



MFA POLICY BRIEF

CFTC Approves Final Derivatives Products Definitions in 4-1 Vote:

The CFTC held an open meeting on Tuesday, July 10, to vote on the final joint products definitions rules and interpretations (i.e., “swap,” “security-based swap,” “mixed swaps,” and “security-based swap agreement”). The CFTC approved the final products definitions rulemaking by a 4-1 vote, with Commissioner Chilton voting against them.

The Commission sought to clarify particular products that are swaps, and beyond the expected scope of interest rate swaps, commodity swaps, currency swaps, equity swaps and broad-based index CDS, the final rules and interpretations will clarify that the following product types are swaps: FX swaps and forwards (subject to a determination by the Secretary of the Treasury to exempt them, in which case certain requirements, such as reporting and business conduct standards, continue to apply), foreign currency options, commodity options, non-deliverable forwards in foreign exchange, cross-currency swaps, forward rate agreements, certain contracts for differences, options to enter into swaps, and forward swaps. CFTC also clarified particular products that are not swaps, including traditional insurance products that meet certain criteria, certain consumer and commercial arrangements, and certain loan participations if the purchaser is acquiring a current or future direct or indirect ownership interest in the related loan or commitment and if certain other conditions are met.

On July 6, the SEC unanimously approved the final product definitions rules and interpretations without an open meeting via the *seriatim* process.

In addition to the final products definitions rule, the CFTC unanimously approved its final rule on the end-user exception to the clearing requirement for swaps, as well as a proposed rule to exempt certain swaps executed by cooperatives from the swap clearing requirement.

[Click here](#) for the CFTC’s press release with links to the Fact Sheets and Q&As for each rule, as well as the opening statements from certain Commissioners.

MFA Files Comments to CFTC on Position Limits Aggregation Proposal:

On June 28th, MFA wrote a [comment letter to the Commodity Futures Trading Commission](#) regarding the new Aggregation Proposal for position limits. MFA expressed its support for various portions of the proposal, including its general approval of the disaggregation relief for “owned entities.” MFA did push for further clarification, requesting that the proposal specifically permit disaggregation in instances of commonly owned entities that share certain employees who do not control trading decisions. Furthermore, MFA suggested that, when passive ownership in the owned entity exceeds the 50 percent ownership threshold, the CFTC should permit disaggregation on case-by-case basis rather than mandate aggregation without exception.

SEC Releases Roadmap for Sequencing of Derivatives Rules:

On June 11th, the Securities and Exchange Commission introduced a “[roadmap plan](#)” outlining the rules regulating security-based swaps (SBS) and SBS participants under the Dodd-Frank Act (Title VII). As derivatives trades switch to trading platforms and clearing houses, Title VII will also place capital, margin and segregation requirements on SBS dealers and major SBS participants. Temporary relief provided by the SEC for SBS participants in the form of exemptions from certain provisions of the Securities Exchange Act of 1934, the Securities Act of 1933, and the Trust Indenture Act of 1939 will also begin to expire, and the roadmap helps create a timeline for this.

Before certain final rules can take effect, threshold definitional rules and cross-border rules governing

the international application of Dodd-Frank provisions must be implemented. Final rules requiring swap data repositories to register with regulators, as well as the rules governing the reporting of SBS transaction data would then be in the next phase of the SEC's proposed implementation plan.

MFA has previously communicated with the SEC on SBS issues, urging them to consider separate regulatory regimes for SBS Dealers and Major SBS Participants – focusing regulation of Major SBS Participants on reducing default risk and focusing regulation of SBS Dealers on market making and pricing and sales practices, in addition to default risk. For more information on MFA advocacy on SBS issues – read our [comment letter](#).

EMIR Derivatives Action:

European regulators are following in the footsteps of their American counterparts to impose stricter guidelines on the over-the-counter (OTC) derivatives market. The Council of the European Union reached agreement with the European Parliament on July 3rd to adopt regulation aimed at increasing transparency OTC derivatives markets. The regulation, known as the European Market Infrastructure Regulation (EMIR), requires financial firms to clear their OTC derivatives contracts through central clearing counterparties. They must also report the contracts to trade repositories.

The European Securities and Markets Authority (ESMA) also released a consultation paper on its draft technical standards for regulation of OTC derivatives. The G-20's deadline for global derivatives regulation is in December and ESMA hopes to have their regulations' technical standards finalized prior to that time. The consultation paper provides guidelines, such as the draft technical standards around determining which derivatives must be cleared as well as thresholds below which clearing of certain derivatives will not be required.

The full EMIR ruling can be read [here](#). ESMA's consultation paper can be found [here](#) - including instructions on submitting a public comment. Public commenting will be closed on August 5th.

Forum 2012 Recap:

MFA hosted its [18th annual managed futures and global macro strategies conference, Forum 2012](#), June 12-13, at The Fairmont Millennium Park, Chicago. *Forum* was designed to bring managers and qualified investors together for business development, networking, and education. Welcome remarks by Chicago Mayor Rahm Emanuel kicked-off the two day event.

Forum's Program Agenda highlights included:

- A special Armchair Chat with CFTC Commissioner Jill E. Sommers who [spoke](#) candidly about ongoing efforts and coordination by regulators to implement financial regulatory reforms under Dodd-Frank.
- A [panel discussion on public pension](#) liabilities including perspectives on the challenges and opportunities in our current economic environment. The presentation was moderated by Peter M. Gilbert, Chief Investment Officer, Lehigh University, and MFA Director. Participants included Oliver C. Mitchell, Jr., Trustee, Pennsylvania State Employees' Retirement System; Lisa J. Morris, Executive Director, The School Employees Retirement System of Ohio; and Ash Williams, Executive Director and Chief Investment Officer, Florida State Board of Administration, and MFA Director.
- Kenneth G. Tropin, Chairman, Founder & Principal, Graham Capital Management, and one of MFA's founders, [spoke](#) with John G. "Jack" Gaine, MFA President Emeritus, about the evolution of the hedge fund industry, macro strategies, quantitative models, the story behind the huge success of Graham, risk management and his vision of the future. Ken won the "Lifetime Achievement Award" at the Managed Futures Pinnacle Awards dinner sponsored by CME Group and BarclayHedge the preceding evening, June 11.
- The Pinnacle Award Winning Managed Futures Managers populated two panels at *Forum*, interviewed by leading allocators to discuss their strategies, the economy, the markets and how they won their awards.