

NEW CFTC PURSUES NEW PRIORITIES BUT OLD CHALLENGES LINGER

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Introduction

On August 28, 2018, the US Senate confirmed Dan Berkowitz (D) and Dawn Stump (r) as Commissioners of the US Commodity Futures Trading Commission (“CFTC” or “Commission”).¹ With the addition of these two Commissioners—and Chairman J. Christopher Giancarlo (r), Commissioner Brian Quintenz (r), and Commissioner Rostin Behnam (D)—the CFTC once again has a full five-person complement after four years of persistent empty seats.² But what will the new Commission accomplish? Chairman Giancarlo has laid out an ambitious agenda in a number of areas including cross-border and financial technology (fintech), and the CFTC’s Division of Enforcement (“Division”) has been very active in bringing complaints against a wide array of market

participants, for a multiplicity of infractions. Yet the Commission also faces a backlog of significant rule proposals and past reform agendas that still need to be addressed. Given these competing interests—ambitious goals on the one hand, and lingering unresolved issues on the other—the Commission has a full plate. Will the Chairman be able to build consensus behind his new agenda *and* around his solutions to the Commission’s old challenges? This article addresses: (1) the new Commission—the views of the four Commissioners; (2) the new priorities—the ambitious vision outlined by the Chairman; and (3) the old challenges—rule proposals and past reforms that still require Commission action.

New Commission

While the four Commissioners have expressed their views on a wide variety of topics, some common themes have emerged among them. Several Commissioners have expressed a commitment to supporting fintech innovations, such as blockchain and cryptoassets,³ with Commissioner Quintenz the most vocal and consistent, *inter alia*, endorsing a cryptocurrency self-regulatory organization⁴ and sponsoring the Technology Advisory Committee.⁵ Commissioners Behnam and Quintenz have also raised objections to the European Commission’s proposed rule, further described below, which could potentially impact US clearinghouses,⁶ with Commissioner Quintenz employing

particularly forceful language.⁷ Commissioner Behnam has consistently focused his remarks on systemic risk in a variety of areas including: high-frequency trading,⁸ blockchain,⁹ and the Chairman's proposed cross-border policy¹⁰ (discussed below).

The newest Commissioners have expressed their priorities in their respective Senate hearing testimonies. Commissioner Berkovitz, who was at the Commission during the drafting of the Dodd-Frank Act, has praised this act for reducing systemic risk, while also noting the need for regulatory change to adapt to the changing market conditions (i.e., cryptocurrencies).¹¹ He has also noted the importance of global harmonization.¹² Commissioner Stump, in her testimony, also highlighted the need to continually update the regulatory structure for customized swaps.¹³ Thus collectively, though they may have differing viewpoints, several common themes emerge among the Commissioners' priorities including: cross-border, fintech, and the need to transform regulation to meet the changing market.

New Priorities

Consistent with the Commissioners' collective interests, Chairman Giancarlo has articulated an ambitious vision on cross-border and fintech. Additionally, the Division has demonstrated a vigorous commitment to enforcement.

Cross-Border

In regard to cross-border, the Chairman recently published a white paper¹⁴ in which he endorsed a complete overhaul of the CFTC's cross-border regime. Mainly, the Chairman proposed a territorial approach¹⁵ to derivatives

oversight—what he coined elsewhere as the “One-One-One Plan”: each jurisdiction having “one undivided trading market, one competent regulator and one set of trading rules.”¹⁶ In other words, the regulator of each jurisdiction should have plenary oversight over its domestic market participants and foreign market participants operating within the jurisdiction, with all other jurisdictions “deferring” to its authority.¹⁷ The Chairman advocated this territorial approach for jurisdictions that he defined as “comparable” which he described as those “that have implemented most of the G20 reforms . . .”¹⁸ Citing data from the Bank of International Settlements, the Chairman estimated that 95% of global swaps activity includes one counterparty from a G20 jurisdiction.¹⁹

