LATHAM & WATKINS LLP

DERIVATIVES MARKET – 2017 YEAR IN REVIEW

A SUMMARY

A Companion to the Annual Latham & Watkins Webcast Series

DERIVATIVES MARKET — 2017 YEAR IN REVIEW: A SUMMARY

Latham & Watkins attorneys look back on the regulatory environment for derivatives during 2017, as well as a glimpse of the year ahead.

As we have rounded the corner and wrapped up 2017 and have now begun 2018 with a fresh start, we note that the derivatives market and regulators, alike, have made significant progress in implementing market reforms since the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the **Dodd-Frank Act**) in 2010. In the middle of last year, the US Commodity Futures Trading Commission (the **CFTC**) initiated Project KISS, taking on the monumental challenge of identifying areas of refinement and improvement in its regulations under Title VII of the Dodd-Frank Act. And, while we expect to see the results of Project KISS in the months ahead and what improvements will be made, the derivatives regulatory framework is in place and market participants are complying with the CFTC's reporting, margin, clearing and trade execution requirements, as well as with business conduct requirements.

Importantly, on a global scale, this past year has been an important year in harmonization. The CFTC and the European Commission (the **EC**) have issued comparability determinations and equivalence decisions, respectively, on uncleared swaps margin regulations, as well as recognizing as sufficient swap trading venues under their respective jurisdiction to follow the local rules of the other jurisdiction.

Further, the CFTC has continued to address and act in new areas of trading risk resulting from technology and innovation, in particular with respect to automated trading and virtual currencies.

The US Securities and Exchange Commission (the **SEC**), however, has yet to finalize many of their related security-based swap rules under Title VII of the Dodd-Frank Act.

The European Union (the **EU**) has also made significant progress in the implementation and proposal of market reforms under the European Market Infrastructure Regulation (**EMIR**).

We have set forth on the following pages a high-level summary of the significant progress and developments made with respect to the US derivatives regulatory regime and related EU developments as well as the remaining challenges faced by the industry.

The information herein was originally presented to clients via a webcast delivered by Latham & Watkins' attorneys on January 11, 2018. The replay is available for viewing under the Knowledge Library section of our website, which can be accessed via this link: https://www.lw.com/webcasts.

TABLE OF CONTENTS *(click to navigate)*

I. CFTC CHANGES AND NEW INITIATIVES 4

A. New Administration Brings New 4

B. Project KISS 4

C. What to Expect in 2018 4

1. LabCFTC, Cybersecurity, and Other Technology-Related Initiatives 4
2. Virtual Currencies 5
3. Regulatory Reform 5
4. Harmonization 5
5. Enforcement: New Tools and Consistent Priorities 6

II. CFTC REGISTRATION UPDATES 6

A. CFTC Interpretive Guidance for Registrants Receiving Separate Compensation for Commodity Trading Advice 6

B. Swap Dealer *De Minimis* Exception 7

III. CFTC RECORDKEEPING AND REPORTING UPDATES 7

A. Finalized CFTC Recordkeeping Requirements 7

1. Scope of Regulatory Records Under CFTC Rule 1.31 7
2. Regulatory Records Retention Period 8
3. Form and Manner of Regulatory Records 8
4. Production of Regulatory Records 8

B. Cross-Border Swaps Reporting Relief 9

1. Extended Reporting Relief Based on Foreign Privacy Law Considerations 9
2. Extension of Relief from Swaps Reporting Requirements for Certain Foreign Swap Entities 9

C. Proposed Amendments to SDR Swap Data Rules 9

D. No-Action Relief for SEFs 10

1. Extended Relief from Certain SEF Audit Trail Requirements 10
2. Extended Relief for Away-SEF Block Trades 10
3. Extended Relief for SEF Operational and Clerical Errors 11
4. SEF Year-End Reporting Relief 11

E. OCR Reporting Relief 11

F. Proposed CCO Reporting Amendments 12

IV. SWAP EXECUTION AND CLEARING UPDATES 12

A. CFTC-EU Trading Venue Equivalence 12

B. Extended Relief from Certain SEF Trade Confirmation Requirements 13

C. Extended Relief from Clearing and Trade Execution Requirement for Certain Inter-Affiliate Swaps 13

D. Extended Relief for Package Transactions 13

V. UNCLEARED SWAP MARGIN RULES 14
A. Cross-Border Application of CFTC Margin Rules 15
B. CFTC Substituted Compliance Determinations 15
1. Covered Products 16
2. Covered Entities + Counterparties 16
C. EU Equivalence Decision 16
1. Covered Products 16
2. Covered Entities + Counterparties 17
D. Related CFTC Guidance and Relief 17
1. Minimum Transfer Amounts for Separately Margined Accounts 17
2. Timing of VM Posting and Collection for Japanese Counterparties 17
VI. VIRTUAL CURRENCY DEVELOPMENTS 18
A. CFTC Virtual Currency Resources 18
1. LabCFTC Virtual Currency Primer 18
2. Self-Certification of Virtual Currency Futures 18
3. CFTC Customer Advisory 19
4. CFTC Oversight of Virtual Currency Markets 19
B. Actual Delivery of Virtual Currencies 19
VII. OTHER CFTC SWAPS REGULATORY UPDATES 20
A. Extended Relief from Transaction-Level Requirements for Foreign SDs 20
B. Position Limits Status Update 20
1. Reproposed Position Limits 20
2. Finalized Aggregation Rules 20
C. Proposed Regulation AT Status Update 21
D. Proposed SD/MSP Capital Rules 22
VIII. SEC SECURITY-BASED SWAP REGULATORY UPDATE 23
A. Security-Based Swap Rulemaking Status Update 23
B. SBSDR Rules Compliance Date 23
C. Security-Based Swaps as “Securities” 24
IX. EU DERIVATIVES REGULATORY UPDATES 24
A. EU Clearing Developments 24
B. Review of EMIR's Implementation 25
C. Variation Margin in Respect of FX Forwards 26

I. CFTC CHANGES AND NEW INITIATIVES

A. New Administration Brings New Leadership

Following the inauguration of President Trump in January 2017, former CFTC Chairman Timothy Massad (D) stepped down from his post, making way for Christopher Giancarlo (R), who was originally confirmed as a commissioner in 2014, to take the reins of the agency. Chairman Giancarlo served in an acting capacity until August 3, 2017, when he was formally confirmed as chairman. For most of 2017, Chairman Giancarlo was joined by only one other commissioner, Sharon Bowen (D), leaving three vacant seats and few opportunities for formal CFTC rulemaking. On August 3, 2017, Brian Quintenz (R) and Russ Behnam (D) were confirmed as new CFTC commissioners, shortly after which former Commissioner Bowen stepped down, leaving two empty seats at the CFTC. The White House previously nominated Dawn DeBerry Stump (R) to fill the remaining Republican vacancy, and we expect her appointment to come before the Senate for confirmation once the Trump administration has officially named a nominee for the final (Democratic) seat at the CFTC. During the course of 2017, Chairman Giancarlo hired new directors of the CFTC's operating divisions and senior staff positions.

B. Project KISS

In May 2017, the CFTC voted to seek public input on simplifying and modernizing the CFTC's rules, regulations and practices to identify those areas that can be simplified to make them less burdensome and less costly. This CFTC initiative was called Project KISS, for "Keep It Simple, Stupid." The deadline for public comment on Project KISS was September 30, 2017.

The CFTC's request for information in respect of Project KISS can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2017-05-09/pdf/2017-09318.pdf**.

C. What to Expect in 2018

The CFTC faces a number of challenges and opportunities entering 2018. Chairman Giancarlo and his fellow commissioners have focused their forward-looking commentary on four areas: technology, cross-border harmonization, and swaps regulation reform. From their statements and from developments thus far, we have summarized below some things to watch out for in 2018.

1. LabCFTC, Cybersecurity, and Other Technology-Related Initiatives

The CFTC views the technological landscape as one of increased risk and opportunity. The importance of cybersecurity is recognized as an essential component of internal controls for both the CFTC and the entities it regulates. The CFTC is in the process of improving its internal controls to decrease the chance of a cybersecurity attack. At the same time, CFTC leadership are likewise addressing proper limits on gathering sensitive material from regulated entities. Looking outward, the CFTC is still in the process of fully implementing the safeguards and standards set in September 2016 for clearinghouses (*i.e.,* **central counterparties** or "**CCPs**"), designated contract markets (**DCMs**), swap execution facilities (**SEFs**) and swap data repositories (**SDRs**). One remaining challenge is examining registered entities – as of October 11, 2017, the CFTC had a 75 percent staff vacancy rate in the CCP cybersecurity program.[1]

The CFTC has been and continues to be very interested in the innovation occurring in distributed ledger technology (**DLT**). DLT has the potential to transform trade execution, processing, reporting and recordkeeping, which is already beginning to be realized. For instance the CFTC recognized as a significant step, Depository Trust Clearing Corporation's (**DTCC's**) decision to transfer US$11 trillion of cleared and bilateral credit derivatives transactions to a DLT system.[2]

This "**RegTech**" – *i.e.,* technology designed to increase the effectiveness and decrease the cost of regulation and compliance – also has the potential to facilitate real-time market surveillance for the CFTC. The CFTC seeks to encourage the development of RegTech by facilitating international information-sharing.[3]

On May 17, 2017, the CFTC announced the launch of LabCFTC, a new initiative aimed at promoting responsible FinTech innovation in the derivatives markets. It is designed to bridge the gap between financial technology (*i.e.,* "**FinTech**") innovators and the CFTC, and to increase the agency's understanding of emerging technologies. LabCFTC operates through three related work streams. First, LabCFTC intends to offer insight and feedback that will allow the CFTC to provide greater regulatory certainty to encourage the development and use of market-enhancing FinTech. Second, LabCFTC identifies and studies emerging technologies that can be used by the CFTC as RegTech. Third, LabCFTC will create internal resources to communicate information about emerging technologies to CFTC staff and collaborate with other stakeholders. One goal of the third work stream is to share best practices both domestically and with foreign regulatory authorities. The CFTC made clear, however, that LabCFTC does not relieve FinTech innovators of the need to comply with applicable laws and regulations.[4]

2. Virtual Currencies

In 2014, former Chairman Massad declared Bitcoin and other virtual currencies to be "commodities". Since then the CFTC has taken action against unregistered or noncompliant exchanges, issued guidance on virtual currency spot and derivatives markets and issued a virtual currency primer. Commissioner Giancarlo has stated that the "responsible regulatory response to virtual currencies is consumer education, asserting CFTC authority, surveilling trading in derivative and spot markets, prosecuting fraud, abuse, manipulation and false solicitation and active coordination with fellow regulators. The CFTC has been following this course and will continue to do so."[5]

Earlier this month, the CFTC issued a Backgrounder on Oversight of and Approach to Virtual Currency Futures Markets, in which it clarified federal oversight of and jurisdiction over virtual currencies, as well as its approach to regulation of virtual currencies and self-certification for new virtual currency futures products (including heightened review of self-certification for such products).

