

January 26, 2016

CFTC Alert

2015 CFTC Year-in-Review, and a Look Forward

By Paul Architzel, Dan M. Berkovitz, Jeannette K. Boot, Douglas J. Davison, Elizabeth Mitchell, Dino Wu, Gail C. Bernstein, Matthew Beville and Ted Serafini

CFTC continues to bring high-profile, large-penalty enforcement cases; begins bringing cases to enforce Dodd-Frank Act implementing regulations; and embarks on post-Dodd-Frank Act regulatory initiatives.

I. Introduction

2015 marked another active and record year for the Commodity Futures Trading Commission's (CFTC or Commission) enforcement program. The CFTC brought several high-profile cases under its new anti-manipulation authority¹ and its new anti-spoofing authority.² The Commission also set a new record for the largest fine collected in its history. In using its new anti-manipulation authority, the Commission began to set forth how it interprets the elements and scope of that authority and courts have begun to weigh in on these interpretations. We expect that the Commission will continue to aggressively use all of its enforcement authorities under the Commodity Exchange Act (CEA), including the new authorities added by the Dodd-Frank Wall Street Reform and Consumer Protection Act,³ and that the amount of civil penalties it seeks will continue to escalate.

2015 was Chairman Tim Massad's first full year leading the agency. Although there were few changes in the fundamental direction of the agency during 2015, the Commission for the first time has prioritized regulatory initiatives other than implementation of Dodd-Frank. These include proposed rules on automated trading and cybersecurity. The Commission also proposed amendments to swap data reporting requirements. We expect similar efforts to fine-tune certain Dodd-Frank rules to continue in the coming year.

¹ 17 C.F.R. § 180.1 (implementing CEA Section 6(c)(1), added by Dodd-Frank); *id.* § 180.2 (implementing CEA Section 6(c)(3)).

² Section 4c of the CEA, 17 U.S.C. § 6c(a)(5)(c). Section 4c of the Commodity Exchange Act (CEA or Act) makes it unlawful for "any person to engage in any trading, practice or conduct on or subject to the rules of a registered entity that . . . is, of the character of, or is commonly known to the trade as, 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution)."

³ The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, H.R. 4173 § 753 (July 21, 2010) (amending the Commodity Exchange Act (codified at 7 U.S.C. § 1 et seq.)).

II. Enforcement

Overall, in 2015, the CFTC filed 69 enforcement cases. Although this is two more than last year, it is fewer than the average number of cases brought annually since the passage of Dodd-Frank in 2011.⁴ This is consistent with the Commission's recent pattern of bringing fewer, but more complex and high-profile, cases with significantly higher sanctions. Consistent with this approach, the Commission obtained over \$3.2 billion in monetary sanctions, nearly matching the record \$3.27 billion obtained in 2014.⁵ The following discussion highlights the particularly noteworthy enforcement efforts in 2015.⁶

Manipulation and Attempted Manipulation

In 2015, the Commission brought a number of cases under its new anti-manipulation authority.⁷ The Commission's Regulation 180.1 is patterned after the Securities and Exchange Commission's (SEC) Rule 10b-5, which implements Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act). The Commission has stated that it "will be guided, but not controlled, by the substantial body of judicial precedent applying the comparable language of [Exchange Act] Rule 10b-5."⁸ As discussed below, the Commission appears to be attempting to establish its own precedents in some important contexts.

Fraudulent and Non-Fraudulent Manipulations

In *CFTC v. Kraft Foods Group, Inc. and Mondelēz Global, LLC*, the Commission sued Kraft Foods Group, Inc. and Mondelēz Global LLC, alleging among other charges that they engaged in a scheme to manipulate or attempt to manipulate the prices of cash wheat and wheat futures.⁹ The Commission alleged violations of both the old and the new anti-manipulation provisions of the CEA, and its rules.¹⁰ Specifically, the Commission alleged that, in response to high cash wheat prices in summer 2011, Kraft and Mondelēz bought \$90 million of December 2011 wheat futures without intending to take delivery.¹¹ Instead, the Commission alleges, the defendants expected the market would react to their long position by lowering cash wheat prices.¹² When those price shifts occurred, Kraft and Mondelēz allegedly liquidated their futures position and purchased wheat in the cash market at the new lower price.¹³

⁴ From 2011 to 2013, the Commission brought an average of 94 enforcement actions per year.

⁵ Press Release, Commodity Futures Trading Comm'n, CFTC Releases Annual Enforcement Results for Fiscal Year 2015, Release PR7274-15 (November 6, 2015).

⁶ The CFTC also continued to bring cases for traditional types of fraud related to commodity pools and/or Ponzi schemes (17 enforcement actions), and for illegal off-exchange precious metals transactions (11 enforcement actions). See *id.*

⁷ CEA Section 6(c)(1), 7 U.S.C. § 9(1); 17 C.F.R. § 180.1.

⁸ Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation, 76 Fed. Reg. 41,398 (July 14, 2011).

⁹ The CFTC also alleges that Kraft and Mondelēz held wheat futures positions in excess of speculative position limits without a valid hedge exemption or a bona fide hedging need and engaged in noncompetitive trades by trading both sides of an exchange-for-physical transaction. Complaint for Injunctive Relief, Civil Monetary Penalties, and Other Equitable Relief, *CFTC v. Kraft Foods Group, Inc.*, No. 15-cv-2881 (N.D. Ill. Apr. 1, 2015).

¹⁰ The Commission charged violation of Sections 6(c)(1) and 9(a)(2) of the CEA, and both of the Commission's anti-manipulation regulations, Regulation 180.1 (which implements Section 6(c)(1)) and 180.2 (which implements Section 9(a)(2)).

¹¹ *Id.* ¶ 34.

¹² *Id.* ¶ 30.

¹³ *Id.* ¶ 39.

The defendants moved to dismiss the manipulation charges on the grounds that the Commission had not adequately pled a fraud claim or alleged that they made any material misrepresentations or omissions. Although the district court denied the defendants' motion, it agreed with the defendants that Regulation 180.1 claims are based in fraud and must be pled with particularity under Federal Rule of Civil Procedure 9(b).¹⁴ The court, citing securities law precedents, rejected the Commission's contention that CEA Section 6(c)(1) prohibited both manipulation and fraud, ruling instead that this provision and Regulation 180.1 thereunder prohibit only fraudulent manipulations that involve "deception, misrepresentation, or other form of fraud."¹⁵ At the same time, the court held that the Commission's complaint met Rule 9(b)'s heightened pleading requirements.¹⁶

If this ruling is upheld and applied more broadly, it could considerably circumscribe the Commission's ability to use its new enforcement powers to challenge manipulations based solely on the exercise of market power, without any accompanying fraudulent or deceptive activity, such as a straightforward market corner or squeeze.¹⁷ Although it is difficult to predict if other courts will adopt the *Kraft* court's reasoning, the decision nonetheless indicates that the Commission may face difficulty as it attempts to interpret and apply its new anti-manipulation authorities. If the district court's holding in the *Kraft* case is more widely applied, the Commission may not find it any easier to bring straightforward anti-manipulation cases than it did prior to the Dodd-Frank amendments. We anticipate further legal challenges and litigation over this issue and in other circumstances where the Commission determines it should not be controlled by securities law precedents.