The Chairman proposed this territorial approach for, inter alia, clearing, trade execution and the US swaps activity of non-US swap intermediaries. Regarding clearing, the Chairman proposed to use exemptive authority²⁰ to allow non-US central counterparties (CCPs) that do not “pose substantial risk” to the US, to “provide clearing services to US customers indirectly through non-US clearing members, without the non-US CCP or its non-US clearing members having to register as a derivatives clearing organization (DCO) or US futures commission merchants (FCMs), respectively.”²¹ This change would be a radical departure from the current state of CFTC regulation which requires that, subject to certain exceptions, US persons can only clear on DCOs or exempt DCOs and through registered FCMs.²² Similarly, the Chairman also proposed using exemptive authority²³ to allow US persons to trade swaps (including those subject to mandatory trade execution) on comparable non-US trading venues without the venues

having to register as Swap Execution Facilities (SEFs).²⁴

Moreover, in keeping with this territorial paradigm, the Chairman advocated that trades that are “arranged, negotiated and executed” (ANE) in the US by personnel of non-US dealers should be subject to US rules since they occur within the US, but not count towards the non-US dealer’s de minimis requirement.²⁵ The treatment of ANE transactions has been a contentious issue since the CFTC issued an interpretive letter stating that such persons would be subject to CFTC regulation.²⁶ In response to non-US swap dealers’ requests for time to update their compliance rules, the CFTC extended the letter multiple times, and currently has extended it indefinitely until applicable Commission action occurs.²⁷

Importantly, consistent with several of his speeches,²⁸ the Chairman took aim at the European Commission’s current proposal to possibly require US CCPs that are designated “Tier 2,” i.e., deemed “systemically important or likely to become systemically important,” to heightened requirements including direct oversight by the European Securities and Markets Authority (ESMA) and relocation to within the European Union.²⁹ In his white paper, the Chairman forcefully argues that, consistent with his territorial approach, European regulators should defer to the CFTC:

[T]he CFTC is authorized by the U.S. Congress to be a rule maker, not a rule taker, for U.S. swaps markets. . . . The CFTC has every right to expect that non-U.S. regulators defer to it on oversight of U.S. CCPs, as the CFTC should defer to non-U.S. regulators for the oversight of CCPs domiciled in their jurisdictions.³⁰

Thus, the Chairman’s cross-border proposal is

multi-faceted and far reaching - affecting many significant areas of CFTC oversight including clearing, trading, and swap dealing. It would be quite an undertaking for the Commission staff to complete the rule drafting process to turn this vision into reality.

Fintech

The Chairman’s fintech focus is also unmistakable—the Chairman has made a number of speeches about the CFTC’s important role in overseeing cryptocurrency-based contracts, including the importance of engaging in robust oversight of fraud and manipulation, while not suppressing innovation.³¹ In keeping with that, the Commission has also provided comprehensive guidance on the regulatory treatment of cryptocurrency contracts,³² and the Division has brought multiple enforcement actions against cryptocurrency-based misconduct.³³ The Commission even sponsored its first ever fintech conference in October 2018.³⁴

In a recent case, *My Big Coin Pay*, the CFTC survived a challenge to its cryptocurrency oversight.³⁵ There, the CFTC brought a complaint against a crypto exchange alleging, inter alia, that it made misleading statements in the process of soliciting customers to purchase its coin - My Big Coin (MBC).³⁶ The exchange argued, in a memo supporting a motion to dismiss, that the Commission did not have jurisdiction over its coin because, per the “commodity” definition in the Commodity Exchange Act (CEA), there is no “contract[] for future delivery” that is “dealt in” this “service[], right[] and interest[].”³⁷ On that point, the CFTC argued that items listed in the commodity definition, and by extension Bitcoin, are meant to be treated as categories not as

specific items. And as such, since there is a futures contract on Bitcoin, it draws all similar items, i.e., cryptocurrencies, into the commodity definition.³⁸

The Court agreed with CFTC on this point, stating that case law indicates that “the CEA only requires the existence of futures trading within a certain class (e.g. “natural gas”) in order for all items within that class (e.g. “West Coast” natural gas) to be considered commodities.”³⁹ Therefore, under the Court’s reasoning, since MBC is a virtual currency and another virtual currency, Bitcoin, has a futures contract, MBC is a commodity.⁴⁰ Thus, the CFTC survived this challenge to their oversight in cryptocurrencies, but this issue is very likely to be relitigated in future filings in this matter. Meanwhile, the Commission’s claim to oversight over cryptocurrency-based contracts remains intact.

