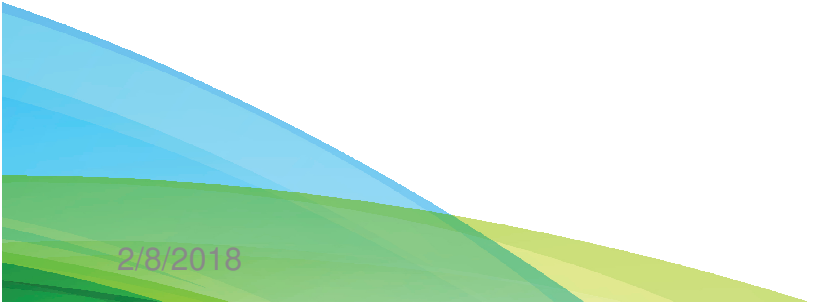




Swaps Trading Compliance and Regulatory Changes

February 8, 2018

Presented by Covington & Burling LLP



2/8/2018



Administrative Items

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Presenters



Stephen M. Humenik
Of Counsel

Washington, DC
+1 202 662 5803
shumenik@cov.com

Stephen Humenik leads Covington's futures and derivatives practice. He has extensive experience on cross-border regulatory, compliance and enforcement matters involving the U.S. Commodity Futures Trading Commission (CFTC) and markets for derivatives and physical and financial commodities. Mr. Humenik applies his business, operational, and technology experience to the implementation of CFTC regulations. Specifically, he advises clients, including swap dealers, financial institutions, asset managers, and end-users, on regulatory and policy matters relating to the registration, trading, clearing and other compliance obligations of the Dodd-Frank Act. Mr. Humenik also represents clients in CFTC enforcement investigations and proceedings. Prior to joining Covington, Mr. Humenik was general counsel and chief regulatory officer of an interest rate swap derivatives market, where he oversaw the legal and regulatory affairs of the exchange, including the exchange's designation as a contract market and ongoing compliance with CFTC regulations. Mr. Humenik previously served as Special Counsel and Policy Advisor to former CFTC Commissioner Scott O'Malia where he assisted on rulemaking, enforcement and legislative matters. Mr. Humenik began his career at the CFTC and primarily served as Senior Trial Attorney for the CFTC's Division of Enforcement where he investigated and litigated complex fraud and market manipulation cases, specifically those involving financial and energy derivatives and physical commodities. Mr. Humenik received his J.D. from the Catholic University of America, Columbus School of Law and B.A. from Pennsylvania State University.



Anne M. Termine
Of Counsel

Washington, DC
+1 202 662 5827
atermine@cov.com

Anne Termine is a member of the futures and derivatives practice, and leads the CFTC Enforcement practice. She is also a member of Covington's white collar defense and investigations practice. Ms. Termine advises clients in handling internal investigations and regulatory enforcement inquiries related to the derivatives markets. Prior to joining Covington, Ms. Termine was a Chief Trial Attorney in the CFTC's Division of Enforcement for thirteen years. In this role, Ms. Termine designed and led the CFTC's landmark enforcement program involving the manipulation and false reporting of LIBOR, Euribor and TIBOR that lead to penalties totaling over \$2.8 billion. Ms. Termine was instrumental in developing relationships and coordinating with diverse foreign regulatory and law enforcement agencies throughout Europe and Asia, as well as with divisions of DOJ and a coalition of over 40 State Attorneys General. Ms. Termine has also led investigations and litigations in matters involving the attempted manipulation and false reporting of natural gas prices, multi-million dollar Ponzi schemes, among others. Prior to joining the CFTC, Ms. Termine was a Senior Assistant District Attorney in the Orleans Parish District Attorney's Office where she tried more than 140 jury and non-jury trials, including several first and second degree murder cases. Ms. Termine received her J.D., *magna cum laude*, from Tulane University School of Law and B.A. from Bucknell University.



Overview

- SEF Rules – Regulatory Background
- SEF Market Structure
- SEF Compliance Tools
- The New CFTC Enforcement Environment
- Swap Dealers - U.S. Enforcement Trends
- SEFs: Upcoming Regulatory Developments
- Covington's Futures and Derivatives Practice





SEF Rules
Regulatory Background



Swap Execution Facilities – Policy Goal

- Section 733 of the Dodd-Frank Act (codified as Section 5h(e) of the Commodity Exchange Act (“CEA”)) states “[t]he goal...is to promote the trading of swaps on swap execution facilities and to promote pre-trade price transparency in the swaps market”.
- Additionally, Congress defined Swap Execution Facility as: “a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that— (A) facilitates the execution of swaps between persons; and (B) is not a designated contract market”. (7 USC 1a (50))



Swap Execution Venues

- Swap Execution Facility (SEF)
 - Any trading facility, that facilitates the execution of swaps between persons and is not a DCM
 - Trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system
 - Bloomberg; Tradeweb; trueEX; ICAP; GFI; Tradition
- Designated Contract Market (DCM)
 - Boards of trade (or exchanges) that operate under the regulatory oversight of the CFTC
 - Traditional futures exchanges: CME, NYMEX, ICE Futures, Nodal
 - Can offer the trading of futures and swaps; central limit order book trading is require



SEF Core Principles

- The CEA has 15 SEF Core Principles for SEFs and the CFTC has promulgated rules for each Core Principle in 17 C.F.R. Part 37.
- Guidance on SEF Core Principles is in 17 C.F.R. Part 37, Appendix B.
- Core Principles are the building blocks of a SEF Rulebook – familiarity with Core Principles will assist in building a compliance program with SEF Rules – both for the SEFs and market participants.



Registration Requirement

- What entities must register as a SEF: Any person operating a facility that offers a trading system or platform in which more than one market participant has the ability to execute or trade swaps (required or permitted) with more than one other market participant on the system or platform.
- Minimum number of recipients of an RFQ: Two initially, moving to three recipients beginning 14 months from the effective date of the Final SEF Rule, which was October 2, 2014.



Execution Methods

- Permitted execution methods for Required Transactions: In the order book (including via cross-trade), through RFQ, or in a block trade.
- Permitted execution methods for Permitted Transactions: In the order book, through RFQ, in a block trade, or by any other means of interstate commerce, including by voice.



Execution Methods – Required Transactions

§ 37.9 Methods of execution for required and permitted transactions.

(a) Execution methods for required transactions.

(1) Required transaction means any transaction involving a swap that is subject to the trade execution requirement in section 2(h)(8) of the Act.

(2) Execution methods.

(i) Each Required Transaction that is not a block trade as defined in section 43.2 of this chapter shall be executed on a swap execution facility in accordance with one of the following methods of execution:

(A) An Order Book as defined in section 37.3(a)(3); or

(B) A Request for Quote System, as defined in paragraph (a)(3) of this section, that operates in conjunction with an Order Book as defined in section 37.3(a)(3).

Required Transactions

Order Book or

RFQ-3 with an Order
Book



Execution Methods – Any Means of Interstate Commerce

§ 37.9 Methods of execution for required and permitted transactions.

(ii) In providing either one of the execution methods set forth in paragraph (a)(2)(i)(A) or (B) of this section, a swap execution facility may for purposes of execution and communication use any means of interstate commerce, including, but not limited to, the mail, internet, email, and telephone, provided that the chosen execution method satisfies the requirements provided in section 37.3(a)(3) for Order Books or in paragraph (a)(3) of this section for Request for Quote Systems.

Mail

Internet

Email

Phone

IM

ALL WITH AN ORDER BOOK



Order Book

Order Book means: (i) An electronic trading facility, as that term is defined in section 1a(16) of the Act; (ii) A trading facility, as that term is defined in section 1a(51) of the Act; or (iii) A trading system or platform in which all market participants in the trading system or platform have the ability to enter multiple bids and offers, observe or receive bids and offers entered by other market participants, and transact on such bids and offers. CEA § 37.3(a)(3)

Electronic Trading Facility means a trading facility that—(A) operates by means of an electronic or telecommunications network; and (B) maintains an automated audit trail of bids, offers, and the matching of orders or the execution of transactions on the facility. CEA § 1a(16)

Trading Facility means a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions—(i) by accepting bids or offers made by other participants that are open to multiple participants in the facility or system; or (ii) through the interaction of multiple bids or multiple offers within a system with a pre-determined nondiscretionary automated trade matching and execution algorithm. CEA § 1a(51)

Many-to-many

Automated Audit Trail

Many-to-many or
Automated Trade
Matching and Execution
Algorithm



Execution Methods – RFQ

§ 37.9 Methods of execution for required and permitted transactions.

(3) Request for quote system means a trading system or platform in which a market participant transmits a request for a quote to buy or sell a specific instrument to no less than three market participants in the trading system or platform, to which all such market participants may respond. The three market participants shall not be affiliates of or controlled by the requester and shall not be affiliates of or controlled by each other. A swap execution facility that offers a request for quote system in connection with Required Transactions shall provide the following functionality:

(i) At the same time that the requester receives the first responsive bid or offer, the swap execution facility shall communicate to the requester any firm bid or offer pertaining to the same instrument resting on any of the swap execution facility's Order Books, as defined in section 37.3(a)(3);

(ii) The swap execution facility shall provide the requester with the ability to execute against such firm resting bids or offers along with any responsive orders; and

(iii) The swap execution facility shall ensure that its trading protocols provide each of its market participants with equal priority in receiving requests for quotes and in transmitting and displaying for execution responsive orders.

RFQ to 3...

...RFQ Response with
Order Book...

...Ability to execute in
Order Book...

...Equality priority in
receipt and responses.



