

US derivatives regulation: a pause in 2017, and a look ahead to 2018

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Introduction

In 2017 there were some moves toward reevaluation of the US regulatory landscape for derivatives under the new administration, but few major changes. The unfinished regulatory priorities from the prior administration were generally not addressed, yet there was no significant rollback of the Dodd-Frank Act regulations on derivatives that had previously been imposed. In part, this reflects the turnover at the relevant financial regulatory agencies, which for large parts of the year were without a full complement of commissioners or relevant senior staff.

During 2017 the US Treasury Department issued its second report on the financial system (Capital Markets Report), which included significant analysis of the regulation of the derivatives markets.⁽¹⁾ The report identified and endorsed a number of concerns raised over the years by market participants regarding the Dodd-Frank Act and its implementation, but proposed few fundamental changes to the derivatives regulatory framework. The report set out a number of specific proposals relating to:

- the refinement of margin requirements;
- regulatory harmonisation;
- the capital treatment of derivatives;
- the scope of end-user exemptions;
- market infrastructure;
- the supervision and use of financial market utilities; and
- the structure and process of regulatory agencies.

Although few concrete actions have been taken, it seems likely that 2018 will see steps toward addressing these priorities.

2017 also saw significant attention paid by regulators to technological developments in the derivatives markets – in particular, trading in virtual currencies and related derivatives and financial products. It is likely that this focus will continue – and expand – in 2018, as the trading markets for these products evolve.

Significant derivatives regulatory developments outside the United States also occurred during the past year – in particular:

- the implementation of the Markets in Financial Instruments Directive (MiFID II) and related developments in the European Union; and
- increasing concern over the potential effects of Brexit.

These will have continuing implications for the overall development of the derivatives markets, and

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the prospects for regulatory harmonisation (or conflict) between regulators in the United States and Europe.

The following discussion is intended to highlight some of the key developments in 2017 and examine some areas that are expected to change in 2018.

New faces

Commodity Futures Trading Commission (CFTC)

At the CFTC, Commissioner J Christopher Giancarlo served as acting chair following the departure of Chair Timothy Massad in January 2017. Giancarlo was nominated by the administration to lead the CFTC full-time in March 2017, and in August Giancarlo was officially confirmed by the Senate.

Joining Giancarlo at the CFTC as commissioners are Republican Brian Quintenz and Democrat Rostin Behnam, both of whom were confirmed by the Senate in August. Democratic Commissioner Sharon Bowen stepped down in September, leaving two vacancies on the commission. Republican Dawn Stump has been nominated to fill one of the positions; however, her nomination is not being advanced to the Senate until a Democratic counterpart is named in order to confirm them as a slate, following historical practice.

Securities and Exchange Commission (SEC)

Former SEC Chair Mary Jo White stepped down from her post in January 2017 and was temporarily replaced by Commissioner Michael Piwowar. Piwowar served as acting chair until May, when Jay Clayton was sworn in as chair of the SEC.

In January 2018 Democrat Robert Jackson and Republican Hester Peirce were sworn in as SEC commissioners. They join incumbent Commissioners Michael Piwowar and Kara Stein to give the SEC its first full commission since 2015.

Board of Governors of the Federal Reserve System

In January 2018 the Senate confirmed former Federal Reserve (or board) Governor Jerome Powell as chair of the Federal Reserve. Powell replaces former Federal Reserve Chair Janet Yellen, who had the option to stay on the board as a governor but has announced that she will resign from the board once Powell is sworn in as chair.

Randal Quarles was approved by the Senate as the Federal Reserve vice chair of supervision in October 2017. This will be the first time that the position, which was created by the Dodd-Frank Act, will be filled. Former Federal Reserve Vice Chair Stanley Fischer also resigned from the board in October, and former Governor Daniel Tarullo resigned in April.

In November 2017 the administration nominated Carnegie Mellon University professor and former Federal Reserve economist Marvin Goodfriend to fill one of the board's vacancies. If confirmed, Goodfriend will join Federal Reserve Governor Lael Brainard on the board; however, the administration would still need to find a replacement for Fischer as vice chair, along with two more governors after Yellen's official resignation.