On January 31, 2018, the Market Risk Advisory Committee (**MRAC**) will hold a meeting to consider the process of self-certification of new products and operations rules for DCMs, as well as related challenges and opportunities in the virtual currency markets.

3. Regulatory Reform

Chairman Giancarlo has been an open advocate for swaps reform and believes that regulations must better track market dynamics and facilitate private sector risk hedging activity. Issues of interest heading into 2018:

- **Regulation AT.** The CFTC has stated that the regulation as proposed will not be finalized. In particular, it appears that the controversial requirement to provide source code to the regulators will not be part of any final regulation.[6]

- **Project KISS.** In 2018, we would expect to see the first round of results of the Project KISS initiative – the industry-wide review of the CFTC rules, regulations and practices to make them simpler, less burdensome and less costly. As part of Project KISS, the CFTC seeks to implement sensible recommendations to reduce regulatory burdens and costs for participants in the derivatives markets.[7]

4. Harmonization

The CFTC is committed to fulfilling the G-20 pledge to increase efforts toward consistent implementation of global standards in derivatives markets. CFTC leadership has repeatedly defended consistent – not identical – cross-border implementation. Toward that end, the CFTC advocates deference and cooperation among global regulators, rather than overlapping regulatory coverage.[8]

Chairman Giancarlo has most recently expressed two concerns on this point. First, the Chairman believes that the CFTC has not gone far enough in extending deference to foreign regulators. CFTC staff is now exploring ways to emphasize deference in the CFTC's regulatory framework and establish bilateral and multilateral agreements with foreign regulators.[9]

Second, Chairman Giancarlo has expressed opposition to overlapping US and foreign regulations for US entities, especially US CCPs. There is concern that Brexit and its surrounding uncertainty may cause the EU to backtrack on the previously negotiated equivalence agreement between the CFTC and the European Commission (the **EC**). The CFTC has indicated that it is committed to assisting the EU in constructing a regime that accounts for Brexit, but that the Chairman will oppose any new measure that would empower the EU to exert direct oversight over third-country CCPs.[10]

5. Enforcement: New Tools and Consistent Priorities

Chairman Giancarlo and the Director of the CFTC's Division of Enforcement have voiced support for continued robust enforcement to protect investors and market integrity. While the CFTC brought fewer enforcement actions in 2017 than in recent years, its actions included significant cases on market manipulation, disruptive trading, fraud and other priorities. The CFTC also continued to apply its enforcement authority in certain aspects of the rapidly evolving virtual currency markets.

In 2017, the Division of Enforcement also announced a new policy encouraging self-reporting of misconduct and issued advisories on its expectations for cooperation in investigations. This new emphasis on self-reporting and cooperation encourages parties to report misconduct voluntarily and work with the Division of Enforcement proactively in exchange for reduced penalties. The CFTC has taken steps to signal that it is applying its new self-reporting policy, but significant questions remain about how the policy will work in practice.

The Division of Enforcement has been expanding its toolkit in other ways as well. The CFTC employed non-prosecution agreements for the first time, and it adopted new anti-retaliation authority to enhance protections for whistleblowers. The Commission also reorganized its structure to move the Surveillance function from the Division of Market Oversight (**DMO**) into the Division of Enforcement, in order to facilitate referrals and collaboration in market analysis. The Division of Enforcement can be expected to continue employing these new tools and approaches in 2018.

For further discussion, please refer to our article on the CFTC's new self-reporting policy at: **https://www.lw.com/thoughtLeadership/cftc-self-reporting-policy-several-questions**.

II. CFTC REGISTRATION UPDATES

A. CFTC Interpretive Guidance for Registrants Receiving Separate Compensation for Commodity Trading Advice

On December 11, 2017, the CFTC's Division of Swap Dealer and Intermediary Oversight (**DSIO**) issued interpretive guidance providing that a futures commission merchant (**FCM**), swap dealer (**SD**) or introducing broker (**IB**) that receives separate compensation for commodity trading advice is not required to register as a commodity trading advisor (**CTA**), so long as its commodity trading advice is "solely incidental" to the conduct of the FCM's or SD's business or "solely in connection with" the operation of the IB's business (**CFTC Letter No. 17-65**). CFTC Letter No. 17-65 was issued in response to an industry request following the EU Markets in Financial Instruments Directive II (**MiFID II**), which requires certain investment managers to make separate payments for investment research and execution services; however, DSIO's interpretation in CFTC Letter No. 17-65 also extends to separate payments for commodity trading advice received by FCMs, SDs and IBs outside of the MiFID II requirements.

CFTC Letter No. 17-65 can be found at:
http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-65.pdf.

B. Swap Dealer *De Minimis* Exception

On October 31, 2017, the CFTC issued an order further extending the phase-in period for the *de minimis* threshold for swap dealer registration, until December 31, 2019. The definition of "swap dealer" sets forth a *de minimis* exception to swap dealer registration, which provides that a person shall not be deemed to be a swap dealer unless its swap dealing activity exceeds an aggregate gross notional amount threshold of US$3 billion (measured over the prior 12-month period), subject to a phase-in period during which the gross notional amount threshold is set at US$8 billion. Absent further action by the CFTC, the phase-in period would have terminated on December 31, 2017, at which time the swap dealer *de minimis* threshold would have automatically decreased to US$3 billion.

On August 15, 2016, the CFTC staff issued its Swap Dealer *De Minimis* Exception Final Staff Report (**Swap Dealer Report**), which analyzed available swap data in conjunction with relevant policy considerations to assess alternative *de minimis* threshold levels and other potential changes to the swap dealer *de minimis* registration exception. However, the CFTC noted in the Swap Dealer Report that the data available was insufficient for purposes of assessing whether, and to what extent, specific changes to the *de minimis* threshold levels would increase or decrease the coverage of swaps regulated by CFTC rules applicable to swap dealers. In particular, the CFTC noted in the Swap Dealer Report that reliable swaps notional amount data was unavailable in the non-financial commodity, equity and FX asset classes. In light of the Swap Dealer Report and the CFTC's staff's findings, the CFTC first opted to extend the swap dealer *de minimis* threshold phase-in period for one year, until December 31, 2018, by approving an order to that effect on October 13, 2016. The CFTC's most recent order further extended the swap dealer *de minimis* threshold phase-in period for another year, establishing December 31, 2019 as the new swap dealer registration *de minimis* threshold phase-in termination date. The CFTC noted in the orders, however, that it may take further action regarding the *de minimis* threshold prior to the phase-in termination date, by rule amendment, order or other appropriate action.

The CFTC's most recent order can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2017-10-31/pdf/2017-23660.pdf**.

III. CFTC RECORDKEEPING AND REPORTING UPDATES

A. Finalized CFTC Recordkeeping Requirements

On May 23, 2017, the CFTC finalized amendments to its recordkeeping requirements under CFTC Rule 1.31, which amendments went into effect on August 28, 2017 (the **CFTC Recordkeeping Amendment**). The CFTC Recordkeeping Amendment (i) eliminated the representation and technical consultant requirements which had previously existed under CFTC Rule 1.31, (ii) removed the previous requirements under CFTC Rule 1.31 to keep electronic records in their native file format and retain all records in a non-rewritable, non-erasable format, (iii) introduced a new streamlined, flexible and "technology-neutral" regulatory scheme for recordkeeping by "**Records Entities**" (*i.e.,* any person required to keep Regulatory Records (defined below) under the CEA or CFTC regulations) and (iv) delineated other requirements with which Records Entities' electronic storage systems must comply in order to satisfy the CFTC's new "principles-based approach" to retaining electronic records.

We have included below a summary of the impact of the CFTC Recordkeeping Amendment on CFTC Rule 1.31.

1. Scope of Regulatory Records Under CFTC Rule 1.31

The CFTC Recordkeeping Amendment defines "**Regulatory Records**" under CFTC Rule 1.31 to include all records required to be maintained under CFTC regulations, including any record of any correction or other amendment to records, provided that, with respect to records stored electronically, regulatory records also include (i) any data

necessary to access, search or display any such records and (ii) all data produced and stored electronically describing how and when such records were created, formatted or modified. As used in CFTC Rule 1.31, "**Electronic Regulatory Records**" include all Regulatory Records, other than Regulatory Records exclusively created and maintained in paper form.

2. Regulatory Records Retention Period

The CFTC Recordkeeping Amendment requires that all Electronic Regulatory Records be "readily accessible" for the entirety of the required retention period, as opposed to being readily accessible for the first two years.

- Records of any swap or related cash or forward transaction (**Swap Records**) must be retained from creation, until five years after the termination, maturity, expiration, transfer and assignment or novation of the underlying swap.
- Any records of oral communications required to be maintained under CFTC regulations must be maintained for a period of no less than one year from the date of such communication.
- If Regulatory Records (other than Swap Records and records of oral communications) are retained electronically, such Electronic Regulatory Records must be kept for no less than five years from the date of their creation.
- Regulatory Records created and retained in paper form must be readily accessible for no fewer than two years.