Trading Mandate for Swaps

- Swaps that are subject to mandatory clearing may be submitted by a SEF or DCM to the CFTC to be deemed “made available to trade”
- Swaps that are “made available to trade” or “MAT” are subject to mandatory trading (also known as the “trade execution requirement”)
- Swaps that are MAT must be executed on or pursuant to the rules of a DCM or SEF



Clearing Mandate in the U.S. - 2013

- The clearing mandate in the U.S. began on February 11, 2013 with phased compliance over the course of 2013:
 - Category 1 Entities (SDs/MSPs and “Active Funds” that are not managed by third-party investment managers) – March 11, 2013
 - Category 2 Entities (Commodity Pools, Private Funds that are not “Active Funds,” and people “predominantly engaged in” banking activities or activities that are financial in nature, that are not managed by third-party investment managers) – June 10, 2013
 - Category 3 Entities (pension funds, accounts managed by third-party investment managers and all others subject to the mandate) – September 9, 2013
- The 2013 CFTC clearing mandate covers the following products:
 - *Interest Rate Swaps* (Fixed-to-Floating Swaps [USD, EUR, GBP, JPY], Basis Swaps [USD, EUR, GBP, JPY], Forward Rate Agreements [USD, EUR, GBP, JPY] and Overnight Index Swaps) [USD, EUR, GBP]; and
 - *Credit Default Swaps* (North American Untranching CDS Indices and European Untranching CDS Indices)
- Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act (CEA;) Final Rule, 77 Fed. Reg. 74284 (Dec. 13, 2012); see also <http://www.cftc.gov/PressRoom/PressReleases/pr6684-13>

Category 1

Category 2

Category 3



Clearing Mandate for IRS in the U.S. - 2013

Specification	Fixed-to-floating swap class			
Currency	U.S. dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).
Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.
Stated Termination Date Range	28 days to 50 years ...	28 days to 50 years ...	28 days to 50 years ...	28 days to 30 years.
Optionality	No	No	No	No.
Dual Currencies	No	No	No	No.
Conditional Notional Amounts	No	No	No	No.
Specification	Basis swap class			
Currency	U.S. dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).
Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.
Stated Termination Date Range	28 days to 50 years ...	28 days to 50 years ...	28 days to 50 years ...	28 days to 30 years.
Optionality	No	No	No	No.
Dual Currencies	No	No	No	No.
Conditional Notional Amounts	No	No	No	No.
Specification	Forward rate agreement class			
Currency	U.S. dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).
Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.
Stated Termination Date Range	3 days to 3 years	3 days to 3 years	3 days to 3 years	3 days to 3 years.
Optionality	No	No	No	No.
Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No.
Specification	Overnight index swap class			
Currency	U.S. dollar (USD)	Euro (EUR)	Sterling (GBP).	
Floating Rate Indexes	FedFunds	EONIA	SONIA.	
Stated Termination Date Range	7 days to 2 years	7 days to 2 years	7 days to 2 years.	
Optionality	No	No	No.	
Dual Currencies	No	No	No.	
Conditional Notional Amounts	No	No	No.	



Clearing Mandate for CDS in the U.S. - 2013

Specification	North American untranched CDS indices class
Reference Entities	Corporate.
Region	North America.
Indices	CDX.NA.IG; CDX.NA.HY.
Tenor	CDX.NA.IG: 3Y, 5Y, 7Y, 10Y; CDX.NA.HY: 5Y.
Applicable Series	CDX.NA.IG 3Y: Series 15 and all subsequent Series, up to and including the current Series. CDX.NA.IG 5Y: Series 11 and all subsequent Series, up to and including the current Series. CDX.NA.IG 7Y: Series 8 and all subsequent Series, up to and including the current Series. CDX.NA.IG 10Y: Series 8 and all subsequent Series, up to and including the current Series. CDX.NA.HY 5Y: Series 11 and all subsequent Series, up to and including the current Series.
Tranchéd	No.

Specification	European untranchéd CDS indices class
Reference Entities	Corporate.
Region	Europe.
Indices	iTraxx Europe. iTraxx Europe Crossover. iTraxx Europe HiVol.
Tenor	iTraxx Europe: 5Y, 10Y. iTraxx Europe Crossover: 5Y. iTraxx Europe HiVol: 5Y.
Applicable Series	iTraxx Europe 5Y: Series 10 and all subsequent Series, up to and including the current Series. iTraxx Europe 10Y: Series 7 and all subsequent Series, up to and including the current Series. iTraxx Europe Crossover 5Y: Series 10 and all subsequent Series, up to and including the current Series. iTraxx Europe HiVol 5Y: Series 10 and all subsequent Series, up to and including the current Series.
Tranchéd	No.



Clearing Mandate for IRS in the U.S. - 2017

- In 2016 the CFTC finalized a rule for mandated clearing for additional non-USD denominated interest rate swaps with compliance dates beginning in 2017.
- However, the CFTC did not phase in different types of IRS swaps by market participant category.
 - The CFTC has based the compliance date on when the clearing requirement was effective in the respective non-U.S. jurisdiction.



Clearing Mandate for Non-USD IRS in the U.S. - 2017

Product	First clearing requirement compliance date in a non-U.S. jurisdiction ¹⁷⁵	CFTC clearing requirement compliance date
AUD-denominated Fixed-to-floating interest rate swap.	April 4, 2016	60 days after publication of this final rulemaking in the Federal Register .
CAD-denominated Fixed-to-floating interest rate swap.	May 9, 2017	July 10, 2017.
CHF-denominated Fixed-to-floating interest rate swap.	None to date	No later than 730 days after publication of this final rulemaking in the Federal Register .
HKD-denominated Fixed-to-floating interest rate swap.	July 1, 2017	August 30, 2017.
MXN-denominated Fixed-to-floating interest rate swap.	April 1, 2016	60 days after publication of this final rulemaking in the Federal Register .
NOK-denominated Fixed-to-floating interest rate swap.	February 9, 2017	April 10, 2017.
PLN-denominated Fixed-to-floating interest rate swap.	February 9, 2017	April 10, 2017.
SEK-denominated Fixed-to-floating interest rate swap.	February 9, 2017	April 10, 2017.
SGD-denominated Fixed-to-floating interest rate swap.	None to date	No later than 730 days after publication of this final rulemaking in the Federal Register .
AUD-denominated basis swap	April 4, 2016	60 days after publication of this final rulemaking in the Federal Register .
NOK-denominated FRA	February 9, 2017	April 10, 2017.
PLN-denominated FRA	February 9, 2017	April 10, 2017.
SEK-denominated FRA	February 9, 2017	April 10, 2017.
EUR-denominated OIS (2–3 year term)	June 21, 2016	60 days after publication of this final rulemaking in the Federal Register .
GBP-denominated OIS (2–3 year term)	June 21, 2016	60 days after publication of this final rulemaking in the Federal Register .
USD-denominated OIS (2–3 year term)	June 21, 2016	60 days after publication of this final rulemaking in the Federal Register .
AUD-denominated OIS	October 3, 2016	60 days after publication of this final rulemaking in the Federal Register .
CAD-denominated OIS	May 9, 2017	July 10, 2017.



Made Available to Trade

A DCM or SEF may make a swap available to trade by submitting a request for Commission approval of a new rule or a certification of a new rule's compliance with the Core Principles.

Factors to be considered by a SEF or DCM when determining whether to make a swap available to trade. The factors, with respect for a swap are:

1. Whether there are ready and willing buyers and sellers;
2. The frequency or size of transactions on SEFs, DCMs, or of bilateral transactions;
3. The trading volume on SEFs, DCMs, or of bilateral transactions;
4. The number and types of market participants;
5. The bid/ask spread;
6. The usual number of resting firm or indicative bids and offers
7. Whether a SEF or DCM's trading system or platform will support trading in the swap; or
8. Any other factor that the SEF or DCM may consider relevant.

Buyers and Sellers

Frequency/Size

Trading Volume

Market Participants

Bid/Ask Spread

Resting B/O's

DCM or SEF Support

Other



MAT Products - IRS

Fixed-to-Floating Interest Rate Swap				
Currency	U.S. Dollar (USD)			
Trade Start Type	Spot Starting (T+2)	Spot Starting (T+2)	IMM Start Date (next two IMM dates)	
	IMM Start Date (next two IMM dates)	IMM Start Date (next two IMM dates)		
Floating Leg				
Floating Rate Indexes	USD LIBOR	USD LIBOR	USD LIBOR	
Reset Frequency	Quarterly, Semi-Annual	Quarterly	Quarterly	
Day Count Convention	Actual/360	Actual/360	Actual/360	
Fixed Leg				
Payment Frequency	Semi-Annual, Annual	Semi-Annual	Annual	Semi-Annual
Day Count Convention	30/360, Actual/360	30/360	Actual/360	30/360
Fixed Rate	Par	Par		MAC (Standard Coupon)*
Tenors	2, 3, 5, 7, 10, 12, 15, 20, 30	4, 6		1, 2, 3, 4, 5, 7, 10, 15, 20, 30
Notional	Fixed Notional			



MAT Products - IRS

Fixed-to-Floating Interest Rate Swap		
Currency	Euro (EUR)	
Trade Start Type	Spot Starting (T+2)	Spot Starting (T+2)
Floating Leg		
Floating Rate Indexes	EURIBOR	EURIBOR
Reset Frequency	Quarterly, Semi-Annual	Quarterly, Semi-Annual
Day Count convention	Actual/360	Actual/360
Fixed Leg		
Payment Frequency	Semi-Annual, Annual	Annual
Day Count Convention	30/360, Actual/360	30/360
Fixed Rate		Par
Tenors	2, 3, 5, 7, 10, 15, 20, 30	4, 6
Notional	Fixed Notional	

Fixed-to-Floating Interest Rate Swap		
Currency	Sterling (GBP)	
Trade Start Type	Spot Starting (T+0)	
Floating Leg		
Floating Rate Indexes	GBP LIBOR	
Reset Frequency	Quarterly, Semi-Annual	
Day Count Convention	Actual/365F	
Fixed Leg		
Payment Frequency	Quarterly, Semi-Annual	
Day Count Convention	Actual/365F	
Fixed Rate	Par	
Tenors	2, 3, 4, 5, 6, 7, 10, 15, 20, 30	
Notional	Fixed Notional	



MAT Products - Credit

Untranching Credit Default Swap Indices		
References Entities	Corporate	Corporate
Region	North America	Europe
Indices	CDX.NA.IG 5Y Series 23 and 24	iTraxx Europe 5Y Series 22 and 23
	CDX.NA.HY 5Y Series 23 and 24	iTraxx Europe Crossover 5Y Series 22 and 23
Applicable Series	At any time, the then-current on-the-run series and the preceding series that was replaced by the current one	



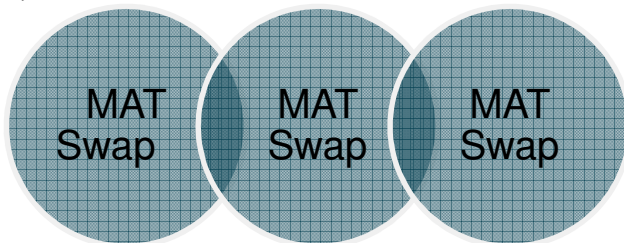
U.S. Trading Mandate for Swaps – Package Transactions

- A package transaction is a transaction involving two or more instruments:
 - 1) that is executed between two or more counterparties;
 - 2) that is priced or quoted as one economic transaction with simultaneous or near simultaneous execution of all components;
 - 3) that has at least one component that is a swap that is made available to trade and therefore is subject to the CEA section 2(h)(8) trade execution requirement; and
 - 4) where the execution of each component is contingent upon the execution of all other components.
- Package Transactions have been the topic of much industry discussion, including a public roundtable at the CFTC, as there is a debate around whether the technology exists to facilitate exchange trading of packages or at least the legs of a package that are subject to the trading mandate.