Enforcement

The new Commission has embraced enforcement with vigor.⁴¹ Within a week of the ceremonial swearing in of its last Commissioner (Commissioner Stump),⁴² the Commission issued 17 enforcement orders and filed one complaint, and since then, the Commission has continued to remain active in enforcement. The charges include fraud⁴³ and manipulation - specifically, spoofing.^{44,45} The Division also issued orders against an introducing broker (IB)⁴⁶ and a swap dealer⁴⁷ for attempted manipulation of the USD ISDAFIX, and brought multiple charges of inadequate recordkeeping along with failure to diligently supervise against other market participants.⁴⁸

The Division has also achieved certain milestones in its enforcement regime - stretching its

authority. For instance, it brought a “pseudo-insider trading” case, pursuant to Rule 180.1 and Sec 9(1), against the Associated Person (AP) of an IB for, inter alia, disclosing material, non-public information about the block trading of its customers for the benefit of another customer with whom the AP hoped to curry favor.⁴⁹ In another matter, the Division also charged the most senior leaders of an IB, including a Chief Executive Officer and Chairman of the Board for, inter alia, failure to supervise.⁵⁰

The highlight of the CFTC’s recent enforcement cases, however, has been the focus on cooperation, including in cases involving multi-defendant complaints.⁵¹ The Division has cited cooperation in several cases since establishing its cooperation policy.⁵² The Division has highlighted a range of behavior demonstrated by the respondents who received cooperation credit, including:

- (1) Providing information about the conduct to the Division that it would not have obtained otherwise;⁵³
- (2) Being “candid” in their proffer of information;⁵⁴
- (3) Spending “hundreds of hours” identifying documents and information;⁵⁵
- (4) Beginning their cooperation “early” or “immediately”;⁵⁶
- (5) Providing cooperation that was “substantial” or “material”;⁵⁷
- (6) Identifying alleged co-conspirators;⁵⁸
- (7) Promptly suspending the alleged perpetrator upon being made aware of the alleged conduct;⁵⁹

- (8) Engaging in an internal review;⁶⁰ and
- (9) Enhancing its compliance program to better detect the violative behavior at issue.”⁶¹

Thus, the Division has demonstrated a robust commitment to enforcement, and to the support of its cooperation regime.

Old Responsibilities

While the Chairman looks ahead with a cross-border, fintech and an enforcement agenda, a host of unfinished rulemakings and reforms still remain to be resolved.

Unfinished Rulemaking

Regarding rulemaking, the Commission has yet to finalize or re-propose position limit rules.⁶² These rules have been re-proposed multiple times, with the last re-proposal revising bona fide hedging exemptions and relaxing reporting requirements.⁶³ Also, the proposed capital rule - the last piece of the compliance puzzle for swap dealer registration - remains dormant.⁶⁴ And the proposed changes to the treatment of swaps data, which also includes necessary rule changes, still needs to be completed.⁶⁵

Trade Execution (SEF) Reform

In regard to unfinished regulatory reforms, the Chairman has long been a proponent of trade execution reform, which has largely been focused on SEFs. In his original white paper,⁶⁶ he advocated far-reaching changes that were re-envisioned in his second white paper, Swaps Regulation Version 2.0,⁶⁷ and several speeches. In Swaps Regulation Version 2.0, and other sources, the Chairman indicated his intention to make radical and comprehensive trade execution reform including:

- (1) Eliminating the current Made-Available-to-Trade (MAT) process;⁶⁸
- (2) Requiring that all swaps subject to mandatory clearing are subject to the trade execution requirement;⁶⁹
- (3) Allowing MAT swaps to be traded through all methods (beyond order book and Request-for-Quote (RFQ-to-3));⁷⁰
- (4) Establishing testing, registration and standards of conduct for swaps professionals;⁷¹
- (5) Ensuring that swaps execution is not happening at IBs but rather on SEFs;⁷²
- (6) Revising the 15-second rule and the requirement that block trades must be executed off-platform;⁷³ and
- (7) Codifying no action letters regarding confirmation requirements for uncleared swaps, error trade policies, and audit trail requirements for post-execution allocation information.⁷⁴

These changes - if successfully adopted - could radically change the face of the swaps market. For instance, eliminating the MAT process, subjecting all swaps subject to mandatory clearing to the trade execution requirement, more diligently policing the trading practices of IBs, and allowing all forms of execution on SEF would move far more swaps onto SEFs. Moreover, establishing a testing and registration regime would introduce a level of individual oversight over swaps persons that does not exist in today's market.