3. Form and Manner of Regulatory Records

The CFTC Recordkeeping Amendment requires that Records Entities retain Regulatory Records in a form and manner that ensures the authenticity and reliability of such records. Furthermore, Records Entities retaining Electronic Regulatory Records must have systems in place that, without limitation:

- Maintain the security, signature and data as necessary to (i) ensure the authenticity of the information contained in Electronic Regulatory Records and (ii) monitor compliance with the CEA and CFTC regulations
- Ensure that (i) the Records Entity is able to produce Electronic Regulatory Records in accordance with CFTC Rule 1.31 and (ii) such Regulatory Records are available in the event of an emergency or other disruption of the Records Entity's record retention systems
- Create and maintain an up-to-date inventory that identifies and describes each system that maintains information necessary for accessing or producing Electronic Regulatory Records

4. Production of Regulatory Records

The CFTC Recordkeeping Amendment requires that all Regulatory Records (whether created and retained in paper or electronic form) be able to be produced "promptly, upon request." In finalizing the CFTC Recordkeeping Amendment, the CFTC indicated that it understands that most Records Entities maintain records electronically and therefore already would have been subject to the previous requirement under CFTC Rule 1.31 to produce records "immediately"; the CFTC noted that it viewed the new "prompt" production standard as consistent with the previous requirement to "immediately" produce electronic records. The CFTC further noted that timely production of Regulatory Records is a priority, and the change from an "immediate" to a "prompt" production standard should not be interpreted as the CFTC's sanctioning any unnecessary delay in Records Entities' production of Regulatory Records.

The CFTC's adopting release can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2017-05-30/pdf/2017-11014.pdf**.

B. Cross-Border Swaps Reporting Relief

1. Extended Reporting Relief Based on Foreign Privacy Law Considerations

DMO issued a no-action letter on June 28, 2013 (i) permitting swap data reporting counterparties to mask legal entity identifiers (**LEIs**), other enumerated identifiers and other identifying terms and (ii) permitting large trader reporting entities to mask identifying information in certain enumerated jurisdictions as a result of foreign privacy laws barring the reporting of such information under Parts 20, 45 and/or 46 (**CFTC Letter No. 13-41**). On March 10, 2017, DMO further extended the relief originally provided in CFTC Letter No. 13-41, subject to certain conditions (**CFTC Letter No. 17-16**), until: (x) September 1, 2017 for "French Reportable Swaps" and "Swiss Reportable Swaps" (each as defined in CFTC Letter No. 17-16); and (y) for all other swaps, the applicable "Reasonable Belief Expiration Date" (*i.e.,* such time as the reporting counterparty no longer holds the requisite reasonable belief regarding the privacy law consequences of reporting) for such swap or group of swaps. CFTC Letter No. 17-16 permits reporting parties that had previously met the conditions of CFTC Letter No. 13-41 (or who meet those conditions in the future) to fulfill their reporting obligations under Parts 20, 45 and/or 46, while acknowledging privacy, secrecy and blocking laws in certain non-US jurisdictions.

CFTC Letter No. 17-16 can be found at:
http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-16.pdf.

2. Extension of Relief from Swaps Reporting Requirements for Certain Foreign Swap Entities

On November 30, 2017, DMO further extended time-limited no-action relief from the swap data reporting rules under Parts 45 and 46 of the CFTC's regulations for foreign Swap Entities established under the laws of Australia, Canada, the EU, Japan or Switzerland, which are not part of an affiliate group in which the ultimate parent entity is a US Swap Entity, bank, financial holding company or bank holding company (**CFTC Letter No. 17-64**). The no-action relief under CFTC Letter No. 17-64 will expire on the earlier of (i) December 1, 2020 and (ii) 30 days following the issuance of a comparability determination by the CFTC with respect to its swaps reporting rules for the jurisdiction in which the non-US Swap Entity is established.

CFTC Letter No. 17-64 can be found at:
http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-64.pdf.

C. Proposed Amendments to SDR Swap Data Rules

On January 13, 2017, the CFTC proposed amendments to a rule that would require SDRs to make swap data available to certain designated regulators and other authorities in the U.S. and abroad, allowing them to share information and more effectively oversee the swaps market. The proposed amendments would include, among others:

- Requirement to execute a confidentiality arrangement between the CFTC and the recipient of the swap data, with respect to the swap data provided to such recipient
- Removal of existing requirement that foreign and domestic authorities seeking access to SDR swap data first indemnify the CFTC and each SDR from which such authorities access swap data
- Listing of factors the CFTC may consider in determining whether to permit other entities access to swap data

The CFTC's proposal can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2017-01-25/pdf/2017-01287.pdf**.

D. No-Action Relief for SEFs

1. Extended Relief from Certain SEF Audit Trail Requirements

CFTC Rule 37.205(a) requires that SEFs capture and retain all audit trail data necessary to detect, investigate and prevent customer and market abuses. Specifically, CFTC Rule 37.205(a) requires that (i) a SEF's audit trail data be sufficient to reconstruct all indications of interest, requests for quotes, orders and trades within a reasonable period of time and provide evidence of any violations of the SEF's rules and (ii) the audit trail enable the SEF to track an order from the time of receipt through fill, allocation or other disposition; CFTC Rule 37.205(b)(2) also requires a SEF's electronic transaction history database to include, among other things, "identification of each account to which fills are allocated." On October 31, 2017, DMO further extended relief (subject to certain enumerated conditions) for SEFs from compliance with the requirements under CFTC Rules 37.205(a) and 37.205(b)(2) that SEFs capture post-execution allocation information in its audit trail and conduct associated audit trail reviews of post-execution allocations, until November 15, 2020 (**CFTC Letter No. 17-54**).

CFTC Letter No. 17-54 can be found at:
http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-54.pdf.

2. Extended Relief for Away-SEF Block Trades

On November 14, 2017, DMO issued no-action relief further extending its previously-provided relief in respect of SEF compliance with CFTC staff guidance (the **STP Guidance**) on the straight-through processing of swaps (**CFTC Letter No. 17-60**).

In September 2013, CFTC staff published its STP Guidance, which provided (among other things) that: (i) FCMs must screen orders for execution on a SEF pursuant to either Rule 1.73(a)(2)(i) or (ii), regardless of the method of execution; (ii) pursuant to CFTC Rule 37.702(b), each SEF must make it possible for clearing FCMs to screen each order as required by CFTC Rule 1.73; (iii) SEFs must have rules stating that trades that are not rejected from clearing are *void ab initio*; and (iv) SEFs, FCMs and Swap Entities may not require breakage agreements as a condition for trading swaps intended for clearing on a SEF. In CFTC Letter No. 17-60, DMO further extended its previously provided relief, until November 15, 2020, under which DMO would not recommend that the CFTC take enforcement action against any SEF which has rules and/or procedures that provide for the use of a SEF trading system or platform to facilitate the execution of block trades that are intended to be cleared, so long as the following conditions are met:

- (x) The block trade is not executed on the SEF's "Order Book" functionality (as defined in CFTC Rule 37.3(a)(3)); (y) the SEF adopts rules pertaining to cleared block trades that indicates that the SEF relies on the relief provided in CFTC Letter No. 17-60 and requires each cleared block trade execution on a non-Order Book trading system or platform to comply with the requirements set forth in the "block trade" definition under CFTC Rule 43.2; and (z) the block trade specifically:
  - Involves a swap that is listed on a registered SEF
  - Is executed pursuant to the SEF's rules and procedures
  - Meets the notional or principal amount at or above the appropriate minimum block size applicable to the swap
  - Is reported to an SDR pursuant to the SEF's rules and procedures and the CFTC's rules and regulations
- The FCM completes the pre-execution credit check pursuant to CFTC Rule 1.73 at the time the order for a block trade enters the SEF's non-Order Book trading system or platform

- The block trade is subject to *void ab initio* requirements where the swap is rejected on the basis of credit

CFTC Letter No. 17-60 can be found at:
http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-60.pdf.

3. Extended Relief for SEF Operational and Clerical Errors

Under the STP Guidance, SEFs are required to have rules providing that trades that are submitted for clearing but are rejected are *void ab initio* (the **Swap Rejection Rule Requirement**). However, after imposing the Swap Rejection Rule Requirement on SEFs, certain market participants expressed concern that some swaps are rejected by DCOs because of a SEF's operational or clerical errors that are readily correctable. On May 30, 2017, CFTC staff further extended its previously-provided no-action relief from the Swap Rejection Rule Requirement, subject to certain terms and conditions, until the effective date of any changes in the relevant CFTC regulations providing a process for modifying previously-executed and cleared swaps (**CFTC Letter No. 17-27**).

CFTC Letter No. 17-27 can be found at:
http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-27.pdf.

4. SEF Year-End Reporting Relief

CFTC Rules 37.1501(f)(2) and 37.1306(d), respectively, require that (i) a SEF's chief compliance officer (**CCO**) prepare and submit an annual compliance report to the CFTC and (ii) a SEF file its fourth fiscal quarter financial report with the CFTC, in each case no later than 60 calendar days after the end of the SEF's fiscal year. On November 20, 2017, DMO issued no-action relief extending the filing deadline for SEFs' annual compliance reports and fourth quarter financial reports, from 60 to 90 calendar days after the end of the SEF's fiscal year (**CFTC Letter No. 17-61**); the relief provided under CFTC Letter No. 17-61 will expire on November 30, 2020.

CFTC Letter No. 17-61 can be found at:
http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-61.pdf.

E. OCR Reporting Relief

On September 25, 2017, in response to separate requests from each of the Futures Industry Association (**FIA**) and the Commodity Markets Council (**CMC**), DMO issued conditional time-limited no-action relief from filing certain ownership and control reports (**OCR**) required by Parts 17, 18 and 20 of the CFTC's regulations (**CFTC Letter No. 17-45**).

The CFTC's ownership and control reporting rules (the **OCR Rules**) were approved by the CFTC in 2013 to enhance the CFTC's large trader reporting program by (i) collecting additional ownership and control information and (ii) requiring that such information be reported electronically. Since the adoption of its OCR Rules, the CFTC has issued various no-action letters and guidance documents to facilitate compliance with these new requirements. For example, DMO issued guidance in April 2016 to respond to questions from market participants regarding the meaning of the terms "owner" and "controller" for purposes of the OCR Rules.

Under CFTC Letter No. 17-45, DMO extended previously issued no-action relief relating to the compliance date for the various reporting requirements under the OCR Rules and allowing reporting entities, subject to certain terms and conditions, to mask certain information about market participants which would be prohibited from disclosure under applicable foreign privacy laws. The CFTC's most recent no-action relief in respect of each obligation under the OCR Rules addressed in CFTC Letter No. 17-45 will expire on the earlier of (i) September 28, 2020 and (ii) the later of the applicable effective date or compliance date of a CFTC action addressing the relevant obligation under the OCR Rules.

