effective compliance program, for purposes of subsection (f) of §1C2.3 (Culpability Score), an organization shall—

- (1) exercise due diligence to prevent and detect violations; and
- (2) otherwise promote an organizational culture that encourages a commitment to compliance with the law.

Such compliance program shall be reasonably designed, implemented, and enforced so that the program is generally effective in preventing and detecting violations. The failure to prevent or detect the instant violation does not necessarily mean that the program is not generally effective in preventing and detecting violations.

(b) Due diligence and the promotion of an organizational culture that encourages a commitment to compliance with the law within the meaning of subsection (a) minimally require the following:

- (1) The organization shall establish standards and procedures to prevent and detect violations.
- (2)
  - (A) The organization's governing authority shall be knowledgeable about the content and operation of the compliance program and shall exercise reasonable oversight with respect to the implementation and effectiveness of the compliance program.
  - (B) High-level personnel of the organization shall ensure that the organization has an effective compliance program, as described in this guideline. Specific individual(s) within high-level personnel shall be assigned overall responsibility for the compliance program.
  - (C) Specific individual(s) within the organization shall be delegated day-to-day operational responsibility for the compliance program. Individual(s) with operational responsibility shall report periodically to high-level personnel and, as appropriate, to the governing authority, or an appropriate subgroup of the governing authority, on the effectiveness of the compliance program. To carry out such operational responsibility, such individual(s) shall be given adequate resources, appropriate authority, and direct access to the governing authority or an appropriate subgroup of the governing authority.

- (3) The organization shall use reasonable efforts not to include within the substantial authority personnel of the organization any individual whom the organization knew, or should have known through the exercise of due diligence, has engaged in violations or other conduct inconsistent with an effective compliance program.
- (4)
  - (A) The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance program, to the individuals referred to in subdivision (B) by conducting effective training programs and otherwise disseminating information appropriate to such individuals' respective roles and responsibilities.
  - (B) The individuals referred to in subdivision (A) are the members of the governing authority, high-level personnel, substantial authority personnel, the organization's employees, and, as appropriate, the organization's agents.
- (5) The organization shall take reasonable steps—
  - (A) to ensure that the organization's compliance program is followed, including monitoring and auditing to detect violations;
  - (B) to evaluate periodically the effectiveness of the organization's compliance program; and
  - (C) to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance regarding potential or actual violations without fear of retaliation.
- (6) The organization's compliance program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance program; and (B) appropriate disciplinary measures for engaging in violations and for failing to take reasonable steps to prevent or detect violations.
- (7) After a violation has been detected, the organization shall take reasonable steps to respond appropriately to the violation and to prevent further similar violations, including making any necessary modifications to the organization's compliance program.

- (c) In implementing subsection (b), the organization shall periodically assess the risk of violations and shall take appropriate steps to design, implement, or modify each requirement set forth in subsection (b) to reduce the risk of violations identified through this process.





## **Mamma Mia – There They Go Again: Dealing with Stricter Energy Regulators**

### **Helpful Links**

1. FERC [Self-Report](#)
2. FERC [Enforcement Hotline](#)
3. FERC [Complaint](#)
4. [CFR Title 18: Conservation of Power and Water Resources: Part 45 – Application for Authority to Hold Interlocking Positions](#)
5. [CFR Title 18: Conservation of Power and Water Resources: Part 46 – Public Utility Filing Requirements and Filing Requirements for Persons Holding Interlocking Positions](#)
6. [2011 Report on Enforcement, Docket No. AD07-13-004](#)
7. [Report on Outages and Curtailments During the Southwest Cold Weather Event of February 1-5, 2011](#)
8. [Report on Transmission Facility Outages During the Northeast Snowstorm of October 29-30, 2011](#)
9. [FERC Northeast Utilities Audit – December 8, 2011](#)
10. [Constellation Energy Commodities Group, Inc. FERC Order Approving Stipulation and Consent Agreement – March 9, 2012](#)
11. [FERC Niagara Mohawk Audit – May 31, 2012](#)