Office of the Comptroller of the Currency (OCC)

Former Comptroller of the Currency Thomas Curry's term expired in May 2017. He was briefly replaced by Keith Noreika, who served as acting comptroller of the currency until the administration's nominee Joseph Otting was sworn in in November 2017.

Federal Deposit Insurance Corporation (FDIC)

The administration initially nominated James Clinger to succeed FDIC Chair Martin Gruenberg; however, Clinger announced in July 2017 that he would be withdrawing his name from consideration. In November, the administration nominated Jelena McWilliams, current Fifth Third Bancorp chief legal officer and former Senate Banking Committee staffer, to fill the position. Gruenberg's term officially expired November 29 2017; however, under FDIC rules, he is permitted to stay on until his successor is approved by the Senate, which he intends to do.

Ongoing regulatory activity

Regulation AT

During this past year the CFTC did not finalise its proposed rule relating to high-frequency and electronic trading, known as Regulation Automated Trading (Regulation AT).⁽²⁾ The comment period on the updated proposal ended on May 1 2017, and there have been no further public statements or actions since the comment period expired. Notably, it appears that the controversial requirement to submit source code for trading algorithms to the CFTC may be struck from any final rule, as Giancarlo and Quintenz have remained strong, vocal opponents of its implementation, and Quintenz has publicly proclaimed that the so-called 'source code repository' proposal has been shot down.⁽³⁾ More generally, further progress may have to wait for a full commission, but given the scope of public opposition to the proposal and the change of administration, it seems likely that any final rulemaking may differ significantly from the proposal.

Position limits

While Giancarlo has frequently discussed his commitment to finalising the CFTC's long-debated (and long-delayed) position limits rule,⁽⁴⁾ he has also repeatedly expressed the importance of having a full commission before doing so.⁽⁵⁾ In addition, the Capital Markets Report recommended that the CFTC finalise its rule on position limits, specifically taking into consideration hedging exemptions, manipulation risks and deliverable supply.⁽⁶⁾ It remains to be seen how the new commissioners will view the substantive issues raised by the proposed rule in light of the longstanding concerns about the rule raised by many market participants and whether the CFTC will make it a priority in 2018.

De minimis threshold

On October 26 2017 the CFTC announced that it would keep the swap dealer *de minimis* registration threshold at \$8 billion until December 31 2019.⁽⁷⁾ The *de minimis* threshold was previously scheduled to revert to \$3 billion on December 31 2018, as provided under the terms of the Commodity Exchange Act, unless the CFTC acted.⁽⁸⁾ The CFTC stated that the one-year extension will provide the commission additional time to better conduct its data analysis on the matter and determine the best course of action.

Security-based swaps

The SEC has not yet implemented or finalised many of the key components of the Dodd-Frank Act reforms relating to security-based swaps. In particular, certain more difficult or controversial topics, including margin and capital requirements for security-based swaps, have yet to be addressed in any final rules. As a result, security-based swap dealer registration is not yet required, and accompanying requirements for security-based swaps are generally not in effect. The Treasury Capital Markets Report urged the SEC to implement its security-based swap rules fully, while working in close coordination with the CFTC.⁽⁹⁾ Clayton has also highlighted the importance of working with the CFTC to harmonise their respective rulemakings.⁽¹⁰⁾ However, the SEC has provided little guidance on the potential timing of the finalisation of security-based swap regulations, and the topic remains listed as a long-term (and not 2018) matter on the SEC's most recent semi-annual regulatory agenda.⁽¹¹⁾

