Schiff Hardin

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DERIVATIVES & FUTURES UPDATE

CFTC RULEMAKING DEVELOPMENTS

CFTC Proposes Algorithmic Trading Regulations for Proprietary Traders, FCMs, and Exchanges

On November 24, 2015, the **CFTC** issued a much anticipated rules proposal related to automated trading in the derivative markets, referred to as Regulation AT. If adopted, these proposed rules would create new requirements for proprietary trading firms, designated contract markets (DCMs), futures commission merchants (FCMs), and other CFTC registrants using algorithmic trading systems. They also would require certain persons to register under a new definition of floor trader if they engage in algorithmic trading through Direct Electronic Access to a DCM in the futures, options, and swaps markets.

1) Purpose and Scope of Proposed Rules

Under this proposal, the CFTC broadly defines "**Algorithmic Trading**" as trading in any commodity interest on or subject to the rules of a DCM, where:

> "one or more computer algorithms or systems determines whether to initiate, modify, or cancel an order, or otherwise makes determinations with respect to an order, including but not limited to: the product to be traded; the venue where the order will be placed; the type of order to be placed; the timing of the order; whether to place the order; the sequencing of the order in relation to other orders; the price of the order; the quantity of the order; the partition of the order into smaller components for submission; the number of orders to be placed; or how to manage the order after submission;" and
>
> the order, modification or cancellation is electronically submitted to a DCM, but <u>not</u> including orders, modifications, or cancellations that are manually entered into a front-end system, with no further discretion by any computer system or algorithm, prior to being submitted to a DCM.

This definition of Algorithmic Trading is not limited only to high frequency trading.

The CFTC determined that rules were needed to prevent persons from using Algorithmic Trading to violate the Commodity Exchange Act (CEA) or CFTC Regulations, including by disrupting the market. Accordingly, a primary focus of the proposed rule is on risk controls for automated trading systems to "reduce the potential for market disruptions arising from system malfunctions and other

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errors or conduct." The risk controls would be mandated at three separate levels – by trading firms engaged in Algorithmic Trading, by FCMs who clear such trades, and by DCMs that provide the trading venue.

2) Registration Required for Certain Proprietary Trading Firms

The proposed rules would amend the definition of "floor trader" to include persons who trade commodity interests at a DCM for their own account by using "**Direct Electronic Access.**" This is defined as an arrangement by which a person transmits an order electronically to a DCM, without the order first being routed through a clearing FCM.

The CFTC estimates that about 100 proprietary trading firms, responsible for about 35% of all futures trading volume, engage in Algorithmic Trading and thus would be required to register as floor traders if their trading is done through Direct Electronic Access. The proposed rules would not require a proprietary trading firm to register as a floor trader if it enters its orders by routing them through a system operated by a clearing FCM. Each proprietary trading firm would need to decide for itself whether the benefits of speed and efficiency gained by using Direct Electronic Access outweigh the costs of being required to register as a floor trader, including the additional burdens set forth in the proposed rules as described below.

3) New Requirements for AT Persons

The proposed rules contain a number of new requirements that apply to "AT Persons." "**AT Person**" is a new term defined as any person registered or required to be registered as (i) an FCM, floor broker, swap dealer, major swap participant, commodity pool operator, commodity trading advisor, or introducing broker that engages in Algorithmic Trading; or (ii) a floor trader that engages in Algorithmic Trading through Direct Electronic Access. The CFTC estimates that about 420 entities would qualify as AT Persons, though some of these may currently be registered with the CFTC in another capacity.

Some of the new requirements for AT Persons would include the following:

- **Development, Testing, and Monitoring** – AT Persons would need to implement policies and procedures for development, testing, and monitoring of algorithmic trading systems. This includes the complete separation of the environment used for development and the one used for production, testing before implementation, real-time monitoring of such systems, and would need to designate staff to be responsible to ensure compliance with the CEA and CFTC Regulations and the training of such staff.
- **Risk Controls** – AT Persons would be required to implement risk controls on orders submitted through Algorithmic Trading, including maximum order message and execution frequency per unit time, order price and order size parameters, and order cancellation systems with the ability to immediately disengage algorithmic trading (kill switch), cancel selected or all resting orders, and prevent submission of new orders. Additionally, AT Persons would need to notify their FCM and DCM when engaging in algorithmic trading.
- **Source Code Repository** – AT Persons would be required to establish and maintain a source code repository that would include the documenting of strategy and design of proprietary algorithmic trading software used and changes implemented, including an audit trail of who made it, when it was made, and the coding purpose of each change. Such records would need to be maintained in accordance with CFTC record-keeping requirements and to be made available for inspection upon request made by the CFTC or the Department of Justice. This requirement is highly controversial within the industry due to concerns about the government's ability to protect sensitive proprietary information.
- **Self-Trade Prevention** – AT Persons would be required to calibrate or take action to apply a DCM's tools to prevent self-trading.
- **Periodic Sufficiency and Effectiveness Review** – AT Persons would need to periodically review compliance with these rules to determine if they have effectively implemented measures reasonably designed to prevent trading disruptions and violations of the CEA or CFTC Regulations.
- **Compliance Reports** – Each AT Person would be required annually to prepare and submit to DCMs compliance reports describing how it complies with its maintenance of risk controls.

4) Additional Requirements for Clearing FCMs

Clearing FCMs through whom Algorithmic Trading is conducted also would be subject to the following additional requirements:

- **Risk Controls** – On orders originating from AT Persons, FCMs would need to establish and implement their own risk controls that were reasonably designed to prevent or mitigate trading disruptions, set at the level of each AT Person, or more granular as the FCM may determine, and make use of the order cancellation systems with the ability to utilize a kill switch, cancel selected or all resting orders, and prevent submission of new orders. FCMs would be required to implement the DCM-provided risk controls for Direct Electronic Access orders and to have policies and procedures designed to ensure that a natural person is alerted when these risk controls are breached.

- **Compliance Reports** – FCMs would need to prepare and submit annually to DCMs compliance reports describing how the FCM will comply with maintenance of risk controls on their AT Person clients, including a description of the FCM's program to establish and maintain their risk controls required by the rules and a certification from the CEO or CCO that it is accurate and complete to the best of her/his knowledge and reasonable belief. Further guidance from the CFTC may be necessary to determine what FCMs need to include in these compliance reports.

5) New Requirements for DCMs

Some of the new requirements for DCMs would include the following:

- **Risk Controls** – DCMs would need to implement risk controls on orders submitted through Algorithmic Trading (and parallel controls for manual orders), including maximum order message and execution frequency per unit time, order price and order size parameters, and order cancellation systems. This would include separate risk controls for algorithmic orders submitted through Direct Electronic Access and require FCMs to use these risks controls for such Direct Electronic Access orders.

