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SPOOFING: THE FIRST CRIMINAL CONVICTION COMES IN THE U.S. - PERSPECTIVES FROM THE U.S. AND U.K.

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U.S. authorities have secured their first criminal conviction for the spoofing offense added to the U.S. Commodity Exchange Act by the Dodd Frank Act. Following the conviction commentators have expressed concern that, as authorities on both sides of the Atlantic seek to increase the number of spoofing cases they pursue, they may find it difficult to distinguish between traders who are spoofing and those pursuing legitimate trading strategies. Against that Background, we recap the scope of the U.S. anti-spoofing offense and compare the position in the United States to the position in the United Kingdom.

While the U.S. prohibition is focused on the intent of the trader when placing the order, the U.K. prohibition (in common with the relevant prohibition in the rest of the E.U.) is focused on the impact of the order on the market. In some cases the difference will not be significant, as authorities in both jurisdictions are likely (i) to pursue cases which would run afoul of either regime and (ii) to rely on similar types of evidence. But in due course regulators may take on cases which bring the differences between the two regimes into relief. In these circumstances, as is the case with insider trading, it will be important for market participants to understand the types of conduct, which although they do not give rise to liability in one jurisdiction, may give rise to the risk of liability in the other.

On November 3, 2015, Michael Coscia, the founder of Panther Energy Trading, was convicted in Chicago federal court of six counts of spoofing and six counts of commodities fraud.[1] This is the first criminal conviction under the anti-spoofing provision added to the U.S. Commodity Exchange Act ("**CEA**") by the Dodd-Frank Act of 2010,[2] and follows civil and disciplinary actions taken against Coscia in 2013 by the Commodity Futures Trading Commission ("**CFTC**") and Chicago Mercantile Exchange ("**CME**") in the U.S. as well as the Financial Conduct Authority ("**FCA**") in the U.K., in which Coscia and Panther Energy Trading, the company he controlled, paid total penalties of $3,700,000.[3] The criminal spoofing charge, which is based on a CEA provision that makes criminal any knowing violation of the CEA,[4] was prosecuted by a new unit of the Northern District of Illinois U.S. Attorney's Office in Chicago called the Securities and Commodities Fraud Section, which was formed in April 2014.

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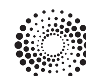

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At the seven-day trial, the jury heard that Coscia had engaged in spoofing in the markets of various commodities, including gold, soybean meal, soybean oil, high-grade copper, Euro FX and Pounds FX currency futures by using an algorithm designed to rapidly place large bids and offers on one side of the market and to cancel those bids and offers when a smaller order on the other side of the market was executed. The U.S. Department of Justice ("**DOJ**") charged that in less than three months in 2011, Coscia illegally profited nearly $1,400,000 using this scheme.

Following Coscia's criminal conviction, CFTC Chairman, Timothy Massad, was reported to have emphasized that the CFTC will continue to treat spoofing as a priority and that traders "*should talk to their lawyers*" if "*they're entering a lot of orders without the intention to consummate*."[5] The formation of the specialized Chicago U.S. Attorney Unit and the remarks of the CFTC Chairman suggest that we will continue to see the CFTC prioritizing civil actions for spoofing and referring appropriate cases to the DOJ for prosecution.

The CFTC's approach to determining whether to charge spoofing may be illustrated by three further spoofing cases that it is now litigating:

- The civil enforcement action against U.K. national Navinder Singh Sarao,[6] who is alleged to have used an algorithm to manipulate the CME's S&P E-Mini futures market by placing multiple large-volume sell orders to create the appearance of substantial supply, which he would modify and cancel when his order on the other side of the market was executed, conduct that is alleged to have caused the so-called Flash Crash in 2010.[7] Sarao is also under criminal indictment for this alleged conduct and is contesting extradition to the United States.
- The May 2015 civil enforcement action in New York federal court against two residents of the United Arab Emirates, Heet Khara and Nasim Salim, alleging that they worked in tandem to spoof the Commodity Exchange, Inc. ("**COMEX**") gold and silver futures markets by entering a large quantity of orders on one side of the market, which they would cancel when a smaller order they entered on the opposite side of the market traded;[8] and
- The October 2015 civil enforcement action against Igor Oystacher and his firm 3Red Trading LLC, which similarly alleges that Oystracher would place large orders on one side of the futures market, which he would then cancel when he filled an order on the other side of the futures market. The spoofing is alleged to have been widespread, occurring on, among others,