Insider Trading

The CFTC also brought its first insider trading case under Regulation 180.1 in a settled action against Arya Motazedí for misappropriating material non-public information from his employer.¹⁸ Motazedí was a gasoline trader whose employer regularly provided him with "confidential and proprietary trading information concerning the times, amounts, and prices at which the company intended to trade energy commodity futures for its own account."¹⁹ Motazedí used this information in trading his personal accounts at prices favorable to him and by placing personal orders ahead of the orders he placed for the company's trading account.

¹⁴ Memorandum Opinion and Order, *CFTC v. Kraft Foods Group, Inc.*, No. 15-cv-2881, at 16 (N.D. Ill. Dec. 18, 2015).

¹⁵ *Id.* at 18, 23-24 (citing *Chiarella v. United States*, 445 U.S. 222, 234-45 (1980) ("According to the Supreme Court, 'Section 10(b) is aptly described as a catchall provision, but what it catches must be fraud.');" *Dirks v. SEC*, 463 U.S. 646, 667 n. 27 (1983)). Further, the court rejected the Commission's argument that interpretations of the anti-manipulation prohibition in CEA Section 9(a)(2) should guide the interpretation of Section 6(c)(1). *Id.* at 19.

¹⁶ The court specifically found the Commission met its burden by alleging the defendant "fraudulently took its futures positions to signal intent to take delivery of the December 2011 wheat from its futures contracts, and that the market was misled by that signal, which ultimately resulted in the prices at issue being based not upon market forces, but rather upon false signals . . ." *Id.* at 28.

¹⁷ This interpretation would also be inconsistent with the Commission interpretation of CEA Section 6(c)(1) and Regulation 180.1 in a recent settlement. In December 2015, the Commission entered a settlement with Total Gas & Power North for allegedly employing a scheme to manipulate the monthly index settlement prices in for physical natural gas to benefit the firm's financial positions, but the order did not allege that the defendant engaged in fraudulent or deceptive conduct. *In re Total Gas & Power North America, Inc.*, CFTC Docket No. 16 -03 (Dec. 7, 2015). We expect the Commission will vigorously resist attempts to limit the scope of Regulation 180.1 to reach only fraud-based manipulations.

¹⁸ *In re Arya Motazedí*, CFTC Docket No. 16 -02, at 3 (Dec. 2, 2015).

¹⁹ *Id.*

The CFTC's Order contains many of the elements of the misappropriation theory of insider-trading established under Exchange Act Rule 10b-5.²⁰ However, the Commission appears to have crafted a broader materiality standard than would be applicable to claims under the Exchange Act. While Exchange Act Rule 10b-5 relies on an objective materiality standard based on what a "reasonable investor" would find important, the Commission did not allege that the information Motazedí misappropriated was market moving or that it would have been "viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."²¹ Instead, it simply stated that the information was "material non-public information," without explaining why or how the information was material. The looser standard of materiality apparently used by the Commission—not tethered to the reasonable investor standard—could expand liability for the misappropriation of information under the CEA to reach conduct that might not be actionable under the Exchange Act.²²

Benchmark Manipulation

In 2015 the Commission issued a number of civil penalties for benchmark manipulation. These included the largest civil monetary penalty (CMP) in CFTC history—\$800 million—against Deutsche Bank for alleged manipulation, attempted manipulation, and false reporting of the London Interbank Offered Rate (LIBOR) and the Euro Interbank Offered Rate (Euribor).²³ The Commission also filed and settled several other cases for manipulation of benchmarks, with substantial civil penalties.²⁴ Although it is likely that the Commission has largely finished its investigations into LIBOR and FX misconduct, we expect the Commission's focus on large-scale manipulation cases will continue in 2016. For example, the Commission is investigating potential misconduct in Treasury auctions and related futures markets.²⁵

Spoofing

In 2015 the Commission filed three new civil cases for violations of the anti-spoofing provision of the CEA. The Department of Justice (DOJ) also obtained the first criminal conviction for spoofing against Michael Coscia and filed a new matter against another individual who allegedly contributed to the May 6, 2010 "Flash Crash."

²⁰ The Commission found that "Motazedí held a relationship of trust and confidence with his employer and owed a duty to his employer not to misuse proprietary or confidential information" and that his personal use of that information constituted a "misappropriation" of his employer's property. *Id.* at 7.

²¹ See *Basic Inc. v. Levinson*, 485 U.S. 224 (1988) (defining materiality under Exchange Act Section 10(b) and Exchange Act Rule 10b-5).

²² We highlighted this theory of liability in our 2013 summary of the Commissions' enforcement program. See Paul M. Architzel et al., WilmerHale, 2013 CFTC Enforcement Year-in-Review, and a Look Forward (Feb. 6, 2014). While the SEC has brought cases for front-running orders under Exchange Act Section 10(b) and Rule 10b-5 thereunder, the SEC must show that the information was material. See *SEC v. Rorech*, 720 F.Supp.2d 367 (S.D.N.Y. 2010) (holding that employee was not liable under Section 10(b) for tipping a client about plans to modify a bond offering because, in part, the information was known to the market and speculative and therefore not material), see also Complaint, *SEC v. Bergin*, No. 3:13-cv-01940-M, ¶ 39 (N.D. Tex. May 23, 2013) (alleging that information about an employer's orders was material because it "had a strong potential to affect the stock's price").

²³ *In re Deutsche Bank AG*, CFTC Docket No. 15-20 (Apr. 23, 2015).

