

info@spiegelmc

C F T C

In this issue:

CLIENT ALERT: CFTC COMPLIANCE UPDATE

The Commodity Futures Trading Commission (“CFTC”) recently has released a number of important issuances affecting Spiegel clients. Many of these issuances delay or reduce the compliance burden imposed by new Dodd-Frank regulations. For your convenience, this memorandum briefly summarizes key points from the CFTC’s issuances over the past several weeks.

Swaps Reporting Deadlines

The CFTC’s Division of Market Oversight issued a “no-action letter”¹ on April 9, 2013 that has the effect of pushing back compliance deadlines for most swaps reporting required of end-users.

- ▶ For non-Swap Dealers or Major Swap Participants² (i.e. most Spiegel clients) entering into new or non-historical energy swaps subject to reporting under Part 45, the new deadline for reporting is August 19, 2013 (pushed back from April 10).
- ▶ For non-Swap Dealers or Major Swap Participants³ (i.e. most Spiegel clients) that previously entered into “historical” energy swaps subject to reporting under Part 46, the new deadline for reporting is October 31, 2013 (pushed back from April 10).

For more information on reporting deadlines, see the CFTC’s press release [here](#) and the no-action letter issued by the CFTC Division of Market Oversight [here](#).

¹ A “no-action letter” is a letter issued by CFTC Staff providing that they will not recommend that the Commission take enforcement action with respect to compliance with specified actions by relevant entities. Commissioner Gensler has publicly affirmed the generally controlling effect of no-action letters issued by CFTC Staff.

² The terms the CFTC uses are non-Swap Dealer or Major Swap Participant swap counterparties that are not “financial entities,” as defined in Section 2(h)(7)(C) of the Commodity Exchange Act (“non-financial swap counterparties”).

³ See *supra* n.2.

Trade Options Reporting and Recordkeeping

The CFTC's Division of Market Oversight issued a [no-action letter](#) on April 5, 2013 that has the effect of relieving most end-users⁴ from most reporting and certain recordkeeping requirements pertaining to trade options. End-users still will need to annually file the Form TO.⁵ The Form TO is available [here](#). The no-action letter does not have an end date, though it is expected that the CFTC will issue a final rule on trade options at some point that may affect this exemption.

201(f) Exemption

On March 28, 2013, the CFTC issued a long-awaited [final rule](#) establishing what is commonly called the "201(f) exemption." This order largely exempts from regulation by the CFTC certain transactions between and among several types of electric power entities, including those that are excused from power rate regulation under Section 201(f) of the Federal Power Act. Exempt entities include the Federal power marketing administrations, utilities owned by state and municipal governments and joint action agencies, tribal utilities, cooperative utilities and "any other entity that is wholly owned, directly or indirectly, by any one or more of the foregoing."

The CFTC's final order for exemption applies to six types of transactions between and among exempt entities. These types of transactions are (1) electric energy delivered, (2) generation capacity, (3) transmission services, (4) fuel delivered, (5) cross-commodity pricing, and (6) other goods and services.⁶

The CFTC retains its general enforcement authority over fraud and market manipulation.

RTO Transactions

Also on March 28, 2013, the CFTC issued a much-anticipated [final order](#) exempting from regulation certain specified Regional Transmission Organization ("RTO") transactions. The final order applies to the purchase or sale of "financial transmission rights," "energy transactions," "forward capacity transactions," and "reserve or regulation transactions" that are offered or sold in a market administered by one of the petitioning RTOs pursuant to a tariff or protocol approved or permitted to take effect by FERC or the Public Utility Commission of Texas. Participating RTOs include CAISO, MISO, ISO-NE, PJM, NYISO, and ERCOT. SPP did not participate in the Joint Petition for exemption and is not covered by the relief. SPP will have to seek similar relief before it begins Day-2 markets. The final order also exempts persons offering, entering into, rendering advice, or rendering other services with respect to those transactions.

⁴ That is, end-users that are not Swap Dealers or Major Swap Participants.

⁵ End-users must also notify the CFTC no later than 30 days after entering into trade options having an aggregate notional value in excess of \$1 billion during any calendar year.

⁶ Cross-commodity agreements include heat rate contracts and agreements where the price of electricity is tied to the cost of delivered fuel. Other goods and services transactions consist of arrangements in which exempt entities share the costs and economic benefits related to construction, operation, and maintenance of facilities.

To be eligible for the exemption, the transactions must be entered into by persons who are: (1) “appropriate persons,” as defined in sections 4(c)(3)(A) through (J) of the Commodity Exchange Act (“CEA”); (2) “eligible contract participants,” as defined in section 1a(18) of the CEA and Commission regulations; or (3) in the business of (i) generating, transmitting, or distributing electric energy, or (ii) providing electric energy services that are necessary to support the reliable operation of the transmission system. Utility clients should meet the standard easily. The exemption is subject to certain conditions which require further action by the RTOs. In addition, the CFTC retains its enforcement authority over fraud and manipulation.

We note that the information contained in this memorandum is highly simplified for general reading and is not intended as legal advice for any specific situation. Please do not hesitate to contact one of the attorneys listed below if you would like advice or additional information.

FOR ADDITIONAL INFORMATION, PLEASE CONTACT THE FOLLOWING SPIEGEL ATTORNEYS:

Lisa Dowden	202.879.2046	lisa.dowden@spiegelmc.com
Melissa Birchard	202.879.4015	melissa.birchard@spiegelmc.com

www.spiegelmc.com