Margin for uncleared swaps

Pursuant to the final margin rules as published by the US prudential regulators and the CFTC (margin rules), certain entities, including regulated swap dealers, (swap entities) and financial users of derivatives undertook a significant overhaul of their trading documentation to meet deadlines concerning regulatory compliant margining. As of March 1 2017 swap entities became required to arrange for compliant posting and collecting of variation margin in respect of certain swaps with any counterparties classified as financial end users, which include buy-side entities other than non-financial corporate end users.⁽¹²⁾ Although variation margin has been frequently used in the relevant markets before the rules became effective, the new regulations required significant changes to existing trading documentation. In light of difficulties experienced by swap entities in amending or executing new documentation with all of their relevant counterparties, both the prudential regulators and the CFTC provided limited relief by extending the compliance deadline to September 1 2017 under certain circumstances.⁽¹³⁾

Also as of September 1 2017 swap entities were required to implement initial margining arrangements with certain financial counterparties that traded larger volumes of swaps.⁽¹⁴⁾ In particular, swap entities were required to update their trading relationships to provide for the collecting of initial margin from other swap entities and the posting and collecting of initial margin

with any financial end users with material swaps exposure⁽¹⁵⁾ for all counterparties that had an average daily aggregate notional amount of certain derivative transactions in excess of \$2.25 trillion during March, April and May 2017. Although the implementation of the initial margin requirements marks a more significant departure from prior practice than the variation margin requirements, only a relatively small number of additional financial institutions became subject to the initial margin requirements under this threshold.

Looking forward, swap entities will be required to implement additional initial margin arrangements with their counterparties as the margin rules continue to phase in. On September 1 2018 they will be required to update their trading relationships to provide for the posting and collecting of initial margin with any financial end-user counterparties with material swaps exposure that have an average daily aggregate notional amount of certain derivative transactions in excess of \$1.5 trillion for March, April and May 2018. Beyond 2018, regulatory-compliant initial margining arrangements for additional counterparties will continue to be phased in on September 1 of 2019 and 2020 (such that by September 1 2020, initial margin posting and collecting will be required with all counterparties that have material swaps exposure).⁽¹⁶⁾

More generally, the Capital Markets Report recommends certain refinements to US margin requirements, citing that many are too restrictive and put US market participants at a disadvantage compared to their international counterparts. In particular, the report suggests that US regulators:

- exempt inter-affiliate transactions from margin requirements;
- provide more flexible timeframes for posting and collecting margin; and
- take a more risk-based approach to margin requirements.

The report also recommends that the SEC re-propose and finalise its non-cleared security-based swaps margin rules. Given the difficulties in agency coordination (including on a cross-border basis, given the goals of harmonisation of margin requirements across jurisdictions), and the significant efforts already made by market participants toward implementing the existing requirements, the prospects for these refinements in 2018 are uncertain.

Cross-border issues

The recent implementation of the revised MiFID II and the negotiation of the United Kingdom's exit from the European Union raised new cross-border issues in 2017. Notably, the CFTC and European Commission reached comparability understandings on two key issues: equivalence of uncleared swap margin requirements and recognition of trading venues for mandatory swap trading purposes. As a result, a swap entity subject to both CFTC and EU margin rules with respect to uncleared swaps may rely on substituted compliance with EU rules where permitted under the CFTC's cross-border margin framework.⁽¹⁷⁾ In addition, the CFTC and European Commission announced a comparability determination framework for mutual recognition of trading venue registration rules, which was finalised in December 2017.⁽¹⁸⁾ Under this framework, the European Union has determined that CFTC swap execution facility (SEF) registration rules are comparable to EU trading venue registration rules, and the CFTC has determined that EU registration requirements for organised trading facilities and multilateral trading facilities satisfy the Commodity Exchange Act standard for granting an exemption from the SEF registration requirement. As a result, it will generally be possible for persons subject to the EU mandatory trading requirement for swaps under MiFID II to comply by trading on CFTC-registered SEFs.