²⁴ The CFTC also filed and settled cases against Barclays for attempting to manipulate and making false reports concerning the US Dollar ISDAFIX and global FX benchmark rates and imposed \$115 million and \$400 million CMP, respectively. *In re Barclays PLC*, CFTC Docket No. 15-25 (May 20, 2015) (ISDAFIX Benchmark Swap Rates); *In re Barclays Bank PLC*, CFTC Docket No. 15-24 (May 20, 2015) (FX benchmark manipulation). Most recently, the Commission imposed a \$3.6 million civil monetary penalty on Total Gas & Power N.A., Inc. for manipulating natural gas indices. *In re Total Gas & Power North America, Inc.*, CFTC Docket No. 16 -03 (Dec. 7, 2015).

²⁵ See Aruna Viswanatha et al., *Probe Widens Into Treasury Debt Auctions*, WALL ST. J., Nov. 3, 2015.

The DOJ's criminal indictment charged Coscia with six counts of commodities fraud and six counts of spoofing.²⁶ Prior to trial, Coscia moved to dismiss the indictment, arguing that the anti-spoofing provision and the commodity fraud provisions were unconstitutionally vague. The district court rejected both challenges.²⁷ After a seven-day trial, the jury found Coscia guilty on all counts.²⁸ Each count of commodities fraud carries a maximum sentence of 25 years in prison and a \$250,000 fine, and each count of spoofing carries a maximum sentence of 10 years in prison and a \$1 million fine.²⁹ Sentencing is scheduled for March 17, 2016.

In another prominent case, the Commission charged UK resident Navinder Singh Sarao and Nav Sarao Futures Limited PLC for allegedly spoofing in the E-Mini S&P 500 futures contracts.³⁰ The CFTC's complaint also alleged that Mr. Sarao's spoofing activities contributed to the market conditions that led to the Flash Crash.³¹ Concurrently, the DOJ filed a criminal action against Sarao.³² According to the complaint, the defendants used an automated "layering" algorithm to submit large sell orders at several successive price levels.³³

The Commission also charged Igor B. Oystacher and his firm 3Red Trading LLC with repeatedly engaging in an alleged spoofing scheme in E-Mini S&P 500, Copper, Crude Oil, Natural Gas, and VIX futures contracts on at least four exchanges.³⁴ This action followed several exchange

²⁶ Indictment, *United States v. Coscia*, No. 14-CR-00551 (N.D. Ill. Oct. 1, 2014). 18 U.S.C. § 1348 makes it unlawful to execute, or attempt to execute, a scheme or artifice "to defraud any person in connection with any commodity for future delivery" or "to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any commodity for future delivery."

In 2013, the CFTC had entered into a settlement Order with Coscia, providing for a \$1.4 million civil penalty against Coscia and his trading firm, Panther Energy Trading, and for the disgorgement of \$1.4 million in profits, for violation of the prohibition against spoofing. *In re Panther Energy Trading LLC*, CFTC Docket No. 13-26 (July 22, 2013).

²⁷ *United States v. Coscia*, 100 F. Supp. 3d 653 (N.D. Ill. 2015).

²⁸ Press Release, Dep't of Justice, US Att'y's Office, N.D. Ill., High-Frequency Trader Convicted of Disrupting Commodity Futures Market in First Federal Prosecution of "Spoofing" (Nov. 3, 2015).

²⁹ 18 U.S.C. § 1348.

³⁰ Complaint for Injunctive Relief, Civil Monetary Penalties, and Other Equitable Relief, *CFTC v. Nav Sarao Futures Ltd. PLC*, No. 15-cv-03398 (N.D. Ill. Apr. 17, 2015).

³¹ *Id.* at 20-21.

³² Criminal Complaint, *United States v. Sarao*, No. 15 CR 75 (N.D. Ill. Feb. 11, 2015). Sarao is fighting extradition. See Suzi Ring, *Sarao Extradition Hearing Delayed as U.S. Expands Charges*, BLOOMBERG, Sept. 25, 2015.

³³ Complaint, *CFTC v. Nav Sarao Futures Ltd.*, at 13-17.

³⁴ Complaint for Injunctive and Other Equitable Relief and Civil Monetary Penalties Under the Commodity Exchange Act, *CFTC v. Oystacher*, No. 1:15-cv-09196 (N.D. Ill. Oct. 19, 2015). The complaint alleges that Oystacher and 3Red manually placed large passive orders on one side of the market at or near the best bid or offer "to create the false impression of market depth and book pressure in a certain direction . . . and induce other market participants into placing orders on the same side of the market and at similar price levels as the spoof orders." Oystacher and 3Red have denied the charges, disputing many of the Commission's factual assertions and legal conclusions, and also challenging the anti-spoofing provision of the CEA as unconstitutionally vague. Answer and Affirmative Defenses of 3Red Trading LLC and Igor B. Oystacher, *CFTC v. Oystacher*, No. 1:15-cv-09196 (N.D. Ill. Dec. 18, 2015). The Northern District of Illinois previously upheld the constitutionality of the anti-spoofing statute in the *Coscia* case.

actions against Oystacher for similar alleged misconduct.³⁵ Finally, the Commission has charged Heet Khara and Nasim Salim with engaging in spoofing in gold and silver futures on several occasions between February and April 2015, including engaging “in coordinated spoofing activity.”³⁶

We expect that the Commission will continue to pursue alleged spoofing in 2016, including coordinating with other regulators and the DOJ.³⁷ Further, the DOJ’s successful prosecution of Coscia and its subsequent indictment of Sarao make clear the potential peril for persons under investigation by the CFTC for civil violations.³⁸

Reporting Requirements

The Commission, in a departure from past administrative practice, instituted several enforcement actions for erroneous reporting. These cases were against registrants and non-registrants alike, including swap dealers, an exchange, and a commercial entity. Specifically, the Commission settled actions against two swap dealers for errors in their swap data reporting, the largest of which resulted in a \$2.5 million penalty.³⁹ The Commission also imposed a \$3 million penalty on ICE Futures U.S., Inc., a designated contract market, for submitting inaccurate and incomplete reports to the CFTC over at least a 20-month period⁴⁰ and an agricultural merchant-dealer for inaccurately reporting its fixed prices cash grain transactions on Form 204.⁴¹

These cases mark an important change in the Commission’s approach to the administration of its reporting regime. Historically, Commission staff worked with regulated entities to address reporting errors. The Commission now appears to be pursuing compliance through enforcement actions. We expect the Commission to continue to aggressively bring enforcement actions for reporting-related infractions. Chairman Massad has made improving the quality of swap data

³⁵ See *In re Oystacher*, ICE 2013-009 (June 5, 2015) (imposing a \$125,000 fine and a cease-and-desist order against Oystacher for “engaging in a pattern of trading activity where he would enter buy or sell orders on one side of the market at different price levels and subsequently cancel such orders in close time proximity to trades the Respondent executed on the opposite side of the market”); *In re Oystacher*, NYMEX 10-07963-BC (Nov. 28, 2014) (imposing \$100,000 fine and a one-month ban for, among other things, entering “bids and offers in Crude Oil futures contracts in such a manner so as not to have the requisite intent to trade at the time of order entry”); *In re Oystacher*, COMEX 11-08380-BC (Nov. 28, 2014) (imposing \$50,000 fine and a one-month ban for, among other things, entering “bids and offers in Silver, Gold and Copper futures contracts in such a manner so as not to have the requisite intent to trade at the time of order entry”). In addition, reports suggest that Oystacher was also anonymously charged for similar conduct by Eurex. Matthew Leising, *The Man Accused of Spoofing some of the World’s Biggest Futures Exchanges*, BLOOMBERG, Oct. 19, 2015.

