

with appliance functionality other than cooking or heating food, the average standby power, P_{SB} , and average off mode power, P_o , of the microwave oven portion shall be determined as for microwave/conventional ovens, microwave/conventional cooking tops, and microwave/conventional ranges, except that manufacturers must submit data to DOE that DOE shall use to determine the values of the apportionment factors, F_{SBM} and F_{OM} , as defined in section 4.3.2 of this appendix, for that particular model of combined product.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter 1

Second Amendment to July 14, 2011 Order for Swap Regulation

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Amendment.

SUMMARY: On July 14, 2011, the Commodity Futures Trading Commission (“CFTC” or the “Commission”) issued a final order (“July 14 Order”) that granted temporary exemptive relief from certain provisions of the Commodity Exchange Act (“CEA”) that otherwise would have taken effect on the general effective date of title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)—July 16, 2011. On December 23, 2011, the Commission amended the July 14 Order to extend the potential latest expiration date of the July 14 Order from December 31, 2011 to July 16, 2012, and added provisions to account for the repeal and replacement (as of December 31, 2011) of part 35 of the Commission’s regulations (the “First Amended July 14 Order”). In this Notice of Proposed Amendment (“Notice”), the Commission proposes to further modify the temporary exemptive relief provided in the First Amended July 14 Order by: (1) Removing references to the entities terms, including “swap dealer,” “major swap participant,” and “eligible contract participant” in light of the final, joint CFTC–SEC rulemaking further defining them issued on April 18, 2012; (2) extending the potential latest expiration date of the July 14 Order to December 31, 2012, or, depending on the nature of the relief, such other compliance date as may be determined by the Commission; (3) allowing the clearing of agricultural swaps, as described herein; and (4) removing any reference to the exempt

commercial market (“ECM”) and exempt board of trade (“EBOT”) grandfather relief previously issued by the Commission. Only comments pertaining to these proposed amendments to the First Amended July 14 Order, as amended (the “Second Amended July 14 Order”), will be considered.

DATES: Submit comments on or before May 30, 2012.

ADDRESSES: Comments may be submitted, referenced as “Effective Date Amendments,” by any of the following methods:

- Agency Web site, via its Comments Online process at <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to www.cftc.gov. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in § 145.9 of the Commission’s regulations, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from www.cftc.gov that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Mark D. Higgins, Counsel, (202) 418-5864, mhiggins@cftc.gov, Office of the General Counsel; David Van Wagner, Chief Counsel, (202) 418-5481,

dvanwagner@cftc.gov, Division of Market Oversight; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; or Anne Polaski, Special Counsel, (312) 596-0575, apolaski@cftc.gov, Division of Clearing and Risk; Commodity Futures Trading Commission, 525 West Monroe, Chicago, Illinois 60661.

SUPPLEMENTARY INFORMATION:

On July 14, 2011, the Commission exercised its exemptive authority under CEA section 4(c)¹ and its authority under section 712(f) of the Dodd-Frank Act by issuing a final order (the “July 14 Order”) that addressed the potential that the final, joint CFTC–SEC rulemakings further defining the terms in sections 712(d)² and 721(c)³ would not be in effect as of July 16, 2011 (*i.e.*, the general effective date set forth in section 754 of the Dodd-Frank Act).⁴ In so doing, the Commission sought to address concerns that had been raised about the applicability of various regulatory requirements to certain agreements, contracts, and transactions after July 16, 2011, and thereby ensure that current practices would not be unduly disrupted during the transition to the new regulatory regime.⁵

¹ 7 U.S.C. 6(c).

² Section 712(d)(1) provides: “Notwithstanding any other provision of this title and subsections (b) and (c), the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors [of the Federal Reserve System], shall further define the terms ‘swap’, ‘security-based swap’, ‘swap dealer’, ‘security-based swap dealer’, ‘major swap participant’, ‘major security-based swap participant’, and ‘security-based swap agreement’ in section 1a(47)(A)(v) of the Commodity Exchange Act (7 U.S.C. 1a(47)(A)(v)) and section 3(a)(78) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(78)).”

³ Section 721(c) provides: “To include transactions and entities that have been structured to evade this subtitle (or an amendment made by this subtitle), the Commodity Futures Trading Commission shall adopt a rule to further define the terms ‘swap’, ‘swap dealer’, ‘major swap participant’, and ‘eligible contract participant.’”