- **Compliance Reports** – DCMs would need to require risk control reports from AT Persons and clearing FCMs, and to review the reports periodically to identify outliers and to instruct the AT Person or FCM on remediation of any insufficient mechanisms or inadequate quantitative settings or calibrations of the risk controls required. DCMs would need to implement rules to require AT Persons to maintain books and records of compliance, and the DCM would be obligated to review and evaluate those books and records to identify any insufficient policies and procedures established by the AT Persons and clearing FCMs.

- **Test Environments** – DCMs would need to provide test environments where AT Persons could test the automated trading systems for compliance with these rules.

- **Self-Trade Prevention** – DCMs would be required to implement rules to prevent self-trading by market participants (with specific exceptions described) and to apply or require the use of these tools on all orders on its electronic trade matching platform. This requirement would be applicable to all market participants, not just AT Persons.

- **Market Maker and Incentive Programs** – DCMs would need to provide disclosure of market maker and incentive programs submitted as rule filings, and this disclosure would need to include all products or services to which these programs apply, eligibility requirements, and payment benefits or incentives received, such as fee rebates (including non-financial benefits, such as enhanced trading priorities or preferential access to market data, including order and trade data).

In addition to explaining the rationale for the proposed rules, the CFTC's 521-page release sets forth 164 questions on which the CFTC is requesting public comments. The public comment period will end on **March 16, 2016**, which is 90 days after the proposed rules were published in the Federal Register.

CFTC Proposes Rules to Enhance Cybersecurity Controls

In December 2015, the CFTC unanimously proposed two new rules requiring cybersecurity testing and system safeguards of risk analysis. One rule proposal addresses clearing and applies to derivatives clearing organizations (DCOs). The other rule proposal addresses exchange-related matters and applies to designated contract markets (DCMs), swap execution facilities (SEFS), and swap data repositories (SDRs). The proposed rules are complex and require DCOs, DCMs, SEFs, and SDRs to implement various types of cybersecurity testing. Below is a summary of the most important elements.

- **Vulnerability Testing** – An entity would need to test its automated systems quarterly for vulnerabilities that might permit information to be obtained by outside parties. In performing this vulnerability testing, an entity would need to ensure that all security components are in place – that software is up-to-date, patches have been implemented, and network components are configured properly.

- **Penetration Testing** – Entities would be required to conduct annual internal and external penetration testing. Penetration testing answers the question of what happens when hackers access an entity's systems. It is meant to mimic tactics, techniques, and procedures used in a cyberattack; identify the extent to which a system can be compromised; and evaluate the effectiveness of the entities' response mechanism. Internal testing assesses the ability of automated systems within the entity (i.e., on the internal network) to identify and exploit vulnerabilities. External testing assesses the ability of outside sources (i.e., the Internet or wireless frequencies around an organization) to identify and exploit system vulnerabilities.

- **Controls Testing** – At least every two years, entities would need to test how well they are safeguarding the reliability, security, or capacity of their data and information. There are three broad types of system safeguards-related controls that entities would need to test: technological controls, operational controls, and management controls. Technological controls focus on access control mechanisms, identification, authentication, firewalls, and the like. Operational controls establish a contingency plan that will be implemented in case of a breach. And management controls concern risk assessment. One key concern the CFTC hopes to address through controls testing is the rule of least privilege – the notion that employees should not have access to controls beyond those necessary to perform their jobs. Control testing is expected to help protect against risks including automated system failures or deficiencies and human errors, deficiencies, or malicious actions.

- **Security Incident Response Plan Testing** – At least annually, entities would be required to test the procedures they have in place and to assess the resources available for identifying, responding to, mitigating, and recovering from security breaches. The security incident response plan would need to list the responsibilities of management, staff, and independent contractors in responding to a security incident, i.e., whom to call, where to go, what is expected of the various parties, and how to quickly make decisions. The plan would need to be practiced. Tests could range from running through a checklist to running simulated attacks. The CFTC believes that firms that practice incident response or engage in cyber war games will be the most effective in responding quickly and effectively to an actual attack.

- **Enterprise Technology Risk Assessment** – At least annually, entities would be required to conduct a written assessment of the threats and risks they face. The assessment would need to identify, estimate, and prioritize the risks of a breach to an entity's operations or assets, or to market participants, individuals, and other entities.

- **Testing Requirements** – The CFTC rules would require DCOs, covered DCMs, and SDRs to hire independent contractors, or to use employees who are not responsible for developing or operating the system, to conduct security incident response plan testing and enterprise technology risk assessment testing. Covered DCMs and SDRs would need to hire independent contractors to perform controls testing, and DCOs would have the option to use employees independent of the system being tested. All entities would need to obtain independent contractors to conduct external penetration testing, but internal penetration testing could be conducted by employees whose work is independent from the system being tested. Additionally, independent contractors would need to conduct at least half of all vulnerability tests.

- **Board Involvement** – The proposed rules would require a larger role for an entity's board of directors and management. Boards would be required to review reports generated by the tests proposed under the CFTC's rules. The CFTC understands that board members may require training to be effective in these new roles, but the CFTC believes that board involvement will ensure the entities maintain a firm commitment to cybersecurity.

The proposed rules were published in the Federal Register on December 23, 2015, and the public comment period will end on February 22, 2016.

CFTC Adopts Margin Rules for Uncleared Swaps

On December 16, 2015, the CFTC voted to adopt final rules that will establish minimum initial margin and variation margin requirements for uncleared swaps entered into by swap dealers and major swap participants that are not overseen by federal banking regulators (collectively, **Swap Entities**). The CFTC rules are substantially similar to the margin rules recently adopted by the federal banking regulators for entities that are subject to their regulatory oversight.

The main points covered by those rules are as follows:

1) Rules Apply to Swap Entities and Financial End Users

The CFTC's margin requirements vary depending on the nature of the counterparties to the uncleared swap. The CFTC's rules establish three categories of counterparties: (1) Swap Entities; (2) financial end users; and (3) non-financial end users.

The CFTC defines the term "financial end user" to include the following types of entities:

- Banks, savings and loan companies, credit unions, and their holding companies;
- State-licensed finance companies, money lenders, mortgage brokers, and currency dealers;
- Securities brokers and dealers, investment advisers, and investment companies;
- Private investment funds, commodity pools, commodity pool operators, commodity trading advisors, floor brokers, floor traders, introducing brokers, and futures commission merchants;
- Insurance companies;
- Employee benefit plans; and
- Any person or entity that raises money from investors or uses its own money primarily for investing or trading in securities, swaps, or other assets.