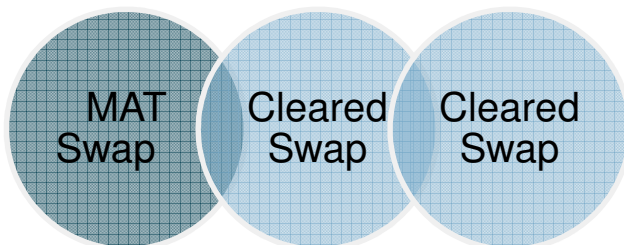


U.S. Trading Mandate for Swaps – Package Transactions

CFTC most recently issued relief on October 31, 2017 from mandatory exchange trading of package transactions, which has been and continues to be phased-in as follows:



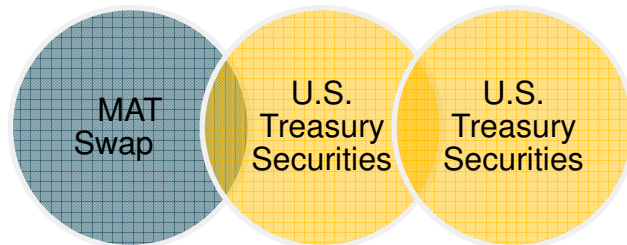
- For package transactions in which all components are swaps subject to the trade execution requirement, there is no additional relief, so compliance was required May 16, 2014.



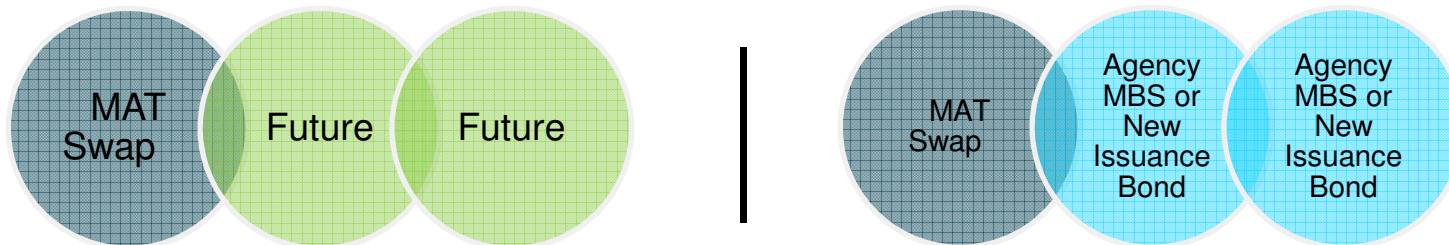
- For package transactions in which the components include at least one swap component that is subject to the trade execution requirement and all other components are swaps subject to the mandatory clearing requirement, relief was provided until June 2, 2014.

U.S. Trading Mandate for Swaps – Package Transactions

Phase-in (cont'd):



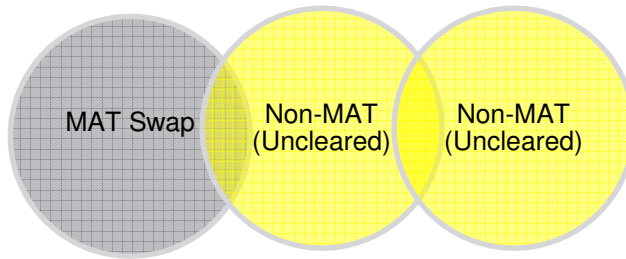
- For package transactions in which the swap components are subject to the trade execution requirement and all other components are U.S. Treasury securities (U.S. Dollar Swap Spreads), relief was provided until June 16, 2014.



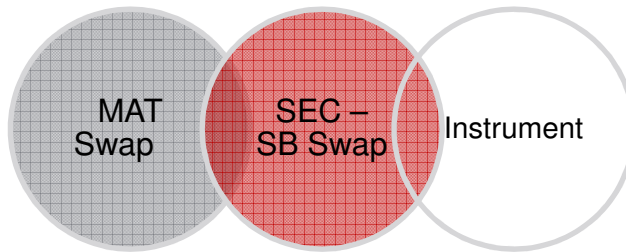
- For package transactions (excluding U.S. Dollar Swap Spreads) in which the components include at least one individual swap component that is subject to the trade execution requirement and all other components are futures/Agency MBS/New Issuance Bond, relief is provided until November 15, 2020 (e.g., for example MAT Swap/Futures).

U.S. Trading Mandate for Swaps – Package Transactions

- Phase-in (cont'd):



- For package transactions in which the components include at least one swap component that is subject to the trade execution requirement and at least one swap component that is under the Commission’s exclusive jurisdiction and not subject to the clearing requirement, relief is provided until November 15, 2020 (i.e., MAT swap v. uncleared credit default swap).



- For package transactions in which the components include at least one swap component that is subject to the trade execution requirement and at least one swap component that is a swap over which the Commission does not have exclusive jurisdiction, relief is provided until November 15, 2020.

Block Trades vs. Large Notional Off-Facility Swaps

- CFTC regulations define a block trade as a publicly-reportable swap transaction that: (i) involves a swap that is listed on a SEF or DCM; (ii) occurs away from the SEF's or DCM's trading system but is executed pursuant to the SEF's or DCM's rules and procedures; (iii) has a notional amount at or above the specified minimum notional order size applicable to the swap; and (iv) is reported subject to the rules and procedures of the SEF or DCM and the CFTC's real-time reporting rules.
- In contrast, CFTC regulations define a large notional off-facility swap as a publicly-reportable swap transaction that: (i) is not executed on or pursuant to the rules of a SEF or DCM; (ii) has a notional amount above the specified minimum notional order size applicable to the swap; and (iii) is not a block trade.



Block Trades

- Block Trades Rules:
 - Swap block levels are set by the Commission. Such levels apply to swaps that are traded on SEFs and DCMs.
 - If a trade meets or exceeds the block level, then it can be traded off-SEF/DCM.



Block Trades

- The block thresholds for interest rate swaps and credit default swaps are currently set using a 50% notional amount calculation, which means that 50% of the notional amount of the swap is in blocks and 50% is not. For other asset classes (foreign exchange swaps and other commodity swaps) the block thresholds are currently set based on the DCM block sizes for economically related futures contracts, if available.
- Per the rule, the percentage will change to 67%, meaning only 33% will be in blocks, after at least one year of reliable data. However, based on recent issues concerning data provision, sufficiency, and usability, the Commission has not yet made an adjustment.



Block Trades – Size – Interest Rate Swaps

Currency group	Tenor greater than	Tenor less than or equal to	50% Notional
Super-Major		46 days	6,400,000,000
Super-Major	46 days	3 months	2,100,000,000
Super-Major	3 months	6 months	1,200,000,000
Super-Major	6 months	1 year	1,100,000,000
Super-Major	1 year	2 years	460,000,000
Super-Major	2 years	5 years	240,000,000
Super-Major	5 years	10 years	170,000,000
Super-Major	10 years	30 years	120,000,000
Super-Major	30 years		67,000,000

Super-Major Currencies are: United States dollar (USD), European Union Euro Area euro (EUR), United Kingdom pound sterling (GBP), and Japan yen (JPY)



SEF Market Structure



The Current SEF Environment

- Currently there are 25 SEFs that are permanently registered with the CFTC.

SEF	Rates	Credit	FX	Commodities	Equity
360 Trading Networks, Inc.			•		
BGC Derivatives Markets, L.P.	•	•	•	•	•
Bloomberg SEF LLC	•	•	•	•	•
Cboe (f/k/a Javelin)	•		•		
Chicago Mercantile Exchange, Inc.				•	
Clear Markets North America, Inc.	•				
DW SEF LLC	•				•
FTSEF LLC (Flextrade)			•		
GFI Swaps Exchange LLC	•	•	•	•	•
GTX SEF LLC			•		
ICAP Global Derivatives Limited	•	•			
ICE Swap Trade LLC		•		•	
LatAm SEF, LLC	•		•		
LedgerX				•	
MarketAxess SEF Corporation		•			
NEX SEF Ltd.					
Seed SEF LLC				•	
SwapEx LLC			•		
TeraExchange, LLC	•	•	•	•	•
Thomson Reuters (SEF) LLC			•		
Tullett Prebon (tpSEF Inc.)	•	•	•	•	•
Tradition SEF, Inc.	•	•	•	•	•
trueEX LLC	•				
TW SEF LLC	•	•			



SEF Trading Volumes Vary Greatly

SEF	Rates	Credit	FX
360 Trading Networks, Inc.			
BGC Derivatives Markets, L.P.	•		•
Bloomberg SEF LLC	•	•	•
Cboe (f/k/a Javelin)			
Chicago Mercantile Exchange, Inc.			
Clear Markets North America, Inc.			
DW SEF LLC			
FTSEF LLC (Flextrade)			
GFI Swaps Exchange LLC		•	•
GTX SEF LLC			
ICAP Global Derivatives Limited	•		
ICAP SEF (US) LLC	•		•
ICE Swap Trade LLC		•	
LatAm SEF, LLC			
LedgerX			
MarketAxess SEF Corporation		•	
NEX SEF Ltd.	•		•
Seed SEF LLC			
SwapEx LLC			
TeraExchange, LLC			
Thomson Reuters (SEF) LLC			•
Tullett Prebon (tpSEF Inc.)	•	•	•
Tradition SEF, Inc.	•		•
trueEX LLC	•		
TW SEF LLC	•	•	

Bullet point represents highest ranked market share per FIA SEF Tracker dated December 2017.