Project KISS

Another prominent agenda that the Chairman

introduced at the start of his Chairmanship was Project KISS—an initiative to solicit input from the market about minor revisions in the regulatory infrastructure that would make the regulation more “simplified and . . . less costly to comply [with].”⁷⁵ The proposed changes cover a wide variety of regulatory areas including:

- (1) Clearing: including potential revisions to customer initial margin requirements and the requirement that DCOs require full collateralization meet certain risk management requirements;
- (2) Reporting: including potential revisions to aggregation notice filings and Large Trader Reporting;
- (3) Swap Dealers: including potential revisions to disclosure obligations and the treatment of “intended to be cleared” (ITBC) swaps;
- (4) FCMs: including potential revisions to rules regarding receipt and holding of customer funds, filing requirements and risk management requirements; and
- (5) Commodity Pool Operators (CPOs) / Commodity Trading Advisers (CTAs): including potential revisions to registration requirements for family offices, JOBS Act solicitation activities and business development companies.⁷⁶

Such changes could streamline the movement of swaps across the market. Moreover, depending on how they are implemented, though considered minor revisions for some market participants, they could be meaningful revisions for other market participants who are their customers or competitors.

Conclusion

The new Commission is poised to make a major impact on the domestic and global derivatives markets. Under the leadership of the Chairman, it has shown strong interest in enforcement with a focus on globalization and fintech. At the same time, the Commission still has important rule-making waiting to be decided, including rules that affect swap dealer’s registration and compliance and the position limits. Moreover, the Commission has some significant reform agendas, including SEF reform, that also await resolution. Market participants that are affected by these markets will be watching closely to see which priorities - whether old or new - ultimately result in rulemaking that has real-world effects on their businesses.

ENDNOTES:

¹See Daily Digest, Congressional Record (Aug. 28, 2018) at <https://www.congress.gov/crec/2018/08/28/CREC-2018-08-28-dailydigest.pdf>; see also CFTC. (August 29, 2018).

²See CFTC. (July 25, 2018). *Special Report: CFTC Nominee Passes Key Hurdle in Senate Confirmation Process* [Press release]. Retrieved from <https://fia.org/articles/special-report-cftc-nominee-passes-key-hurdle-senate-confirmation-process>. (“The CFTC has not had a full five-person complement since 2014.”)

³See e.g., Behnam, Rostin. “Remarks of Commissioner Rostin Behnam at the BFI Summit.” CFTC, 4 June 2018, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam7>; see e.g., Quintenz, Brian. “Remarks of Commissioner Brian Quintenz at the 38th Annual GITEX Technology Week Conference.” CFTC, 16 Oct. 2018, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaquintenz16>; see CFTC. (July 24, 2018). *Statement of Dan M. Berkovitz Hearing on the Nomination of Dan M. Berkovitz to be a*

Member of the U.S. Commodity Futures Trading Commission - U.S. Senate Committee on Agriculture, Nutrition, and Forestry, at 2. Retrieved from https://www.agriculture.senate.gov/imo/media/doc/Testimony_Berkovitz_07.24.18.pdf. (“The emerging markets for cryptocurrencies are just the latest example of new market conditions that the CFTC has begun to address through its regulatory and enforcement programs.”)

⁴See e.g., Quintenz, Brian. “Keynote Address by Commissioner Brian Quintenz before the DC Blockchain Summit.” CFTC, 7 March 2018, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaquintenz8>.

⁵See Behnam, Rostin. “Opening Statement of Commissioner Brian Quintenz before the CFTC Technology Advisory Committee.” CFTC, 5 Oct. 2018, <https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement100518>.

⁶See e.g., Quintenz, Brian. “Remarks of Commissioner Brian Quintenz at the Institute of International Bankers Membership Luncheon.” CFTC, 21 June 2018, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaquintenz14>; see also Behnam, Rostin. “Keynote Remarks of CFTC Commissioner Rostin Behnam at the Federal Reserve Bank of Chicago’s Fifth Annual Conference on CCP Risk Management, Chicago, Illinois.” CFTC, 16 Oct. 2018, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam10>.

