

SEC and CFTC Adopt Final Swap Product Definitional Rules, Which Will Trigger Compliance Dates for Multiple Dodd-Frank Act Rules

On July 6 and July 10, the Securities and Exchange Commission (the “SEC”) and the Commodity Futures Trading Commission (the “CFTC” and, together with the SEC, the “Commissions”), respectively, adopted final rules defining the terms “swap,” “security-based swap,” and “security-based swap agreement,” governing “mixed swaps,” and establishing books and records requirements for “security-based swap agreements.” This marks a critical milestone in the Dodd-Frank regulatory scheme, as the compliance dates for many other rules under the Dodd-Frank Act (some of which already have been finalized by the Commissions) are dependent on adoption of these definitional rules.

The definitional rules will become effective 60 days after their publication in the Federal Register, which is expected to occur in the near future. Entities subject to the new Dodd-Frank rules will be required to comply with many new requirements, such as swap data recordkeeping and reporting, position limits, and registration of dealers or major participants, in some cases as soon as the date on which the definitional rules become effective (*i.e.*, as early as September 2012). The definitional rules will also be significant to fund sponsors and advisers as they analyze their commodity pool operator and commodity trading advisor registration status in the wake of the repeal of the registration exemption under CFTC Rule 4.13(a)(4) and modifications to the exclusion and exemption under CFTC Rules 4.5 and 4.13(a)(3), respectively.

Additional information regarding the definitional rules adopted by the Commissions, as well as the timing of compliance dates for various other Dodd-Frank Act rules that will be triggered by the effectiveness of the definitional rules, will be provided in a separate client alert following publication of the definitional rules in the Federal Register.