CFTC Letter No. 17-45 can be found at: **http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-45.pdf**.

F. Proposed CCO Reporting Amendments

Under Sections 4s(k)(2) and (3) of the CEA, CCOs of Swap Entities must, among other duties, prepare and sign an annual compliance report (**CCO Annual Report**); Section 4d(d) of the CEA requires CCOs of FCMs to "perform such duties and responsibilities" as are established by CFTC regulation or by the rules of a registered futures association. In 2012, the CFTC promulgated Rules 3.3(d)-(f) pursuant to its mandate under Sections 4d(d) and 4s(k) of the CEA. Among other requirements, Rule 3.3 requires a CCO to be actively engaged in compliance activities with the appropriate authority, resources and access to the board of directors or senior officer to administer the registered firm's compliance activities. On July 25, 2016, in an effort to clarify Rule 3.3's required elements and address additional supervisory relationships that a CCO may have with senior management, in addition to those with the registered firm's board of directors or senior officer, DSIO issued a staff advisory regarding CCO reporting line requirements for Swap Entities and FCMs (**CFTC Staff Advisory No. 16-62**). While DSIO laid out certain examples in CFTC Staff Advisory No. 16-62 of reporting lines to senior officers which could be permissible based on the relevant facts and circumstances, there was no specific CFTC guidance on who would qualify as a "senior officer" for purposes of a CCO's compliance with Rule 3.3, until May 3, 2017, when the CFTC published proposed amendments to Part 3 of its regulations in respect of CCO regulatory compliance obligations (the **Proposed CCO Amendments**), which would define "senior officer" in Rule 3.1 as the "chief executive officer or other equivalent officer of a registrant." If finalized, the Proposed CCO Amendments would also eliminate the requirement that CCO Annual Reports map the registered firm's compliance against each applicable statutory and regulatory requirement.

The CFTC's proposal can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2017-05-08/pdf/2017-09229.pdf**.

IV. SWAP EXECUTION AND CLEARING UPDATES

A. CFTC-EU Trading Venue Equivalence

On October 13, 2017, CFTC Chairman Giancarlo and EC Vice President for Financial Stability, Financial Services and Capital Markets Union, Valdis Dombrovskis, announced a common approach regarding CFTC- and EU-authorized derivatives trading venues (the **Common Approach**). Under the Common Approach:

- EC Vice President Dumbrovski intends to propose that the EC adopt an equivalence decision covering the CFTC-authorized SEFs and DCMs that are notified to the EC by the CFTC, provided the requirements of the Markets in Financial Instruments (**MiFIR**), the Markets in Financial Instruments Directive (**MiFID II**) and the Market Abuse Regulation (**MAR**) are otherwise met.

- On December 8, 2017, the CFTC issued an order of exemption for certain enumerated multilateral trading facilities (**MTFs**) and organized trading facilities (**OTFs**) authorized in the EU under MiFID II, from the requirement to register as a SEF under Section 5h of the CEA.

The Common Approach can be found at: **http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo_cacdtv101317.pdf**; and the CFTC's exemptive order for EU-authorized MTFs/OTFs can be found at: **http://www.cftc.gov/idc/groups/public/@requestsandactions/documents/ifdocs/mtf_otforder12-08-17.pdf**.

B. Extended Relief from Certain SEF Trade Confirmation Requirements

The CFTC's SEF rules require that a SEF "provide each counterparty to a transaction that is entered into on or pursuant to the rules of the [SEF] with a written record of all of the terms of the transaction which shall legally supersede any previous agreement and serve as a confirmation of the transaction." The CFTC initially indicated that SEFs could satisfy this written confirmation requirement by incorporating by reference the terms set forth in the master trading agreements previously negotiated by the counterparties to a transaction (the **Governing Bilateral Agreements**), provided that such Governing Bilateral Agreements had been submitted to the SEF ahead of execution. Given the significant undertaking for a SEF to collect such Governing Bilateral Agreements from each of its participants, DMO issued a no-action letter on August 18, 2014, which provided relief for SEFs from certain confirmation and recordkeeping requirements applicable to SEFs, so that SEFs would not be required to obtain copies of the Governing Bilateral Agreements between the counterparties to an uncleared swap transaction. On March 24, 2017, the CFTC further extended this relief until the effective date of revised CFTC regulations that establish a permanent, practicable SEF confirmation solution, so that the CFTC can work toward a more permanent solution (**CFTC Letter No. 17-17**).

CFTC Letter No. 17-17 can be found at: **http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-17.pdf**.

C. Extended Relief from Clearing and Trade Execution Requirement for Certain Inter-Affiliate Swaps

Under the inter-affiliate exemption from the clearing requirement, one of the conditions requires the clearing of all swaps between (x) affiliated counterparties claiming the exemption and (y) unaffiliated counterparties (the **Outward Facing Swaps Condition**). In order to provide for an orderly transition period with respect to the Outward Facing Swaps Condition and timing issues associated with the implementation of mandatory clearing regimes in non-US jurisdictions, the CFTC provided two temporary alternative compliance frameworks for compliance with the Outward Facing Swaps Condition, which allows entities relying on the inter-affiliate clearing exemption to post and collect variation margin (**VM**), rather than clearing all outward facing swaps. On December 14, 2017, the CFTC's Division of Clearing and Risk (**DCR**) further extended its previously provided no-action relief in respect of the Outward Facing Swaps Condition (which was due to expire on December 31, 2017) until the earlier of (i) December 31, 2020 and (ii) the effective date of amendments to CFTC Rule 50.52 (**CFTC Letter No. 17-66**).

In adopting CFTC Rule 50.52, the CFTC provided that inter-affiliate swaps that are exempt from mandatory clearing under CFTC Rule 50.52 are not subject to the trade execution requirement. However, swaps involving eligible affiliate counterparties that do not satisfy CFTC Rule 50.52(b) or another exception or exemption from the clearing mandate remain subject to the trade execution requirement. On December 14, 2017, DMO further extended its previously provided relief, under which DMO would not recommend that the CFTC take enforcement action against any eligible affiliate counterparty executing an over-the-counter (**OTC**) swap transaction with another eligible affiliate counterparty, and which was due to expire on December 31, 2017, until the earlier of (i) December 31, 2020 and (ii) the effective date of CFTC action providing a permanent solution for the execution of inter-affiliate swaps (**CFTC Letter No. 17-67**).

CFTC Letter No. 17-66 can be found at: **http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-66.pdf**; and CFTC Letter No. 17-67 can be found at: **http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-67.pdf**.

D. Extended Relief for Package Transactions

On October 31, 2017, DMO further extended its previously-provided no-action relief from Sections 2(h)(8) and 5(d)(9) of the Commodity Exchange Act, as amended (the **CEA**), and CFTC Rules 37.3(a)(2) and 37.9 for swaps executed as

part of certain "package transactions" (as defined in CFTC Letter No. 17-55), until November 15, 2020 (**CFTC Letter No. 17-55**). As noted in CFTC Letter No. 17-55, DMO is continuing to assess how to enable SEFs and DCMs to facilitate trading of certain package transactions in a manner that balances the utility of package transactions, against the policy goals of the CFTC's trade execution requirement.

CFTC Letter No. 17-55 can be found at:
http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-55.pdf.

V. UNCLEARED SWAP MARGIN RULES

In September 2013, the Basel Committee on Banking Supervision (**BCBS**) and the International Organization of Securities Commissions (**IOSCO**), at the direction of the Group of Twenty (**G-20**), published international standards for margin requirements for non-centrally cleared derivatives (the **International Standards**). The International Standards were intended to reduce the opportunity for regulatory arbitrage by creating an international framework for uncleared swaps that regulators could use as a guide to frame their respective margin rules. In October 2015, the **Prudential Regulators** (*i.e.,* the Office of the Comptroller of the Currency (Department of Treasury), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency) became the first financial regulators worldwide to finalize their margin requirements for uncleared derivative transactions (the **PR Margin Rules**). The PR Margin Rules apply to uncleared swap and uncleared security-based swap transactions entered into by CFTC-registered swap dealers and major swap participants (**MSPs**) and SEC-registered security-based swap dealers (**SBSDs**) and major security-based swap participants (**MSBSPs**) that are subject to regulatory oversight by the Prudential Regulators.

For further discussion, please refer to our *Client Alert* on the Prudential Regulators' finalized uncleared swap margin rules: **Prudential Regulators Are First to Finalize Uncleared Swap Margin Rules**.

Shortly after the joint finalization by the Prudential Regulators of the PR Margin Rules in October 2015, the CFTC finalized its own uncleared swap margin requirements on December 16, 2015 (the **CFTC Margin Rules** and, together with the PR Margin Rules, the **US Margin Rules**). Applicable to Swap Entities that are not subject to supervision by the Prudential Regulators (**CFTC Covered Swap Entities**), the CFTC Margin Rules largely track the PR Margin Rules.

For further discussion, please refer to our *Client Alert* on the finalized CFTC uncleared swap margin rules: **CFTC Uncleared Swap Margin Rules to Take Effect in September**.

The US Margin Rules are being phased in over four years, a compliance period which began on September 1, 2016 for the highest-volume dealers. Subject to the four-year phased-in compliance schedule, SDs/MSPs and prudentially-regulated SBSDs/MSBSPs (collectively with SDs/MSPs, **Covered Swap Entities**) entering into uncleared swaps with other Covered Swap Entities, or with Financial End-Users (as defined in the US Margin Rules) with **Material Swaps Exposure** (*i.e.,* an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange (**FX**) forwards and FX swaps with all counterparties for June, July and August of the previous calendar year that exceeds US$8 billion (calculated only for business days and aggregated with the Financial End-User's "Margin Affiliates")), must collect and post initial margin (**IM**) and VM on a daily basis. Covered Swap Entities entering into uncleared swaps with Financial End-Users that do not have Material Swaps Exposure must collect and post daily VM, but are not required to post or collect IM.

Pursuant to the Terrorism Risk Insurance Program Reauthorization Act of 2015 (**TRIPRA**), the US Margin Rules contain an exemption for certain uncleared swaps entered into with certain "Exempted End-Users" using such uncleared swaps to hedge or mitigate commercial risk.