SEF Offerings and Rules Are Differentiated

- Participants and Market Structure
 - Dealer-to-Dealer, Dealer-to-Customer, Customer-to-Customer
 - Presence of Alternative Market Makers
 - Availability of Name Give-Up
- Order Book Usage and Liquidity
- Voice Execution
- Use of 3rd Party Service Providers
 - MarkitWire (affirmation platforms) and timing of clearing.
 - CFTC guidance regarding automation and straight-through-processing requirements = 10 mins.
- Cross-Border Considerations
 - Global Connectivity
 - CFTC recent action to further delay CFTC Staff Advisory 13-69 (“arrange, negotiate, or executed” in the U.S.). See CFTC Letter Nos. 17-36, 16-64, 15-48, 14-140, 14-74, 14-01, 13-71.



SEF Compliance Tools



SEF Compliance Tools

- SEF Policy Manual
 - SEF Policy Requirements and Transaction Type
 - SEF Rules Trading Matrix
- SEF Rulebook Matrix
 - SEF Error Trade Flowcharts



SEF Compliance Tools

- SEF Policy Manual: The SEF Policy Manual provides the overall regulatory guidelines market participants are subject to when trading on a SEF.
- SEF Risk Matrix: The SEF Risk Matrix is correlated to the SEF Policy Manual and provides a baseline to test compliance with the SEF Policy Manual, including the areas that we would consider best practices and mandatory requirements. The SEF Risk Matrix is provided as an Excel spreadsheet.
- SEF Rules Trading Matrix: The SEF Rules Trading Matrix provides a quick reference guide as to when specific SEF Policy Manual rules are implicated for direct trading by the swap dealer or broker trades. The Rules Trading Matrix is provided as an Appendix to the SEF Policy Manual.



SEF Compliance Tools

- SEF Rulebook Matrix: The SEF Rulebook Matrix summarizes and compares the primary rule areas for the SEFs to which a market participant is connected. The Matrix is set forth in an Excel spreadsheet that is searchable.
 - The SEF Rulebook Matrix focuses on the following rule sets:
 - Execution Methods (e.g., Order Book, RFQ, Auction, Work-up)
 - Trade Practice (e.g., pre-arranged trading, cross trades, pre-execution communications)
 - Sanctions
 - Block Trades
 - Confirmations
 - Participant Errors, Price Adjustments, Trade Cancellations And Trade Busts
 - Correction of Trades with Operational or Clerical Errors
 - Prime Brokerage
 - EU Equivalence
 - The SEF Rulebook Matrix is updated as needed, based on our tracking of SEF developments, including the following: SEF rule changes, the issuance of SEF advisories, SEF disciplinary actions, CFTC developments related to regulatory changes or no-action letters, SEF rule enforcement reviews; and implications of CFTC enforcement cases on major rule sets.



SEF Rulebook Matrix



High-level Overview of Topics

	A	B	C	D
1	TOPIC	BSEF	DW SEF	TW SEF
2	1. BACKGROUND INFORMATION			
9	2. DESCRIPTION OF SEF EXECUTION METHODS			
17	3. TRADING PRACTICES			
72	4. SANCTIONS			
77	5. BLOCK TRADES			
89	6. CONFIRMATIONS			
94	7. PARTICIPANT ERRORS, PRICE ADJUSTMENTS, TRADE CANCELLATIONS AND TRADE BUSTS			
114	8. CORRECTION OF TRADES WITH OPERATIONAL OR CLERICAL ERRORS			
124	9. PRIME BROKER PROVISIONS			
129	10. EXECUTION			
132	11. SEF HAS EU EQUIVALENCE	Yes	Yes	Yes
133	Notes			
134				
135	Privileged and Confidential			
136				
137				
138				
139				
140				
141				



Detail of Background Information for each SEF

2018-02-05 -- SEF Rulebook Matrix.xlsx - Excel

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TOPIC	BSEF	DW SEF	TW SEF
1. BACKGROUND INFORMATION			
Effective Date of Rulebook	December 22, 2017	March 8, 2017	March 8, 2017
Link to website	http://www.bloombergsef.com	http://www.tradeweb.com/	http://www.tradeweb.com/
Link to notices/rulebook	http://www.bloombergsef.com/resources/	http://www.tradeweb.com/About-Us/Disclosures/	http://www.tradeweb.com/About-Us/Disclosure
Access (API/GUI/Other)	Bloomberg Terminal	API; GUI	API; GUI
Products	IRS; CDS; FX; Commodity	IRS; Equity; FRAs	IRS; CDS
Definition of Market Participant	Any Person that has been granted, and continues to have, Trading Privileges under the BSEF Rules and has signed the Participant Documentation or DMA Customer Documentation. Subject to Applicable Law, a Participant may trade for its own proprietary account or for or on behalf of a Customer or Account. An ISV cannot be a Participant.	Any Person that has been granted Trading Privileges under these Rules and who may permit Authorized Users of such Participant to exercise such Trading Privileges pursuant to the Rules. Except as expressly permitted in these Rules, a Participant may not be an ISV or automated trading system (based on a Person's function, not legal entity affiliation). A Participant does not include an Authorized User, Client Account, Clearing Customer or Trading Customer when acting in any such capacity.	Any Person that has been granted Trading Privileges under these Rules and who may permit Authorized Users of such Participant to exercise such Trading Privileges pursuant to the Rules. Except as expressly permitted in these Rules, Participant may not be an ISV or automated trading system (based on a Person's function, legal entity affiliation). A Participant does not include an Authorized User, Client Account, Clearing Customer or Trading Customer when acting in any such capacity.

SEF Rules Matrix as of 2017-02

Ready

Hyperlinks to each SEF website and Rulebook

Asset Classes are color coded.



Differences and Updates to SEF Rulebooks

2018-02-05 -- SEF Rulebook Matrix.xlsx - Excel

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TOPIC	IGDL SEF	GFI Swaps Exchange	tpSEF	Tradition SEF
1. BACKGROUND INFORMATION				
Effective Date of Rulebook	January 3, 2018	January 9, 2017	December 18, 2017	November 15, 2017
Link to website	http://www.icap.com/what-we-do/global-broking/sef.aspx	https://www.gfigroup.com/markets/swaps-exchange/overview	http://www.tullettprebon.com/swap_execution_facility/	http://www.traditionsef.com/
Link to notices/rulebook	https://sirt.cfto.gov/sirt.aspx?Topic=TradingOrganizationRulesAD&Keys=37805	http://www.gfigroup.com/markets/gfi-sef/overview/	http://www.tullettprebon.com/swap_execution_facility/rulebook.aspx	http://www.traditionsef.com/regulator/files/rulebook/all/all
Access [API/GUI/Other]	Not specified	Not specified.	Not specified.	GUI
Products	IRS; CDS; FRAs; IRDs; Swaptions; Inflation and Exotic Swaps and Options	IRS; CDS; FX; Commodity	IRS; CDS; FX; Commodity; Equity	IRS; CDS; FX; Commodity; Equity
Definition of Market Participant	Any Trading Privilege Holder, Authorised Trader or Authorised Trading Firm.	A Person (other than an individual) that has been authorized by the Company to have access to the Trading Platform pursuant to Rule 301 and to permit Sponsored Access Firms and Registered Traders to have access to the Trading Platform pursuant to Rules 304 and 305.	Any Person, other than an ISV, that has been admitted by the SEF and that has been granted, and continues to have, Trading Privileges.	An Eligible Contract Participant (other than an ISV) that satisfies the Participant criteria described in Rule 302 and has entered into and has in effect the applicable Participant Documentation, and that has been granted Trading Privileges by Tradition SEF, and includes General Participants and Broker Firm Participants unless the context requires
2. DESCRIPTION OF SEF EXECUTION METHODS				
a. Auction Functionality	No	No	No	Functionality available [R. 505(d)], currently on Trad-X Trading Platform [Tradition SEF Platform Supplement 1v1.1].
b. Work-up sessions	Yes [R. 307]	Yes [R. 507(b)]	No, but there are Risk Mitigation Sessions [R. 401B, App'x C]	Yes [R. 508]

Legend SEF Rules Matrix as of 2017-02 Fines Enforcement Actions ...

Ready 60%

Updates to Matrix are highlighted.

Major differences are called out.

Key differences are highlighted.



SEF Disciplinary Matters

2018-02-05 -- SEF Rulebook Matrix.xlsx - Excel

File Home Covington Insert Page Layout Formulas Data Review View ACROBAT iManage Tell me... Humenik, Stephen Share