⁷See Quintenz, Brian. “Keynote Address of Commissioner Brian Quintenz before FIA Annual Meeting, Boca Raton, Florida.” CFTC, 14 March 2018, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaquintenz9>.

⁸See Behnam, Rostin. “Remarks of Commissioner Rostin Behnam before Energy Risk USA, Houston, Texas.” CFTC, 15 May 2018, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam6>.

⁹See Behnam, Rostin. “Remarks of Commissioner Rostin Behnam at the BFI Summit.” CFTC, 4 June 2018, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam7>.

¹⁰Behnam, Rostin. “Keynote Remarks of

CFTC Commissioner Rostin Behnam at the Federal Reserve Bank of Chicago’s Fifth Annual Conference on CCP Risk Management, Chicago, Illinois.” CFTC, 16 Oct. 2018, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam10>.

¹¹See CFTC. (July 24, 2018). *Statement of Dan M. Berkovitz Hearing on the Nomination of Dan M. Berkovitz to be a Member of the U.S. Commodity Futures Trading Commission - U.S. Senate Committee on Agriculture, Nutrition, and Forestry*, at 2. Retrieved from https://www.agriculture.senate.gov/imo/media/doc/Testimony_Berkovitz_07.24.18.pdf.

¹²*Id.* at 3.

¹³See CFTC. (July 27, 2017). *Statement of Dawn D. Stump, Confirmation Hearing, US Senate Committee on Agricultural, Nutrition, and Forestry*, at 2. Retrieved from https://www.agriculture.senate.gov/imo/media/doc/Testimony_Stump.pdf. (“To avoid complacency, we must be vigilant about reviewing and refining regulations so they are properly calibrated for the inevitable market evolution ahead.”)

¹⁴Giancarlo, J. Christopher. “Cross-Border Swaps Regulation Version 2.0 - A Risk-Based Approach with Deference to Comparable Non-United States Regulation,” at 1. *White Paper*. CFTC, 1 Oct. 2018, https://www.cftc.gov/sites/default/files/2018-10/Whitepaper_CBSR100118_0.pdf.

¹⁵*Id.*

¹⁶Giancarlo, J. Christopher. “Remarks by Chairman J. Christopher Giancarlo at FIA Japan, Tokyo, Japan.” CFTC, 11 Sept. 2018, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo54>.

¹⁷See supra note 14 at e.g., 1, 77.

¹⁸*Id.* at 10.

¹⁹His cited figures indicate that trades in which one of the counterparties is a U.S. person comprise 26% of the market, and trades in which one of the counterparties is in a G20 jurisdiction comprise 69%. *Id.* at 11.

²⁰7 U.S.C. A. § 7a-1(h).

²¹See *supra* note 19 at 44.

²²See 17 CFR 3.10; 7 U.S.C.A. § 7a-1(a); and 7 U.S.C.A. § 1a(28). Importantly, Commissioner Behnam has already raised concerns about the potential effect on bankruptcy protection for U.S. customers of this proposal. See *supra* note 10.

²³7 U.S.C.A. § 7b-3(g).

²⁴See *supra* note 14 at 51-52.

²⁵*Id.* at 78-80.

²⁶CFTC Staff Advisory No. 13-69 (November 14, 2013), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/13-69.pdf>.

²⁷CFTC Letter No. 17-36 (July 25, 2017), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/document/letter/17-36.pdf>.

²⁸See *e.g.*, Giancarlo, J. Christopher. (September 12, 2018). *Remarks by Chairman J. Christopher Giancarlo at the ISDA Industry and Regulators Forum, Singapore*. Retrieved from <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo55>; “Remarks by Chairman J. Christopher Giancarlo at the ISDA Industry and Regulators Forum, Singapore,” (September 12, 2018) available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo55>.

²⁹See Amendments by the European Parliament to the Commission proposal: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs, at 48-49, (May 25, 2018), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017PC0331>.

³⁰See *supra* note 14 at 41-42. *White Paper*. CFTC, 1 Oct. 2018, https://www.cftc.gov/sites/default/files/2018-10/Whitepaper_CBSR100118_0.pdf.