Financial regulatory authorities worldwide have followed suit, with the EU, Canada, Japan, Switzerland and Australia each having finalized (or have regulations that will be finalized soon with respect to) their respective margin requirements for uncleared derivative transactions.

For further discussion, please refer to our publication comparing the US Margin Rules and the EU Margin Rules: **US vs. EU Margin Rules: Comparative Summary as of October 4, 2016**.

A. Cross-Border Application of CFTC Margin Rules

The CFTC finalized regulations addressing the cross-border application of the CFTC Margin Rules in May 2016 (the **CFTC Cross-Border Margin Rules**). The CFTC Cross-Border Margin Rules subject all uncleared swap transactions entered into by US CFTC Covered Swap Entities to the CFTC Margin Rules, as well as certain uncleared swaps entered into by non-US CFTC Covered Swap Entities where the risk flows back to a US entity. Under the CFTC Cross-Border Margin Rules, an uncleared swap entered into by a non-US Swap Entity with a non-US person counterparty is excluded from the CFTC Margin Rules (the **Exclusion**), provided that both of the following conditions are met:

- Neither counterparty's obligations under the uncleared swap are guaranteed by a US person (where a "guarantee" is defined broadly to capture any arrangement pursuant to which one party to the uncleared swap with a non-US person counterparty has rights of recourse against a US person guarantor with respect to the non-US person counterparty's relevant uncleared swap obligations)

- Neither counterparty is (i) an FCS (defined below), nor (ii) a US branch of a non-US CFTC Swap Entity

The Exclusion is not available for certain inter-affiliate uncleared swaps. A non-US CFTC Swap Entity would be a "**Foreign Consolidated Subsidiary**" (an **FCS**) under the CFTC Cross-Border Margin Rules if its financial statements are included in those of an ultimate parent entity (*i.e.,* the parent entity in a consolidated group in which none of the other entities in the consolidated group has a controlling interest, in accordance with US generally accepted accounting principles (**GAAP**)) that is a US person, regardless of whether such US ultimate parent entity guarantees the non-US CFTC Swap Entity's obligations under the relevant uncleared swap transaction.

The CFTC Cross-Border Margin Rules diverge from the cross-border application of the PR Margin Rules in a number of instances. Notably, if a non-US Financial End-User with no US person guarantee of its relevant uncleared swap obligations is ineligible for the Exclusion due to the identity of its CFTC Swap Entity counterparty (or the CFTC Swap Entity counterparty's guarantor), substituted compliance may nonetheless be available with respect to such non-US Financial End-User's uncleared swaps with either (i) US CFTC Swap Entities or (ii) non-US CFTC Swap Entities with a US person guarantee of their relevant uncleared swap obligations. Substituted compliance, however, is only available with respect to the CFTC Swap Entity's posting of IM to the non-US Financial End-User (*i.e.,* not with respect to the CFTC Swap Entity's collection of IM from the non-US Financial End-User or the posting/collection of VM). The effect of this provision is that such a substituted compliance determination would not benefit non-US Financial End-Users without Material Swaps Exposure because such entities would not otherwise be subject to the IM posting/collection requirements under the CFTC Margin Rules.

For further discussion, please refer to our *Client Alert* on the proposed cross-border application of the CFTC uncleared swap margin rules: **CFTC Proposes Cross-Border Application of Margin Requirements for Uncleared Swaps**.

B. CFTC Substituted Compliance Determinations

The CFTC issued its first substituted compliance determination under the CFTC Cross-Border Margin Rules in September 2016, with respect to the Japanese margin requirements for non-centrally cleared derivative transactions (the **Japanese Margin Rules**) (the **CFTC Japanese Comparability Determination**). More than a year later, the

CFTC issued its second substituted compliance determination under the CFTC Cross-Border Margin Rules – this time with respect to the EU Margin Rules (the **CFTC EU Comparability Determination**).

1. Covered Products

The CFTC Margin Rules apply to uncleared swaps entered into on or after the relevant compliance date, except that physically-settled FX forwards and FX swaps, as well as the fixed, physically-settled exchange of principal in cross-currency swaps (collectively, **FX Products**) are exempt from the CFTC Margin Rules. On the other hand, the EU Margin Rules apply to non-centrally cleared OTC derivatives (uncleared OTC derivatives) entered into on or after the relevant compliance date, except that: (i) FX Products are exempt from the IM requirements under the EU Margin Rules; and (ii) hedging swaps related to regulated covered bonds (**Covered Bond Swaps**) are exempt from both IM and VM requirements under the EU Margin Rules.

Under the CFTC EU Comparability Determination, the CFTC Margin Rules would continue to apply to a CFTC Swap Entity's uncleared swap transactions, notwithstanding the fact that any of those uncleared swaps would be exempt or otherwise fall outside the scope of the EU Margin Rules. In such circumstances, the parties must comply with the applicable IM/VM posting/collection requirements for such uncleared swaps under the CFTC Margin Rules.

2. Covered Entities + Counterparties

The CFTC Margin Rules apply to CFTC Swap Entities, in respect of their uncleared swaps with either (i) other Swap Entities or (ii) Financial End-Users. The CFTC EU Comparability Determination is expressly limited to CFTC Swap Entities, meaning that PR Swap Entities must await a comparability determination from the Prudential Regulators before they may substitute compliance with the EU Margin Rules under the PR Margin Rules.

The EU Margin Rules apply to uncleared OTC derivatives entered into between any of the following types of counterparties: (i) Financial Counterparties (**FCs**); (ii) Non-Financial Counterparties above the clearing thresholds (**NFC+**); and (iii) third-country entities (**TCEs**) that would be FC or NFC+ if established in the EU (**TCEs (FC/NFC+)**)

The CFTC expressly noted in the CFTC EU Comparability Determination that there may be gaps between the counterparties captured under the CFTC Margin Rules, as opposed to under the EU Margin Rules. Under the CFTC EU Comparability Determination, the CFTC Margin Rules would continue to apply to a CFTC Swap Entity's in-scope trades with its Financial End-User counterparties, notwithstanding the fact that any of those counterparties are NFC- for purposes of the EU Margin Rules. In such circumstances, the parties must comply with the applicable IM/VM posting and collection requirements under the CFTC Margin Rules.

The CFTC's comparability determination can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2017-10-18/pdf/2017-22616.pdf**.

C. EU Equivalence Decision

Concurrent with the publication of the CFTC EU Comparability Determination on October 13, 2017, the EC published its own decision recognizing equivalence of the CFTC Margin Rules in respect of the EU Margin Rules. Note that the PR Margin Rules were outside the scope of the EC's equivalence decision. Accordingly, compliance by CFTC Swap Entities with the CFTC Margin Rules (but not by PR Swap Entities with the PR Margin Rules) in respect of uncleared OTC derivative transactions that are subject to margin requirements under both the EU Margin Rules and the CFTC Margin Rules, and to which the CFTC Swap Entity counterparty is established in the United States, shall constitute compliance with the EU Margin Rules, effective November 3, 2017.

1. Covered Products

The EC qualified its equivalence decision with respect to the CFTC Margin Rules, providing that the EU Margin Rules will continue to apply to uncleared cross-border OTC derivative transactions between FC, NFC+ and/or TCE

(FC/NFC+) counterparties where such transactions are subject to the EU Margin Rules, notwithstanding the fact that such transactions (*e.g.,* FX Products) may be exempt or otherwise fall outside the scope of the CFTC Margin Rules. In such circumstances, the parties must comply with the applicable IM/VM posting and/or collection requirements, as applicable, for such uncleared OTC derivative transactions under the EU Margin Rules.

2. Covered Entities + Counterparties

The EC limited its equivalence decision to the CFTC Margin Rules and entities subject to such rules (*i.e.,* CFTC Swap Entities and their counterparties); PR Swap Entities and their counterparties are outside the scope of the EU equivalence decision.

The EC's equivalence decision can be found at: **http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D1857&from=EN**. For further discussion, please refer to our *Client Alert* on the CFTC EU Comparability Determination and the EC's related equivalence decision: **https://www.lw.com/thoughtLeadership/CFTC-publishes-comparability-determination-EU-margin-rules**.

D. Related CFTC Guidance and Relief

1. Minimum Transfer Amounts for Separately Margined Accounts

CFTC Rule 23.153(c) provides that a CFTC Swap Entity is not required to collect/post VM under the CFTC Margin Rules with respect to a particular counterparty unless and until the combined amount of IM and VM required to be collected/posted under the CFTC Margin Rules, and that has not been collected/posted with respect to such counterparty, is greater than US$500,000 (the **Minimum Transfer Amount**). On February 13, 2017, DSIO granted no-action relief which permits CFTC Swap Entities entering into uncleared swaps with "**Separately Managed Accounts**" (*i.e.,* accounts managed by an asset manager and governed by an investment management agreement that grants the asset manager authority with respect to a specified amount of assets under management) to treat each such account as a separate counterparty for purposes of applying the Minimum Transfer Amount of IM and VM under the CFTC Margin Rules, despite the fact that such accounts are owned by the same legal entity (**CFTC Letter No. 17-12**). In order to qualify for relief under CFTC Letter No. 17-12, the uncleared swaps of a market participant that is the owner of more than one Separately Managed Account must satisfy each of the following conditions:

- Any such uncleared swaps were entered into with the CFTC Swap Entity by an asset manager on behalf of a Separately Managed Account owned by the legal entity pursuant to authority granted under an investment management agreement.
- The Separately Managed Account's swaps are subject to a master netting agreement that does not permit netting of IM or VM obligations across Separately Managed Accounts of the legal entity that has swaps outstanding with the CFTC Swap Entity.
- The CFTC Swap Entity applies an alternative Minimum Transfer Amount no greater than US$50,000 to the Separately Managed Account's IM and VM collection/posting obligations under the CFTC Margin Rules.

CFTC Letter No. 17-12 can be found at: **http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-12.pdf**.

