

CFTC Finalizes a More Permissive Interpretation of Embedded Volumetric Optionality in Forward Contracts

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The Commodity Futures Trading Commission (“CFTC”) has published a final interpretation on volumetric optionality that represents a win for electric and gas utilities transacting in electricity, gas, and related commodities in the course of serving their customers. The interpretation will make it easier for utilities to determine that a contract with “embedded volumetric optionality” is a relatively unregulated “forward contract” rather than a regulated “swap.” Although the seven-factor test used for making this determination has not been eliminated, and no particular class of forward contracts is exempted under this interpretation, the CFTC here indicates its intent to apply the test in a way that will be more favorable to many Spiegel clients.

Please see the full Client Alert linked below for further details.

info@spiegelmcld

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