⁴ Effective Date for Swap Regulation, 76 FR 42508 (issued and made effective by the Commission on July 14, 2011; published in the **Federal Register** on July 19, 2011). Section 712(f) of the Dodd-Frank Act states that “in order to prepare for the effective dates of the provisions of this Act,” including the general effective date set forth in section 754, the Commission may “exempt persons, agreements, contracts, or transactions from provisions of this Act, under the terms contained in this Act.” Section 754 specifies that unless otherwise provided in Title VII, provisions requiring a rulemaking become effective “not less than 60 days after publication of the final rule” (but not before July 16, 2011).

⁵ Concurrent with the July 14 Order, the Commission’s Division of Clearing and Intermediary Oversight (which is now two divisions—the Division of Clearing and Risk (“DCR”) and the Division of Swap Dealer and Intermediary Oversight (“DSIO”)) and the Division of Market Oversight (“DMO”) (together “the

For those same reasons, on December 23, 2011, the Commission published in the **Federal Register** a final order, the First Amended July 14 Order, amending the July 14 Order in two ways.⁶ First, the Commission extended the potential latest expiry date from December 31, 2011 to July 16, 2012 or, depending on the nature of the relief, such other compliance date as may be determined by the Commission,⁷ to address the potential that, as of December 31, 2011, the aforementioned joint CFTC–Securities and Exchange Commission (“SEC”) joint rulemakings would not be effective. Second, the Commission included within the relief set forth in the First Amended July 14 Order any agreement, contract or transaction that fully meets the conditions in part 35 as in effect prior to December 31, 2011. This amendment addressed the fact that such transactions, which were not included within the scope of the original July 14 Order because the

Divisions”) identified certain provisions of the Dodd-Frank Act and CEA as amended that would take effect on July 16, 2011, but that may not be eligible for the exemptive relief provided by the Commission in its July 14 Order—specifically, the amendments made to the CEA by Dodd-Frank Act sections 724(c), 725(a), and 731. On July 14, 2011, the Divisions issued Staff No-Action Relief addressing the application of these provisions after July 16, 2011. Available at: <http://www.cftc.gov/ucm/groups/public/@llettergeneral/documents/letter/11-04.pdf>.

⁶ Amendment to July 14, 2011 Order for Swap Regulation, 76 FR 80233 (Dec. 23, 2011).

⁷ The Commission clarified that while the exemption set forth in the second part of the First Amended July 14 Order generally shall expire upon the earlier of July 16, 2012 or such other compliance date as may be determined by the Commission, it modified that alternative condition to provide that the exemption will not expire prior to July 16, 2012 in certain circumstances. Specifically, the Commission stated that no other compliance date will be determined (and thus, the exemption will remain in effect until July 16, 2012) for agreements, contracts, and transactions (and for persons offering, entering into, or rendering advice or rendering other services with respect to, such agreements, contracts or transactions) that: (1) Are executed on an ECM or EBOT that is operating under the terms of the Commission’s Order Regarding the Treatment of Petitions Seeking Grandfather Relief for Exempt Commercial Markets and Exempt Boards of Trade, 75 FR 56513, Sept. 16, 2010 (the ECM/EBOT Grandfather Order”), and that complies with all of the applicable conditions of the ECM/EBOT Grandfather Order; and (2) are cleared by a Commission-registered derivatives clearing organization (“DCO”). Concurrent with the First Amended July 14 Order, the Divisions also issued a new staff no-action letter further addressing the applicability of the amendments made to the CEA by Dodd-Frank Act sections 724(c), 725(a), and 731. The Commission staff has informed the Commission that it is separately considering whether to issue a no-action letter in which the staff would state that it would not recommend that the Commission commence an enforcement action against markets or market participants for failure to comply with the above-referenced provisions over a period of time co-extensive with that set forth in the Second Amended July 14 Order, as proposed herein.

exemptive rules in part 35 covered them at that time, required temporary relief because part 35 would not be available as of December 31, 2011.⁸ In so doing, the Commission clarified that new part 35 and the exemptive relief issued in the First Amended July 14 Order, and any interaction of the two, do not operate to expand the pre-Dodd-Frank Act scope of transactions eligible to be transacted on either an ECM or EBOT to include transactions in agricultural commodities.