A "non-financial end user" is defined as a counterparty that is neither a Swap Entity nor a financial end user.

2) Requirements for Initial Margin and Variation Margin

After the applicable compliance date, the CFTC's margin rules will require daily posting and collecting of initial margin for all new swaps between two Swap Entities or between a Swap Entity and a financial end user that has over $8 billion in gross notional exposure in uncleared swaps. The initial margin can be in the form of cash, sovereign debt, corporate bonds, equities, gold, and certain fund shares, with appropriate haircuts as specified in the rules.

With respect to variation margin, the rules will require daily payments in cash for all new swaps between two Swap Entities. For swaps between a Swap Entity and a financial end user (regardless of the gross notional exposure of its uncleared swaps), the rules will require daily posting of variation margin in one of the forms approved for initial margin.

When margin is required to be posted, the CFTC rules will require the initial margin collateral to be held in segregated accounts at an independent custodian. Rehypothecation of the margin collateral will be prohibited.

3) No Margin Required for Non-Financial End Users

Notably, the CFTC rules will not require non-financial end users to post initial margin or variation margin for uncleared swaps. Because such entities generally use swaps to hedge commercial risks, the CFTC believes that they pose less risk of default than financial entities. This treatment for non-financial end users was mandated by an amendment to the Dodd-Frank Act adopted by Congress in January 2015 to except non-financial companies from the requirement to post margin on uncleared swaps.

4) Special Treatment for Inter-Affiliate Swap Transactions

The most controversial aspect of the CFTC's margin rules involved how those rules should apply to a swap between a Swap Entity and one of its affiliates. The margin rules adopted by the federal banking regulators require two-way initial margin and variation margin for swaps between a Swap Entity and an affiliate that is either a Swap Entity or a financial end user. However, commenters argued that inter-affiliate swap transactions are not outward-facing and thus do not increase the overall risk exposure of the consolidated enterprise to third parties. A majority of the CFTC (Chairman Massad and Commissioner Giancarlo) accepted that argument. Commissioner Bowen issued a dissenting statement in which she stated her view that the CFTC should have adopted the same approach as the banking regulators on this issue.

Under the CFTC's margin rules, a Swap Entity is not required to collect initial margin from an affiliate, provided that (1) the swaps are subject to a centralized risk management program that is reasonably designed to manage the risks of inter-affiliate swaps, and (2) the Swap Entity and its affiliate exchange variation margin payments. In addition, the Swap Entity will be required to collect initial margin from a non-U.S. affiliate that is a financial end user if the affiliate is not subject to initial margin requirements, under foreign margin rules that are comparable to those imposed on non-affiliates under the CFTC's margin rules, with respect to the affiliate's own outward facing swaps with financial end users. This requirement is designed to prevent the potential use of affiliates to evade the requirement to collect initial margin from third parties as required under the CFTC's rules if the swap were directly between the Swap Entity and the third party.

Except as noted in the preceding paragraph with respect to non-U.S. affiliates of a Swap Entity, the recently-adopted CFTC margin rules do not address how those rules will apply when one or both of the swap counterparties are located outside of the U.S. That subject is being addressed in a separate rulemaking proceeding.

5) Implementation Schedule

The requirements to post and collect initial margin and variation margin will be phased in starting September 1, 2016, in accordance with the following schedule:

- September 1, 2016 – Initial margin and variation margin required when both the Swap Entity and its counterparty (combined with their affiliates) have an average daily aggregate notional amount of covered swaps for the prior March, April, and May that exceeds \$3 trillion.
- March 1, 2017 – Variation margin required for all covered swaps between two Swap Entities or between a Swap Entity and a financial end user.
- September 1, 2017 – Initial margin required when both the Swap Entity and its counterparty (combined with their affiliates) have an average daily aggregate notional amount of covered swaps for the prior March, April, and May that exceeds \$2.25 trillion.
- September 1, 2018 – Initial margin required when both the Swap Entity and its counterparty (combined with their affiliates) have an average daily aggregate notional amount of covered swaps for the prior March, April, and May that exceeds \$1.5 trillion.
- September 1, 2019 – Initial margin required when both the Swap Entity and its counterparty (combined with their affiliates) have an average daily aggregate notional amount of covered swaps for the prior March, April, and May that exceeds \$0.75 trillion.
- September 1, 2020 – Initial margin required for all covered swaps

between two Swap Entities or between a Swap Entity and a financial end user that has over $8 billion in gross notional exposure in uncleared swaps.

The CFTC's margin rules do not have retroactive effect and will not apply to transactions executed before the applicable dates set forth above.

CFTC Amends Regulation 1.35 to Ease the Recordkeeping Burden for Certain Market Participants

The CFTC recently amended its Regulation 1.35(a) in several respects, effective on December 24, 2015. The amendments relax recordkeeping requirements for certain market participants in the following ways:

1) Requirement that Records Be Searchable

Before this amendment, Regulation 1.35(a) required that specified records be maintained in a form and manner "identifiable and searchable by transaction." The amendment replaced the term "searchable" with the phrase "maintained in a form and manner which permits prompt, accurate and reliable location, access, and retrieval of any particular record, data, or information." The CFTC explained that the amended rule permits market participants to use paper or electronic records for their business and does not require them to convert their records to searchable electronic databases.

2) Exclusion for Unregistered Members

Regulation 1.35(a) generally required many categories of market participants, including members of a DCM or a SEF, to include text messages as among the types of records that must be retained. The recent amendment eliminates the requirement to retain text messages for members of a DCM or SEF that are not registered or required to be registered with the CFTC in any capacity. In addition, the amendment removes the requirement that such unregistered members keep records of written communications that lead to the execution of a commodity interest transaction or related cash or forward transactions, although records of the transactions themselves must be retained.

3) Exclusion for Commodity Trading Advisors

Regulation 1.35(a) previously required a commodity trading advisor (CTA) that is a member of a DCM or SEF to record all oral communications that lead to the execution of a commodity interest. The amendment alleviates that recordkeeping burden by excluding CTAs entirely from the oral recordkeeping requirements of the rule.

CFTC Proposes Supplemental Rulemaking to Modify Aggregation Provisions of Its Position Limit Rules

On September 22, 2015, the CFTC approved and opened for public comment a supplement to its proposed rulemaking to modify the aggregation provisions of its position limit rules. The CFTC's supplemental notice of proposed rulemaking revises how the CFTC proposes to address situations when aggregation is required on the basis of ownership of a greater than 50% interest in another entity.