³⁶ Complaint for Injunctive Relief, Civil Monetary Penalties, and Other Equitable Relief, *CFTC v. Khara*, No. 15 cv 03497 (S.D.N.Y. May 5, 2015).

³⁷ See Timothy Massad, Chairman, Commodity Futures Trading Comm’n, Remarks at the Conference on the Evolving Structure of the U.S. Treasury Market (Oct. 21, 2015) (noting that Commission has “brought enforcement actions against those who engage in spoofing. And we will continue to be aggressive on this front”).

³⁸ In 2013, the CFTC had entered into a settlement Order with Coscia, providing for a \$1.4 million civil penalty against Coscia and his trading firm, Panther Energy Trading, and for the disgorgement of \$1.4 million in profits, for violation of the prohibition against spoofing. *In re Panther Energy Trading LLC and Michael J. Coscia*, CFTC Docket No. 13-26 (July 22, 2013).

³⁹ See *In re Deutsche Bank AG*, CFTC Docket No. 15-40 (September 30, 2015) (failure to properly report cancellations of swap transactions in all asset classes, as well as related supervisory violations); *In re Australia and New Zealand Banking Group Ltd.*, CFTC Docket No. 15-31 (Sept. 17, 2015) (submitting large trader reports that routinely contained errors).

⁴⁰ *In re ICE Futures U.S., Inc.*, CFTC Docket No. 15-17 (Mar. 16, 2015).

⁴¹ *In re Marubeni America Corp.*, CFTC Docket No. 15-18 (Mar. 23, 2015).

one of his top priorities,⁴² commenting that “[f]or those industry participants who do not make timely, complete and accurate reporting, we will not hesitate to carry out enforcement actions.”⁴³ The cases against the swap dealers also indicate that the Commission now expects swap dealers to be fully compliant with the new Dodd-Frank swap dealer regulatory regime.

Other

Whistleblowers. The CFTC in 2015 made its second whistleblower award of \$290,000 to an individual who provided information about violations of the CEA.⁴⁴ The number of whistleblower tips has steadily increased since the program began. In 2015, the CFTC received 232 whistleblower tips, a significant increase from the 58 whistleblower tips that were submitted in 2012.⁴⁵ We expect there will be more awards in the future as the program matures and reported cases make their way through the enforcement pipeline.⁴⁶

Trade Practice Violations. The Commission brought several actions involving trade practice violations, including cases for noncompetitive exchange of futures for physical transactions⁴⁷ and unauthorized swaps transactions.⁴⁸

Customer Funds Violations. The Commission brought several cases for violations relating to the treatment of customer funds, the most significant against U.S. Bank National Association for allowing Peregrine Financial Group, Inc. to misuse its customers’ segregated funds for its own purposes, resulting in the misappropriation of over \$215 million.⁴⁹ As part of the settlement, U.S. Bank agreed to pay \$18 million to a trustee representing Peregrine’s customers.⁵⁰ In addition, the Commission imposed a \$300,000 penalty on Morgan Stanley for failing to hold sufficient US dollars in segregated accounts in the United States.⁵¹

Failure to Supervise. The Commission continued to bring actions against entities for failure to diligently supervise their employees under Regulation 166.3.⁵² For example, during the past year, the Commission brought actions against firms for violations of Regulation 166.3 for alleged

⁴² See generally Timothy Massad, Chairman, Commodity Futures Trading Comm’n, Remarks at the Exchequer Club of Washington, D.C. (Nov. 18, 2015).

⁴³ Timothy Massad, Chairman, Commodity Futures Trading Comm’n, Keynote Remarks at the Futures Industry Association Future and Options Expo (Nov. 4, 2015). In line with this statement, the Division of Swap Dealer and Intermediary Oversight recently published a Staff Advisory providing additional guidance to swap dealers and major swap participants regarding their reporting obligations. CFTC Staff Advisory 15-66 (Dec. 16, 2015).

⁴⁴ Press Release, Commodity Futures Trading Comm’n, CFTC to Issue Whistleblower Award of Approximately \$290,000, PR7254-15 (Sept. 29, 2015).

⁴⁵ Commodity Futures Trading Comm’n, Annual Report on the Whistleblower Program and Customer Education Initiatives (2012); Commodity Futures Trading Comm’n, Annual Report on the Whistleblower Program and Customer Education Initiatives (2015).

⁴⁶ Under the Dodd-Frank Act, the CFTC’s Whistleblower Program provides monetary awards to persons who report violations of the Commodity Exchange Act if the information leads to an action that results in more than \$1 million in monetary sanctions. Whistleblowers are eligible for 10 to 30 percent of monies collected. The CFTC can also pay awards based on monetary sanctions collected by other authorities in actions that are related to a successful CFTC action, and are based on information provided by a CFTC whistleblower. See generally 7 U.S.C. § 26.

⁴⁷ *In re Olam Int’l, Ltd.*, CFTC Docket No. 15-13 (Jan. 20, 2015).

⁴⁸ *CFTC v. Evans*, No. 14-0839-CV-W-ODS (June 16, 2015).

⁴⁹ Consent Order, *CFTC v. U.S. Bank, NA*, No. 13-cv-2041-LRR, at 25 (N.D. Iowa Feb. 4, 2015).

⁵⁰ *Id.*

⁵¹ *In re Morgan Stanley & Co*, CFTC Docket No. 15-26 (Aug. 6, 2015).