In this Notice, the Commission is proposing to further amend the First Amended July 14 Order in the following four ways.⁹ First, in light of the final, joint CFTC–SEC rulemaking further defining the entities terms in sections 712(d), including “swap dealer,” “major swap participant,” and “eligible contract participant,” issued on April 18, 2012,¹⁰ the Commission is removing references to those terms in this proposed Second Amended July 14 Order. Second, the Commission is proposing to extend the latest potential expiry date from July 16, 2012 to December 31, 2012 or, depending on the nature of the relief, such other compliance date as may be determined by the Commission. The extension would ensure that market practices will not be unduly disrupted during the transition to the new regulatory regime.

Third, the Commission is proposing to further amend the First Amended July 14 Order to provide that agricultural swaps, whether entered into bilaterally, on a DCM, or a SEF, may be cleared in the same manner that any other swap may be cleared and without the need for the Commission to issue any further exemption under section

⁸ The Commission promulgated a rule pursuant to section 723(c)(3) of the Dodd-Frank Act, and CEA sections 4(c) and 4c(b), that, effective December 31, 2011, repealed the existing part 35 relief and replaced it with new § 35.1 of the Commission’s regulations. See Agricultural Swaps, 76 FR 49291 (Aug. 10, 2011). Rule 35.1 generally provides that “agricultural swaps may be transacted subject to all provisions of the CEA, and any Commission rule, regulation or order thereunder, that is otherwise applicable to swaps. [It] also clarifies that by issuing a rule allowing agricultural swaps to transact subject to the laws and rules applicable to all other swaps, the Commission is allowing agricultural swaps to transact on [designated contract markets (“DCMs”), swap execution facilities (“SEFs”)], or otherwise to the same extent that all other swaps are allowed to trade on DCMs, SEFs, or otherwise.” *Id.* at 49296.

⁹ As proposed, the Second Amended July 14 Order.

¹⁰ CFTC–SEC, Further Definition of “Swap Dealer”, “Security-Based Swap Dealer”, “Major Swap Participant”, “Major Security-Based Swap Participant”, and “Eligible Contract Participant” (issued Apr. 18, 2012) (to be codified at 17 CFR pt. 1), available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister041812b.pdf>.

4(c) of the CEA.¹¹ This amendment is intended to harmonize the First Amended July 14 Order and the final rules amending part 35 of the Commission’s regulations, to the extent that the July 14 Order, as amended, maintained the pre-Dodd-Frank part 35 prohibition against the clearing of agricultural swaps. While the proposed Second Amended July 14 Order would remove the clearing prohibition for agricultural swaps, this proposal would not permit agricultural swaps to be entered into or executed on an ECM or EBOT. The Commission notes that ECMs and EBOTs both operate some form of trading facility without any self-regulatory responsibilities. The Commission generally believes that any form of exchange trading in agricultural swaps should only be permitted in a self-regulated environment. In other words, unlike exempt and excluded commodities, which were allowed to be transacted on a trading facility (*i.e.*, platform-traded) in an unregulated environment under the CEA prior to the Dodd-Frank Act and now during the transition to the Dodd-Frank Act regulatory regime, agricultural swaps, which were not allowed to be platform-traded on an ECM or EBOT under the CEA prior to Dodd-Frank Act, may not be platform-traded during the transition to the Dodd-Frank Act regulatory regime. Accordingly, under this proposed amendment and in conjunction with 17 CFR part 35, as effective on and after December 31, 2011, the Commission confirms that agricultural swaps may only be entered into or executed bilaterally, on a DCM,¹² or on a SEF.¹³

In connection with swaps executed on a DCM (whether agricultural swaps or otherwise), the Commission clarifies that a DCM may list such swaps for trading under the DCM’s rules related to futures contracts without exemptive relief.¹⁴ As required for futures, a DCM must submit such swaps to the Commission under either § 40.2 (listing products for trading by certification)¹⁵ or § 40.3 (voluntary submission of new products for Commission review and approval)¹⁶ of the Commission’s regulations. Swaps that are traded on a DCM are required to be cleared by a DCO.¹⁷ In order for a DCO to be able to clear a swap listed for trading on a

¹¹ 7 U.S.C. 6(c).

¹² See December 23 Order, 76 FR at 80236, note 11 (Dec. 23, 2011).

¹³ See 17 CFR 35.1(b).

¹⁴ See 76 FR at 80236, note 22 (Dec. 23, 2011).

¹⁵ 17 CFR 40.2.

¹⁶ 17 CFR 40.3.

¹⁷ See 7 U.S.C. 5(d)(11)(A).

