

HAWKINS ADVISORY

CFTC PROVIDES AMENDED COMPLIANCE DATES FOR SWAP MARKET PARTICIPANTS TO OBTAIN CFTC INTERIM COMPLIANT IDENTIFIERS (CICIS)

Pursuant to provisions of the Dodd-Frank Act (“Dodd-Frank”), the Commodity Futures Trading Commission (the “CFTC”) has jurisdiction to regulate the over-the-counter swap market represented in part by interest rate exchange agreements tied to debt obligations, including those of governmental and non-profit entities. Regulations have recently been issued regarding business conduct standards for swap dealers, which include “safe harbor” protections provided in the regulations that may be availed of by swap dealers. These safe harbor provisions are the motivating force behind the creation by the International Swap Dealers Association (ISDA) of its DF Protocol system whereby the parties to a regulated swap independently provide certain information to a digital platform as a means of amending existing swap documentation. These safe harbors also address certain matters that swap dealers must assure are part of the swap policies of their counterparties (such as the requirement for a governmental “Special Entity” to engage an independent swap advisor and monitor its performance). Although the need for safe harbors does not exist until there is activity involving the swap dealer with respect to existing or new swaps (including amendment or novation of existing swaps), there is pressure at the present time from the swap dealer community to take the actions required for effectiveness of the safe harbors, including participation in the DF Protocol, regardless of whether or not there is swap activity ongoing or planned at present. The CFTC has not imposed any compliance deadlines for these actions.

However, the CFTC has imposed compliance dates for certain actions regulated by the CFTC under Dodd-Frank related to recordkeeping and swap data reporting. The CFTC is a participant in

a process led by an international Regulatory Oversight Committee to establish a global system of “legal entity identifiers” (“LEIs”, currently known as CFTC Interim Compliant Identifiers or “CICIs”) for all swap market participants which would be utilized in all recordkeeping and all swap data reporting required by Dodd-Frank. In connection with the Dodd-Frank reporting requirements, regulations of the CFTC require swap counterparties to obtain CICIs and the CFTC has urged swap counterparties to go to www.ciciutility.org to obtain a CICI or otherwise check CICI status. The CFTC recently announced in a no-action letter that, with respect to “historical swaps” (essentially, any swap in existence on July 1, 2010 or executed thereafter during a “transition period”), non-financial swap counterparties that are not swap dealers or major swap participants (which includes our governmental and non-profit client base) have a compliance date of October 31, 2013. Newly executed swaps (which may encompass modifications to historical swaps) that are not “transition swaps” have a compliance date of July 1, 2013. We understand that the process of obtaining a CICI is straightforward and inexpensive (a \$200 fee). Note that a request for a CICI may be undertaken by a swap counterparty or by a third party that has received the permission of the counterparty (such as a financial or swap advisor) for that purpose. In addition, Dodd-Frank and CFTC regulations make clear that where a non-financial swap counterparty executes a swap with a swap dealer, the swap dealer is the entity ultimately liable for compliance with the CFTC reporting requirements, not the non-financial swap counterparty. Persons who have questions about this Hawkins Advisory may contact Richard A. Van Dusen at Hawkins (phone 212-820-9630; email rvandusen@hawkins.com).

About Hawkins Advisory

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