⁵² 17 C.F.R. 166.3.

failures to adequately supervise trading activities⁵³ and alleged failures to maintain adequate segregation of customer funds.⁵⁴

In a novel development, the Commission brought an action against a non-US swap dealer located in the European Union (EU) for allegedly failing to supervise its activities under Regulation 23.602, which imposes a duty of diligent supervision on swap dealers. The Commission alleged that the non-US swap dealer failed to supervise its compliance with the Commission's swap data reporting requirements.⁵⁵ This decision is surprising because the Commission previously allowed non-US swap dealers located in the EU to comply with the EU requirements regarding diligent supervision of their swap activities, instead of Regulation 23.602.⁵⁶ Accordingly, although a non-US swap dealer must comply with the CFTC regulations when substituted compliance has not been granted, the responsibility for supervising the swap dealer's compliance with all regulatory requirements—including the CEA and the CFTC regulations—rests with the home jurisdiction regulator.

In its Order in this case the Commission provided no explanation for why it did not recognize the substituted compliance that it had previously provided to swap dealers located in the EU with respect to the duty to diligently supervise swap activities.

III. Regulatory Developments

New Rulemakings

For the past five years, the Commission's rulemaking efforts have been focused almost exclusively on implementing the Dodd-Frank Act. Although the Dodd-Frank rulemakings have not all been completed, in late 2015 the Commission unveiled two significant new regulatory initiatives not specifically related to Dodd-Frank. These are proposed rules on automated trading and cybersecurity.

Regulation AT

In response to the predominance of electronic trading as well as to several high-profile market disruptions in the derivatives and securities markets involving automated trading systems, the Commission proposed Regulation AT to impose a comprehensive regulatory regime on automated trading on US designated contract markets (DCMs).⁵⁷ The hallmark of this proposal is a layered regime, requiring that certain market participants (AT Persons), clearing member futures commission merchants (clearing member FCMs) whose customers are AT Persons, and DCMs executing orders of AT persons, adopt pre-trade and other risk controls for algorithmic trading.

⁵³ See also *In re INTL FCStone Markets, LLC*, CFTC Docket No. 15-27 (Aug. 19, 2015) (inadequate oversight of swaps traders in its Kansas City Energy Group, 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); Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief, *CFTC v. Futures Int'l LLC*, No. 14-cv-7877 (N.D. Ill. Sept. 21, 2015) (supervisory failure related to recording, false statements, and unauthorized trading)

⁵⁴ *In re Morgan Stanley & Co.*, CFTC Docket No. 15-26 (Aug. 6, 2015).

⁵⁵ See *In re Deutsche Bank AG*, CFTC Docket No. 15-40 (Supervisory failure related to reporting); see *supra* note 50.

⁵⁶ In its Comparability Determination with respect to certain entity-level requirements for swap dealers located in the EU, the Commission stated, "the MiFID standards . . . [regarding supervisory duties] are generally identical in intent to [Regulation] 23.602 because such standards seek to ensure that SDs and MSPs strictly comply with applicable law, which would include the CEA and the Commission's regulations." Comparability Determination for the European Union: Certain Entity-Level Requirements, 78 Fed. Reg. 78,923, 78,931 (Dec. 27, 2013).

⁵⁷ Regulation Automated Trading Proposal, 80 Fed. Reg. 78,824 (Dec. 17, 2015) (notice of proposed rulemaking).

As proposed, an entity engages in “Algorithmic Trading” when (1) it has computer algorithms or systems determine whether to initiate, modify, or cancel an order, or make other “determinations” regarding an order⁵⁸ and (2) the order, modification, or cancellation is electronically submitted to a DCM.

As proposed, AT Persons would be required to implement a variety of risk controls, such as maximum order message and execution rates, order price and maximum order size parameters, and order cancellation systems. They would also be required to implement development, testing, and supervision standards; to submit compliance reports to DCMs regarding the new risk controls; and to become members of at least one registered futures association.⁵⁹ Clearing member FCMs would be subject to similar requirements. Any market participant with direct electronic access to a DCM that engages in Algorithmic Trading not already registered with the Commission would be required to register as a floor trader. In addition to establishing pre-trade and other risk controls for all orders, DCMs would be required to disclose specified information relating to its trade matching systems and its market-maker and trading incentive programs and to implement programs to prevent self-trading.

A controversial provision in the proposal would require each AT Person to maintain a repository of all its source code, including algorithms, and make the information therein available to any representative of the Commission or the DOJ upon request. For a more detailed description of the proposal and discussion of the issues therein, please see WilmerHale’s client alert “[CFTC Proposes ‘Regulation AT’ for Automated Trading.](#)”

Cybersecurity

The CFTC also proposed to require derivative clearing organizations (DCOs), DCMs, swap execution facilities (SEFs), and swap data repositories (SDRs) to conduct five types of cybersecurity testing.⁶⁰ These types of testing include: (1) vulnerability testing, (2) penetration testing, (3) controls testing, (4) security incident response plan testing, and (5) enterprise technology risk assessment.⁶¹ The proposal would require the use of independent contractors to conduct some of the required testing and clarify the scope of system safeguards testing, internal reporting and review of testing results, and remediation of identified vulnerabilities and deficiencies.⁶² The CFTC is also proposing to expand current obligations related to risk analysis and oversight for DCMs, SEFs, and SDRs to include enterprise risk management and governance.⁶³

⁵⁸ Such determinations include, but are not limited to, “whether to initiate, modify, or cancel an order” or to determine “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.” Proposed Regulation 1.3(zzzz).

⁵⁹ Currently, the National Futures Association is the only national registered futures association.

⁶⁰ See System Safeguards Testing Requirements, 80 Fed. Reg. 80,140 (Dec. 23, 2015) (Proposal); System Safeguards Testing Requirements for Derivatives Clearing Organizations, 80 Fed. Reg. 80,114 (Dec. 23, 2015) (Proposal).

⁶¹ Commodity Futures Trading Comm’n, Fact Sheet – Notice of Proposed Rulemakings on System Safeguards Testing Requirements (Dec. 16, 2015).

⁶² *Id.*

⁶³ The current six categories of risk analysis and oversight are as follows: information security; business continuity-disaster recovery (BC-DR) planning and resources; capacity and performance planning; systems operations; systems development and quality assurance; and physical security and environmental controls. 17 CFR §§ 38.1051(a), 37.1401(a); & 49.24(b). The enterprise risk management and governance category includes the following five areas:

- Assessment, mitigation, and monitoring of security and technology risk.

Completing the Dodd-Frank Rulemakings

As discussed above, the CFTC has largely completed adoption of the Dodd-Frank implementing rules, most significantly just recently adopting a final margin rule for uncleared swaps. The Commission also took additional steps this year related to the position limits rulemaking, but has yet to adopt final rules. Also outstanding are the Commission's final rules on capital for uncleared swaps.