DCM, the DCO must be eligible to clear such swap pursuant to § 39.5(a)(1) or (2),¹⁸ and must submit the swap to the Commission pursuant to § 39.5(b).¹⁹

Fourth, the Commission is proposing to further amend the First Amended July 14 Order to remove any reference to the ECM/EBOT Grandfather Order, which expires on July 16, 2012.²⁰ After July 16, 2012, ECMs and EBOTs, as well as markets that rely on pre-Dodd-Frank CEA section 2(d)(2) (“2(d)(2) Markets”), will only be able to rely on the Second Amended July 14 Order, as proposed herein. The relief for ECMs and EBOTs, as well as for 2(d)(2) Markets, granted under the proposed Second Amended July 14 Order shall expire upon the effective date of the DCM or SEF final rules, whichever is later, unless the ECM or EBOT, or 2(d)(2) Markets, files a DCM or SEF application on or before the effective date of the DCM or SEF final rules, in which case the relief shall remain in place during the pendency of the application.²¹ For these purposes, an application will be considered no longer pending upon the application being approved, provisionally approved,²² withdrawn, or denied.

¹⁸ 17 CFR 39.5(a).

¹⁹ 17 CFR 39.5(b).

²⁰ The Commission issued the ECM/EBOT Grandfather Order pursuant to Sections 723(c) and 734(c) of the Dodd-Frank Act which authorized the Commission to permit ECMs and EBOTs respectively to continue to operate pursuant to CEA Sections 2(h)(3) and 5d for no more than one year after the general effective date of the Dodd-Frank Act’s amendments to the CEA.

²¹ The Commission currently receives notice filings from ECMs and EBOTs, and thus has a general familiarity with the nature and number of markets operating pursuant to ECM and EBOT exemptive relief. See 17 CFR 36.2(b) and 17 CFR 36.3(a). In order for the Commission to gain a similar familiarity with 2(d)(2) Markets, and to facilitate their eventual transition to registered DCM or registered SEF status, the Commission strongly encourages 2(d)(2) Markets intending to operate pursuant to the exemptive relief proposed in this Second Amended Order to provide the Commission with notice of their operations (or intent to so operate) on or before July 16, 2012, or as reasonably soon thereafter as is practicable. Any such notice should be sent to the Commission’s Division of Market Oversight, 1155 21st St. NW., Washington, DC 20581 (or electronically, to DMOLetters@cftc.gov), and should include the name and address of the 2(d)(2) Market, and the name and telephone number of a contact person. The Commission anticipates that such notice will assist the Commission in its preparation to review any subsequent application for registration, or provisional registration, as a SEF or DCM submitted by such 2(d)(2) Market. Notwithstanding the provision of such notice, the Commission notes that any subsequent SEF or DCM registration application by a 2(d)(2) Market will still undergo a separate, complete, and independent evaluation by the Commission, just as will every SEF and/or DCM application submitted by an ECM and/or EBOT.

²² For these purposes, an application is “provisionally approved” on the date that such provisional approval becomes effective such that the ECM, EBOT, or 2(d)(2) Market may then rely on

The Commission seeks comment on all aspects of this proposal.

Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act (“PRA”)²³ imposes certain requirements on Federal agencies (including the Commission) in connection with conducting or sponsoring any collection of information as defined by the PRA. The proposed Second Amended July 14 Order will not require a new collection of information from any persons or entities that will be subject to the final order.

B. Cost-Benefit Considerations

Section 15(a) of the CEA²⁴ requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA. CEA section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The Commission proposes that there are no significant, if any, costs associated with this proposed amendment. This is so because the proposed order is permissive—that is, it provides additional time beyond that provided for in the First Amended July 14 Order for persons to comply with any substantive or administrative requirements being imposed elsewhere.

The Commission further proposes that, as discussed above, the primary benefits of this proposal include that it ensures that market practices will not be unduly disrupted during the transition to the new regulatory regime, and removes any actual or perceived inconsistency between Commission orders and rules with regard to agricultural swaps.

The Commission requests comments on the consideration of costs and benefits of the proposed amendments discussed in this Notice.

Proposed Second Amended July 14 Order

The Commission proposes a Second Amended July 14 Order to read as follows:

such provisional approval to operate as a DCM or SEF, as applicable.

²³ 44 U.S.C. 3507(d).

²⁴ 7 U.S.C. 19(a).

