

Update on Swaps Clearing Timetable

We wanted to inform you of recent statements from the CFTC staff regarding the phasing-in of the mandatory clearing requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). As you may recall, on July 24, 2012, the CFTC issued proposed rules that would require certain interest rate swaps and credit default index swaps to be cleared. We expect that those rules will be finalized in the next few weeks. In July, the CFTC also adopted final rules that created a phased-in implementation schedule for compliance with mandatory clearing determinations under the Dodd-Frank Act, with different compliance dates for different categories of market participant. Certain types of market participants (“category 1 entities”) are subject to a mandatory clearing determination 90 days after such determination is published in the Federal Register, certain other types of market participants (“category 2 entities”) are subject to a mandatory clearing determination 180 days after such determination is published in the Federal Register, and other market participants are subject to a mandatory clearing determination 270 days after such determination is published in the Federal Register. (For more information, see Ropes & Gray’s [Alert](#).)

Many in the market have assumed that the mandatory clearing mandate would apply only to swaps entered by a market participant after the applicable phased-in compliance date. Recently, however, the CFTC has informally advised several dealers that swaps entered into after the effective date of a mandatory clearing determination by any type of market participant are required to be cleared, although such transactions do not need to be submitted to a clearinghouse for clearing until after the 90, 180 or 270 day compliance period. Accordingly, under the CFTC’s interpretation, all interest rate swaps and credit default index swaps entered into following the effective date of the mandatory clearing determination for such swaps, which will likely be in November 2012, would be required to be cleared. The CFTC’s interpretation was surprising to many market participants, is likely to be subject to further discussion between market participants and the CFTC, and may change. We will provide further updates when further information is available.