Securities Regulation Daily Wrap Up, TOP STORY—CFTC's Giancarlo criticizes U.S. swap regulations and calls for a forward looking agenda, (Dec. 9, 2016)

Securities Regulation Daily Wrap Up

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By Brad Rosen J.D.

CFTC Commissioner J. Christopher Giancarlo issued a strong rebuke of the Commission's regulatory framework for swaps trading in a far reaching address to ISDA's Trade Execution Legal Forum this Friday in London. Giancarlo, the Commission's sole Republican member and frequently mentioned as a candidate to assume the chairmanship under the new administration, stated "[t]he time has come for the CFTC to revisit its flawed swaps trading rules to better align them with market dynamics, allow U.S. swap intermediaries to fairly compete in world markets and reverse the tide of global market fragmentation."

After leading off his remarks with critical comments about an "unrealistic" March 1 deadline imposed by regulators for implementing variation margin requirements for uncleared swaps that would pose "a massive challenge for market participants," Commissioner Giancarlo turned his remarks to his ambitious forward-looking agenda with a focus on three major megatrends which he identifies as transforming today's global markets. These include technological disruption, changing market liquidity, and global fragmentation.

Disruptive technologies. Commissioner Giancarlo pointed to three specific disruptive technologies which promise in time to transform the trading markets, including digital ledger technology, also known as blockchain; artificial intelligence guiding highly dynamic trade execution, which is also a key feature in high frequency trading; and the emergence of big data and digital data analysis.

While the CFTC and other global regulators have grappled with technology related issues over the years in connection automatic trading and its proposed Regulation AT, as well the emerging swap regulatory framework, the commissioner called for a much more concerted effort to usher in a new technological era in the financial markets. "Financial regulators should provide a dedicated team to help FinTech firms navigate through the various state, federal, and foreign regulators and regimes across domestic and international jurisdictions." he observed. Giancarlo continued, "financial regulators must address how to prevent death from a thousand cuts by numerous state, federal, and foreign regulators that look to provide services across various financial market regulatory jurisdictions."

"Problematic regulations." Commissioner Giancarlo also commented on the adverse changes in market liquidity in recent years which has been characterized by the declining role of money center banks and the emergence of proprietary trading firms that seek to have no open positions or exposure at day's end. He views this negative development as the result of reforms under the Dodd-Frank Act. Finally, the commissioner observed the fragmentation in the global markets which he sees as being driven mainly by the US regulation asserting "[o]verseas market participants avoid financial firms bearing the scarlet letters of "U.S. person" in certain swap products to steer clear of the CFTC's problematic regulations."

Clearly, Commissioner Giancarlo's remarks anticipate the dawn of a new regulatory environment and the central role he will be playing in it. In closing, the commissioner pledged to do his part to "enhance market health, vibrancy and durability."

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