Under the CFTC's original aggregation proposal in its proposed position limit rule from November 2013, an owner of more than a 50% interest in another entity is not allowed to disaggregate the positions of the two entities unless the owner provides specified information and certifications in an application to the CFTC, and then received CFTC approval to disaggregate. However, under the supplemental proposal, owners of an interest exceeding 50% would be able to disaggregate their positions without needing CFTC approval, upon filing a notice with the CFTC stating that certain specified standards have been met.

The comment period for the supplemental notice of proposed rulemaking ended on November 30, 2015. The CFTC is still considering that rulemaking along with the November 2013 proposal on position limits and the comments on it submitted during multiple earlier comment periods.

CFTC NO-ACTION LETTERS

Application of Dodd-Frank to Cross-Border Transactions

The CFTC in 2013 approved interpretive guidance describing how the CFTC will apply Dodd-Frank regulations to cross-border transactions. In addition, in Staff Advisory No. 13-69, the CFTC staff took the position that a transaction between a non-U.S. swap dealer and a foreign client is subject to the CFTC's swap rules if the swap is arranged, negotiated, or executed by personnel or agents of the non-U.S. swap dealer who are located in the United States. This position is controversial and has never been enforced by the CFTC. The CFTC has issued a series of no-action letters that extended the date when non-U.S. swap dealers would be required to comply with it. The most recent no-action letter was issued on August 13, 2015, and it extends the compliance date until September 30, 2016.

Relief Extended for Inter-Affiliate Swaps

The CFTC's rules that require mandatory clearing for certain swaps contain an exemption for swaps between affiliated entities, provided that certain conditions are met. One of the conditions requires that swaps between one of the affiliated entities and an unaffiliated counterparty be cleared. However, it is impractical to meet that condition when the counterparty is not located in the United States, because most foreign jurisdictions have not yet implemented a mandatory clearing requirement for swaps. Accordingly, the CFTC has issued no-action relief to allow affiliated entities to rely on this exemption even when their swaps with foreign counterparties are not cleared. In a recent no-action letter dated November 17, 2015, the CFTC extended the expiration date for such relief from December 31, 2015 until December 31, 2016.

Mandatory Trading Requirement for Swaps in Package Transactions

Dodd-Frank requires that all swap transactions subject to mandatory clearing must be executed either on a DCM or a SEF, except where no DCM or SEF makes the swap "available to trade." In early 2014, the CFTC certified that certain interest rate swaps and certain credit default index swaps were "available to trade." As a result of the CFTC's certification, bilateral, over-the-counter transactions in those swaps are unlawful, unless an exception (such as the end-user exception) is available.

Application of the mandatory trading requirement is more complicated for transactions in swaps that are combined with transactions in other financial instruments and executed as a single "packaged" trade. If at least one of the components of a packaged trade is a swap that is subject to the mandatory trading requirement, the CFTC has taken the position that the entire package must be executed on an exchange or a SEF. However, in recognition of the fact that the exchanges and SEFs are not prepared operationally to trade certain of such package transactions, the CFTC has issued no-action relief in this area. In a no-action letter dated October 14, 2015, the CFTC granted relief from the mandatory trading requirement for the swap components of the following types of package transactions until November 15, 2016:

- Packaged trades in which at least one swap component is subject to mandatory trading and the other components are futures contracts.
- Packaged trades in which at least one swap component is subject to mandatory trading and the other components are bonds newly issued and sold in the primary market.

In addition, the CFTC staff granted more limited no-action relief to other types of package transactions. In those transactions, the swap component that is subject to the mandatory trading requirement must be executed on a DCM or SEF, but the DCM or SEF may provide greater flexibility in the methods of execution used for such transactions. This relief will expire on November 15, 2016, unless it is extended again.

Relief Extended for Certain Block Trades

In the context of swaps that are listed on a registered SEF, the CFTC defines a "block trade" as a transaction with a notional amount at or above the minimum block size for the swap that "occurs away" from the SEF's trading platform and is executed pursuant to the SEF's rules. The CFTC engaged in rulemaking proceedings in order to specify the criteria and treatment for block trades in swaps. In the rulemaking, the CFTC made clear that, under its definition of a block trade for swaps, the block trade cannot be transacted on the SEF's trading platform.

For operational reasons, it is difficult for a SEF to perform pre-execution credit screening with respect to a block trade unless the block trade is executed on the SEF's trading platform. This difficulty led the CFTC staff in 2014 to grant time-limited no-action relief to SEFs from the requirement that a block trade must "occur away" from the SEF's trading platform. Because the same operational considerations continue to exist, the CFTC staff issued another no-action letter on November 2, 2015 that extends the no-action relief granted by the prior letter until November 15, 2016.

New Ownership and Control Reporting Requirements Delayed

In 2013, the CFTC adopted a rule that expanded upon its previous Ownership and Control Reporting (OCR) programs by requiring the electronic submission of trader identification and market participant data on new and updated reporting forms. The Futures Industry Association requested additional time to comply with the OCR requirements in order to educate clients of member firms about the new reporting obligations and to collect the new data needed for OCR reporting. The CFTC staff issued a no-action letter dated September 28, 2015 in which it granted the following time-limited relief until the dates specified below:

- April 27, 2016 – Relief from electronically reporting via new Forms 102A (to identify holders of large positions), 102B (to identify traders that exceed a stated volume of transactions on a DCM), and 102S (to identify holders of certain swap positions).
- September 28, 2016 – Relief from electronically reporting via new Forms 40/40S (to collect information from reporting traders) and 71 (to collect information on omnibus volume threshold accounts).
- February 13, 2017 – Relief from electronically reporting via new Form 102B (to identify traders that exceed a stated volume of transactions on a SEF).

CFTC AND CRIMINAL ENFORCEMENT ACTIONS

CFTC Brings Action Against Igor B. Oystacher and 3 Red Trading LLC for Spoofing and Employment of a Manipulative and Deceptive Device

On October 19, 2015, the CFTC filed a complaint in the Northern District of Illinois alleging disruptive trading practices in violation of Sections 4c(a)(5)(C) and 6(c)(1) of the CEA against Igor B. Oystacher (Oystacher) and his proprietary trading company, 3 Red Trading LLC (3 Red), for engaging in spoofing and the employment of a manipulative and deceptive device while trading multiple futures products, including Crude Oil and E-Mini S&P 500 contracts.