The possibility of Brexit has raised new cross-border complications, including for central counterparties (CCPs). In 2016 the CFTC and European Commission reached an understanding on CCP regulation that permitted the European Commission to determine that US regulation of CCPs by the CFTC was equivalent to European regulation, thereby allowing US CCPs to continue to do clearing business with European persons. In the wake of the United Kingdom's decision to leave the European Union, the European Commission proposed rules which would provide the European financial regulators with greater authority over third-country CCPs, including those located in the United States, and in some cases could require CCPs to be domiciled in the European Union. Giancarlo has been a vocal critic of these proposals, arguing that they would violate the equivalence agreement reached between the CFTC and the European Commission. He has voiced these concerns during speeches on his European and Asian tours,⁽¹⁹⁾ and he has written opinion editorials in the *Wall Street Journal*⁽²⁰⁾ and French newspaper *Les Echos*⁽²¹⁾ criticising these proposals.⁽²²⁾

The Capital Markets Report contained several other general recommendations relating to cross-border issues. Treasury suggested working with regulators in other jurisdictions to remedy conflicting legislation and implement more useful substituted compliance regimes, providing a unified regulatory front to promote US regulatory objectives while participating in financial regulatory standard-setting bodies (eg, the Basel Committee) and continuing to take part in cross-border crisis-management groups to coordinate cross-border resolution of CCPs.⁽²³⁾ Cross-border considerations are thus likely to continue to receive significant attention in the coming year.

QFC stay issues in recovery and resolution

The Federal Reserve, FDIC and OCC finalised a set of substantively identical rules requiring covered financial institutions under their respective jurisdiction to amend many of their qualified financial contracts (QFCs) (a category that includes most over-the-counter derivatives) in order to restrict their counterparties' ability to immediately terminate such contracts in the event that the covered institution or an affiliate enters into bankruptcy or resolution proceedings.⁽²⁴⁾ These rules contain two key provisions:

- each covered financial institution must amend its QFCs in order to add certain restrictions on the close out of such QFCs to be consistent with the stay-and-transfer provisions of the Federal Deposit Insurance Act and Title II of the Dodd-Frank Act (also referred to as the orderly liquidation authority); and
- the QFCs of covered financial institutions and their affiliates are generally prohibited from containing a cross-default based on an insolvency or resolution of an affiliate.

There will be a phased-in compliance schedule dependent on the type of counterparty, beginning January 1 2019 for transactions between two covered financial institutions. It is likely that compliance with these amendments will require significant effort of covered financial institutions and their counterparties during 2018. It is expected that market participants will comply with the rules through adherence to the International Swaps and Derivatives Association (known as 'ISDA') Universal Stay Protocol or through an anticipated US-specific version of the Resolution Stay Jurisdictional Modular Protocol (US JMP). No timeline has been provided for the release of the US JMP at the time of publication. Broadly similar requirements have been implemented in other jurisdictions.⁽²⁵⁾

Swaps reporting rules review

In July 2017 the CFTC Division of Market Oversight (DMO) announced that it would be conducting a comprehensive review of its swap data reporting regulations in Parts 43, 45 and 49 of the CFTC's regulations. The CFTC opened up a 40-day comment period for market participants to provide feedback, which closed on August 21 2017.⁽²⁶⁾ At the same time, the CFTC also provided the Roadmap to Achieve High Quality Swaps Data for the review process.⁽²⁷⁾ This roadmap envisions two tranches of reforms:

- swap data repository operations and the confirmation of data accuracy by swap counterparties; and
- reporting workflows generally, including standardisation and streamlining of data fields and potential changes in reporting deadlines.

The DMO said that it hoped to have proposals for the first tranche by the end of the fourth quarter in 2017 and proposals for the second tranche by late first quarter or early second quarter in 2018, although no proposals have been released as of the time of publication.

Bitcoin, virtual currencies and financial technology (fintech)

The rise in trading in virtual currencies or cryptocurrencies in 2017 has led to new challenges for regulators. Virtual currencies have all experienced rapid and significant price swings and increased investor use, and initial coin offerings (ICOs) have raised over \$4 billion for new projects.⁽²⁸⁾ This activity has led to greater regulatory scrutiny. For example, after the Decentralised Autonomous Organisation (DAO) was hacked leading to the loss of its tokens, the SEC issued an opinion that the DAO Tokens were in fact securities, setting the precedent that issuers of ICOs may have to register with the SEC and comply with SEC securities laws.⁽²⁹⁾ The SEC has subsequently taken or threatened multiple enforcement actions against issuers of ICOs.⁽³⁰⁾ As this market continues to develop, it will

be important to monitor how the SEC regulates these offerings.