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Date	Swap Dealer	SEF	Description	Penalty
010316	Société Générale SA	Tradition	Failure to report amended swaps data pursuant to Rule 529.	\$1,000
04/05/16	Citibank NA	Bloomberg SEF	For trade date February 10, 2016, Citibank NA did not notify nor receive approval to offset and correct an error trade as required under BSEF Rule 516.	\$1,250
04/05/16	Morgan Stanley Capital Services LLC	Bloomberg SEF	For trade date January 20, 2016, Morgan Stanley Capital Services LLC did not notify nor receive prior approval to offset an error trade as required under BSEF Rule 516. Pursuant to BSEF Rule 621, Morgan Stanley was fined \$1250.	\$1,250
07/27/16	Credit Suisse International	Bloomberg SEF	For trade date March 21, 2016 Credit Suisse International did not notify nor receive prior approval to offset and correct error trades as required under BSEF Rule 516. Pursuant to BSEF Rule 621, Credit Suisse International was fined \$1250.	\$1,250
07/29/16	Standard Chartered Bank	TR SEF	Failure to report a canceled or amended transaction.	\$1,000
08/12/16	Goldman Sachs International	Bloomberg SEF	For trade date June 2, 2016, Goldman Sachs International did not notify nor receive prior approval to offset an error trade as required under BSEF Rule 516.	\$1,250
08/24/16	Bank of America NA	Bloomberg SEF	For trade date June 13, 2016, although Bank of America, N.A. notified BSEF of the initial error trade, it did not receive prior approval to offset and correct the error trade as required under BSEF Rule 516.	\$1,250
11/17/16	Citibank NA	Bloomberg SEF	For trade date August 2, 2016, Citibank, National Association did not notify nor receive approval to offset and correct an error trade as required under BSEF Rule 516.	\$1,750
11/17/16	Citibank NA	Bloomberg SEF	For trade date August 12, 2016, Citibank National Association did not notify nor receive prior approval to offset and correct an error trade as required under BSEF Rule 516.	\$2,000
01/04/17	Bank of America NA	ICE Swap Trade, LLC	ICE Swap Trade, LLC ("IST") Market Regulation found that between August 24, 2015 and February 10, 2016, Merrill Lynch International and/or Bank of America, N.A. (collectively "BoFA") executed large notional transactions in violation of IST Rule 701(a) "Block Trades". Specifically, Market Regulation found that BoFA executed 13 transactions below the Appropriate Minimum Block Size, and 9 transactions that were not Block Trades but were incorrectly reported to IST as Block Trades. Accordingly, IST issued BoFA a Summary Fine in the amount of five thousand dollars (\$5,000.00 USD) pursuant to IST Rule 811(m).	\$5,000
01/30/17	Credit Suisse International	Bloomberg SEF	For trade date September 23, 2016, Credit Suisse International included tickeling costs in an offsetting transaction thereby not matching the price of the initial error trade, as required by BSEF Rule 516.	\$1,750
03/15/17	Bank of America NA	Bloomberg SEF	For trade date October 4, 2016, Bank of America, National Association did not notify nor receive prior approval to offset and correct an error trade as required under BSEF Rule 516.	\$1,750
03/23/17	Deutsche Bank AG	Bloomberg SEF	For trade date November 9, 2016, Deutsche Bank AG did not notify nor receive prior approval to offset an error trade as required under BSEF Rule 516.	\$1,250
04/04/17	Barclays Bank PLC	Bloomberg SEF	For trade date November 9, 2016, Barclays Bank PLC did not notify nor receive prior approval to offset an error trade as required under BSEF Rule 516.	\$1,250
04/04/17	BNP Paribas SA	Bloomberg SEF	For trade date December 14, 2016, BNP did not notify nor receive prior approval to offset and correct an error trade as required under BSEF Rule 516.	\$1,250
05/24/17	Citibank NA	Bloomberg SEF	For trade date December 7, 2016, Citibank NA did not notify nor receive prior approval to offsetting and correcting an error trade as required under BSEF Rule 516.	\$4,500
05/26/17	Goldman Sachs International	TR SEF	Failure to report a canceled or amended transaction.	\$1,000
06/20/17	JPMorgan Chase Bank, NA	Bloomberg SEF	On September 12, 2016 JPMorgan Chase Bank, National Association violated BSEF Rule 531A(d) by submitting a block trade to BSEF more than 10 minutes after the time the Participants agreed to the terms of the block trade.	\$1,250
06/29/17	Barclays Bank PLC	Bloomberg SEF	For trade date April 5, 2017, Barclays Bank PLC did not notify nor receive prior approval to offset and correct an error trade as required under BSEF Rule 516.	\$1,750
06/29/17	Deutsche Bank AG	Bloomberg SEF	For trade date May 4, 2017, Deutsche Bank AG did not notify nor receive approval to offset and correct an error trade as required under BSEF Rule 516.	\$1,750
10/31/17	Barclays Bank PLC	Bloomberg SEF	For trade date May 18, 2017, Barclays Bank PLC did not notify nor receive prior approval to offset and correct an error trade as required under BSEF Rule 516.	\$2,000
11/22/17	Citibank, N.A.	Bloomberg SEF	For trade date June 6, 2017, Citibank NA did not notify nor receive prior approval to offsetting error trades as required under BSEF Rule 516.	\$5,500

SEF Rules Matrix as of 2017-02 Fines || Enforcement Actions Log

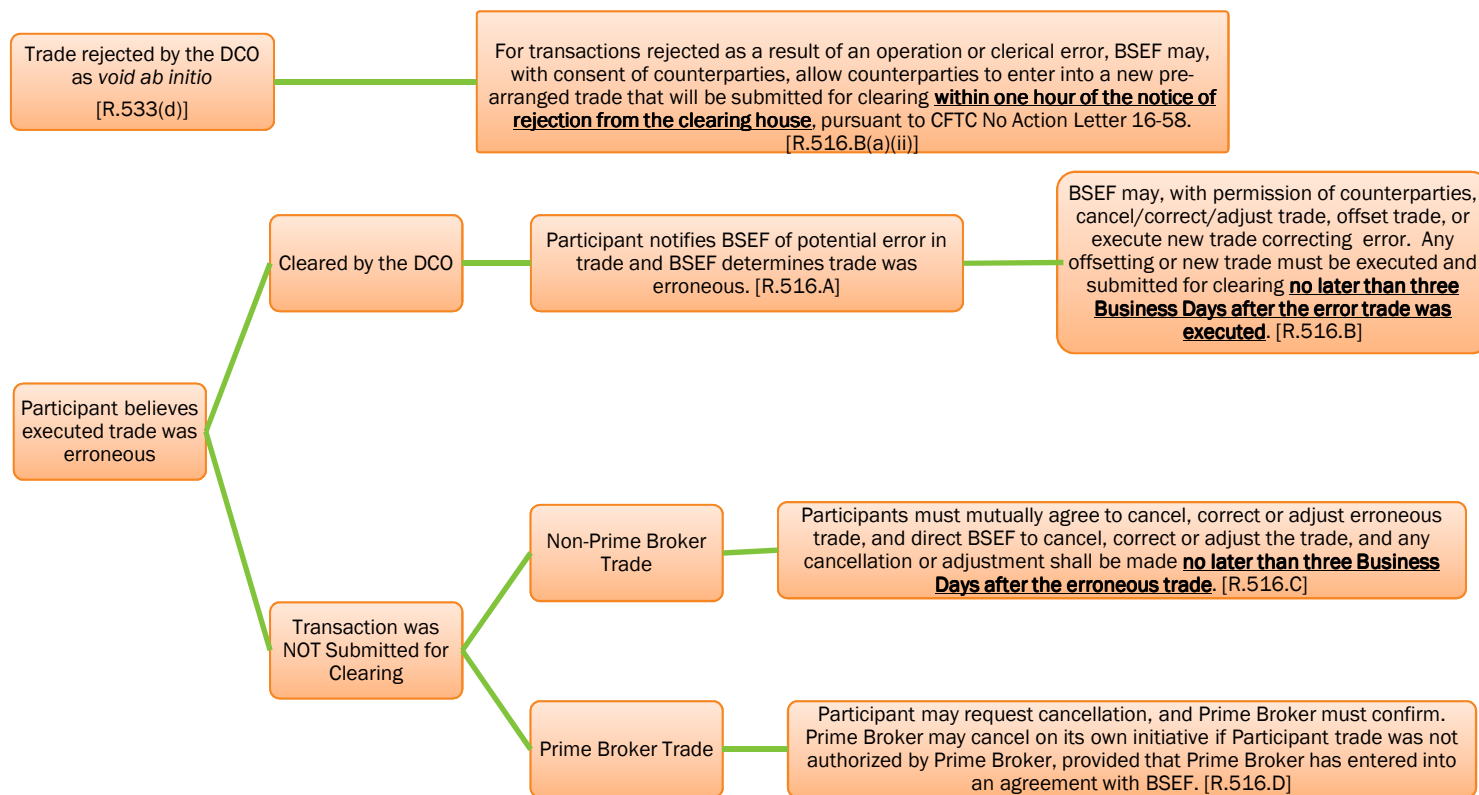
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SEF Error Trade Flowcharts



Sample SEF Error Trade Flowchart



- *Void ab initio* - Per the CFTC's guidance on Straight Through Processing, dated September 26, 2013, if a swap that is intended to be cleared is rejected from a DCO, then it is considered *void ab initio* - i.e., the swap is treated as though it was not executed to begin with.



Cryptocurrency SEFs and Swaps



LedgerX – BTC Swaps and Options

- LedgerX began offering a bitcoin swap product in October 2017.
- No retail traders permitted because the product is a swap.
- The products are fully collateralized.
- LedgerX – Day-Ahead USD/BTC Swaps
 - The Exchange Contract is a USD-priced prepaid day-ahead swap on bitcoin. The Exchange Contract, which is prepaid by the buyer at the time of order execution and physically settled by the seller on a T+1 basis, provides an Exchange Contract buyer with bitcoin and an Exchange Contract seller with USD.
- LedgerX - USD/BTC Options
 - The Exchange Contract will provide a purchaser, in exchange for a premium, the right (but not the obligation) to purchase, in the case of a call option, or sell, in the case of a put option, bitcoin at the price specified in the applicable Exchange Contract at the expiration of such Exchange Contract



Cross-Border Recognition



Cross-Border Recognition

- CFTC is able to exempt, conditionally or unconditionally, a SEF from registration if the Commission found the facility was “subject to comparable, comprehensive supervision and regulation on a consolidated basis”
- On December 8, 2017 the CFTC issued an Order exempting, certain multilateral trading facilities (“MTFs”) and organised trading facilities (“OTFs”) authorized within the European Union (“EU”), from the requirement to register with the CFTC as SEFs.
 - The order exempted 10 MTFs and six OTFs authorized within the EU from the SEF registration requirements. Beginning on Jan. 3, 2018, market participants, subject to the CFTC’s jurisdiction, were able to satisfy the CEA’s swaps trading mandate by transacting on the trading venues. Additionally, participation by a U.S. person would not trigger the requirement that the MTFs or OTFs register as a SEF with the CFTC.
 - The CFTC order granting exempt SEF status to EU-authorized MTFs and OTFs does not affect other requirements under the CEA and the CFTC’s regulations, specifically, reporting requirements as they pertain to swap transactions
- The European Commission (“EC”) adopted a decision on Dec. 5, 2017, finding the legal and supervisory frameworks of 14 DCMs and 23 SEFs sufficient. The EC’s decision enabled EU counterparties to trade derivatives, subject to the EU trading obligation, on the approved DCMs and SEFs.