2. Timing of VM Posting and Collection for Japanese Counterparties

On February 23, 2017, DSIO issued time-limited no-action relief under which it would not recommend a CFTC enforcement action against SDs which are also subject to the Japanese Margin Rules, for failure to comply with the VM posting/collection timing requirements under the CFTC Margin Rules with respect to uncleared swaps with certain

counterparties operating in Japan (**Supervised Counterparties**), so long as each of the following conditions are met (**CFTC Letter No. 17-13**):

- Subject to any minimum transfer amount not exceeding the amount permitted under the CFTC Margin Rules:
  - The SD posts/collects any VM amount initially required under the CFTC Margin Rules, within three business days of execution of the uncleared swap (**T+3**)
  - The SD posts/collects any VM amount thereafter required under the CFTC Margin Rules on at least a T+3 basis until the uncleared swap is terminated or expires
- The SD uses its best efforts to comply "as soon as possible" with the daily (*i.e.,* **T+1**) posting/collection requirement for VM under the CFTC Margin Rules for uncleared swap transactions with Supervised Counterparties
- No later than March 1, 2020, the SD complies with the T+1 posting/collection requirement for VM under the CFTC Margin Rules for all uncleared swap transactions with Supervised Counterparties

CFTC Letter No. 17-13 can be found at:
http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-13.pdf.

VI. VIRTUAL CURRENCY DEVELOPMENTS

A. CFTC Virtual Currency Resources

On December 15, 2017, the CFTC launched a virtual currency resource page on its website, which will house CFTC-produced resources on virtual currency, including the various CFTC resources discussed below.

The CFTC's virtual currency resource page can be found at: **http://www.cftc.gov/bitcoin/index.htm**.

1. LabCFTC Virtual Currency Primer

On October 17, 2017, LabCFTC published a primer on virtual currencies (the **LabCFTC Primer**), marking the first installment of LabCFTC's planned series of releases to provide the market with information about FinTech innovation. In particular, the LabCFTC Primer: (i) provides an overview of virtual currencies and their potential uses; (ii) generally outlines the CFTC's role in respect of virtual currencies; and (iii) cautions investors in and users of virtual currencies of the potential risks in respect thereof.

The LabCFTC Primer can be found at:
http://www.cftc.gov/idc/groups/public/documents/file/labcftc_primercurrencies100417.pdf.

2. Self-Certification of Virtual Currency Futures

On December 1, 2017, the CFTC published a "backgrounder" on the self-certification process for listed virtual currency products (the **Self-Certification Backgrounder**). The Self-Certification Backgrounder accompanied the CFTC's announcement on December 1, 2017 that two DCMs had self-certified new listed contracts for virtual currency futures and/or options.

The Self-Certification Backgrounder can be found at:
http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/bitcoin_factsheet120117.pdf.

3. CFTC Customer Advisory

On December 15, 2017, the CFTC released a customer advisory on the risks of trading virtual currencies (the Virtual Currency Advisory). The Virtual Currency Advisory details the risks of purchasing virtual currencies in the cash market, as well as those risks posed by virtual currency futures and options.

The Virtual Currency Advisory can be found at: **http://www.cftc.gov/idc/groups/public/@customerprotection/documents/file/customeradvisory_urvct121517.pdf**.

4. CFTC Oversight of Virtual Currency Markets

On January 4, 2018, the CFTC published a "backgrounder" on its oversight of and approach to virtual currency futures markets (the **CFTC Backgrounder**). The CFTC Backgrounder was released by the CFTC to provide clarity regarding: (i) federal oversight of and jurisdiction over virtual currencies; (ii) the CFTC's approach to regulation of virtual currencies; (iii) the self-certification process generally, as well as specifically regarding the recent self-certification by two DCMs for new virtual currency futures and options products; and (iv) background on the CFTC's "heightened review" of virtual currency contracts. The CFTC also used the CFTC Backgrounder to discuss the constituencies that may be impacted by virtual currency futures contracts.

The CFTC Backgrounder can be found at: **http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/backgrounder_virtualcurrency01.pdf**.

B. Actual Delivery of Virtual Currencies

On December 15, 2017, the CFTC issued a proposed interpretation for the term "actual delivery" as applied to retail commodity transactions involving virtual currencies (**Proposed Interpretation**). Under Section 2(c)(2)(D) of the CEA, (the **Retail Commodity Rules**), commodity transactions (i) between persons that are not eligible contract participants (**ECPs**) or eligible commercial entities (*i.e.,* retail investors) and (ii) that are not margined, financed, or leveraged (**Retail Commodity Transactions**) are subject to regulation by the CFTC as if they were futures contracts, **unless** the underlying commodity is "actually delivered" within 28 days. Under the Proposed Interpretation, the CFTC would consider the following factors requisite for actual delivery to have occurred within the context of virtual currency:

- Within 28 days from the date of the Retail Commodity Transaction, the customer must be able to both:
  - Take possession and control of the entire quantity of the virtual currency, regardless of whether the purchase was made on margin, using leverage, or under some other financing arrangement
  - Use the purchased virtual currency freely in commerce, both within and outside of any particular platform
- Upon expiration of such 28-day period, the offeror, counterparty seller and any respective affiliates thereof must not retain any interest or control over the virtual currency that was purchased on margin, leverage, or through some other financing arrangement

The public comment period in respect of the Proposed Interpretation will end on March 20, 2018.

The Proposed Interpretation can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2017-12-20/pdf/2017-27421.pdf**.

VII. OTHER CFTC SWAPS REGULATORY UPDATES

A. Extended Relief from Transaction-Level Requirements for Foreign SDs

In November 2013, DSIO issued a staff advisory providing that a non-US Swap Entity that regularly uses personnel or agents located in the U.S. (**US Personnel**) to arrange, negotiate or execute a swap with a non-US person would generally be required to comply with "transaction-level" requirements applicable to Swap Entities, regardless of the location of their counterparty (**2013 ANE Advisory**). DSIO issued a no-action letter on November 26, 2013 (**CFTC Letter No. 13-71**), granting time-limited relief from compliance with transaction-level requirements under the 2013 ANE Advisory for non-US Swap Entities with respect to swaps with non-US person counterparties that are neither "guaranteed affiliates" nor "conduit affiliates" of a US person using US Personnel to arrange, negotiate or execute such swaps (**ANE Transactions**). On July 25, 2017, CFTC staff further extended the relief originally provided in CFTC Letter No. 13-71, until the effective date of any CFTC action addressing whether a particular transaction-level requirement is or is not applicable to an ANE Transaction (**CFTC Letter No. 17-36**).

CFTC Letter No. 17-36 can be found at: **http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-36.pdf**.

B. Position Limits Status Update

The CFTC has federal position limits (**Federal Position Limits**) in effect for certain agricultural futures and option contracts (**Legacy Agricultural Contracts**). While various amendments to the CFTC position limits regime have been proposed, which would expand the Federal Position Limits to include position limits on certain metals and energy contracts, as well as on additional agricultural contracts beyond the Legacy Agricultural Contracts, such amending regulation is in (re-)proposed form and has not yet been finalized (the **Proposed CFTC Position Limits**).

1. Reproposed Position Limits

While the CFTC reproposed amendments to its position limits regime on December 5, 2016, the Proposed CFTC Position Limits have not yet been finalized.

The CFTC's most recent proposal can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2016-12-30/pdf/2016-29483.pdf**.

2. Finalized Aggregation Rules

While the Proposed CFTC Position Limits have not yet been finalized, the related aggregation rules were adopted by the CFTC on December 5, 2016 (the **CFTC Aggregation Rules**) and apply to existing CFTC position limits (*i.e.,* to Legacy Agricultural Contracts) as of February 14, 2017, though DMO has issued time-limited no-action relief until August 12, 2019 for compliance with certain requirements in respect of an exemption under the CFTC Aggregation Rules (**CFTC Letter No. 17-37**). Under the CFTC Aggregation Rules, market participants are generally required to aggregate their positions with the positions of another person in each of the following instances, absent an applicable exemption:

- **Control:** The market participant directly or indirectly controls the trading of such other person
- **Ownership:** The market participant holds ≥10% ownership or equity interest in such other person
- **Substantially Identical Trading:** Even if an exemption from aggregation would otherwise be available, any market participant that – by power of attorney or otherwise – holds or controls the trading of positions in more than

one account or pool with substantially identical trading strategies, such market participant must aggregate all such positions with all of its other positions or trading.

The CFTC's adopting release can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2016-12-16/pdf/2016-29582.pdf**; and CFTC Letter No. 17-37 can be found at: **http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-37.pdf**.

Exchanges also impose position limits or accountability levels for certain futures and options for which no regulatory position limits apply (**Exchange Position Limits**), and have amended their respective rulebooks to incorporate aggregation rules in respect of Exchange Position Limits which are analogous to the CFTC Aggregation Rules.

C. Proposed Regulation AT Status Update

After re-proposing Regulation Automated Trading on November 4, 2016 (**Proposed Regulation AT**), on January 23, 2017, the CFTC extended the comment period in respect of Proposed Regulation AT, through May 1, 2017.

Proposed Regulation AT would impose risk controls, transparency measures and other requirements on (i) certain market participants (*i.e.,* **AT Persons**) using algorithmic trading systems (**ATS**), (ii) clearing member FCMs, with respect to their AT Person customers, and (iii) US DCMs executing AT Person orders. Proposed Regulation AT would also require certain proprietary traders to register with the CFTC as **floor traders** if such traders (x) are engaged in algorithmic trading through direct electronic access (**DEA**) to a DCM and (y) are not otherwise registered with the CFTC in any capacity. Proposed Regulation AT represents an effort by the CFTC to streamline certain regulatory requirements originally proposed by the CFTC in November 2015.

Proposed Regulation AT would:

- Apply across all commodity interest trading on or subject to the rules of a DCM, where either (i) computer algorithms or systems determine whether to initiate, modify or cancel an order or (ii) computers make other determinations (*e.g.,* which product to trade and order timing, quantity and volume) with respect to any commodity interest trade on or subject to the rules of a DCM (**Algorithmic Trading**)

- Define AT Persons to include any person registered or required to be registered with the CFTC as an FCM, floor broker, Swap Entity, CPO, CTA, IB or floor trader that engages in Algorithmic Trading on or subject to the rules of a DCM

Proposed Regulation AT would explicitly exclude from the definition of Algorithmic Trading, orders (or modifications thereto or cancellations thereof) for which every parameter is manually entered into a front-end system by a person, with no further discretion by any computer system or algorithm. Most notably, the CFTC's original proposal would have required AT Persons to, among other things:

- Maintain a repository of its source code used for algorithmic trading (**AT Source Code**), which must include (among other things) an audit trail of material changes to AT Source Code that would allow the AT Person to determine (i) who made the material change, (ii) when such material change was made and (iii) the rationale for such material change

- Manage AT Source Code access, persistence, copies of production code and changes to production code

- Make such repository available for inspection by the CFTC and/or the US Department of Justice (the **DOJ**)

This last requirement was by far the most controversial requirement in the original proposal. The CFTC responded to industry concerns raised during the initial comment period by hosting a public roundtable on June 10, 2016, and subsequently reopening the comment period before publishing its supplemental proposal.