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the COMEX metals futures markets, New York Mercantile Exchange energy futures markets, and CME financial futures markets.[9]

Notably, these cases show the CFTC's focus on schemes to enter large numbers of trades and to quickly withdraw them in order to mislead the market and profit from actual trades on the others side of the market. They also show the extraterritorial reach of the anti-spoofing authority, as two of them are directed against traders located outside the United States. Also important is the aggressive stance the CFTC has taken by seeking in all three cases the extraordinary remedy of a preliminary injunction, which prohibits any trading in futures markets while the litigation is pending.[10]

On the other side of the Atlantic, regulators have also been active. Coscia was also punished in the U.K. for spoofing. On July 3, 2013, the FCA imposed a fine of £597,993 on Mr. Coscia for using an algorithm to engage in spoofing in the markets for Brent Crude Futures, Gas Oil Futures, and Western Texas Intermediate Crude Futures on ICE Futures Europe over a six week period in 2011.[11]

Since Coscia's punishment, there have been two further spoofing cases in the United Kingdom: (i) on January 24, 2014, the FCA imposed a fine of £8,000,000 on Canadian company Swift Trade Inc for systematically spoofing a wide range of shares on the London Stock Exchange (the "LSE") during 2007 and 2008;[12] and (ii) on August 12, 2015, the High Court, following a claim by the FCA, imposed penalties totaling £7,600,000 on the English branch of a Swiss hedge fund, Da Vinci Invest Limited, three traders based in Hungary, and a Seychelles company controlled by those traders for spoofing a wide range of shares on the LSE in late 2010.[13]

U.S. Statutory Regime and Official Guidance

The CEA's anti-spoofing provision prohibits conduct that is "commonly known" as "spoofing," which is defined as "bidding or offering with the intent to cancel the bid or offer before execution" any CEA registered trading facility (that is, any designated contract market on swap execution facility).[14] The offense can be prosecuted as a civil violation by the CFTC or, if done purposefully, as a criminal offense by the DOJ (to whom the CFTC will often refer matters having conducted preliminary investigations). The CFTC may impose a civil monetary penalty of up to $140,000 per violation or triple the monetary gain.[15] Additionally, the CFTC may impose a range of other penalties including barring a defendant from the market.[16] Each count of criminal spoofing carries a maximum penalty of 10 years in prison and a $1,000,000 fine.[17]

Recognizing that the boundaries of the new spoofing offense were not fully clear, the CFTC published interpretive guidance in 2013 when it issued rules in relation to the anti-spoofing provision. In that guidance, the CFTC provided four non-exclusive examples of spoofing behavior:

(i) submitting or cancelling bids or offers to overload the quotation system of a registered entity;

(ii) submitting or cancelling bids or offers to delay another person's execution of trades;

(iii) submitting or cancelling bids or offers with intent to create artificial price movements; and

(iv) submitting or cancelling multiple bids or offers to create an appearance of false market depth.[18]

Notably, these behaviors are not limited to efforts to mislead the market as to price or liquidity and do not require a manipulative intent. Further, these behaviors can extend to orders which are made at market prices. Given the scope of prohibited behaviors, the intent element becomes critical if legitimate activ-

ity is to be distinguished from unlawful and potentially criminal acts.

The CFTC's guidance seeks to address the intent issue by explaining both what is and what is not the prohibited intent.

The guidance explains that:

1. The CFTC considers that a market participant must act with some degree of intent beyond recklessness to engage in the spoofing trading practices prohibited by the CEA;[19]

2. The CFTC considers that a spoofing violation will not occur where the person's intent when cancelling a bid or offer before execution was to cancel such bid or offer as part of a legitimate, good faith attempt to consummate a trade;[20]

3. The CFTC does not consider that a pattern of trading is necessary for a violation to occur: spoofing may be committed with a single order. However, in determining whether spoofing has occurred, the CFTC will look at all the facts and circumstances of a case including an individual's trading practices and patterns where applicable.[21]