The New CFTC Enforcement Environment



Outlook of the CFTC Enforcement Director

- A vigorous enforcement program is essential to fulfilling [the agency's] mission. As Chairman Giancarlo has made clear, under his leadership, **there will be no pause, no let up, and no relaxation in the CFTC's efforts to enforce the law and punish wrongdoing.**
- We know the vast majority of businesses and market participants want to obey the law. We know they work hard to do the right thing—not because they're afraid of getting caught. But because they want to run their businesses the right way. **These businesses know that misconduct within a company diminishes confidence in management. It undermines the company's culture. It spawns even more misconduct. And it creates enforcement risk—which could lead to substantial losses in the form of fines, or even criminal investigations and prosecutions.**
- But we also know that companies with even the best intentions can make mistakes, make bad choices, or have a few bad actors. And we recognize that no matter how much corporate leaders may want to foster compliance within the company, **when they detect misconduct, their decision whether to voluntarily report it often comes down to a business decision—to dollars and cents.** What's the risk that, if we don't report, regulators will detect it? If they detect it, how much might we get fined? If we report it, what sort of treatment can we expect? Depending on how the answers shake out, company leadership may decide to voluntarily report the wrongdoing—or not.
- **We at the CFTC want to shift this analysis in favor of self-reporting.** We think we can do this. We think we can do it by spelling out the substantial benefit, in the form of a significantly reduced penalty, we'll recommend for companies and individuals that self-report. And by making crystal clear what we expect from self-reporters who want this substantial benefit.



The New Enforcement Environment

- Enhanced oversight and regulation in the context of an aggressive enforcement environment.
- Emphasis placed on self-reporting to the CFTC and providing significant cooperation with Division of Enforcement investigations.
- Market surveillance function (special calls, review of market data for specific conduct, and review of large trader reports and position accountability/position limits) now part of the Division of Enforcement.
- U.S. agency budgetary constraints result in lengthy investigations and high internal investigation expenses for market participants.
- Parallel Investigations by Multiple Authorities:
 - NFA, Exchanges and SEFs
 - Criminal Coordination (DOJ; FBI; State AGs)
 - Cross-agency Actions (CFTC; SEC; FERC; others)
 - Cross-border Actions (FCA; FINMA; JFSA; others)
- New Whistleblower provisions will result in higher volume of investigations.
- Settlement or litigation in an environment where U.S. agencies and exchanges are looking for “example” cases.



The New Enforcement Environment – Enhanced Cooperation

- In January 2017, the CFTC updated its cooperation guidelines, with an emphasis placed on assistance to the CFTC in its investigation.
- The guidelines state that, in evaluating cooperation, the CFTC Division of Enforcement will consider:
 - the value of the cooperation to the investigation and enforcement action;
 - the value of the cooperation to the CFTC’s broader law enforcement interests;
 - the culpability of the company or individual; and
 - uncooperative conduct that offsets or limits credit that the company or individual would otherwise receive.



The New Enforcement Environment – Non-Prosecution Agreements

- In June 2017, the CFTC entered into its first ever non-prosecution agreements (NPAs) with three individual traders, related to an enforcement action for spoofing against the traders' former employer.
- Under the NPAs, individual traders were required to admit that they engaged in unlawful spoofing in exchange for the CFTC's commitment to not bring any enforcement action against them arising from the investigation.
- The CFTC emphasized the individuals' "substantial cooperation, immediate willingness to accept responsibility for their misconduct, material assistance provided to the CFTC's investigation of [the financial institution], and the absence of a history of prior misconduct."
- Enforcement Director James McDonald characterized NPAs as a "powerful tool to reward extraordinary cooperation in the right cases."
- It is unclear whether NPAs will also be used with companies. However both the DOJ and SEC have granted NPAs to companies, making the issue ripe for consideration by the CFTC.



Updated Advisory on Self-Reporting and Full Cooperation

- On September 25, 2017, CFTC Enforcement Director, James McDonald announced a CFTC Enforcement *Updated Advisory on Self-Reporting and Full Cooperation*.
- The Advisory notes that:
 - the Division is providing additional information regarding voluntary disclosures and the substantial credit companies and individuals can expect from the Division if they voluntarily disclose misconduct and fully cooperate with the Division's investigation;
 - [the Advisory] should provide greater transparency about what the Division requires from companies and individuals seeking mitigation credit for voluntarily self-reporting misconduct, fully cooperating with an investigation, and remediating;
 - [the Advisory] should also provide greater transparency about what companies and individuals can expect from the Division if they meet these requirements. Specifically, if a company or individual self-reports, fully cooperates, and remediates, the Division will recommend that the Commission consider a substantial reduction from the otherwise applicable civil monetary penalty; and
 - the Advisory will encourage companies and individuals to detect, report, and remediate wrongdoing, thus increasing voluntary compliance with the law.



Updated Advisory on Self-Reporting and Full Cooperation

- **Requirements for full self-reporting and cooperation credit:**
 - **Voluntary disclosure to the Division:**
 - Voluntary disclosure must be made prior to an imminent threat of exposure of the misconduct.
 - The disclosure must be made to the Division within a reasonably prompt time after the company or individual becomes aware of the misconduct.
 - The disclosure must include all relevant facts known to the company or individual at the time of the disclosure, including all relevant facts about the individuals involved in the misconduct.
 - The Division recognizes that, at the time of the first voluntary disclosure, the company or individual may not yet know all of the relevant facts, or the full extent of the misconduct. To encourage voluntary disclosure at the earliest possible time, the Division will still recommend full credit for the company or individual—assuming compliance with the other requirements—where the company or individual made best efforts to ascertain the relevant facts at the time of disclosure, fully disclosed the facts known at that time, continued to investigate, and disclosed additional relevant facts as they came to light.



Updated Advisory on Self-Reporting and Full Cooperation

- **Requirements for full self-reporting and cooperation credit, con't:**
 - **Full cooperation:**
 - To receive full credit under this self-reporting program, the company/individual must adhere to the terms of the Division's January 2017 Advisories.
 - **Timely and appropriate remediation of flaws in compliance and control programs:**
 - Will be fact and circumstance dependent.
 - **Credit:**
 - If the company or individual self-reports, fully cooperates, and remediates, the Division will recommend the most substantial reduction in the civil monetary penalty that otherwise would be applicable.
 - In extraordinary circumstances—for example where misconduct is pervasive across an industry and the company or individual is the first to self-report—the Division may recommend a declination of prosecution.
 - In all instances, the company or individual will be required to disgorge profits (and, where applicable, pay restitution) resulting from any violations.



Swap Dealers and Swaps Traders

U.S. Enforcement Trends



Enforcement Cases Facing Swap Traders

- Price Manipulation (e.g., Indices and Products)
- Fraud-based Manipulation (e.g., Recklessness; Use of a Deceptive Device; Insider Trading)
- Disruptive Trading Practices, particularly Spoofing and Wash Trading
- Position Limits and Reporting, including:
 - Swap Transaction Reporting
 - Large Trader Reporting
- False Statements to the CFTC and SROs, like Exchanges and the NFA
- Failure to Supervise and Inadequate Risk Management
- Business Conduct with Swap Dealer Counterparties
- Segregation of Customer Funds and Undercapitalization



Notable CFTC Enforcement Cases

- **Spoofing**

- Multiple Spoofing Cases (Jan. 29, 2018)

- CFTC announced the settlements of 3 corporate cases against major financial institutions and the filing of 5 complaints, charging six individuals and one company (a software developer), with spoofing and manipulation in the futures markets.
- Deutsche Bank was fined \$30 million for spoofing and manipulation, the largest fine imposed by the CFTC to date for spoofing-related misconduct;
- UBS was fined \$15 million for spoofing and attempted manipulation; and
- HSBC was fined \$1.6 million for spoofing.
- CFTC noted that the fines would have been substantially higher but for each banks' substantial cooperation, and for UBS, its additional self-reporting of the conduct.

- Citigroup Global Markets Inc. (Jan. 19, 2017)

- CFTC alleged that 5 Citigroup traders placed over 2,500 spoofing orders for U.S. Treasury futures between July 2011 and December 2012.
- CFTC also found that Citigroup failed to diligently supervise by providing insufficient training regarding spoofing, and by lacking inadequate systems and controls to detect spoofing.
- CFTC ordered Citigroup to pay a \$25 million civil money penalty.

- The Bank of Tokyo-Mitsubishi UFJ, Ltd. (BTMU) (Aug. 7, 2017)

- CFTC alleged that a BTMU trader placed over multiple orders for various futures contracts with an intent to cancel the orders before execution between July 2009 and December 2014.
- CFTC recognized BTMU's self-reporting of the misconduct, cooperation in the investigation, and proactive, large-scale remediation.
- CFTC ordered BTMU to pay a \$600,000 civil monetary penalty.



Notable CFTC Enforcement Cases

- **Swap Dealers: Business Conduct Rules**

- CFTC Orders Cargill, Inc. to Pay a \$10 Million Civil Monetary Penalty for Providing Inaccurate Mid-Market Marks on Swaps, Which Concealed Cargill’s Full Mark-up, in Violation of Swap Dealer Business Conduct and Reporting Requirements, and for Failing to Supervise Swap Dealer Employees
 - The charges against Cargill cover approximately four years and relate to Cargill’s obligations to provide disclosures to its counterparties in swaps transactions related to the price of a given swap. Specifically, Cargill operates a business unit, known as Cargill Risk Management (“CRM”), which engages in swaps with various commodity counterparties. Certain of the swaps CRM entered into failed to comply with the CEA and CFTC Regulations because CRM failed to properly disclosure what is known as the mid-market mark. The mid-market mark is provided pre-trade and is a market price for the swap that is provided to a counterparty along with the price the swap dealer is willing to transact with a counterparty.
 - The CFTC noted that certain employees expressed concern within Cargill about Cargill’s use of the methodology both before and after Cargill’s swap dealer registration, including concerns that the methodology masked the actual value of the swap from counterparties and did not comply with the CFTC regulations. These concerns were expressed to the management “at the highest level within Cargill’s swap business,” including business and compliance.