Proposed Regulation AT amends the CFTC's original proposal as follows:

- **Risk Control Framework.** Proposed Regulation AT would replace the originally proposed three-level risk control structure (*i.e.,* risk controls imposed at Persons, FCMs and DCMs), with a two-level structure (*i.e.,* risk controls imposed on the DCM and either the AT Person or its FCM).

- **CFTC Registration.** Proposed Regulation AT would incorporate a volume-based test for floor trader registration; this volume threshold would also apply in determining whether a CFTC registrant is an AT Person subject to Regulation AT.

- **AT Source Code.** Under Proposed Regulation AT, AT Source Code and related records would be subject to preservation pursuant to rules separate from the CFTC's general recordkeeping requirements. Further, the CFTC would have access to the following items via a subpoena or "special call" approved by the CFTC:

  - AT Source Code

  - Records tracking changes to an AT Person's AT Source Code

  - Log files recording the activity of an AT Person's ATS

- **Reporting to DCMs.** Proposed Regulation AT would: (i) replace the originally proposed annual compliance report, with an annual certification requirement consisting of the AT Person or FCM, as applicable, attesting that it complies with Regulation AT; and (ii) replace the originally proposed requirement that DCMs review AT Person and FCM annual compliance reports, with an obligation for DCMs to establish a program for periodic review of AT Person or FCM compliance with Regulation AT, as applicable.

- **Third-Party Algorithmic Trading Systems.** Proposed Regulation AT would provide AT Persons using third-party ATS with options to facilitate regulatory compliance, including the ability to satisfy Regulation AT's development and testing requirements with a combination of third-party certifications and the AT Person's own due diligence efforts.

Importantly, Commissioner Quintenz has stated that the CFTC should not "regulate and dictate all algorithmic trading activity" and, instead, should try to comprehend and deal with automated trading risk. Additionally, Commissioner Quintenz indicated that the previously proposed requirement that AT Source Code be maintained in a special repository was "D-E-A-D." There have been no formal regulatory developments in respect of Proposed Regulation AT since the comment period closed last spring.

The CFTC's supplemental proposal can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2016-11-25/pdf/2016-27250.pdf**.

D. Proposed SD/MSP Capital Rules

On December 2, 2016, the CFTC approved a proposal to adopt new regulations and to amend existing regulations to implement Sections 4s(e)-(f) of the CEA with respect to capital requirements for CFTC Swap Entities, along with related financial reporting and recordkeeping requirements. In March 2017, the CFTC extended the public comment period for the proposed capital requirements, until May 15, 2017.

The CFTC's proposal can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2016-12-16/pdf/2016-29368.pdf**; and the CFTC's extension of the comment period can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2017-03-16/pdf/2017-05277.pdf**.

VIII. SEC SECURITY-BASED SWAP REGULATORY UPDATE

A. Security-Based Swap Rulemaking Status Update

Compliance with many of the SEC's finalized security-based swaps regulations is contingent on the occurrence of the **SBS Entity Registration Compliance Date**, which will be the latest of the following:

- Six months following publication in the Federal Register of the SEC's final rules establishing capital, margin and segregation requirements for SBSDs and MSBSPs (collectively, **SBS Entities**)
- Compliance date of the SEC's final rules establishing recordkeeping and reporting requirements for SBS Entities
- Compliance date of the SEC's final business conduct rules
- Compliance date of final rules establishing a process for an SBS Entity to apply to the SEC to permit a statutorily disqualified associated person (**AP**) to effect or be involved in effecting security-based swaps on behalf of the SBS Entity

Of these, the SEC has thus far only adopted its external business conduct standards for SBS Entities (the **SEC EBC Rules**) (discussed below). The compliance date for the SEC EBC Rules will be the SBS Entity Registration Compliance Date. The remainder of the above-listed rulemakings have been proposed, but have not yet been finalized by the SEC.

B. SBSDR Rules Compliance Date

On March 31, 2017, the SEC published an order further delaying compliance with Rules 13n-1 to 13n-12, as currently amended, with respect to security-based swap data repository (**SBSDR**) registration, duties and core principles (**SBSDR Rules**) until the later of (i) May 1, 2017 and, (ii) for any SBSDR applicant that filed an amendment to its pending SBSDR application with the SEC prior to May 1, 2017, September 29, 2017. While the SBSDR Rules adopting release originally provided for a compliance date of March 18, 2016, the SEC had thrice previously extended the SBSDR Rules compliance date, most recently to April 1, 2017, to allow the SEC additional time to review and consider issues related to the SBSDR registration applications it had received thus far. The most recent extension of the SBSDR Rules compliance date was meant to allow the SEC to review the SBSDR registration applications that it has received and to consider issues related to those applications. Two SBSDR applicants filed amended SBSDR applications with the SEC prior to May 1, 2017 – DTCC Data Repository (U.S.), LLC (on April 28, 2017) and ICE Trade Vault (on May 1, 2017) – meaning that compliance with the SBSDR Rules was required on September 29, 2017 for these two SBSDR applicants, and on May 1, 2017 for all other SBSDR applicants.

However, while the SBSDR Rules have gone into effect, the SEC's 2016 amendments to its security-based swap data reporting rules (**Regulation SBSR**) clarified that compliance with Regulation SBSR has been delayed until the later of: (i) six months after the date on which the first SBSDR that can accept transaction reports in an asset class registers with the SEC; and (ii) one month following the SBS Entity Registration Compliance Date (which, as noted above, is itself contingent on the finalization and effectiveness of various SEC security-based swap rulemakings).

The SEC's most recent order can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2017-04-06/pdf/2017-06793.pdf**; the SEC's notice of DTCC's amended SBSDR application can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2017-08-09/pdf/2017-16715.pdf**; and the SEC's notice of ICE's amended SBSDR application can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2017-08-01/pdf/2017-16173.pdf**.

C. Security-Based Swaps as "Securities"

Title VII of the Dodd-Frank Act amended the definition of "security" under the Securities Exchange Act of 1934 (the **Exchange Act**) to expressly include security-based swaps. On July 1, 2011, the SEC issued an exemptive order granting temporary exemptive relief from compliance with certain provisions of the Exchange Act which would otherwise be applicable to security-based swaps by virtue of their being encompassed by the "securities" definition. The SEC's 2011 exemptive order distinguished between (i) temporary exemptions related to pending security-based swap rulemakings (**Linked Temporary Exemptions**) and (ii) temporary exemptions that were generally not directly related to a specific security-based swap rulemaking (**Unlinked Temporary Exemptions**). On February 10, 2017, the SEC extended its exemptive relief in respect of the Linked Temporary Exemptions, which was due to expire under a previous extension on February 11, 2017, until February 11, 2018; on January 18, 2017, the SEC extended its exemptive relief in respect of Unlinked Temporary Exemptions, which was due to expire on February 5, 2017 under a previous extension, until February 5, 2018. Notwithstanding the SEC's exemptive orders, security-based swaps remain subject to the SEC's antifraud, anti-manipulation and insider trading enforcement authority.

The SEC's most recent order in respect of Linked Temporary Exemptions can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2017-02-15/pdf/2017-03121.pdf**; and the SEC's most recent order in respect of its Unlinked Temporary Exemptions can be found at: **https://www.gpo.gov/fdsys/pkg/FR-2017-01-25/pdf/2017-01620.pdf**.

IX. EU DERIVATIVES REGULATORY UPDATES

A. EU Clearing Developments

An important development in 2017 was the delay in the application of the clearing obligation to smaller FCs until June 21, 2019 (instead of June 21, 2017).

Following the European Securities and Markets Authority's (**ESMA's**) public consultation during 2016 and receipt of opinions from various stakeholders, a Commission Delegated Regulation was published on April 29, 2017, which amended the deadline for compliance with clearing obligations for certain counterparties trading OTC derivatives.

By June 21, 2019, the requirement to clear OTC interest rate and index credit default swaps will apply to FCs (**Category 3 Entities**) that both:

- Are not clearing members of a CCP in respect of at least one of the clearing classes
- Belong to a group whose aggregate month-end average gross notional amount of outstanding non-centrally cleared derivatives for the relevant assessment period is below €8 billion

It remains to be seen whether this exemption will actually be used by Category 3 Entities, as counterparties are being offered better pricing if they clear and certain FCs refuse new lines of credit without clearing.

It should also be noted that non-financial counterparties above the clearing thresholds (*i.e.,* NFC+) (**Category 4 Entities**) will be required to start clearing on December 21, 2018, a few months before the analogous requirement for Category 3 Entities.

ESMA's Commission Delegated Regulation can be found at: **http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0751&from=EN**.

B. Review of EMIR's Implementation

The EC launched a public consultation in May 2015 on the implementation of EMIR so far, in order to fulfill its mandate under EMIR to review the impact of the regulation three years after its adoption. The EC's final report, which included a legislative proposal, was published on May 4, 2017. Rather than fundamental reform, the legislative proposal sets out a number of targeted modifications of EMIR, which are designed to eliminate disproportionate costs and burdens, and to simplify the rules promulgated thereunder. The EC's proposal was further amended by the Council of the European Union (the **Council**) on November 15, 2017.

The EC's proposal would impact the following rulemaking areas in particular:

- **FC Definition.** The definition of FCs would be amended to cover alternative investment funds (**AIFs**) registered under national law which are currently considered to be NFCs. All third-country AIFs would be considered to be third-country entities that would be FCs if established in the EU (*i.e.,* TCEs (FC)), regardless of whether they are managed by an AIF manager authorised or registered in the EU. Central securities depositories would also be caught by the FC definition.

