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## RE-EXAMINING THE CFTC'S REGULATION OF CROSS-BORDER SWAPS CLEARING AND TRADING ACTIVITIES

*In this article, the authors discuss the CFTC's application of Title VII's swaps clearing and trading mandates to cross-border and extraterritorial trading activities, comparing them to corollary provisions of EU regulation. They then turn to registration requirements for foreign DCOs, FCMs, IBs, and SEFs. Finally, they analyze how the present framework could contribute to market fragmentation and close with some thoughts on possible new directions for that framework advocated by leading market associations.*

By Colin Lloyd and Christian Artmann \*

Following the 2007-2008 financial crisis, the Group of Twenty leaders agreed to strengthen regulation of over-the-counter ("OTC") derivatives through, among other reforms, requiring clearing of standardized OTC derivatives through central counterparties ("CCPs") and, where appropriate, trading of standardized OTC derivatives on exchanges or electronic trading platforms.<sup>1</sup> In the United States, Congress enacted these

reforms in Title VII of the Dodd-Frank Act.<sup>2</sup> Title VII amended the Commodity Exchange Act ("CEA") to authorize the Commodity Futures Trading Commission ("CFTC") to implement these reforms for "swaps," which include OTC derivatives based on rates, currencies, physical commodities, and broad-based security indexes. Title VII also authorized the Securities and Exchange Commission ("SEC") to implement these

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<sup>1</sup> G-20, *Leaders' Statement: The Pittsburgh Summit* (Sept. 24-25, 2009), [https://www.g20.org/Content/DE/StatischeSeiten/Breg/G7G20/Anlagen/G20-erklaerung-pittsburgh-2009-en.pdf?\\_\\_blob=publicationFile&v=3](https://www.g20.org/Content/DE/StatischeSeiten/Breg/G7G20/Anlagen/G20-erklaerung-pittsburgh-2009-en.pdf?__blob=publicationFile&v=3).

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<sup>2</sup> Title VII of Pub. L. No. 111-203, 124 Stat. 1376 (2010).

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