Securities Regulation Daily Wrap Up, TOP STORY—CFTC reproposes position limits rules while approving final rules on aggregation, (Dec. 5, 2016)

Securities Regulation Daily Wrap Up

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By Brad Rosen J.D.

The CFTC reached a unanimous consensus today to issue a reproposed rule on position limits, as well as a final rule on the aggregation of positions. Recognizing that the winds of change are blowing at the CFTC, current Chairman Timothy Massad shared his candid assessment, "truthfully, the agency is in a time of transition. We didn't want to finalize a rule that the Commission would not embrace going forward." In a prepared statement, Massad elaborated, "I did not want to adopt a final rule today that the Commission would choose not implement or defend next year. Our markets and the many end-users and consumers that rely on them are served best by having reasonable and predictable regulation" (Release No. RIN 3038-AD82, December 5, 2016).

The reproposed rule, which implements limits on speculative futures and swaps positions as required by the 2010 Dodd-Frank Act, has a tortured history. A 2011 rule adopted by the Commission was highly controversial and later struck down by the courts. Another rule proposal was issued in 2013 and it too has been the subject of extensive discussion, commentary, and disagreement. In a similar vein, the current reproposal has been described by Commissioner J. Christopher Giancarlo in a separate statement as "very detailed and highly complex. It is over 700 pages in length and has over one thousand footnotes." This reproposed rule, however, is supported by all of the Commissioners, and all see it as precursor to the enactment of a final and viable rule. "We have been working hard to get the rule right," observed Chairman Massad.

The reproposed rule includes revised limits on speculative positions for 25 core physical commodity futures contracts and their related options and swaps instruments. The Commission is deferring action on three cash settled commodities. For some of these contracts, the proposed limits are higher than the exchange limits in place today, while in other contracts the limits will actually be lower, especially in the energy sector where deliverable supplies have increased over the years.

Further changes have been proposed regarding the definition of bona fide hedging, exemptions for bona fide hedging in physical commodities, granting spread exemptions, and the ability of exchanges to grant non-enumerated hedge exemptions. Additionally, the reproposed rule includes requirements and acceptable practices for designated contract markets and swap execution facilities for setting position limits. The reproprosal includes updated reporting requirements as well.

At the conclusion of his remarks, Commissioner Giancarlo welcomed commenters' views on the reproposal, and optimistically stated "with their added insight we can finalize a position rule limits rule in 2017 that is workable and does not undo years of standard practice in these markets." The period for public comment for this rule will remain open for 60 days following its publication in the *Federal Register*.

The release is No. RIN 3038-AD82.

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