According to the CFTC complaint, during at least 51 trading days between December 2011 and January 2015, Oystacher and 3 Red intentionally and repeatedly engaged in a manipulative and deceptive spoofing scheme while trading in at least five futures products on at least four difference exchanges. The complaint alleges that Oystacher and 3 Red manually placed large passive orders on one side of the market at or near the best bid or offer price, which they intended to cancel before execution (spoof orders). Oystacher and 3 Red would then cancel (or attempt to cancel) all spoof orders before they were executed, and simultaneously "flip" their position from buy to sell (or vice versa) by placing an aggressive order on the other side of the market. The CFTC alleges that the activity above created the false impression of market depth and constituted a manipulative and deceptive device that allowed Oystacher and 3 Red to buy futures contracts at more beneficial prices.

The CFTC's complaint seeks a permanent injunction against Oystacher and 3 Red as well as civil monetary penalties, disgorgement of profits, and trading and registration bans for violating the CEA. Importantly, and in an unusual move by the CFTC, on November 10, 2015, the CFTC asked the judge to enter a preliminary injunction which would bar Oystacher and 3 Red from trading for the duration of the lawsuit. This aggressive stance by the CFTC will essentially force an early determination of the ultimate issue of whether the alleged trading activity constitutes spoofing and therefore represents an ongoing violation of the CEA. A date for the preliminary injunction hearing has been set for April 25, 2016.

CFTC Settlement Characterized as First "Insider Trading" Case

On December 2, 2015, the CFTC entered a settlement order requiring Arya Motazedi to pay a civil monetary penalty for violating Sections 4b(a)(1)(A) and (C), 4c(a) and 6(c)(1) of the CEA and CFTC Regulation 180.1. This settlement has been viewed within the industry as the CFTC's first case against an individual for "insider trading." The CFTC's Order found that trading on material non-public information in breach of a pre-existing duty constituted a violation of Regulation 180.1, which the CFTC has made clear is a catch-all provision reaching fraud in all its forms.

The CFTC alleged that Motazedi engaged in fraudulent transactions in the NYMEX's RBOB Gasoline Physical futures contract and CL Light Sweet Crude Oil futures contract by arranging at least 34 trades between a proprietary account he traded on behalf of his employer at the time and his own personal accounts at prices which disadvantaged his employer's account. The Order states that Motazedi also placed orders for his personal accounts ahead of orders for his employer's account (a process called "front running") on at least 12 separate occasions. These fraudulent transactions generated additional profits for Motazedi at the expense of his employer and resulted in trading losses for his employer.

The CFTC Order also stated that Motazedi misappropriated non-public, confidential and material information concerning the times, volume and prices at which his employer intended to trade energy commodity futures for its proprietary account. The settlement order prohibits Motazedi from trading energy commodities in his personal accounts and from engaging in personal transactions that created an actual or potential conflict of interest with the interests of his employer pursuant to his employer's trading guidelines. The CFTC's order further found that Motazedi breached his duties to his employer by using this non-public information to trade in personal trading accounts and failing to disclose that trading to his employer.

The Order required Motazedi to pay a civil monetary penalty of $100,000 and restitution in the amount of almost $217,000 for the benefit of his employer. Motazedi also agreed to permanent bans from trading and registering as a futures professional in any capacity with the CFTC. Separately, CME announced on December 2, 2015 that it had entered an order against Motazedi based upon the same conduct.

CFTC Settles Attempted Manipulation in Natural Gas Index by Manipulative Device

On December 7, 2015, the CFTC entered an order requiring Total Gas & Power North America, Inc. (TGPNA) and Therese Tran to jointly pay a $3.6 million civil monetary penalty for violating Sections 9(a)(2), 6(c)(1) and 6(c)(3) of the CEA and CFTC Regulations 180.1 and 180.2. This case again demonstrates the CFTC's willingness to use its traditional pre-Dodd-Frank manipulation authority in addition to its new post-Dodd-Frank manipulation authority regarding the intentional or reckless use of a "manipulative or deceptive device or contrivance." The CFTC alleged that TGPNA, a natural gas trading firm, and Tran, a Houston-based natural gas trader, attempted to manipulate the natural gas monthly index settlement prices through physical fixed-price trading during settlement periods known as "bid-week."

According to the Order, during bid-weeks for September 2011, October 2011, March 2012 and April 2012, TGPNA and Tran attempted to manipulate the price of natural gas at the following hubs: El Paso Permian Basin, El Paso San Juan Basin, Southern California Gas Co., and West Texas Waha. The Order states that, during these bid-weeks, TGPNA's fixed price trading accounted for a substantial percentage of the total market by volume at these hubs even though TGPNA had no material customers, assets or transportation in these regions. The Order characterized the manipulative device employed by the Respondents as the "purchasing and/or selling [of] large volumes of fixed-price natural gas at the relevant hubs before and during bid-week that were intended to benefit TGPNA's related financial positions."

The Order imposed a two-year limitation on both TGPNA and Tran from trading certain physical natural gas at hub locations when TGPNA also holds, prior to and during bid-week, any financial natural gas position whose value is derived in any material part from natural gas bid-week index pricing. TGPNA must also comply with various reporting and recordkeeping requirements for two years.

CFTC Fines Swap Dealer in First Case Regarding Failure to Supervise Swaps Trading

On August 19, 2015, the CFTC entered into a settlement requiring INTL FCStone Markets LLC (FCStone), a provisionally registered swap dealer, to pay a $200,000 civil monetary penalty under the CFTC's first case alleging violations of Regulation 23.602. CFTC Regulation 23.602 is the new rule requiring swap dealers and major swap participants to diligently supervise all activities related to their swap business, and the CFTC has noted it is similar to the longstanding supervision rule, Regulation 166.3, which applies to all registrants.

The CFTC alleged that FCStone failed to diligently supervise traders in its Kansas City Energy Group (KCEG), lacked adequate policies and procedures to ensure that discretionary trading of customer accounts was appropriate and properly controlled, and failed to implement policies and procedures already in place. According to the Order, from January 2013 to July 21, 2013, traders in KCEG obtained verbal authorization to enter into discretionary trades, despite the fact that FCStone's compliance procedures explicitly required written authorization for a trader to exercise discretion over customer trades. The Order also stated that FCStone did not have sufficient controls and procedures in place in order to monitor this type of discretionary trading. For example, the Order found that FCStone's lack of supervision contributed to one of FCStone's traders, Gregory Evans, engaging in 30 unauthorized trades in a non-discretionary account without detection for a period of several months, resulting in customer losses of approximately $1.2 million.