The Commission, to provide for the orderly implementation of the requirements of Title VII of the Dodd-Frank Act, pursuant to sections 4(c) and 4c(b) of the CEA and section 712(f) of the Dodd-Frank Act, hereby issues this Order consistent with the determinations set forth above, which are incorporated in this final order, *as amended*, by reference, and:

(1) Exempts, subject to the conditions set forth in paragraph (4), all agreements, contracts, and transactions, and any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction, from the provisions of the CEA, as added or amended by the Dodd-Frank Act, that reference one or more of the terms regarding instruments subject to further definition under sections 712(d) and 721(c) of the Dodd-Frank Act, which provisions are listed in Category 2 of the Appendix to this Order; *provided, however*, that the foregoing exemption:

a. Applies only with respect to those requirements or portions of such provisions that specifically relate to such referenced terms; and

b. With respect to any such provision of the CEA, shall expire upon the earlier of: (i) The effective date of the applicable final rule further defining the relevant term referenced in the provision; or (ii) December 31, 2012.

(2) *Agricultural Commodity Swaps.* Exempts, subject to the conditions set forth in paragraph (4), all agreements, contracts, and transactions in an agricultural commodity, and any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction, from the provisions of the CEA, if the agreement, contract, or transaction complies with part 35 of the Commission’s regulations as in effect prior to December 31, 2011, including any agreement, contract, or transaction that complies with such provisions then in effect notwithstanding that:

a. The agreement, contract, or transaction may be part of a fungible class of agreements that are standardized as to their material economic terms; and/or

b. The creditworthiness of any party having an actual or potential obligation under the agreement, contract, or transaction would not be a material consideration in entering into or determining the terms of the agreement, contract, or transaction *i.e.*, the agreement, contract, or transaction may be cleared.

This exemption shall expire upon the earlier of (i) December 31, 2012; or (ii) such other compliance date as may be determined by the Commission.

(3) *Exempt and Excluded Commodity Swaps*. Exempts, subject to the conditions set forth in paragraph (4), all agreements, contracts, and transactions, and any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction, from the provisions of the CEA, if the agreement, contract, or transaction complies with part 35 of the Commission's regulations as in effect prior to December 31, 2011, including any agreement, contract, or transaction in an exempt or excluded (but not agricultural) commodity that complies with such provisions then in effect notwithstanding that:

a. The agreement, contract, or transaction may be executed on a multilateral transaction execution facility;

b. The agreement, contract, or transaction may be cleared;

c. Persons offering or entering into the agreement, contract or transaction may not be eligible swap participants, provided that all parties are eligible contract participants as defined in the CEA prior to the date of enactment of the Dodd-Frank Act;

d. The agreement, contract, or transaction may be part of a fungible class of agreements that are standardized as to their material economic terms; and/or

e. No more than one of the parties to the agreement, contract, or transaction is entering into the agreement, contract, or transaction in conjunction with its line of business, but is neither an eligible contract participant nor an eligible swap participant, and the agreement, contract, or transaction was not and is not marketed to the public;

Provided, however, that:

a. Such agreements, contracts, and transactions in exempt or excluded commodities (and persons offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction) fall within the scope of any of the CEA sections 2(d), 2(e), 2(g), 2(h), and 5d provisions or the line of business provision as in effect prior to July 16, 2011; and

b. This exemption shall expire upon the earlier of: (i) December 31, 2012; or (ii) such other compliance date as may be determined by the Commission; except that, for agreements, contracts, and transactions executed on an exempt commercial market ("ECM"), exempt board of trade ("EBOT"), or pursuant to

CEA section 2(d)(2) as in effect prior to July 16, 2011 ("2(d)(2) Market"), this exemption shall expire upon the earlier of (i) December 31, 2012; or (ii) the effective date of the designated contract market ("DCM") or swap execution facility ("SEF") final rules, whichever is later, unless the ECM, EBOT, or 2(d)(2) Market files a DCM or SEF registration application on or before the effective date of the DCM or SEF final rules, in which case the relief shall remain in place during the pendency of the application. For these purposes, an application will be considered no longer pending when the application has been approved, provisionally approved, withdrawn, or denied.

