

## SEC TO ISSUE INTERPRETIVE GUIDANCE ON THE TREATMENT OF SECURITY FUTURES UNDER SECTION 16 OF THE EXCHANGE ACT

The Securities and Exchange Commission (“SEC”) has issued a release defining the term “equity security” to include “security futures” for purposes of all rules promulgated under the Securities Act of 1933 (the “Securities Act”) and the Securities Exchange Act of 1934 (the “Exchange Act”). The release was issued in order to conform the definition used under the rules to the definition used under the Securities Act and the Exchange Act, which had been amended to include security futures by the Commodity Futures Modernization Act of 2000 (the “CFMA”).

Among other things, the CFMA amended Section 16 of the Exchange Act to cover ownership of, and transactions in, security futures. In general, Section 16 of the Exchange Act requires “insiders” of a registrant (officers, directors and 10% shareholders) to file public reports covering transactions in equity securities of the registrant, and to disgorge short-swing profits made on purchases and sales or sales and purchases of equity securities occurring within a six-month period. The CFMA did not, however, provide guidance on the treatment of transactions in security futures under Section 16.

In its release, the SEC indicated that it would issue separate interpretive guidance setting forth its views on the treatment of security futures under Section 16 and other provisions of the federal securities laws. We will apprise you of further developments in this area as they arise.

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If you wish to obtain any additional information regarding the SEC release, please contact Frank A. Daniele (212-728-8216, [fdaniele@willkie.com](mailto:fdaniele@willkie.com)) or the corporate partner who regularly works with you.

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