- **Clearing Thresholds.** The EC's proposal would affect the clearing thresholds for NFCs and smaller FCs, as well as the method for calculating whether or not the relevant clearing thresholds have been exceeded. NFCs would only be subject to mandatory clearing for those classes of OTC derivatives for which they exceed the clearing threshold, but they may still be treated as an NFC+ for all other purposes (*e.g.,* margining of uncleared transactions). The following clearing thresholds would also be introduced for small FCs: €1 billion for credit and equity derivatives contracts, and €3 billion for interest rate, FX, commodity and other OTC derivatives. In contrast to the proposed treatment of NFCs, FCs would be required to clear all OTC derivatives that fall within the scope of the clearing requirement if they exceed the relevant clearing threshold for any one asset class, and hedging transactions would be **included** in the determination of whether or not the clearing thresholds have been exceeded. Margin and other risk mitigation obligations would continue to apply to smaller FCs, regardless of whether they exceed the relevant clearing thresholds. Counterparties would need to calculate whether or not they exceed the clearing thresholds by reference to their aggregate month-end average positions for March, April and May in each year (rather than a 30-day rolling average).

- **Other Clearing-Related Provisions.** The EC's proposal would affect: (i) market participants' access to clearing; (ii) exemptions for pension scheme arrangements; and (iii) frontloading requirements. The proposed legislation would also introduce the possibility for the EC to suspend the clearing obligation in specific circumstances.

- **Derivatives Reporting.** Under the EC's proposal: (i) CCPs would be responsible for reporting all exchange-traded derivatives on behalf of their direct clients; (ii) FCs would be responsible for reporting on behalf of their NFC counterparties; (iii) intra-group transactions would no longer have to be reported where at least one of the counterparties is an NFC; and (iv) the obligation to report historic trades that were no longer outstanding on the reporting start date (*i.e.,* February 12, 2014) would be removed.

- **Risk Mitigation Procedures.** Such procedures would be subject to ongoing supervisory procedures, including (i) with respect to the level and type of collateral and segregation arrangements and (ii) to ensure initial and ongoing validation of counterparties' risk management procedures.

The EC's proposal is still going through the EU legislative process, and is likely to be finalised and published at the end of 2018.

The EC's proposal can be found at: **https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-208-F1-EN-MAIN-PART-1.PDF**.

C. Variation Margin in Respect of FX Forwards

On November 15, 2017, the Council published a Presidency compromise text in respect of the legislative proposal to amend EMIR. This is a follow up to the original EMIR amendment proposal, published on May 4, 2017.

Citing the need for international convergence, the Council proposed that physically-settled FX forwards shall no longer be subject to IM exchanges and shall only be subject to exchange of VM if they are concluded between institutions under the Capital Requirements Regulation (*i.e.,* credit institutions and investment firms). This is a major change and, if the proposal were to be adopted in its current form, NFCs and small FCs, who trade mainly physically-settled FX forwards to manage their currency risk exposures, would be exempt from margin requirements for these instruments.

Changes to the Regulatory Technical Standards amending margin requirements for non-centrally cleared OTC derivatives were published by the European Supervisory Authorities (**ESA**) on December 18, 2017 and need to be endorsed by the EC. It is expected that these changes will take effect during the first quarter of 2018.

The proposal must still make its way through the EU legislative process and for the moment it is unclear how long this will take. As these proposals are not yet in place and the January 3, 2018 deadline for collecting VM for FX forwards has already passed, European authorities and national competent authorities are expected to give forbearance on any enforcement in anticipation of the rules being changed pursuant to an ESA joint statement published on November 24, 2017 allowing for flexibility in enforcement.

The Presidency compromise text can be found at: **http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_14372_2017_INIT&from=EN**.

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Latham & Watkins' lawyers advise clients with respect to the full range of over-the-counter (OTC) and exchange-traded derivative products. Latham's derivatives practitioners have experience with swap, option and structured-note transactions involving established products, such as interest rates, currencies, commodities, securities and credit. In addition, the firm provides counsel with respect to emerging products and structures, such as those relating to weather, longevity and property derivatives. Latham's lawyers have extensive experience with the full life cycle of relevant products, from new product development and assessment, to transaction execution and documentation, and on-going legal risk management, including defaults, regulatory-inquiry response, and customer complaints and litigation.

For more information, please visit our Derivatives practice page on our website at https://www.lw.com/practices/Derivatives.

[1] *See* Testimony of J. Christopher Giancarlo Chairman U.S. Commodity Futures Trading Commission before the House Committee on Agriculture (Oct. 11, 2017), *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-29 (**Agriculture Committee Testimony**); Keynote Remarks of Commissioner Brian Quintenz before the Symphony Innovate 2017 Conference (Oct. 4, 2017), *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/opaquintenz1 (**Symphony Innovate Keynote**).

[2] *See* Remarks of Commissioner Brian Quintenz at the Technology and Standards: Unlocking Value in Derivatives Markets Conference (Nov. 30, 2017), *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/opaquintenz4.

[3] *See* Remarks of Chairman J. Christopher Giancarlo at the Singapore FinTech Festival (Nov. 15, 2017), *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo32.

[4] *See* Symphony Innovate Keynote; Agriculture Committee Testimony.

[5] CFTC Release, Chairman Giancarlo Statement on Virtual Currencies: CFTC Also Releases Backgrounder on Oversight of and Approach to Virtual Currency Futures Markets (Jan. 4, 2018), *available at* http://www.cftc.gov/PressRoom/PressReleases/giancarlostatement010418; *see* Symphony Innovate Keynote.

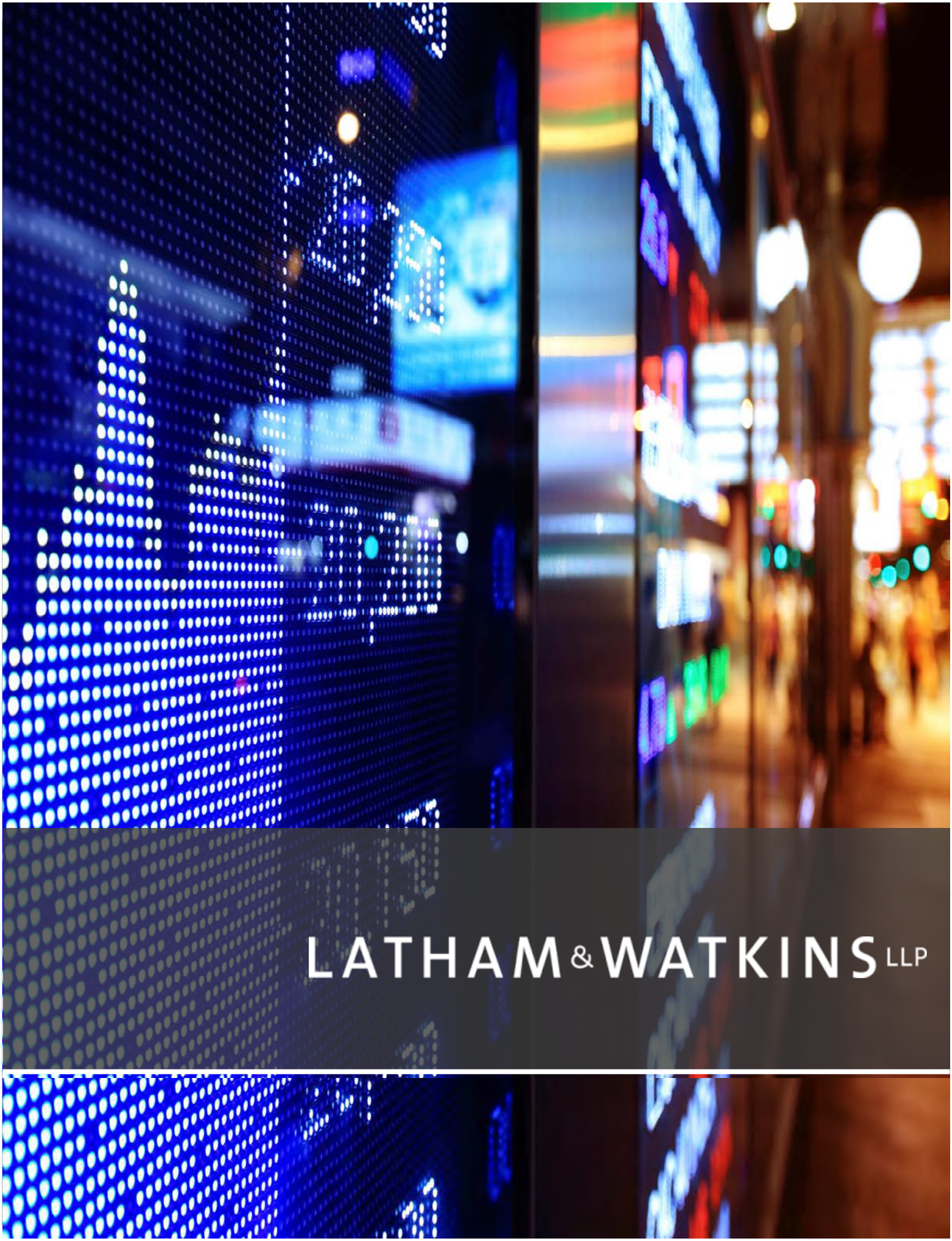
[6] *See* Symphony Innovate Keynote.

[7] *See* Agriculture Committee Testimony; Remarks of CFTC Chief of Staff Michael Gill to the Futures Industry Association of Japan (Nov. 10, 2018), *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/opagill1.

[8] *See* Giancarlo in Paris' Les Échos: Deference is the Path Forward in Cross-Border Supervision of CCPs (Sept. 11, 2017), *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/giancarlooped091117 (**Paris Remarks**); Remarks of CFTC Chairman J. Christopher Giancarlo before the Eurofi Financial Forum (Sept. 14, 2017), *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-28 (**Eurofi Remarks**); Farewell Address of CFTC Commissioner Sharon Y. Bower at the Institute of International Economic Law at the Georgetown University Law Center (Sept. 25, 2017), *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/opabowen-16.

[9] *See* Eurofi Remarks; Paris Remarks.

[10] *See* Remarks of CFTC Chairman J. Christopher Giancarlo to the ISDA Regulators and Industry Forum, Singapore (Nov. 13, 2017), *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo31; WSJ Opinion/Commentary: Chairman J. Christopher Giancarlo (Nov. 6, 2017), *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/giancarloopinion110617.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