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Client Alert: CFTC Issues Swap Definition

August 1, 2012 | *Lisa G. Dowden*

The CFTC has finally voted out its long-awaited final rule on the definition of “Swap” - the types of transactions that will be subject to the new Dodd-Frank regulations. Almost more important than the definition itself is the fact that the date when this rule becomes final - sixty days after publication in the Federal Register, which has not yet occurred - is the trigger date for beginning implementation of the array of new Dodd-Frank regulations. Thus, barring something unusual, we would expect that trigger date to occur this fall. While there will be some staggered implementation, with larger entities having to comply first, it is time to focus on what utilities must do to be in compliance when the rules are effective. It is generally expected that there will be some dampening in the trading markets, possibly starting very soon, while utilities, generators and marketers attempt to realign their transactions and determine what kinds of transactions they intend to continue and what kinds they intend to stop.

The Swap definition itself has some positive features, including clarification that forward purchases and sales of electricity and gas where physical delivery is intended will not be treated as Swaps. However, the rule is lengthy and complex, so you should assess your existing transactions carefully.

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