Margin for Uncleared Swaps

On December 16, 2015, the Commission approved a final rule for margin on uncleared swaps for swap dealers and major swap participants (MSPs).⁶⁴ The rule applies to swap dealers and MSPs that are not otherwise regulated by a Prudential Regulator⁶⁵ (each a covered swap entity or CSE) when entering into uncleared swaps with a swap dealer, MSP, or financial institution.⁶⁶ The Commission also published for comment an interim final rule that would exempt commercial end users from margin requirements.⁶⁷ While generally consistent with the Prudential Regulators' final rules,⁶⁸ the CFTC's rules differ in a few areas: (1) treatment of inter-affiliate trades, (2) the anti-evasion provision in the definition of margin affiliate, (3) the model approval process, (4) the calculation of variation margin and related documentation requirements, and (5) the treatment of certain treasury affiliates.⁶⁹

With respect to initial margin (IM), the rule requires daily two-way margin to be posted and collected for all uncleared trades between CSEs and swap dealers/MSPs and all trades between CSEs and financial end users that have over \$8 billion in gross notional exposure in uncleared swaps.⁷⁰ With respect to variation margin (VM), the rules would require CSEs to post or collect VM, depending on the value of the VM, daily for all uncleared swaps with swap dealers, MSPs, or financial end users.⁷¹ The final rule also addresses the calculation of IM and VM,⁷² acceptable forms of margin,⁷³ custodial arrangements,⁷⁴ the requirements for inter-affiliate swaps, and a schedule for implementation of the rule.⁷⁵

-
- Capital planning and investment with respect to security and technology.
 - Board of directors and management oversight of system safeguards.
 - Information technology audit and controls assessments.
 - Remediation of deficiencies.

⁶⁴ Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 Fed. Reg. 636 (Jan. 6, 2015) (CFTC Final Rule).

⁶⁵ CEA section 1a(39) definition of "Prudential Regulator" includes the Federal Reserve Board (FRB); the Office of the Comptroller of the Currency (OCC); the Federal Deposit Insurance Corporation (FDIC); the Farm Credit Administration; and the Federal Housing Finance Agency.

⁶⁶ CFTC Margin Requirements, 81 Fed. Reg. at 695.

⁶⁷ *Id.* at 677.

⁶⁸ Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. 74,840 (Nov. 30, 2015) (Prudential Regulator's adopting release of margin requirements for uncleared swaps).

⁶⁹ CFTC Margin Requirements, 81 Fed. Reg. at 677.

⁷⁰ *Id.* at 697-8.

⁷¹ *Id.*

⁷² *Id.* at 699-701. The rules would permit the calculation of IM to be based on models or a standardized table. Models would be required to use a 99% confidence level over 10-day liquidation time. *Id.* The rules would permit \$50 million threshold below which margin need not be collected. *Id.* For calculating VM, the rules would require the use of methods and inputs that rely on recent trades or third-party valuations. *Id.*

The divergence of the final rule from the proposed rule and also from the Prudential Regulators' final rules with respect to the application of margin requirements to inter-affiliate transactions was a key point of disagreement within the Commission. The proposed rule would have required two-way initial margin and variation margin for swaps between CSEs and their affiliates that are swap dealers, MSPs, or financial end users.⁷⁶ In contrast, the final rule exempts inter-affiliate transactions from IM requirements that meet conditions⁷⁷ similar to the conditions for exemption from the clearing requirement for certain inter-affiliate swaps.⁷⁸

The Commission did not exempt all inter-affiliate swaps from IM requirements. The rule requires CSEs to collect initial margin from non-US affiliates that are financial end users that are not subject to comparable initial margin collection requirements on their own outward-facing swaps.⁷⁹ The rule also contains an anti-evasion provision that would apply the margin requirements in the case of a series of transactions involving, directly or indirectly, an affiliate that is not subject to comparable initial margin collection requirements.⁸⁰ The rule also requires that when a CSE enters into an inter-affiliate swap with an entity that is subject to the rules of the Prudential Regulators it must post IM in an amount equal to the amount that the swap entity is required to collect under the rules of the Prudential Regulators.⁸¹

The final margin rules passed with the support of Chairman Massad and Commissioner Chris Giancarlo. Commissioner Sharon Bowen disagreed with the Commission's divergence from the Prudential Regulators on the treatment of inter-affiliate swaps transactions and voted against the final rule as a result.⁸² Commissioner Bowen stated that the CFTC should have followed the Prudential Regulators' lead.⁸³ The Prudential Regulators rules require swap entities under their jurisdiction to collect IM from affiliates that are swap entities or financial end users.⁸⁴ Those rules, however, do not require two-way IM, i.e., they do not require that the swap entity subject

⁷³ The rules would permit IM to include cash, sovereign debt, government-sponsored debt, investment grade debt, including corporate bonds, equities, gold, and shares of certain funds with appropriate haircuts. The rules would require VM to be in cash for all trades between CSEs and SD/MSPs. The rules would permit VM of the same nature as permitted IM for all trades between SD/MSPs and financial end users. *Id.* at 701.

⁷⁴ The rules would require IM to be held at independent custodian. The rules would not permit rehypothecation of required IM. *Id.* at 702-03.

⁷⁵ IM requirements would be phased-in starting September 1, 2016 and ending September 1, 2020 from the largest participants to smaller ones. *Id.* at 675. VM requirements would be effective September 1, 2016 for the largest participants and March 1, 2017 for the rest. *Id.* at 676.

⁷⁶ *Id.* at 673.

⁷⁷ They are: (i) the swaps are subject to a centralized risk management program that is reasonably designed to monitor and to manage the risks associated with the inter-affiliate swaps; and (ii) the CSE exchanges variation margin with the margin affiliate. *Id.* at 703.

⁷⁸ *Id.* See also 17 C.F.R. § 50.52.

⁷⁹ *Id.*

⁸⁰ *Id.* The Commission elaborated that "even if the CSE is only in privity of contract with an affiliate who is subject to such requirements, but that affiliate, directly or indirectly, is transacting with another affiliate who is not subject to such requirements, the CSE would be required to collect initial margin." *Id.* at 674.

⁸¹ *Id.*

⁸² See generally Sharon Y. Bowen, Comm'r, Commodity Futures Trading Comm'n, Dissenting Statement of Regarding Final Rule on Margin for Uncleared Swaps (Dec. 16, 2015).