(4) Provided that the foregoing exemptions in paragraphs (1), (2), and (3) above shall not:

a. Limit in any way the Commission's authority with respect to any person, entity, or transaction pursuant to CEA sections 2(a)(1)(B), 4b, 4c, 6(c), 6(d), 6c, 8(a), 9(a)(2), or 13, or the regulations of the Commission promulgated pursuant to such authorities, including regulations pursuant to CEA section 4c(b) proscribing fraud;

b. Apply to any provision of the Dodd-Frank Act or the CEA that became effective prior to July 16, 2011;

c. Affect any effective or compliance date set forth in any rulemaking issued by the Commission to implement provisions of the Dodd-Frank Act;

d. Limit in any way the Commission's authority under section 712(f) of the Dodd-Frank Act to issue rules, orders, or exemptions prior to the effective date of any provision of the Dodd-Frank Act and the CEA, in order to prepare for the effective date of such provision, provided that such rule, order, or exemption shall not become effective prior to the effective date of the provision; and

e. Affect the applicability of any provision of the CEA to futures contracts or options on futures contracts, or to cash markets.

In its discretion, the Commission may condition, suspend, terminate, or otherwise modify this Order, as appropriate, on its own motion. This final order, as amended, shall be effective immediately.

Issued in Washington, DC, on May 10, 2012 by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Proposed Order Amending the Second Amendment to July 14, 2011 Order for Swap Regulation—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations

On this matter, Chairman Gensler and Commissioner Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

Appendix 1—Chairman Gary Gensler

I support the proposed exemptive order regarding the effective dates of certain Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provisions. Today's proposed exemptive order makes four changes to the exemptive order issued on December 19, 2011.

First, the proposed exemptive order extends the sunset date from July 16, 2012, to December 31, 2012.

Second, the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission have now completed the rule further defining the term "swap dealer" and "securities-based swap dealer." Thus, the proposed exemptive order no longer provides relief as it once did until those terms were further defined. The Commissions are also mandated by the Dodd-Frank Act to further define the term "swap" and "securities-based swap." The staffs are making great progress, and I anticipate the Commissions will take up this final definitions rule in the near term. Until that rule is finalized, the proposed exemptive order appropriately provides relief from the effective dates of certain Dodd-Frank provisions.

Third, in advance of the completion of the definitions rule, market participants requested clarity regarding transacting in agricultural swaps. The proposed exemptive order allows agricultural swaps cleared through a derivatives clearing organization or traded on a designated contract market to be transacted and cleared as any other swap. This is consistent with the agricultural swaps rule the Commission already finalized, which allows farmers, ranchers, packers, processors and other end-users to manage their risk.

Fourth, unregistered trading facilities that offer swaps for trading were required under Dodd-Frank to register

as swap execution facilities (SEFs) or designated contract markets by July of this year. These facilities include exempt boards of trade, exempt commercial markets and markets excluded from regulation under section 2(d)(2). Given the Commission has yet to finalize rules with regard to SEFs, this proposed order gives these platforms additional time for such a transition.

Appendix 2—Statement of Commissioner Scott D. O'Malia

I concur in support of the Commission's proposal to further modify the temporary exemptive relief provided in the Commission's final order dated July 14, 2011 (the "July 14 Order").²⁵ In the July 14 Order, the Commission addressed concerns raised by industry regarding the applicability of various regulatory requirements to agreements, contracts and transactions after the effective date of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Today's proposal would, among other things, extend the temporary exemptive relief from last extension date (*i.e.*, July 16, 2012) to December 31, 2012.²⁶

²⁵ See *Effective Date for Swap Regulation*, 76 FR 42508 (issued and made effective by the Commission on July 14, 2011; published in the *Federal Register* on July 19, 2011).

²⁶ The proposed amendment to the July 14 Order also seeks to: (1) Remove references to the entities

Based on the Chairman's statements at a recent industry conference,²⁷ I am supportive of the Commission's proposed amendment to the July 14 Order to the delay application until the end of the year or until the implementation. However, I understand that unless the Commission focuses on its priorities, it seems unlikely we can meet this schedule.

Assuming that we complete all Dodd-Frank Act-related rules, orders and guidance by the end of 2012, I think this proposed amendment is appropriate and will provide the industry with needed comfort that the new swaps regulatory regime will not unduly disrupt current market practices.

Notwithstanding today's proposed amendment, I believe that market participants continue to seek guidance regarding the timing of the Commission's remaining rules. I frequently hear that the Commission's

terms in Sections 712(d) of the Dodd-Frank Act, including "swap dealer," "major swap participant," and "eligible contract participant" in light of the final, joint CFTC-Securities and Exchange Commission rulemaking further defining those terms on April 18, 2012; (2) allow the clearing of agricultural swaps; and (3) removing any reference to the exempt commercial market and exempt board of trade grandfather relief previously issued by the Commission.

