CFTC Releases White Paper Addressing Cross-Border Swaps Regulation; CFTC and Australian Securities Regulator Sign FinTech Cooperation Agreement

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CFTC Releases White Paper Addressing Cross-Border Swaps Regulation

On October 1, Commodity Futures Trading Commission Chairman J. Christopher Giancarlo released a white paper addressing the regulation of cross-border swaps. The white paper, titled “Cross-Border Swaps Regulation Version 2.0: A Risk-Based Approach with Deference to Comparable Non-U.S. Regulation,” sets forth various proposed changes to the CFTC’s current cross-border approach.

Among other things, the white paper recommends that the CFTC expand the use of its exemptive authority for non-US swaps central counterparties (CCPs) that do not pose substantial risk to the US financial system and that are subject to “comparable, comprehensive supervision and regulation” by appropriate governmental authorities in the home country of the CCPs. More specifically, these non-US CCPs should be permitted to provide clearing services to US customers indirectly through non-US clearing members without registering as derivatives clearing organizations or futures commission merchants, respectively.

The white paper also recommends that the CFTC should generally exempt from swap execution facility (SEF) registration non-US trading venues that are regulated in jurisdictions that are comparable to the United States. Similarly, the white paper proposes a deferential approach that would permit non-US persons to rely on substituted compliance with respect to the swap clearing and trade execution requirements in comparable jurisdictions.

With respect to non-US swap dealers regulated by comparable jurisdictions, the white paper proposes that non-US persons whose swaps are guaranteed by a US person (Guaranteed Entities) generally should be required to count all their swap dealing activity toward the de minimis threshold. In contrast, other non-US persons, including foreign consolidated subsidiaries of a US parent entity, should not be required to count toward the de minimis threshold swaps with (1) Guaranteed Entities that are registered as swap dealers (or are affiliated with a registered swap dealer), (2) Guaranteed Entities that are guaranteed by a non-financial guarantor, or (3) foreign branches of US banks that are registered as swap dealers. In any event, all non-US dealers should be permitted to exclude from the de minimis threshold swaps executed anonymously on a registered SEF, designated contract market, or foreign board of trade and cleared by a registered or exempt clearing organization.

Finally, the white paper sets forth two main proposals with respect to US swaps that are arranged, negotiated or executed within the United States by personnel or agents of non-US persons. As proposed in the white paper, any swap that is executed in the United States should be subject to US swap execution rules. Second, any swap that is arranged, negotiated or executed within the United States by personnel or agents of non-US persons should not count towards a potential non-US dealer’s de minimis threshold if the non-US dealer is in a
Chairman Giancarlo intends to instruct the CFTC staff to draft for the Commission's consideration rule proposals intended to implement the recommendations set out in the white paper.

The full white paper is available here.

**CFTC and Australian Securities Regulator Sign FinTech Cooperation Agreement**

The Commodity Futures Trading Commission and the Australian Securities and Investments Commission (ASIC) have entered into a cooperation arrangement on financial technology innovation. The arrangement is intended to facilitate cooperation and the sharing of information between the CFTC and ASIC relating to financial technology and the use of technology for purposes of regulation and oversight of financial markets and participants.

More information is available here.

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