³¹See *e.g.*, CFTC. (Feb. 6, 2018). *Written*

Testimony of Chairman J. Christopher Giancarlo before the Senate Banking Committee, Washington, D.C., at 2. Retrieved from <https://cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo37>; see also Giancarlo, J. Christopher. “Remarks of Chairman J. Christopher Giancarlo at the Singapore FinTech Festival.” CFTC, 15 Nov. 2017, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo32>.

³²See “Bitcoin,” available at <https://cftc.gov/Bitcoin/index.htm>.

³³See CFTC. (July 23, 2018). *Federal Court Orders Commodity Pool Operator and Its Principal to Pay More Than \$1.9 Million for Bitcoin and Binary Options Fraud Scheme* [Press release]. Retrieved from <https://cftc.gov/PressRoom/PressReleases/7760-18>.

³⁴“CFTC Announces Agenda for FinTech Forward 2018 Conference,” (September 28, 2018) available at <https://www.cftc.gov/PressRoom/PressReleases/7810-18>.

³⁵Memorandum of Decision, *CFTC v. My Big Coin Pay, et al.*, Civ. No. 18-10077-RWZ (September 26, 2018 SDNY).

³⁶Complaint, *CFTC vs. My Big Coin Pay, et al.*, Case No. 1:18-cv-10077-RWZ, at 2-3 (January 16, 2018).

³⁷Memorandum in Support of Their Motion to Dismiss the Amended Complaint, *CFTC vs. My Big Coin Pay, et al.*, Case No. 1:18-cv-10077-RWZ, at 13 (May 4, 2018).

³⁸Plaintiff’s Opposition to Defendant’s Motion to Dismiss the Amended Complaint, *CFTC v. My Big Coin Pay, et al.*, Civ. No. 18-10077-RWZ, at 9-11 (May 18, 2018).

³⁹Memorandum of Decision, *CFTC vs. My Big Coin Pay, et al.*, Case No. 1:18-cv-10077-RWZ, at 6-8 (September 26, 2018).

⁴⁰*Id.* at 6-8. Notably, the Court rejected as “unavailing” the CFTC’s other argument that MBC is a “good” or an “article” and it would be a commodity in the absence of a futures contract.

⁴¹See *e.g.*, “Remarks of Chairman J. Christopher Giancarlo at Economic Club of Minnesota, Minneapolis, Minnesota,” (October 2, 2018) <http>

[s://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo56](https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo56); “Remarks of Chairman J. Christopher Giancarlo at FIA Expo Chicago, Illinois,” (October 17, 2018) available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo58>.

⁴²See *supra* at 13.

⁴³See e.g., Complaint, *CFTC v. Royal Metals Group, LLC & Chelsea Gless*, Civ. No. 18-08407 (September 14, 2018 SDNY), available at <https://www.cftc.gov/sites/default/files/2018-09/enfroyalmetalsgroupcomplaint091418.pdf>; *CFTC v. Yehuda L. Belsky and Y Trading, LLC*, Civ. No. 1:18-cv-5408 (September 26, 2018 EDNY), available at <https://www.cftc.gov/sites/default/files/2018-09/enfyehudaandytradingcomplaint092618.pdf>. Similarly, on September 28, the Division alleged violations of multiple counts of fraud of an unregistered CPO for making misrepresentations to solicit customers for forex trading and then, inter alia, misappropriating some of the customer funds. Complaint, *CFTC v. Lucrative Pips et al.*, Civ. No. 1: 18-mi-99999-UNA (September 28, 2018 N.D. Ga.), available at <https://www.cftc.gov/sites/default/files/2018-09/enflucrativeperrycomplaint092818.pdf>.

⁴⁴See e.g., Order Instituting Proceedings, *Victory Asset, Inc.*, CFTC Dkt. No. 18-35 (September 19, 2018), available at https://www.cftc.gov/sites/default/files/2018-09/enfmichaelfrankorder091918.pdf?utm_source=govdelivery.

⁴⁵See e.g., Order Instituting Proceedings, *Geneva Trading USA, LLC (Geneva)*, CFTC Dkt. No. 18-37 at 2, (September 20, 2018), available at <https://www.cftc.gov/sites/default/files/2018-09/enfgenevaorder092018.pdf>.