The CFTC has also focused heavily on the rise in trading of virtual currencies (and derivatives on such currencies). In October 2017 the CFTC released a primer on virtual currencies intended to provide an overview of the market, outline the CFTC's role in regulating the market and caution investors of the potential risks involved.⁽³¹⁾ Additionally, in July, the CFTC granted start-up LedgerX SEF and derivatives clearing organisation (DCO) registration, allowing it to trade and clear swaps and options on virtual currencies.⁽³²⁾ Multiple exchanges also submitted self-certifications to the CFTC for new contracts, including cash-settled bitcoin futures, and several more have discussed plans to do so in early 2018. The CFTC stated that while it would not generally block such products, it expected to provide enhanced scrutiny of such products, specifically regarding margin levels and surveillance.⁽³³⁾ In the context of regulation of retail leveraged products involving virtual currencies, the CFTC has issued for comment a proposed interpretation relating to the definition of 'delivery' for virtual currencies.⁽³⁴⁾ The CFTC has also taken enforcement actions against several individuals and companies for engaging in fraudulent virtual currency schemes.⁽³⁵⁾ It can be expected that the CFTC will continue to focus on developments in these markets, particularly to the extent that problems with markets or products (or defaults relating to products) may arise.

The CFTC has taken other steps to facilitate or address fintech more generally. In May the CFTC launched its new fintech initiative titled LabCFTC.⁽³⁶⁾ Headed by CFTC Chief Innovation Officer Daniel Gorfine, LabCFTC is intended to serve as a platform to inform the CFTC's understandings of new technology and be an information source for commissioners and CFTC staff to help shape new policies and regulations. Additionally, LabCFTC is intended to create channels for market participants to contact CFTC staff regarding new ideas and products. This initiative also consists of publishing LabCFTC primers on new technology to keep market participants informed.

In 2018 cybersecurity will likely be another concern for the financial regulatory agencies. As more and more activity moves online, cyber risk for financial institutions has never been higher. Major cyberattacks such as the Equifax hack have shown that market participants are still vulnerable, and in response many regulators have announced plans to start shoring up cyber regulations. The SEC also announced in September 2017 that its EDGAR system had been the target of a cyberattack in 2016, showing that there is still work to be done at the regulators themselves.⁽³⁷⁾ While there has been little in the way of formal proposals, it can be expected that regulators will pay enhanced attention to these issues in the coming year.

Congressional actions

The possibility of Congressional action affecting derivatives markets will need to be monitored. Earlier in 2017, the House of Representatives voted to approve a series of Dodd-Frank rollbacks contained in the Financial CHOICE Act, which contained more provisions that would affect various aspects of the derivatives markets.⁽³⁸⁾ In November, the Senate Banking Committee reached a narrower, bipartisan agreement relating to certain Dodd-Frank provisions, the so-called Economic Growth, Regulatory Relief and Consumer Protection Act.⁽³⁹⁾ Notably, the proposed legislation would raise the threshold for a financial institution to be considered systemically important from \$50 billion in assets to \$250 billion in assets and exempt financial institutions with less than \$10 billion in assets from the requirements of the Volcker Rule. The Senate bill in its current form would not appear to significantly affect the regulation of derivatives. It is unclear at this time how or whether either bill will proceed, or how they might be reconciled. Market participants will need to watch the potential implications of any reconciled bill.

Project KISS

Even in the absence of legislative action, the CFTC may consider other deregulatory actions it can take administratively. Shortly after being appointed acting chair of the CFTC, Giancarlo announced the launch of Project KISS (which stands for 'Keep it Simple, Stupid'), which was initially intended to serve as an agency-wide internal review of agency rules and regulations in an attempt to simplify them and make them less costly for market participants.⁽⁴⁰⁾ Shortly thereafter, the CFTC opened Project KISS to public comment.⁽⁴¹⁾ Dozens of comment letters from a wide range of industry groups and market participants were submitted before the September 30 2017 deadline. The CFTC has said that it plans on releasing a document summarising the recommendations at some point in 2018. It is unclear how the CFTC and its staff will respond to these suggestions, but market participants will need to pay attention to the possibility of changes and new regulatory priorities over the course of

the year.