The CFTC guidance has left significant uncertainty about the requirements of proof. In particular, it provides that the trader's state of mind must be "beyond reckless," but leaves open whether specific intent is required for a CEA civil spoofing violation.[22] Thus, the CFTC may take the view that a trader could be "beyond reckless" in placing an order, even if it is unable to establish specific intent to cancel the order when it was placed. In contrast, the standard in criminal prosecutions is clearer. The CEA expressly states that a willful violation of that statute or CFTC rules are felonies prosecutable by the DOJ.[23] There, the DOJ, which is required to prove its cases beyond a reasonable doubt unlike the CFTC's mere preponderance of evidence standard, will need to establish that the trader acted with the purpose of cancelling an order to avoid trade consummation at the time the order was placed.[24]

Nevertheless, the CFTC guidance suggests that the CFTC will prioritize cases where specific intent is present, as reflected by trading that appears to be motivated by a desire to mislead, as the examples in the guidance appear to involve such activity (e.g. "submitting or cancelling bids or offers *with intent to create artificial price movements*").[25] However, these are non-exhaustive examples, and the CFTC could conceivably bring an enforcement action alleging spoofing conduct outside the context of market deception.

Indeed, viewed from another perspective the examples in the guidance give less comfort because they involve scenarios that would go beyond the scope of the statute absent some evidence that the trader intended not to execute the orders at the time they were placed. For example, submitting bids with intent to overload the quotation system of a registered entity arguably goes beyond the statute, as a trader could, in theory, place these offers with the intent to execute them. Furthermore, the guidance may not be tightly worded as it might be. For example, it provides that "*a section 4c(a)(5)(C) violation occurs when the trader intends to cancel a bid or offer before execution*" which, as written, could include a circumstance where a trader simply changes his mind about whether to execute a bid or offer previously placed. Therefore, a prudent reading of these examples suggests they should be confined to bids and offers made with a concurrent intent to cancel before execution.

The U.S. exchanges have also published their own rules and guidance on spoofing that goes beyond what the CFTC provided. For example the CME and the Intercontinental Exchange ("**ICE**") have published guidance on what conduct may constitute spoofing under CME Rule 575[26] and ICE Rule 4.02,[27] respectively. Like the statutory language, this guid-

ance focuses on intent and suggests that exchanges will focus on whether deception or market abuse occurred. Specifically, the exchanges will consider, among other things: (i) whether the market participant's intent was to induce others to trade when they otherwise would not; (ii) whether the market participant's intent was to affect a price rather than to change his position; (iii) whether the market participant's intent was to create misleading market conditions; and (iv) the ability of the market participant to manage the risk associated with the order(s) if fully executed, in determining whether conduct constitutes spoofing.[28]

U.K. Statutory Regime

In each of the three cases the FCA has brought (Coscia, Swift Trade, and Da Vinci), the FCA took action using its powers under the civil market abuse regime set out in Part VIII of the U.K. Financial Services and Markets Act 2000 ("**FSMA**"), which implements the provisions of the European Market Abuse Directive. The basis of the action in each case was section 118(5) of FSMA, which provides that one of the behaviors which may amount to market abuse:

> "*consists of effecting transactions or orders to trade (otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant market) which -*
>
> *a) give, or are likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments, or*
>
> *b) secure the price of one or more such investments at an abnormal or artificial level.*"

Much like the CFTC, the FCA has published a code giving guidance as to conduct that it considers is or is not market abuse (the Code of Market Conduct ("COMC")). COMC does not refer to spoofing, but it does describe spoofing-like behavior. Paragraph 1.6.2 provides that "*entering orders into an electronic trading system, at prices which are higher than the previous bid or lower than the previous offer, and withdrawing them before they are executed, in order to give a misleading impression that there is demand for or supply of the qualifying investment at that price*" is considered by the FCA to be market abuse within the meaning of section 118(5) of the FSMA.[29] The High Court relied on this paragraph in Da Vinci to support its decision.[30]

Unlike the U.S. anti-spoofing statute, under the UK civil market abuse regime there is no intent requirement of any kind. The English courts have held that "*the test is wholly objective; it does not require any particular state of mind on the part of the person whose behaviour is under consideration.*"[31]

On the facts, both Coscia and Swift Trade were found by the FCA to have engaged in spoofing deliberately, intending to mislead the market. However, in Da Vinci, the High Court found that Da Vinci Invest Limited had engaged in spoofing falling within the scope of section 118(5) even without intent to mislead the market or to commit market abuse. Da Vinci management was found to have been unaware of the abusive trading strategy employed by its traders, but, since the orders and trades were in Da Vinci's name Da Vinci was found to have committed market abuse, regardless of its lack of intent because the civil regime in the U.K. is effects-based. Da Vinci was found to have been reckless in allowing traders to trade in its name without properly performing due diligence on them or their trading strategy. But that recklessness went to penalty rather than liability.[32]