⁸³ *Id.*

⁸⁴ Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. 74,840, 74,893 (Nov. 30, 2015) (Prudential Regulators' Final Rule).

to the Prudential Regulators' rules to also post IM to affiliates that are swap entities or financial end users.⁸⁵

Position Limits

Of the various Dodd-Frank implementing rulemakings, the most significant now outstanding is speculative position limits. The Commission held several advisory committee hearings this past year focusing on issues in the position limit rulemaking, including deliverable supply estimates, exemptions for bona fide hedging positions, and a potential proposal to delegate to the exchanges responsibility for granting hedge exemptions to position limits.⁸⁶ In September, the Commission approved a "supplemental" proposed rule on the aggregation of positions which would modify the criteria for owners of more than 50 percent of another entity to be exempt from the aggregation requirement and simplify the process for claiming such an exemption.⁸⁷ For a more detailed discussion of the supplemental proposed rule on aggregation, please see WilmerHale's client alert "[CFTC Updates Position Limits Rule.](#)"

We anticipate that the Commission may adopt final rules in 2016.

Dodd-Frank Fine-Tuning

With the near-completion of the Dodd-Frank implementing rules, the Commission in 2015 began a processing of fine-tuning certain of the requirements. Of these, the most significant are proposed changes to swap data reporting requirements. In addition, the Commission took several actions responding to the concerns of commercial end users, providing record-keeping relief for certain commercial end users by amending Regulation 1.35(a),⁸⁸ issuing an interpretation of forward contracts with embedded volumetric optionality⁸⁹ and proposing a rule to reduce reporting and record keeping requirements for trade options.⁹⁰ The Commission also approved a final rule to modify a "Residual Interest Deadline" for FCMs.⁹¹

⁸⁵ *Id.*

⁸⁶ Commodity Futures Trading Comm'n, July 14, 2015 Energy Markets Advisory Committee Meeting (July 14, 2015) (discussing the definition of bona fide hedging and proposal to delegate certain responsibilities to the exchanges), <https://www.youtube.com/watch?v=xpE-sthXOWs&feature=youtu.be>; Commodity Futures Trading Comm'n, Transcript of September 22, 2015 Agricultural Advisory Committee Meeting (Sept. 22, 2015) (discussing bona fide hedging and deliverable supply), http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/aac_transcript092215.pdf. For information on this proposal, see Paul M. Architzel et al., WilmerHale, CFTC Updates Position Limits Rule, (Sept. 29, 2015), <https://www.wilmerhale.com/pages/publicationsandnewsdetail.aspx?NewsPubId=17179879501>.

⁸⁷ Aggregation of Positions, 80 Fed. Reg. 58,365 (Sept. 29, 2015) (Rule Proposal).

⁸⁸ For example, the rule removed the requirement for certain records to be kept in a form and manner "identifiable and searchable by transaction," among other changes. Records of Commodity Interest and Related Cash or Forward Transactions, 80 Fed. Reg. 80,247 (Dec. 24, 2015) (Final Rule).

⁸⁹ Forward Contracts With Embedded Volumetric Optionality, 80 Fed. Reg. 28,239 (May 18, 2015).

⁹⁰ Trade Options, 80 Fed. Reg. 26,200 (May 7, 2015) (Proposed Rule). Notably, the proposal deleted a reference to position limits, but did not address whether position limits would apply to trade options in the future. *Id.* at 26,204.

⁹¹ Residual Interest Deadline for Futures Commission Merchants, 80 Fed. Reg. 15,507 (Mar. 24, 2015).

Data Quality

Commission staff is currently developing proposals to refine what swap data must be reported and how it must be reported.⁹² As part of that process, the Division of Market Oversight published for public comment draft technical specifications for certain swap data elements and associated questions.⁹³ The request seeks public comment on over 120 data elements for several “swap data reporting topics including counterparty-related elements, price, clearing, product, periodic reporting, orders, package transactions, options, additional fixed payments, notional amount, events, rates and foreign exchange.”⁹⁴ These proposals take on additional gravity in light of the Commission’s move to enforce data reporting requirements through enforcement actions.

IV. Looking Forward: 2016

Leadership

There have been several changes in leadership and senior staff at the CFTC. Commissioner Mark Wetjen resigned in August, resulting in two Commissioner vacancies. Operating with only three Commissioners creates certain challenges for the CFTC. Sunshine Act requirements apply whenever a quorum of Commissioners is present. With only three Commissioners, any two constitute a quorum. President Obama has yet to nominate anyone to fill the vacancies.

Chairman Massad has filled several key senior staff positions at the agency in 2015. He appointed Eileen T. Flaherty as director of the Division of Swap Dealer and Intermediary Oversight.⁹⁵ Prior to moving the CFTC, Ms. Flaherty served as the global head of compliance and financial crime prevention for Newedge, in addition to being the Americas general counsel. Chairman Massad tapped Eric J. Pan, who was serving as an associate director in the SEC’s Office of International Affairs, to be the director of the CFTC’s Office of International Affairs.⁹⁶ Lastly, Phyllis Dietz stepped down from her role as acting director of the Division of Clearing and Risk (DCR) and retired from the Commission. Chairman Massad appointed Jeffrey Bandman, who previously served as special counsel to the chair, as DCR’s acting director.

Budget

Congress flat-funded the Commission for fiscal year 2016 at \$250 million.⁹⁷ This falls well below the President’s request for \$322 million to fund the agency.⁹⁸ Members of the House Agriculture

⁹² See Timothy Massad, Chairman, Commodity Futures Trading Comm’n, Keynote Remarks at the Futures Industry Association Futures and Options Expo (Nov. 14, 2015).

⁹³ COMMODITY FUTURES TRADING COMM’N, DRAFT TECHNICAL SPECIFICATIONS FOR CERTAIN SWAP DATA ELEMENTS: A REQUEST FOR COMMENT BY STAFF OF THE U.S. COMMODITY FUTURES TRADING COMMISSION (2015), <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/specificationsswapdata122215.pdf>.

⁹⁴ Press Release, Commodity Futures Trading Comm’n, CFTC Staff Issues Request for Comment on Draft Technical Specifications for Certain Swap Data Elements, PR7298-15 (Dec. 22, 2015).

⁹⁵ Press Release, Commodity Futures Trading Comm’n, CFTC Chairman Massad Announces the Appointment of Eileen T. Flaherty as Director of the Division of Swap Dealer and Intermediary Oversight, PR7203-15 (July 24, 2015).

⁹⁶ Press Release, Commodity Futures Trading Comm’n, CFTC Chairman Massad Announces Eric J. Pan as Director of the Office of International Affairs, PR7227-15 (Sept. 10, 2015).

⁹⁷ Consolidated Appropriations Act, H.R. 2029 (2016).