⁴⁶See e.g., Order Instituting Proceedings, *ICAP Capital Markets LLC, et al. (ICAP)*, CFTC Dkt. No. 18-33 (September 18, 2018), available at <https://www.cftc.gov/sites/default/files/2018-09/enficapcapitalmarketsorder091818.pdf>.

⁴⁷See e.g., Order Instituting Proceedings, *Bank of America, N.A. (Bank of America)*, CFTC Dkt. No. 18-34 (September 19, 2018), available at <https://www.cftc.gov/sites/default/files/2018-09/enfbankofamericaorder091918.pdf>.

⁴⁸See e.g., Order Instituting Proceedings,

Global Asset Advisors LLC d/b/a Daniels Trading & Glenn A. Swanson, CFTC Dkt. No. 18-30 (September 14, 2018), available at <https://www.cftc.gov/sites/default/files/2018-09/enfglobalassetadvisorsorder091418.pdf>. Ordering a \$300,000 penalty, the Division charged the IB with failure to supervise because, inter alia, it (1) had an inadequate supervisory system, (2) did not conduct an inquiry after the observation of questionable activity (i.e., red flags) and (3) did not implement its own policy and procedures. *Id.* at 6; Order Instituting Proceedings, *ABN AMRO Clearing Chicago LLC*, Dkt. No. 18-31 (September 14, 2018), available at <https://www.cftc.gov/sites/default/files/2018-09/enfabnamroclearingorder091418.pdf>.

⁴⁹See Complaint, *CFTC v. EOX Holdings LLC et al.*, Civ. No. 18-cv-8890 (September 28, 2018 SDNY), available at <https://www.cftc.gov/sites/default/files/2018-09/enfeoxholdingsllccomplaint092818.pdf>.

⁵⁰Complaint, *CFTC v. TFS-ICAP et al.*, Civ. No. 18-cv-8914 (September 28, 2018 SDNY), available at <https://www.cftc.gov/sites/default/files/2018-09/enftfsicapjeremywoolfendecomplaint092818.pdf>; TFS at 14-15.

⁵¹See e.g., *CFTC v. Timothy Joseph Atkins et al.*, Civ. No. 1:18-cv-23992-JEM (September 27, 2018 S.D. Fla.), available at <https://www.cftc.gov/sites/default/files/2018-09/enftimothyjaygashecomplaint092718.pdf>; *CFTC v. Ronald Montano et al.*, Civ. No. 6:18-cv-1607-ORL-41-DCI (September 27, 2018 M.D. Fla.), available at <https://www.cftc.gov/sites/default/files/2018-09/enfmontanoenterprisescomplaint092718.pdf>.

⁵²See CFTC. (Jan. 19, 2017). *CFTC's Enforcement Division Issues New Advisories on Cooperation* [Press release]. Retrieved from <https://www.cftc.gov/PressRoom/PressReleases/pr7518-17>.

⁵³See e.g., Order Instituting Proceedings, *Grayson Brookshire (Brookshire)*, CFTC Dkt. No. 18-45, at 2, (September 27, 2018), available at <https://www.cftc.gov/sites/default/files/2018-09/enfgraysonbrookshireorder092718.pdf>; Order Instituting Proceedings, *Antonia Giacca (Giacca)*, CFTC Dkt. No. 18-47, at 2, 5, (September

27, 2018), available at <https://www.cftc.gov/sites/default/files/2018-09/enfantoniogiacciaorder092718.pdf>; Barrett at 2, 5; and Order Instituting Proceedings, *Martin Schranz et al.*, (Schranz), CFTC Dkt. No. 18-46, at 2-3, 5 (September 27, 2018) available at <https://www.cftc.gov/sites/default/files/2018-09/enfmartinschranzgsdorder092718.pdf>

⁵⁴*Brookshire* at 2, 5; *Giacca* at 2, 5; and Order Instituting Proceedings, *Justin Blake Barrett*, (Barrett), CFTC Dkt. No. 18-44, at 2, 5 (September 27, 2018) available at <https://www.cftc.gov/sites/default/files/2018-09/enfjustinblakebarrettor092718.pdf>.

⁵⁵*Brookshire* at 2, 5; and *Barrett* at 2, 5.