Notable CFTC Enforcement Cases

- **Reporting and Failure to Supervise – Key Case**

- CFTC v. Deutsche Bank (filed in 2016)

- CFTC alleged that Deutsche Bank's swap data reporting system experienced an outage that prevented it from reporting swap data for five days for multiple asset classes.
- Attempts to fix the outage exacerbated the problem – CFTC alleges that outage and recurring problems were the result of Deutsche Bank's failure to have adequate disaster recovery plan and failure to have appropriate supervisory systems.
- CFTC also alleges violation of prior CFTC order regarding Deutsche Bank's swap data reporting.
- Deutsche Bank agreed to appointment of monitor to ensure its compliance with reporting responsibilities.
- Court ordered a monitor to be put in place and to make periodic reports directly to the Court.



Notable CFTC Enforcement Cases

- **Reporting and Failure to Supervise**

- CFTC Orders Citibank and Citigroup Global Markets to Pay \$550,000 Penalty for Failure to Properly Report Legal Entity Identifier (LEI) Information to a Swap Data Repository (SDR), Failure to Establish Electronic Systems and Procedures for LEI Reporting, Failure to Correct Errors in LEI Data Previously Reported to SDRs, and Failure to Diligently Supervise LEI Reporting (Sept. 25, 2017).
- CFTC Orders Wells Fargo Bank, N.A. to Pay a \$400,000 Penalty for Inaccurate Large Trader Reports for Physical Commodity Swaps Positions (Sept. 27, 2016).
- CFTC Orders London-Based Barclays Bank PLC to Pay a \$500,000 Penalty for Failures in Reporting EFRPs and in Responding to Division of Enforcement Request for Documents (Sept. 22, 2016).
- CFTC Orders JPMorgan Ventures Energy Corp. and JPMorgan Chase Bank, N.A. to Pay a \$225,000 Penalty for Inaccurate Large Trader Reports for Physical Commodity Swaps Positions (Mar. 23, 2016).
- CFTC Orders Deutsche Bank AG to Pay a \$2.5 Million Civil Monetary Penalty for Swaps Reporting Violations and Related Supervision Failures (Sept. 30, 2015).



Notable CFTC Enforcement Cases

- **Failure to Supervise**

- CFTC Orders Morgan Stanley & Co. LLC to Pay \$500,000 for Failure to Supervise the Processing of Exchange and Clearing Fees Charged to Customers as a FCM (Sept. 28, 2017).
 - Prior similar actions: JP Morgan Securities-\$900,000 Penalty in January 2017 (included a self-report); Barclays Capital-\$800,000 Penalty in August 2016; Merrill Lynch-\$1.2 Million Penalty in August 2014.
- CFTC Orders Merrill Lynch to pay \$2.5 million for Failure to Supervise for Inadequate Policies and Procedures Related to Block Trade Execution and Recordkeeping, and Failure to Supervise Response to CME Inquiry into Block Trades (Sept. 22, 2017).
 - In related action, Bank of America agreed to pay a \$2.5 million fine to settle an investigation brought by the U.S. Attorney's Office for the Western District of North Carolina, for engaging in impermissible pre-hedging of block trades.



Notable CFTC Enforcement Cases

- **Failure to Supervise**

- CFTC Orders SG Americas Securities, LLC (a subsidiary of Société Générale Group) to Pay \$750,000 Penalty for Failure to Supervise and for Confirming EFPs that Constituted Wash Trading, Non-Bona Fide Prices and Noncompetitive Trades (Sept. 28, 2016).
- CFTC Orders Advantage Futures LLC, its CEO and its CRO to Pay \$1.5 Million Civil Monetary Penalty for Failure to Supervise the Handling of Commodity Interest Accounts, Deficient Risk Management and Credit Risk Practices, and Knowingly Making Inaccurate Statements to the Commission (Sept. 21, 2016).
 - Case involved CFTC's first action enforcing Regulations 1.11 and 1.73, which cover risk management programs and supervision requirements for FCMs and clearing FCMs, respectively.
 - CFTC found that Advantage's representations regarding its policies and procedures in the risk manuals and CCO Reports submitted to the CFTC were inaccurate.



Notable CFTC Enforcement Cases

- **Recordkeeping Violations**

- CFTC Orders E*Trade Securities and E*Trade Clearing, a FCM and IB, to pay \$280,000 civil money penalty for failure to maintain records (Jan. 26, 2017).
 - CFTC found that the third-party vendor employed by E*Trade to compile customer audit trail logs for customers routinely destroyed the records after 10 days.
 - E*Trade attempted to recover the missing audit logs, but could not recover 3 years worth of data.
 - E*Trade violated CFTC Rule 1.35, requiring FCMs and IBs to maintain systematic records of all transactions relating to its business of dealing in commodity futures, and Rule 1.31, requiring retention of records for 5 years.
 - CFTC also found that E*Trade violated CEA § 4g, requiring that records be made available for inspection by the CFTC.



Notable CFTC Enforcement Cases

- **Fictitious/Noncompetitive Block Trades**

- CFTC Orders DV Trading LLC and Trader Brandon Elsasser to pay Over \$5 million for Wash Trading Designed to Generate Exchange Rebate Fees Under Market Maker Program (June 29, 2017).
- CFTC Orders Russian Bank JSC VTB Bank and its UK-Based Subsidiary VTB Capital PLC to pay a \$5 Million Penalty for Executing Fictitious and Non-Competitive Block Trades in Russian Ruble/U.S. Dollar Futures Contracts (Sept. 19, 2016).
 - CFTC found that VTB executed block trades in foreign exchange futures contracts with VTB Capital to transfer to it cross-currency risk. VTB Capital would then hedge that risk in the OTC swaps market.
 - CFTC found that the trades constituted fictitious sales and were noncompetitively priced because the trades were not executed “openly and competitively.”

- **Customer Collateral**

- CFTC Orders Morgan Stanley & Co. LLC to Pay a \$300,000 Civil Monetary Penalty for Violations of Customer Protection Rule for Cleared Swaps and Related Supervision Failures (Aug. 6, 2015).



The Early Days of SEF Enforcement

- SEFs have been monitoring market activities and have begun to take multiple disciplinary actions.
- SEFs are now SROs subject to close coordination with the CFTC and related pressure to investigate/pursue disciplinary actions.
 - The CFTC Enforcement Division has indicated a desire to push more review and enforcement duties to SROs such as SEFs and to also conduct their own investigations of swaps trading activities.
- To date, most SEFs have only followed up on exception reports.
- SEFs are now issuing warning letters and fines. The charts on the next slides summarize the fines.
- Typically, a market participant can only get one warning letter a year.



SEF Enforcement Matters*

Date	Swap Dealer	SEF	Description	Penalty
01/08/16	Société Générale SA	Tradition	Failure to report amended swaps data pursuant to Rule 529.	\$1,000
04/05/16	Citibank NA	Bloomberg SEF	For trade date February 10, 2016, Citibank NA did not notify nor receive approval to offset and correct an error trade as required under BSEF Rule 516.	\$1,250
04/05/16	Morgan Stanley Capital Services LLC	Bloomberg SEF	For trade date January 20, 2016, Morgan Stanley Capital Services LLC did not notify nor receive prior approval to offset an error trade as required under BSEF Rule 516. Pursuant to BSEF Rule 621, Morgan Stanley was fined \$1250.	\$1,250
07/27/16	Credit Suisse International	Bloomberg SEF	For trade date March 21, 2016 Credit Suisse International did not notify nor receive prior approval to offset and correct error trades as required under BSEF Rule 516. Pursuant to BSEF Rule 621, Credit Suisse International was fined \$1250.	\$1,250
07/29/16	Standard Chartered Bank	TR SEF	Failure to report a canceled or amended transaction.	\$1,000
08/12/16	Goldman Sachs International	Bloomberg SEF	For trade date June 2, 2016, Goldman Sachs International did not notify nor receive prior approval to offset an error trade as required under BSEF Rule 516.	\$1,250
08/24/16	Bank of America NA	Bloomberg SEF	For trade date June 13, 2016, although Bank of America, N.A. notified BSEF of the initial error trade, it did not receive prior approval to offset and correct the error trade as required under BSEF Rule 516.	\$1,250
11/17/16	Citibank NA	Bloomberg SEF	For trade date August 2, 2016, Citibank, National Association did not notify nor receive approval to offset and correct an error trade as required under BSEF Rule 516.	\$1,750
11/17/16	Citibank NA	Bloomberg SEF	For trade date August 12, 2016, Citibank National Association did not notify nor receive prior approval to offset and correct an error trade as required under BSEF Rule 516.	\$2,000

*As reported by SEFs to NFA BASIC.



SEF Enforcement Matters

Date	Swap Dealer	SEF	Description	Penalty
01/04/17	Bank of America NA	ICE Swap Trade, LLC	ICE Swap Trade, LLC ("IST") Market Regulation found that between August 24, 2015 and February 10, 2016, Merrill Lynch International and/or Bank of America, N.A. (collectively "BofA") executed large notional transactions in violation of IST Rule 701(a) "Block Trades". Specifically, Market Regulation found that BofA executed 13 transactions below the Appropriate Minimum Block Size, and 9 transactions that were not Block Trades but were incorrectly reported to IST as Block Trades. Accordingly, IST issued BofA a Summary Fine in the amount of five thousand dollars (\$5,000.00 USD) pursuant to IST Rule 811(m).	\$5,000
01/30/17	Credit Suisse International	Bloomberg SEF	For trade date September 23, 2016, Credit Suisse International included ticketing costs in an offsetting transaction thereby not matching the price of the initial error trade, as required by BSEF Rule 516.	\$1,750
03/15/17	Bank of America NA	Bloomberg SEF	For trade date October 4, 2016, Bank of America, National Association did not notify nor receive prior approval to offset and correct an error trade as required under BSEF Rule 516.	\$1,750
03/29/17	Deutsche Bank AG	Bloomberg SEF	For trade date November 9, 2016, Deutsche Bank AG did not notify nor receive prior approval to offset an error trade as required under BSEF Rule 516.	\$1,250
04/04/17	Barclays Bank PLC	Bloomberg SEF	For trade date November 9, 2016, Barclays Bank PLC did not notify nor receive prior approval to offset an error trade as required under BSEF Rule 516.	\$1,250
04/04/17	BNP Paribas SA	Bloomberg SEF	For trade date December 14, 2016, BNP did not notify nor receive prior approval to offset and correct an error trade as required under BSEF Rule 516.	\$1,250
05/24/17	Citibank NA	Bloomberg SEF	For trade date December 7, 2016, Citibank NA did not notify nor receive prior approval to offsetting and correcting an error trade as required under BSEF Rule 516.	\$4,500