⁹⁸ See *FY16 Budget Requests for the SEC & CFTC: Hearing Before the S. Comm. on Fin. Servs. & Gen. Gov’t*, 114th Cong. (2015) (testimony of Timothy G. Massad, Chairman, Commodity Futures Trading Comm’n).

Committee have said they would not advocate for increased funding for the agency unless a reauthorization bill is passed.⁹⁹ The House has done so, but the Senate has yet to act.¹⁰⁰

Chairman Massad's Priorities

In addition to the rule initiatives discussed above, Chairman Massad has prioritized the following for Commission action: SEF registration, SEF trading rules, data standardization, and resolving the impasse with the EU over the recognition of clearinghouses. He has also indicated that where staff have provided relief in the form of “no-action” letters, he supports proposing permanent adjustments to the relevant rules.¹⁰¹ He has not indicated when the Commission would do so.

Data Quality. As discussed above, one of the Chairman's priorities is to ensure that data is complete and of consistently good quality.

The Chairman indicated that he is considering proposing changes in the beginning of 2016 that would give SDRs greater ability to improve the quality of data before it is sent to the CFTC. Chairman Massad contends that SDRs should be able to validate the completeness and accuracy of data before it is provided to the CFTC. Additionally, the chairman stated that SDRs should be held “accountable for the manner in which they collect, compile and report the data they receive.”¹⁰² And as discussed above, the Commission has already proposed modifications relating to “form, manner and the allowable values that each data element can have.”¹⁰³

SEF Registration. At the time that this article was written, there remain 22 temporarily registered SEFs. In November 2015, Chairman Massad stated that the staff will “soon make recommendations to the Commission as to whether to grant permanent registration status,” and that the Commission will consider those recommendations by early 2016.¹⁰⁴ We expect that the first permanent registrations will have occurred by the publication date or shortly thereafter.

SEF Trading Rules. Chairman Massad has also indicated that the Commission in 2016 will consider revisions to the current “Made Available to Trade” (MAT) process.¹⁰⁵ Some market participants have called for the Commission to play a larger role in this process, and Chairman Massad has indicated an openness to considering how the Commission might do that.¹⁰⁶

⁹⁹ *Dodd-Frank Turns Five: Assessing the Progress of Global Derivatives Reforms: Hearing Before the H. Comm. on Agriculture*, 114th Cong. (2015) (opening statement of K. Michael Conaway, Chairman, House Comm. on Agriculture).

¹⁰⁰ *Id.*

¹⁰¹ See Timothy Massad, Chairman, Commodity Futures Trading Comm'n, Keynote Remarks at the Swap Execution Facility Conference (Oct. 26, 2015).

¹⁰² Timothy Massad, Chairman, Commodity Futures Trading Comm'n, Keynote Remarks at the Futures Industry Association Futures and Options Expo (Nov. 4, 2015).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ CEA Section 2(h)(8) provides that if a swap is required to be cleared, then the swap must be executed on a DCM or SEF to the extent the swap is MAT.

¹⁰⁶ Timothy Massad, Chairman, Commodity Futures Trading Comm'n, Keynote Remarks at the Swap Execution Facility Conference (Oct. 26, 2015). Chairman Massad indicated that staff are considering whether the Commission should play a more active role, either by having the power to initiate the process, or greater review power, or both; what the process and standards should be for considering factors such as liquidity; and whether there should be a process and standards for determining that a product should no longer be subject to the trade execution requirement. *Id.*

Clearinghouse Recognition. Chairman Massad has also made clear that he wants to resolve issues surrounding the recognition of US clearinghouses in the EU. The EU recently proposed certain changes regarding client margin accounts which may signal an opportunity for the two sides to reach an accord in 2016.¹⁰⁷

IV. Conclusion

We believe it is likely that in 2016, the Division of Enforcement will continue aggressively pursuing the types of high-profile cases that have resulted in record fines, to pursue opportunities to bring actions under the new authorities added by Dodd Frank, including the new anti-spoofing, anti-manipulation, and insider trading authorities, and to enforce other Dodd-Frank regulations, including data reporting requirements. On the regulatory front, we believe that finalizing the new rulemaking initiatives begun at the end of 2015 will set the regulatory agenda for much of 2016, along with completion of the outstanding Dodd-Frank implementing rules and actions. Once the SEFs are permanently licensed, the Commission's attention will likely turn to compliance reviews of the permanently registered SEFs.

¹⁰⁷ Press Release, European Secs. & Markets Authority, ESMA Consults on Margin Period of Risk for CCPs' Client Accounts (Dec. 23, 2015), <https://www.esma.europa.eu/press-news/esma-news/esma-consults-margin-period-risk-ccps%E2%80%99-client-accounts>.

FOR MORE INFORMATION ON THIS OR OTHER SECURITIES MATTERS, CONTACT:

Paul Architzel +1 202 663 6240 paul.architzel@wilmerhale.com

Dan M. Berkovitz +1 202 663 6352 dan.berkovitz@wilmerhale.com

Jeannette K. Boot +1 212 295 6507 jeannette.boot@wilmerhale.com

Dino Wu +1 212 295 6436 dino.wu@wilmerhale.com

Elizabeth Mitchell +1 202 663 6426 elizabeth.mitchell@wilmerhale.com

Gail C. Bernstein +1 202 663 6155 gail.bernstein@wilmerhale.com

Douglas J. Davison +1 202 663 6690 douglas.davison@wilmerhale.com

Matthew Beville +1 202 663 6255 matthew.beville@wilmerhale.com

Ted Serafini +1 202 663 6545 ted.serafini@wilmerhale.com

Wilmer Cutler Pickering Hale and Dorr LLP is a Delaware limited liability partnership. WilmerHale principal law offices: 60 State Street, Boston, Massachusetts 02109, +1 617 526 6000; 1875 Pennsylvania Avenue, NW, Washington, DC 20006, +1 202 663 6000. Our United Kingdom office is operated under a separate Delaware limited liability partnership of solicitors and registered foreign lawyers authorized and regulated by the Solicitors Regulation Authority (SRA No. 287488). Our professional rules can be found at www.sra.org.uk/solicitors/code-of-conduct.page. A list of partners and their professional qualifications is available for inspection at our UK office. In Beijing, we are registered to operate as a Foreign Law Firm Representative Office. This material is for general informational purposes only and does not represent our advice as to any particular set of facts; nor does it represent any undertaking to keep recipients advised of all legal developments. © 2016 Wilmer Cutler Pickering Hale and Dorr LLP