⁵⁶*Brookshire* at 2, 5; *Barrett* at 2, 5; and Order Instituting Proceedings, *Travis Stephenson*, (Stephenson), CFTC Dkt. No. 18-48, at 2, 5 (September 27, 2018) available at <https://www.cftc.gov/sites/default/files/2018-09/enfravisstephensonorder092718.pdf>

⁵⁷*Brookshire* at 2, 5; *Giacca* at 2, 5; *Barrett* at 2, 5; Order Instituting Proceedings, *William Earl Berry et al.*, (Berry), CFTC Dkt. No. 18-42, at 2, 5 (September 27, 2018) available at <https://www.cftc.gov/sites/default/files/2018-09/enfberrymediaworkorder092718.pdf>; and Stephenson at 2, 5.

⁵⁸*Schranz* at 2-3, 5.

⁵⁹*Geneva* at 3.

⁶⁰*Geneva* at 5.

⁶¹Order Instituting Proceedings, *Mizuho Bank, Ltd.*, (Mizuho), CFTC Dkt. No. 18-38, at 3 (September 21, 2018), available at <https://www.cftc.gov/sites/default/files/2018-09/enfmizuhobankorder092118.pdf>.

⁶²See “Position Limits for Derivatives: Certain Exemptions and Guidance; Proposed Rule,” 81 *Fed. Reg.* 38458 (June 13, 2016); see also “Position Limits for Derivatives; Re-proposal,” 81 *Fed. Reg.* 96704 (Dec. 30, 2016).

⁶³See “Position Limits for Derivatives; Proposed Rule,” 81 *Fed. Reg.* 96704 (December 30, 2016).

⁶⁴See “Capital Requirements of Swap Dealers

and Major Swap Participants,” 82 *Fed. Reg.* 13971 (March 16, 2017).

⁶⁵See “Roadmap to Achieve High Quality Swaps Data.” CFTC Website, July 10, 2017, available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf; In his hearing, Commissioner Berkovitz noted the importance of finishing the rules regarding position limits, de minimis and capital. Available at https://www.agriculture.senate.gov/imo/media/doc/Testimony__Berkovitz__07.24.18.pdf

⁶⁶Giancarlo, J. Christopher. “Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank.” *White Paper*. CFTC, 29 Jan. 2015, <https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/sefwhitepaper012915.pdf>.

⁶⁷Giancarlo, J. Christopher and Tuckman, Bruce. “Swaps Regulation Version 2.0 - An Assessment of the Current Implementation of Reform and Proposals for Next Steps.” *White Paper*. CFTC, 26 Apr. 2018, https://www.cftc.gov/sites/default/files/2018-05/oc Chairm an_swapregversion2whitepaper_042618.pdf.

⁶⁸Giancarlo, J. Christopher and Tuckman, Bruce. “Swaps Regulation Version 2.0: An Assessment of the Current Implementation of Reform and Proposal for Next Steps - White Paper,” at p. 55. CFTC Website, Apr. 26, 2018, available at https://www.cftc.gov/sites/default/files/2018-05/oc Chairm an_swapregversion2whitepaper_042618.pdf.

⁶⁹*Id.*

⁷⁰*Id.* at pp. 52-54.

⁷¹See e.g., Giancarlo, J. Christopher. “Remarks of CFTC Chairman J. Christopher Giancarlo to the ISDA Regulators and Industry Forum, Singapore - Optimizing Swaps Trading and Clearing for Our Economic Aspirations.” CFTC Website, Nov. 13, 2017, available at <https://cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo31>.

⁷²*Id.*

⁷³*Id.*

⁷⁴Gill, Michael. “Remarks of CFTC Chief of Staff Michael Gill at the National Press Club, CFTC Kiss Policy Forum.” CFTC Website, Feb. 12, 2018, *available at* <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagill2>.

⁷⁵See “CFTC Requests Public Input on Simplifying Rules,” (May 3, 2017), *available at* <http>

[s://www.cftc.gov/PressRoom/PressReleases/pr7555-17](https://www.cftc.gov/PressRoom/PressReleases/pr7555-17).

⁷⁶Gill, Michael. “Remarks of CFTC Chief of Staff Michael Gill at the National Press Club, CFTC Kiss Policy Forum.” CFTC Website, Feb. 12, 2018, *available at* <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagill2>.