Comment

Although changes in the regulatory landscape were limited in 2017, several steps, including the Capital Markets Report and Project KISS, may lay the groundwork for more significant developments to come, particularly now that regulatory agencies have new leadership and senior staff and have had an opportunity to review market participant feedback. There also remain a number of outstanding issues (including cross-border considerations) and emerging issues (including trading of virtual currencies and other fintech developments) that are likely to demand regulatory attention in the coming year. Thus, in 2018 the new administration may have a greater impact on the shaping of the derivatives regulatory environment.

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Endnotes

- (1) For more information regarding the Capital Markets Report, please refer to our earlier update, which is available [here](#).
- (2) Regulation Automated Trading, 80 Fed Reg 78824 (December 17 2015), available [here](#).
- (3) Commissioner Brian Quintenz, CFTC, "Keynote Remarks of Commissioner Brian Quintenz before the Symphony Innovate 2017 Conference" (October 4 2017), available [here](#).
- (4) Position Limits for Derivatives, 81 Fed Reg 96704 (December 30 2016), available [here](#).
- (5) Chair J Christopher Giancarlo, CFTC, "Testimony before the House Committee on Agriculture" (October 11 2017), available [here](#).
- (6) US Department of the Treasury, "A Financial System That Creates Economic Opportunities: Capital Markets" (October 6 2017), at 143. The Capital Markets Report is available [here](#).
- (7) Order Establishing a New *De Minimis* Threshold Phase-In Termination Date, 82 Fed Reg 50309 (October 31 2017), available [here](#).
- (8) Order Establishing *De Minimis* Threshold Phase-In Termination Date, 81 Fed Reg 71605 (October 18 2016), available [here](#). See 17 CFR § 1.3(ggg)(4)(ii)(D).
- (9) Capital Markets Report at 130.
- (10) Chair Jay Clayton, SEC, "Testimony on 'Oversight of the US Securities and Exchange Commission'" (September 26 2017), available [here](#).
- (11) The SEC's most recent semi-annual regulatory agenda is available [here](#).
- (12) See 17 CFR 23 or 12 CFR 237.
- (13) CFTC No-Action Letter 17-11 (February 13 2017), available [here](#).
- (14) See 17 CFR § 23.161 or 12 CFR § 237.1(e).
- (15) See 17 CFR § 23.151 or 12 CFR § 237.2. Material swaps exposure for an entity means that the entity and its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July and August of the previous calendar year that exceeds \$8 billion,

where such amount is calculated only for business days. An entity must count the average daily aggregate notional amount of an uncleared swap, an uncleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and a margin affiliate only once. For the purposes of this calculation, an entity should not count a swap that is exempt pursuant to Section 23.150(b) or a security-based swap that qualifies for an exemption under Section 3C(g)(10) of the Securities Exchange Act of 1934 (15 USC 78c-3(g)(4)) and implementing regulations or that satisfies the criteria in Section 3C(g)(1) of the Securities Exchange Act of 1934 (15 USC 78-c3(g)(4)) and implementing regulations.

(16) See *supra* note 14.

(17) Comparability Determination for the European Union: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 82 Fed Reg 48394 (October 18 2017), available [here](#).

(18) CFTC, "CFTC Approves Exemption from SEF Registration Requirement for Multilateral Trading Facilities and Organised Trading Facilities Authorized Within the EU" (December 8 2017), available [here](#).

(19) Chair J Christopher Giancarlo, CFTC, "Remarks of Chairman J. Christopher Giancarlo before the Global Forum for Derivatives Markets 38th Annual Bürgenstock Conference" (September 12 2017), available [here](#).

(20) J Christopher Giancarlo, "An EU Plan to Invade US Markets", *The Wall Street Journal* (November 5 2017), available [here](#).

