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CLIENT ALERT:

New CFTC Proposed Rule Could Provide Relief from Trade Options Reporting and Recordkeeping Requirements

The Commodity Futures Trading Commission (“CFTC”) has announced a [proposed rule](#) that could provide meaningful relief for those of our clients who engage in trade options (or suspected trade options) in the course of their business. The proposed rule would eliminate the requirement that entities that are not Swap Dealers or Major Swap Participants¹ file an annual Form TO disclosing otherwise-unreported trade options. The rule would also provide relief from certain other recordkeeping and reporting requirements related to trade options.

The rulemaking offers an opportunity to submit comments in support of the proposed relief. Comments must be received by the CFTC by June 8, 2015. Please contact us if we can assist you to prepare comments, or if you have questions as to how the proposed amendments may impact your operations.

The Proposed Amendments

On May 7, 2015, the CFTC published in the Federal Register a proposed rule that would:

- **Eliminate the Form TO Filing Requirement**
 - The CFTC proposes amendments that would eliminate any necessity for a Non-Swap Dealer/Major Swap Participant (“Non-SD/MSP”) to file a Form TO. Currently, some commercial users must file a Form TO by March 1 of each year to report previously unreported trade options or suspected trade options to the CFTC. Even those who ultimately determine they are not required to file the Form TO may be obliged to undertake a time-consuming annual review of transactions to assess potential reporting obligations. This relief alone would be significant.

¹ Most Spiegel clients are neither Swap Dealers (“SDs”) nor Major Swap Participants (“MSPs”).

- **Eliminate Part 45 Reporting for Non-SD/MSPs**
 - The CFTC proposes amendments to the effect that a Non-SD/MSP “will under no circumstances be subject to part 45 reporting requirements with respect to its trade option activities.” The current rule requires that a Non-SD/MSP counterparty to a trade option that has become obligated to report a non-trade option swap within the past calendar year must comply with Part 45 reporting requirements.

- **Add a \$1 Billion Notice Provision for Non-SD/MSPs**
 - The CFTC proposes to make permanent a provision contained in a currently applicable “no-action letter” that requires Non-SD/MSP trade option counterparties to provide notice within 30 days after entering into trade options, whether reported or unreported, that have an aggregate notional value in excess of \$1 billion in any calendar year. Such parties could alternatively provide notice in advance that they expect to enter into trade options in excess of \$1 billion.

- **Modify the Recordkeeping Requirements for Non-SD/MSPs**
 - The proposed rule would clarify that trade option counterparties who are not SD/MSPs need not identify their trade options in recordkeeping by means of either a “unique swap identifier” (“USI”) or a “unique product identifier” (“UPI”), although they must obtain a Legal Entity Identifier (“LEI”) which they provide to their counterparty, if that counterparty is an SD/MSP.

These proposed amendments could provide significant regulatory relief to Spiegel clients who may engage in trade options or suspected trade options. **Comments are due by June 8.**

FOR ADDITIONAL INFORMATION, PLEASE CONTACT THE FOLLOWING SPIEGEL ATTORNEYS:

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