In addition to imposing the civil monetary penalty, the Order also required FCStone to cease and desist from further violations of CFTC Regulation 23.602. This is the first CFTC enforcement action charging violations of Regulation 23.602, and it is likely a harbinger of the type of actions related to new regulatory requirements that the CFTC will focus on in the coming year.

CFTC Fines an FCM for Failure to Supervise and Respond Fully to a Section 4g Request

On September 6, 2015, the CFTC entered into a settlement order requiring Forex Capital Markets, LLC (FXCM) to pay an $843,000 civil monetary penalty for violating Sections 4g and 6(c) of the CEA and CFTC Regulations 166.3, 1.31 and 1.35. The CFTC alleged that FCXM, a registered FCM, failed to diligently supervise its officers, employees, and agents in their handling of accounts held at FXCM's Revelation Forex Fund (RFF), which was determined to be a fraudulent foreign currency exchange pool. Earlier in 2015, the CFTC entered into a Consent Order for a permanent injunction against the operators of RFF, Kevin G. White and two entities that he controlled, for fraudulently soliciting $7.4 million and misappropriating $1.7 million of pool participants' funds.

The CFTC alleged that FXCM failed to follow its own internal compliance procedures, which required that its employees identify and promptly report suspicious activities to appropriate authorities. The specific allegations included that FXCM had reviewed false profitable performance claims on RFF's website and also became aware of postings in an online forex trading forum alleging that White had made several fraudulent profitability claims, yet failed to identify or report these warning signs that RFF was a fraud. Further, the Order states that FXCM failed to identify or report that White's operation of RFF violated the exemption from registering as a commodity pool operator by RFF.

The Order also found that FXCM failed to respond fully to the Commission's Section 4g document request (under the recordkeeping requirement for FCMs). The CFTC Order found that FXCM provided emails in response to the Section 4g request, and supplemented that response, but inadvertently omitted other emails from those responses. The Order implies that the Section 4g violation occurred because the CFTC had to issue a subpoena to ultimately obtain the omitted emails not provided in response to the Section 4g request. The Order also found FXCM violated a prior CFTC order entered on October 3, 2011 that required FXCM to cease and desist from violating Section 4g and Regulation 1.35.

The CFTC Order requires FXCM to pay a civil monetary penalty of $700,000; disgorge commissions and fees of almost $144,000 that it earned from the RFF accounts; and, among other compliance measures, hire a third-party compliance consultant to review and report on the supervisory issues raised in the Order.

CFTC Fines Firm for Failing to Disclose a Principal in Registration Filings and Material Changes to the Firm's Algorithmic Trading System in its Promotional Materials

On September 24, 2015, the CFTC entered an order requiring an individual and a proprietary trading company to pay a $280,000 civil monetary penalty for violating Sections 9(a)(3), 6(c)(2), 4o(1)(A) and (B) of the CEA. The CFTC alleged that Yakov Shlyapochnik and his Connecticut-based company, Nord Capital Advisors, LLC (NCA), failed to disclose NCA's principal in registration filings and fraudulently solicited prospective clients by failing to disclose material changes in NCA's algorithmic trading program.

According to the Order, from September 2011 through August 2014, NCA failed to disclose in registration filings with the National Futures Association (NFA) that Nord Capital Financial Services Ltd. (NCFS) was acting as NCA's principal. The Order also found that NCA failed to update its registration by disclosing NCFS as a principal and failed to disclose NCFS as a principal in annual registration updates filed with the NFA.

In addition, the Order found that NCA disseminated false and misleading marketing materials to clients, by failing to disclose material changes in its algorithmic trading system. According to the Order, from December 2012 through July 2014, NCA used a different algorithmic trading program than it used prior to December 2012. However, in advertising materials that NCA disseminated from February 2013 through July 2014, NCA's track record was presented as if NCA had used the same algorithmic trading program since 2011. Shlyapochnik was found equally liable for the NCA's violations because he allegedly controlled NCA and knowingly induced its violations of the CEA. In addition to the civil monetary penalty, the CFTC Order also imposed permanent trading and registration bans on Shlyapochnik and NCA.

CFTC Fines Swap Dealer for Swaps Reporting Violations and Failure to Supervise

On September 30, 2015, the CFTC entered an order requiring Deutsche Bank AG to pay a $2.5 million civil monetary penalty for violating CFTC Regulations 43.3(a), 43.3(e), 45.4(a), 45.14(a), and 23.602. The CFTC alleged that Deutsche Bank, a provisionally registered swap dealer, failed to properly report its swap transactions and did not diligently address and correct swap reporting errors until Deutsche Bank was notified of the CFTC's investigation. This is the CFTC's first action enforcing the new Dodd-Frank requirements for real-time public reporting of swap transactions and the reporting of swap data to swap data repositories.

According to the CFTC Order, for a period of over two years, Deutsche Bank failed to properly report cancellations of swap transactions in all asset classes, which in the aggregate included between tens-of-thousands and hundreds-of-thousands of reporting violations and errors and omissions in its swap reporting. The Order stated that Deutsche Bank was aware of problems relating to its cancellation messages since its reporting obligations began on December 31, 2012, but failed to provide timely notice to the data repository and did not diligently investigate, address and remediate the problems until it was notified of the Division of Enforcement's investigation in June 2014. The Order further found that Deutsche Bank did not have an adequate system to supervise all activities related to compliance with the swaps reporting requirements until at least sometime between April and July of 2014 – well after its reporting obligations went into effect.

The Order recognized Deutsche Bank's significant cooperation with the CFTC during the investigation of this matter, though it did not indicate what credit was given for its cooperation. In addition to the civil monetary penalty, Deutsche Bank must comply with specific undertakings to improve its internal controls to ensure the accuracy and integrity of its swaps reporting in the future.

NFA REGULATORY DEVELOPMENTS

NFA Interpretive Notice on Cybersecurity Approved by CFTC

The NFA's Cybersecurity Interpretive Notice will become effective on March 1, 2016. This notice, recently approved by the CFTC, requires all NFA member firms to adopt and implement policies and procedures to "secure customer data and access to their electronic systems." The interpretive notice recognizes that one size does not fit all firms and allows firms flexibility in establishing their program for diligent supervision, taking into account their size, the complexity of their operations, their customers, counterparties they service, and interconnectedness.

Under the notice, every firm is required to implement an information systems security program (ISSP), approved by an executive-level firm official, that includes:

1. A security risk analysis;
2. A description of the safeguards against identified system threats and vulnerabilities;
3. The process used to evaluate the nature of a detected security event, understand its potential impact, and take appropriate measures to contain and mitigate the breach; and
4. A description of the member's ongoing education and training related to information systems security for all appropriate personnel.