Note that Da Vinci would also have been likely to face civil liability under U.S. law, but for different reasons. There, as discussed above, the intent of its traders would have been imputed to the entity under a vicarious liability theory, thus satisfying the intent requirement for the entity. Conversely, in the UK under the civil and criminal market abuse regimes, if intent must be proved against a corporate entity, that intent must be found in an employee sufficiently senior to constitute the company's "directing mind and will."[33]

Beginning in July 2016, the civil anti-spoofing provisions applicable in the U.K. will derive directly from the new European Market Abuse Regulation ("MAR")—which comes into force then—rather than from FSMA.[34]

Article 15 of MAR prohibits "market manipulation" which is defined in Article 12(1) to include:

> *(a) entering into a transaction, placing an order to trade or any other behaviour which:*
>
> > *(i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances; or*
> >
> > *(ii) secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level;*
>
> *(b) entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances, which employs a fictitious device or any other form of deception or contrivance;*[35]

Article 12(2) provides that market manipulation includes the following behavior:

> *(c) the placing of orders to a trading venue, including any cancellation or modification thereof, by any available means of trading, including by electronic means, such as algorithmic and high-frequency trading strategies, and which has one of the effects referred to in paragraph 1(a) or (b), by:*
>
> > *(i) disrupting or delaying the functioning of the trading system of the trading venue or being likely to do so;*
> >
> > *(ii) making it more difficult for other persons to identify genuine orders on the trading system of the trading venue or being likely to do so, including by entering orders which result in the overloading or destabilisation of the order book; or*
> >
> > *(iii) creating or being likely to create a false or misleading signal about the supply of, or demand for, or price of, a financial instrument, in particular by entering orders to initiate or exacerbate a trend;*[36]

As can be seen, Article 12(1)(a) is worded in similar terms to section 118(5) of FSMA, which is currently used to address spoofing in the U.K. So the wording of the core provision under which spoofing will be addressed will remain largely the same.

However, the substance of Article 12(2)(c) is new. That Article should, in principle, make it easier for regulators to take action against spoofing because it lists in the primary legislation spoofing and spoofing-like behaviors which must be taken to fall within the scope of the market manipulation offense. However, it remains to be seen how Article 12(2)(c) will be construed by regulators and the courts. It may be that it gives rise to as many issues as it resolves. The wording of Article 12(c)(iii) is particularly interesting because it specifies that placing orders with the effect of exacerbating a trend may amount to market manipulation. This is designed to capture illegitimate "momentum" trading but is arguably broad enough to cover trading strategies which seek to follow market trends.

It will remain the case under MAR that the market abuse regime will be effects-based. There will be no requirement to show intent.

Criminal regime

Unlike in the U.S., there has been no criminal prosecution for spoofing in the U.K. to-date, but there are separate provisions of criminal law which would allow prosecution to take place.

Under section 90 of the Financial Services Act 2012 ("FSA 2012") a person commits an offense if (in summary) he does any act which creates a false or misleading impression as to the market in or price or value of any relevant investments, if he intends to create the impression, and either: (i) he intends to induce another person to acquire or dispose of those investments or to refrain from doing so; or (ii) he knows that the impression is false or misleading or is reckless as to whether it is, and intends to make a gain or to cause a loss to another. The offense applies where

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the act is done in the U.K., or the false or misleading impression is created there. It is punishable by up to 7 years in prison and an unlimited fine.

Although there have been no prosecutions to-date, it is clear that spoofing may fall within the scope of this offense in certain circumstances.

Unlike the civil regime, section 90 FSA 2012 requires both an impact on the market and an element of intent.

As to the impact on the market, the defendant must create a false or misleading impression as to the market in or price or value of a relevant investment. This is similar to the impact required under the first limb of the civil offense which covers transactions or orders which give, or are likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, relevant investments.

As to intent the offense requires an intent to create an impression, but not an intent to create a misleading impression. It is sufficient if the defendant is reckless as to whether the impression given is misleading, if the other elements of the offense are satisfied.