²⁷ See *Commodity Futures Trading Commission Chairman Gary Gensler, Remarks before International Swaps and Derivatives Association's 27 Annual General Meeting (May 2, 2012)*, available at <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-112>.

rules are not sequenced in a manner that provides them with the certainty they need to make budgeting, investment and hiring decisions.

For that reason, I have included along with my statement a list of the remaining Commission rules, orders and guidance, as well as a timetable of when I understand the Commission expects to vote on those rules, orders and guidance. I have developed this list and timetable based on my knowledge and through my conversations with Commission staff. I strongly urge the public to provide comments on this list and timetable. I also ask that the public answer whether: (1) The Commission's year-end deadline is achievable; and (2) the sequencing of these rules, orders and guidance is appropriate?

While I support the proposed amendment to the July 14 Order, I believe that the Commission's accelerated rulemaking schedule will likely result in many unforeseen perils. For example, to address many of the problems arising out of the Commission's final rulemaking for large trader reporting for physical commodity swaps, the Commission issued temporary and conditional relief and a guidebook. These actions were intended to act as a Band-Aid fixing what the Commission could have addressed in the final rulemaking if it were not rushed.

BILLING CODE 6351-01-P

Draft CFTC 2012 Rulemaking Schedule

Earliest Potential Date for Consideration	Rule	General Topics
May 2012	Historical Swaps (Part 46)	Reporting
May 2012	Ownership and Control Reports (OCR) – PROPOSAL	Reporting; Large Trader
May 2012	Aggregation for Position Limits – PROPOSAL	Position Limits; (Reporting)
June 2012	Cross-Border Guidance – PROPOSAL	Extraterritoriality; Interaffiliate; Registration; Clearing; Capital; Margin
June 2012	Cross Border Relief (4(c) Order) – PROPOSAL	Extraterritoriality; Interaffiliate; Registration; Clearing; Capital; Margin
June 2012	Inter-Affiliate Exemption – PROPOSAL	Clearing
June 2012	RTO/ISO Proposed Order – PROPOSAL	Products; Trading (DCM or SEF); Clearing
June 2012	Product Definitions	Products; Jurisdiction
June 2012	End-User Exemption	Clearing
June 2012	Exemption from Clearing Requirement (4(c) Order)	Co-operatives; Clearing
June 2012	Implementation: Clearing Rules	Mandatory Clearing
June 2012	Mandatory Clearing Determinations – PROPOSAL	Mandatory Clearing; 90-Day Review
June 2012	Aggregation and Work-Up Prohibition – PROPOSAL	Trading (DCM)
July 2012	Implementation: Trading Rules	Trading (DCM & SEF)
July 2012	Disruptive Trading Practices – PROPOSAL	Trading (SEF)
July 2012	Core Principle 9	Trading (DCM)
July 2012	SEF Core Principles	Trading (SEF)
July 2012	Made Available to Trade	Trading (SEF); Mandatory Trading
July 2012	Segregation for Uncleared Swaps	Clearing; Segregation and Bankruptcy
July 2012	201(f) Order – PROPOSAL	Products; Trading (DCM & SEF); Clearing
August 2012	Conforming Amendments (I, II, III)	Entity Definitions (Floor Broker); Trading (Best Execution)
August 2012	Associated Persons & Other Registrants – PROPOSAL	Registration
August 2012	Internal Business Conduct II	Portfolio Compression & Netting
August 2012	Harmonization b/w RICs & CPOs	CPO/CTA; Registration
September/October 2012	Block Trades for Swaps	Trading (DCM & SEF)
Fall 2012	Identity Theft Red Flags	Title X of Dodd-Frank; Consumer Protection
Fall 2012	SIDCOs: Financial Resources	Clearing; International Coordination
Fall 2012	Intermediary Customer Protection Measures – PROPOSAL	Segregation and Bankruptcy; Response to MF Global
Fall 2012	Reporting: Clean-Up	Reporting; Parts 43, 45, 46 and 49
Fall 2012	Conflicts of Interest & Governance	Trading (DCM & SEF); Clearing (DCO); Ownership; Governance
Fall 2012	Volcker Rule	Entity Definitions; Trading; Jurisdiction
Fall 2012	Capital for Non-Banks	Entity Definitions; Capital; Margin
Fall 2012	Margin for Non-Banks	Entity Definitions; Capital; Margin