Every firm must review its ISSP at least annually and, in doing so, assess the effectiveness of the program. Further, firms must provide cybersecurity training to new and existing employees.

The notice also provides a list of resources firms may, but are not required to, use in creating their ISSPs and identifies specific safeguards the firms may want to include in their ISSPs.

New Forex Dealer Membership Requirements Are Now Effective

The NFA amendments to NFA Financial Requirements Sections 11 and 12, Compliance Rule 2-36, and related interpretive notice, recently approved by the CFTC, went into effect on January 4, 2016.

The amendments to Financial Requirements Section 11 do not change the requirement that Forex Dealer Members (FDMs) maintain at least $20 million of capital plus additional capital equaling 5% of all liabilities to customers over $10 million. The amendments require FDMs to maintain additional capital for transactions with eligible contract participants (ECPs). Firms also must maintain additional capital if the ECP is acting as a dealer.

Under amended Financial Requirements Section 12, FDMs must collect a security deposit for every forex transaction done with an ECP, and that security deposit must be equal in amount to the deposit FDMs are required to collect on forex transactions with their customers. Also, FDMs may be a counterparty to an ECP acting as a dealer only when the ECP collects and maintains from its customers and ECP counterparties security deposits for forex transactions in amounts that at least meet the amount required by Section 12. Further, the amended section now requires FDMs to notify the NFA electronically if they begin to require a security deposit higher than the NFA requires.

Finally, amended Compliance Rule 2-36 requires all FDMs to implement a risk management program to "monitor and manage the risks associated with [their] forex activities." The new interpretive notice for the amended rule identifies what must be included in such programs. All FDMs were required to file their plans with the NFA by January 4, 2016. An FDM also will be required to file quarterly risk exposure reports (the first such report must cover the first calendar quarter, ending March 31, 2016) and submit interim reports any time it identifies a material change in its exposure to risk. FDMs also must test their programs at least annually.

Under the Rule 2-36 amendments, each FDM is required to appoint a single individual as its Chief Compliance Officer (CCO). The CCO must prepare an annual report that fulfills the CFTC Regulation 3.3 requirements. An FDM also must make certain information available on its website and keep that information up to date. See NFA Notice to Members 1-15-21.

The NFA has published regulatory guide on Forex transactions that reflects these new requirements, among others. The updated guide is available on NFA's website.

CFTC's New Rule Requires All IBs, CPOs, and Most CTAs to Register with NFA

In September 2015, the CFTC adopted a rule that requires all CFTC registered introducing brokers (IBs), commodity pool operators (CPOs), and commodity trading advisors (CTAs), except §4.14(a)(9) Exempted CTAs, to be a member of a registered futures association. NFA is the only registered futures association. Exempted CTAs under §4.14(a)(9) are not required to be NFA members because the NFA's rules "have little applicability" to such entities.

Window to Affirm Exemption or Exclusion from CPO or CTA Registration Closes February 29, 2016

Entities or individuals claiming an exemption or exclusion from CPO or CTA registration under CFTC Regulations 4.5, 4.13(a)(1), 4.13(a)(2), 4.13(a)(3), 4.13 (a)(5), or 4.13(a)(8) must annually affirm the applicable notice of exemption or exclusion within 60 days of the end of the calendar year. This year, affirmations must be made by February 29, 2016. The applicable exemption or exclusion will be withdrawn on March 1, 2016 if it is not timely affirmed. The NFA has provided guidance on completing the affirmation process and answered frequently asked questions in Notice to Members I-15-26.

NFA Swap Dealer/Major Swap Participant Registry Users Required to Provide Legal Entity Identifier

The NFA notified members who use the swap dealer/major swap participant registry that the NFA is implementing a new version of the registry that will include a firm's legal entity identifier. Registry users are required to update their systems and procedures before July 1, 2016 to incorporate the new version of the registry. See NFA Notice to Members I-15-28.

NFA ENFORCEMENT ACTIONS

Firm Fined and Barred from Acting as an FCM Because of its Inadequate Risk Management Policy

On December 9, 2015 the NFA settled charges it brought against X-Change Financial Access LLC (XFA), a registered FCM, alleging that XFA's risk management policy was inadequate because it did not sufficiently address all risks. Specifically, the NFA found that the policy did not adequately address capital risk and that XFA did not adequately monitor risks related to customers trading in volatile markets. In settling the charges, NFA barred XFA from acting as an FCM, limiting its activity to that of an introducing broker, and ordered XFA to pay a $75,000 fine.

Firm and its Principal Barred from NFA Membership

NFA barred Grace Financial Group LLC (GFG) and GFG's principal, Christopher T. Bondy, from being NFA members, finding that the firm did not keep accurate financial records, did not maintain the required amount of minimum adjusted net capital, and did not register its CEO as an associated person. NFA also found that the firm willfully gave it false and misleading information. Further, NFA found that Mr. Bondy failed to adequately supervise the firm.

CME AND ICE ENFORCEMENT ACTIONS

The CME Group (CME) and ICE Futures U.S. (ICE) brought enforcement actions in the second half of 2015 that were predominantly from four categories: disruptive trading, wash trading, violations of exchange for related position (EFRP) rules, and position limit violations. Some of the more notable cases are summarized below.

Disruptive Trading and Spoofing

On August 21, 2015, the CME settled charges it brought against Wolverine Trading, LLC (Wolverine), alleging that Wolverine operated an automated trading system (ATS) that, due to a sequence number log naming error by Wolverine, sent over 27,000 resend requests to the Exchange on a single day. The CME's business conduct committee (BCC) found that, despite efforts by the CME to contact Wolverine, Wolverine continued to submit resend requests until CME closed all of Wolverine's ports. The BCC further found that Wolverine's monitoring and internal notification processes were insufficient to recognize or stop the ATS from continuing to submit resend requests. The BCC found that Wolverine violated CME Rules 432.Q (an act detrimental to the interest or welfare of the Exchange) and 432.W (failure to diligently supervise employees and agents) and ordered it to pay a fine of $125,000. The Wolverine case reflects the CME's willingness to bring actions against firms for an ATS that malfunctions or has a coding error and creates a market disruption.

The majority of CME actions in the area of disruptive trading were focused on trading activity it charged as spoofing. These matters were charged under various subsections of Rule 432, the CME's general conduct rules, and not charged under the CME's specific disruptive trading Rule 575. This is likely due to the fact that the violative activity in these matters occurred prior to September 2014, when Rule 575 became effective. The CME brought over a dozen such cases in 2015. All of these cases reflected similar trading activity of large orders placed on one side of the market and smaller orders placed on the opposite side of the market that would benefit from the buy/sell imbalance or create market pressure to entice participants to trade the smaller orders, with the large orders then being cancelled. The following is an example of the spoofing actions brought in 2015.

