

[Securities Regulation Daily Wrap Up, CFTC NEWS AND SPEECHES— Giancarlo discusses commodity reforms at Chicago Expo, \(Oct. 17, 2018\)](#)

Securities Regulation Daily Wrap Up

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By [Jay Fishman, J.D.](#)

Commodity Futures Trading Commission Chairman J. Christopher Giancarlo, on October 17, 2018, addressed attendees at the FIA Expo in Chicago, Illinois on various activities that occupied the CFTC during the first week of [October](#), including: (1) the FinTech Forward 2018 Conference; (2) the Technology Advisory Committee's (TAC) new look at automated trading in today's digital markets; (3) the Market Risk Advisory Committee's (MRAC) review of issues related to the movement away from LIBOR and SOFR; (4) the CFTC's highest-ever enforcement record; and (5) the new regulatory deference approach to cross-border swap and other commodity reforms.

FinTech Forward. This first-ever conference focused on key tech-driven financial market developments, with participants:

- Considering the impact of new technologies on markets and customers;
- Determining what regulators must do to remain forward-thinking in order to mitigate risks and educate customers and market participants; and
- Identifying emerging opportunities, risks, and challenges.

TAC's look at today's automated trading. Giancarlo, on proclaiming this Expo TAC's first meeting with the full CFTC since 2013, thanked TAC member-commissioners for their hard work sponsoring various committees (e.g., the energy and environmental markets committee, and the global markets and market risks advisory committees), and announced his decision to chair the agricultural advisory committee.

He then declared his having voted against his predecessor Chairman Massad's proposed Regulation AT (automated trading) primarily because it would put hundreds or thousands of automated traders under CFTC oversight, which he said the agency was under-resourced to handle. Nevertheless, he stated his determination to thoughtfully consider any Regulation AT elements that fellow commissioners, market participants, and the public believe could springboard a new and more effective rule.

LIBOR/SOFR elimination-related issues. Giancarlo mentioned approval of the MRAC's formation of a sub-committee to address emerging issues related to the movement away from LIBOR and SOFR.

Record setting enforcement. Giancarlo exclaimed record-setting enforcement for the CFTC during the fiscal year comprising October 2017 to September 2018. The CFTC reported, among other things:

1. More enforcement actions than ever before and more penalties resulting from those actions than the previous administration's past five out of eight years;
2. More large cases than ever before;
3. More manipulative conduct and spoofing cases; and
4. More whistleblower awards than in the program's entire history.

Deferential cross-border regulation. Giancarlo remarked upon the recent release of his white paper on cross-border regulation. He took this opportunity to state that the new approach to cross-border swaps and commodity regulation would be one of deference to other countries' commodities/swaps policies, and apologized to the international community for the CFTC's having taken a harsher approach in prior years. Giancarlo indicated that the white paper does not address every cross-border issue but lays out a high-level framework for approaching

the matter. He, moreover, announced his having directed the CFTC staff to begin the rulemaking process, with an appropriate comment period, to publish proposed and final regulations in the first half of 2019.

European Union's disheartening proposals. Giancarlo closed his address by expressing dismay over recent European Union (EU) legislative proposals that go totally against his deference approach to commodity regulation, by expanding the EU's and EU banks' regulatory and supervisory authority over EU and third-country central clearinghouses (CCPs). He said one negative effect for the U.S. would be a dramatic increase in the costs to clear at U.S. CCPs that are operating in the EU. Those escalated clearing costs, he said, would be inconsistent with U.S. law.

Giancarlo emphasized his recent talks with EU leaders, asking them to reconsider such an expansive approach that harkens back to the CFTC's 2013 regime. He declared that the CFTC will not stand for this overreach, and that in the absence of EU reconsideration, the CFTC will have no choice but to think through for implementation a range of readily available steps to protect U.S. markets and market participants.

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