(21) Chair J Christopher Giancarlo, CFTC, "Giancarlo in Paris' Les Échos: Deference is the Path Forward in Cross-Border Supervision of CCPs" (September 11 2017), available [here](#).

(22) Chair Pat Roberts (R-KS) and Ranking Member Debbie Stabenow (D-MI) of the Senate Committee on Agriculture, Nutrition and Forestry recently penned a letter showing their support for Giancarlo's efforts, which is available [here](#). Giancarlo's response is available [here](#).

(23) Capital Markets Report at 132 and 165.

(24) The Federal Reserve's final rule, Restrictions on Qualified Financial Contracts of Systemically Important US Banking Organisations and the US Operations of Systemically Important Foreign Banking Organisations; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions, 82 Fed Reg 42882 (September 12 2017), is available [here](#); the OCC's final rule, Mandatory Contractual Stay Requirements for Qualified Financial Contracts, 82 Fed Reg 56630 (November 29 2017), is available [here](#); and the FDIC's final rule, Restrictions on Qualified Financial Contracts of Certain FDIC-Supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions, 82 Fed Reg 50228 (October 30 2017), is available [here](#).

(25) For more information on these final rules, please refer to our earlier update, which is available [here](#).

(26) CFTC No-Action Letter 17-33 (July 10 2017), available [here](#).

(27) CFTC, "Roadmap to Achieve High Quality Swaps Data" is available [here](#).

(28) Steven Russolillo, "Initial Coin Offerings Surge Past \$4 Billion—and Regulators Are Worried", *The Wall Street Journal* (December 14 2017), available [here](#).

(29) SEC, "Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO, Exchange Act Release 81207" (July 25 2017), available [here](#).

(30) SEC, "Company Halts ICO After SEC Raises Registration Concerns" (December 11 2017), available [here](#).

- (31) CFTC, "A CFTC Primer on Virtual Currencies" (October 17 2017) is available [here](#).
- (32) CFTC, "CFTC Grants SEF Registration to LedgerX LLC" (July 6 2017) is available [here](#). CFTC, "CFTC Grants DCO Registration to LedgerX LLC" (July 24 2017) is available [here](#).
- (33) CFTC, "Backgrounder on Self-Certified Contracts for Bitcoin Products" (January 4 2018) is available [here](#).
- (34) Retail Commodity Transactions Involving Virtual Currency, 82 Fed Reg 60335 (December 20 2017), available [here](#).
- (35) CFTC, "CFTC Charges Colorado Resident Dillon Michael Dean and His Company, The Entrepreneurs Headquarters Limited, with Engaging in a Bitcoin and Binary Options Fraud Scheme" (January 19 2018), available [here](#). CFTC, "CFTC Charges Patrick K. McDonnell and His Company CabbageTech, Corp. d/b/a Coin Drop Markets with Engaging in Fraudulent Virtual Currency Scheme" (January 19 2018), available [here](#). CFTC, "CFTC Charges Randall Crater, Mark Gillespie, and My Big Coin Pay, Inc with Fraud and Misappropriation in Ongoing Virtual Currency Scam" (January 24 2018), available [here](#).
- (36) CFTC, "CFTC Launches LabCFTC as Major Fintech Initiative" (May 17 2017), available [here](#).
- (37) Chair Jay Clayton, SEC, "Statement on Cybersecurity" (September 20 2017), available [here](#).
- (38) For more information regarding the Financial CHOICE Act, please refer to our earlier update, which is available [here](#).
- (39) Economic Growth, Regulatory Relief and Consumer Protection Act, S.2155, 115th Congress (2017-2018), available [here](#).
- (40) Acting Chair J Christopher Giancarlo, CFTC, "Remarks of Acting Chairman J Christopher Giancarlo before the 42nd Annual International Futures Industry Conference in Boca Raton, FL" (March 15 2017), available [here](#).
- (41) Project KISS, 82 Fed Reg 23765 (May 24 2017), available [here](#).

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