On October 12, 2015, the CME issued two orders regarding charges it brought against Nitin Gupta (Gupta), alleging that Gupta engaged in a pattern of activity in which he repeatedly entered large orders in multiple futures contracts on the New York Mercantile Exchange and the Commodity Exchange without the intent to trade. (Since Gupta failed to answer the charges, they were deemed to be admitted.) The CME alleged that Gupta entered these orders to encourage market participants to trade opposite his smaller orders that were resting on the opposite side of the book, and that after receiving a fill on his smaller resting orders, he would then cancel the large orders. The CME found that Gupta violated CME Rule 432.B.2 (conduct inconsistent with equitable principles of trade), Rule 432.T (dishonorable or uncommercial conduct), and Rule 432.Q, and it imposed a $150,000 fine and a permanent ban from CME membership or access to any CME trading platform or trading floor.

Wash Trading

ICE issued a settlement order on November 10, 2015, finding that on several occasions between December 2013 and July 2014, traders at Inertia Power VI, LLC (Inertia) "may have violated" (this phrase is used in ICE's settlements) Rule 4.02(c) (Trade Practice Violations) by executing trades opposite one another. Specifically, ICE found that, in each instance, the opposing buy and sell orders were entered by Inertia with the knowledge and intent that the orders would match opposite one another and to transfer positions between accounts at Inertia. According to the settlement, Inertia did not admit or deny the allegations and agreed to pay a fine of $70,000 and to cease and desist from future violations of Rule 4.02(c).

On October 2, 2015, the CME settled charges it brought against Huikon Capital Inc. (Huikon), alleging that two Huikon traders entered a series of wash trades in Crude Oil Calendar Spreads between accounts with the same beneficial owner. Additionally, the order found that Huikon failed to diligently supervise its traders in a manner sufficient to ensure that they were familiar with Exchange rules. Pursuant to the settlement, Huikon agreed to pay a $40,000 fine for the violation of Rules 432.W and 534 (Wash Trading).

Exchange for Related Positions Violations

On August 25, 2015, ICE settled charges it brought against Noble Americas Resources Corp. (NARC) and Noble Columbia S.A.A. (NCS), finding they "may have violated" Rule 4.06(b) (EFRP transaction and documentation requirements). Specifically, ICE alleged multiple instances when NARC and NCS entered into non-bona fide Exchange for Physical (EFP) transactions opposite each other and also failed in multiple instances to maintain documentation to substantiate the physical component of an EFP transaction. The settlement order called for NARC and NCS each to pay a $62,500 penalty and to cease and desist from future violations of Rule 4.06(b).

On November 25, 2015, the CME settled charges it brought against Ginga Global Markets Pte Ltd (Ginga), alleging that on six dates Ginga brokered and arranged several transactions for the purpose of transferring $65,000 from one firm to another in order to correct an operational error made in a prior transaction. The settlement also found that in two of the transactions, both executed as EFRPs, Ginga did not generate accurate broker confirmations in accordance with relevant market practices. The settlement order called for Ginga to pay a $30,000 penalty for violations of Rules 432.B.2 and 538.H (EFRP transaction documentation requirements).

On December 18, 2015, the CME settled charges it brought against Petco Trading Labuan Company Ltd (Petco), alleging that Petco did not execute a bona fide EFRP transaction on two dates. The order alleged that Petco entered into transactions which did not involve the transfer of ownership of the cash commodity underlying the Exchange contract between Petco and its counterparty and yet designated the transactions as EFRPs. The settlement order called for Petco to pay a $20,000 penalty for violating Rule 538.C (EFRP underlying related position requirements).

Position Limit Violations

ICE issued a settlement order on October 13, 2015, finding that Armajaro Asset Management (Armajaro) "may have violated" Rule 6.13(a) by exceeding its Exchange specified position limit in the May 2013 Coffee "C" Futures Contract. Armajaro agreed to a fine of $50,000, which included a disgorgement of profits, and agreed to cease and desist from future violations of Rule 6.13(a) (position limits and accountability levels).

On October 2, 2015, the CME settled charges it brought against BBL Commodities LLP (BBL), alleging that BBL violated position limits of the Exchange. BBL held a futures equivalent position of 5,553 short May 2015 Brent Crude Oil Last Day Financial Futures contracts, which was 1,553 contracts (38.83%) over the standard expiration month limit in effect on three trade dates in April, 2015. BBL subsequently liquidated its overage position, resulting in profits of $195,384.40. Pursuant to the settlement, BBL agreed to pay a fine of $25,000 and to disgorge its profits for violations of Rule 562 (position limits).

Our deep understanding of the futures and OTC derivatives markets makes us uniquely qualified to help clients respond to the convergence of these markets as mandated by the Dodd-Frank Act. Our attorneys have extensive familiarity with the following subjects:

- Futures and other exchange-traded products, such as “event” contracts
- OTC derivatives across all asset classes and transaction types
- The Dodd-Frank Act’s derivatives title, including the CFTC’s and SEC’s proposed and final rulemakings and the requirements that apply to swap dealers, major swap participants, swap execution facilities and end-users
- Drafting and negotiation of OTC transaction documents, including ISDA and EEI master agreements, schedules and annexes
- Clearing, collateral, margin and prime brokerage arrangements
- CFTC, NFA and CME registrations, compliance and rule interpretations
- Hedge fund and commodity pool formations and regulation, including master-feeder fund structures
- Compliance procedures, trading procedures, sales practices, recordkeeping and reporting, and anti-money laundering policies
- Formal and informal investigations and actions before regulatory bodies, including the DOJ, CFTC, NFA and CME Group
- Resolution of customer complaints, arbitrations and litigations
- Anti-manipulation and fraud issues
- Intellectual property in the financial services industry, including patents, trademarks, copyrights and trade secrets
- Transactions in cash commodities, including physical options
- Formation, merger, acquisition and disposition of financial services firms

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Our collaborative, comprehensive approach to legal services ensures that our clients receive the full benefit of our regulatory, transaction, tax and litigation experience. We invite you to contact any member of our group to explore how we might serve you.

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ABOUT SCHIFF HARDIN LLP

Schiff Hardin LLP is a general practice law firm representing clients across the United States and around the world. We have offices located in Ann Arbor, Atlanta, Chicago, Dallas, Lake Forest, New York, San Francisco and Washington.

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