SEF Enforcement Matters

Date	Swap Dealer	SEF	Description	Penalty
05/26/17	Goldman Sachs International	TR SEF	Failure to report a canceled or amended transaction.	\$1,000
06/20/17	JPMorgan Chase Bank, NA	Bloomberg SEF	On September 12, 2016 JPMorgan Chase Bank, National Association violated BSEF Rule 531.A(d) by submitting a block trade to BSEF more than 10 minutes after the time the Participants agreed to the terms of the block trade.	\$1,250
06/29/17	Barclays Bank PLC	Bloomberg SEF	For trade date April 5, 2017, Barclays Bank PLC did not notify nor receive prior approval to offset and correct an error trade as required under BSEF Rule 516.	\$1,750
06/29/17	Deutsche Bank AG	Bloomberg SEF	For trade date May 4, 2017, Deutsche Bank AG did not notify nor receive approval to offset and correct an error trade as required under BSEF Rule 516.	\$1,750
10/31/17	Barclays Bank PLC	Bloomberg SEF	For trade date May 18, 2017, Barclays Bank PLC did not notify nor receive prior approval to offset and correct an error trade as required under BSEF Rule 516.	\$2,000
11/22/17	Citibank, N.A.	Bloomberg SEF	For trade date June 6, 2017, Citibank NA did not notify nor receive prior approval to offsetting error trades as required under BSEF Rule 516.	\$5,500



SEFs: Upcoming Regulatory Developments



Coming Soon – SEF Rule Enforcement Reviews

- Rule Enforcement Reviews (“RERs”), and the reports prepared by the Division of Market Oversight (“DMO” or the “Division”), are intended to present an analysis of an exchange’s compliance capabilities during the period under review.
- Such reviews to date have only dealt with exchanges (“DCMs”).
- The RERs assess certain compliance programs and do not assess all programs, core principles, or Commission regulations.
- Deficiency v. Recommendation.
 - a deficiency is an area where DMO believes an exchange is not in compliance with a Commission regulation and must take corrective action.
 - a recommendation concerns an area where DMO believes the exchange should improve its compliance program.



Recent Rule Enforcement Review Deficiencies

- Sample deficiencies from recent reviews:
 - Inadequate staffing to conduct investigations or prosecute possible rule violations.
 - Penalties were insufficient to deter rule violations.
 - In a recent review, penalty imposed by exchange of \$500-\$750 per rule violation was not enough.
 - Program for reviewing audit trail data was not effective.
 - Reviewing annual certifications from clearing firms and occasional randomly selected samples of audit trail data is not enough.
 - Investigations were not completed promptly--some took longer than a year, in violation of CFTC Regulation 38.158(b).



Upcoming Changes to SEF Regulations

- The current Commission has not substantively modified SEF regulations through no-action or formal rulemaking. However, guidance has been provided related to:
 - Block Trades – “occurs away” does not prohibit credit checks on SEF.
 - Breakage Agreements – not permitted.
 - Enablement mechanisms – not permitted.
 - STP requirements – new guidance or rules to make clear that affirmation platforms cannot add latency to clearing process.
 - ISDAs at the SEF – subject to no-action relief.
 - Agency access – permissible for connectivity.



Potential CFTC Regulatory Reform: Swaps Trading Blueprint

- Commissioner J. Christopher Giancarlo has criticized the CFTC's implementation of Dodd-Frank's regulatory framework for swaps, and in 2015 published a white paper detailing these criticisms and suggesting reforms to the CFTC's swaps trading rules.
- Commissioner Giancarlo referenced this white paper recently and noted the CFTC swaps trading regulatory framework has resulted in fragmentation of global financial markets. Commissioner Giancarlo stated that this fragmentation is “caused by ill-designed rules and burdensome regulations – and the application of those rules abroad – is harming market liquidity and market safety and soundness, increasing the systemic risk that the Dodd-Frank Act was predicated on reducing.”
 - *The time has come for the CFTC to revisit its flawed swaps trading rules to better align them to market dynamics, allow U.S. swap intermediaries to fairly compete in world markets and reverse the tide of global market fragmentation.*



Potential CFTC Regulatory Reform: Swaps Trading Blueprint

- In his white paper, then-Commissioner Giancarlo notes that he is generally in favor of Dodd-Frank’s regulatory framework for trading swaps.
- However, he criticizes the CFTC’s implementation of that framework, arguing that the CFTC unwisely modeled its swaps trading rules after the futures regulatory framework, despite the significant differences in the two markets.
- Below are the concerns raised by then-Commissioner Giancarlo:
 - Unnecessary Limitations on Execution Methods
 - Block Transaction “Occurs Away from SEF” Requirement
 - Ill-Advised “Made Available to Trade” Process
 - Conflating “Impartial Access” With “All-to-All” Access
 - Ill-Advised Void *Ab Initio* Rule
 - Uncleared Swaps Confirmations
 - Embargo Rule and Name Give-Up
 - Prescriptive Rules Disguised as Core Principles



Potential CFTC Regulatory Reform: Swaps Trading Blueprint

- To remedy the concerns discussed above, then-Commissioner Giancarlo proposes a swaps trading regulatory framework based around five key tenets:
 - 1) Comprehensiveness
 - 2) Cohesiveness
 - 3) Flexibility
 - 4) Professionalism
 - 5) Transparency
- In addition, then-Commissioner Giancarlo has been critical of the “over-expansive” cross-border approach of the CFTC. Therefore, as Chairman, he is likely to revisit the entire cross-border approach, including issues of substituted compliance.



Background Information



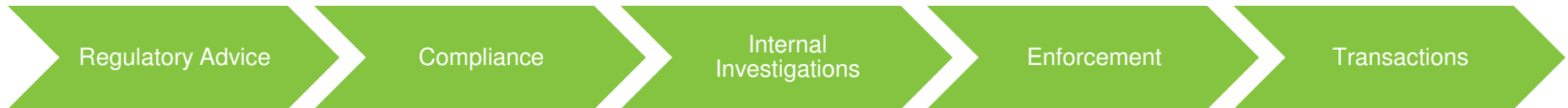
Futures, Derivatives and Commodities – Representation of Diverse Market Participants



- Swap Dealers and Financial Institutions
 - Advise multiple swap dealers with global offices in compliance reviews of swap dealer policies and procedures, including policies related to the trading of swaps in all asset classes.
 - Advise swap dealers on swap dealer registration applications, including revisions to policies and procedures.
 - Advise Coinbase, Inc. on financial services regulations, including the regulatory requirements of the CFTC related to cryptocurrency.
 - Representation of ISDA on a white paper related to a principles-based approach to the CFTC's cross-border and substituted compliance regime.
 - Advise several of the world's largest derivatives market participants, including a U.S. investment bank, on separate CFTC enforcement matters related to futures and swaps trading.
 - Advise a commodity brokerage firm in enforcement and exchange investigations.
- Asset Managers, Hedge Funds and Commodity/Corporate End-Users
 - Advise multiple market participants, including global commodity trading houses, on compliance with CFTC regulations, including policies and procedures related to futures and swaps trading.
 - Advise one of the world's largest asset managers on compliance with margin for uncleared swaps rules.
 - Conduct real-time and event-driven reviews of futures and swaps trading activity to verify compliance with internal policies and CFTC regulations, including position limits and other CFTC reporting.
- Clearinghouses, Exchanges and Trading Platforms
 - Advise multiple clients on potential acquisitions of clearinghouses, designated contract markets (DCMs) and swap execution facilities (SEFs) registered with the CFTC and European regulators.
 - Advise multiple derivatives trading platforms on the application of the CFTC's core principles for SEFs and DCMs, including the regulatory implications of business requirements and operational and technology functions and the clearing services, as well as innovative products such as virtual currency (bitcoin) derivatives.
 - Assist a global clearinghouse in its entry into the markets in China and India.
 - Advise on the Principles of Financial Market Infrastructures (PFMIs) for central counterparties (CCPs) established by the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO).



Futures, Derivatives and Commodities – Diverse Practice Coverage



- Cross-Border Regulatory Advice
 - Cross-boarder practice with industry-based understanding of international commodity and derivatives markets.
 - Expertise in the Dodd-Frank Act, U.S. regulations and international derivatives reforms, including EU Directives and Regulations.
 - Extensive connectivity within the CFTC and other U.S. and international regulatory bodies.
 - Assist with swap dealer and SEF analysis and registrations and ISDA documentation.
- Compliance Policies and Programs
 - Deep understanding of the compliance obligations of market participants, including swap dealers, hedge funds, asset managers and commercial end-users.
 - Perform Compliance Reviews of market participant activities.
 - Advise on policies and procedures to demonstrate compliance with domestic and international regulations and industry best practices.
 - Develop tailored training programs based on civil and criminal enforcement trends.
- Internal Investigations and Enforcement Actions
 - Focused and rapid review of conduct based on enforcement and industry experience.
 - Perform internal investigations and represent companies and employees.
 - Part of the leading White Collar Practice in the U.S.
 - Cross-agency actions (e.g., CFTC, SEC, DOJ, FERC, State Attorneys General).
 - Cross-border actions (e.g., UK-FCA and SFO, France-AMF, Switzerland-FINMA, Japan-JFSA, Singapore-MAS).
- Transactional Advice
 - Advice on products and transactions involving the futures, commodities, and derivatives markets, including due diligence related to the regulatory implications of M&A transactions.
 - Advice related to International Swaps and Derivatives Association documentation and collateral arrangements, prime brokerage agreements, derivative structuring for corporate treasury functions, insolvency issues and transactional due diligence.



Disclaimer

This presentation is not intended as legal advice. You should seek specific legal advice before acting with regard to the subjects mentioned herein.

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