Accordingly, in relation to spoofing, it would not be necessary for the prosecutor to prove that the defendant had an intent to cancel at the time an order was placed, as is necessary in a criminal prosecution under the U.S. offense. In the UK, under section 90, it would be sufficient for the prosecutor to show that the defendant placed an order knowing it would create an impression, reckless as to whether that order would be cancelled, and thus reckless as to whether the impression given by the order was misleading.

Thus, it is conceivable that the offense may be prosecuted in circumstances where a trader has used an algorithm to trade without properly understanding how the algorithm works, being reckless as to whether it would mislead the market. It is not clear that such conduct could be prosecuted as a criminal offense under the U.S. anti-spoofing provision.

Note that section 90 FSA 2012 replaced section 397(3) FSMA which established a similar offense but which required a prosecutor to prove that a person had acted for the purpose of creating a false or misleading impression, and for the purpose of inducing a person to deal in relevant investments or to refrain from doing so. The language of the old section arguably poses a significantly higher hurdle for a prosecutor to overcome.

Following the conviction of Michael Coscia in the U.S., and given the growing appetite in the U.K. for harsher punishment for those who engage in market abuse (see for example the Fair and Effective Markets Review published by the FCA, Prudential Regulation Authority and Bank of England in June 2015 which calls for the increase of the maximum sentence for criminal market abuse from 7 to 10 years)[37], it is to be expected that we will soon see prosecutions under section 90 FSA 2012 for spoofing. Those are likely to be easier to achieve under section 90 than they would have been had section 397 remained in force. The FCA may have a greater appetite for pursuing a prosecution in those circumstances.

Whether Navinder Singh Sarao could be prosecuted in the U.K. for his alleged spoofing of the market for E-mini S&P 500 futures traded on the CME, given that he is said to have traded from his home in London, is likely to become an issue in his extradition proceedings, which, at the time of writing, have just commenced in London. The question will need to be determined by reference to section 397(3) given that the conduct in question occurred in 2010, but any analysis by the court as to the scope of section 397(3) would also be relevant to future applications of section 90 FSA given the similarity between the two provisions.

Conclusion

As can be seen from the analysis above, the U.S. and the U.K. (along with the rest of Europe) approach the regulation of spoofing from different angles.

The defining aspect of the U.S. spoofing offense, as prohibited by the CEA and CFTC guidance, is the trader's intent to cancel an order (rather than transact) at the time of placing the order. Although the allegations in the U.S. cases pursued to date suggest that the CFTC has clear evidence that the traders were placing orders with intent to cancel the trade in a deliberate attempt to mislead the market, it is the intent to avoid transacting rather than to mislead the market that must be proven. However, in practice the intent to mislead and a profit motive are likely to be alleged to support the intent element.[38]

By contrast, under the U.K. regime there is no provision specifically targeted at spoofing, and relevant legislation is more complex. Under the civil regime authorities must prove that an order gave, or was likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, the relevant investment, or secured the price of that investment at an abnormal or artificial level. Thus, the legislation provides a variety of alternative routes by which spoofing could be proven and engages a number of different concepts.[39]

Despite these differences there are and will continue to be similarities in the way in which authorities approach cases in both jurisdictions.

First, while under the U.K. civil regime there is no requirement to prove intent, the regulator will often seek to prove that an order gave a false or misleading impression by reference to the subjective intent of the trader placing the order, since it may be argued that without illegitimate intent behind it, the order cannot be said to give an impression which is false or misleading. So cases in the U.K. will often also involve the examination of trader intent.

Second, in both jurisdictions the most readily available evidence is likely to be trading data and so authorities will focus on the same or similar evidence, albeit with a view to drawing slightly different inferences. In the United States, the authorities may seek to prove that a trader had a subjective intent to cancel an order at the time it was placed by adducing evidence of the frequency with which that trader cancelled orders more generally, and as to price movements and the behavior of other traders in the market at the relevant time (to show that the decision to cancel was not made after the order was placed in response to other market stimuli). In the United Kingdom, the regulator may seek to prove illegitimate intent in a similar way (with a view to proving that the impression given by the orders was false or misleading) and is also likely to rely on trading data to show how the impression given by the orders affected other market participants.[40]

But in due course there may be more cases in which the differences between the regimes are thrown into relief, especially if regulators start to pursue cases which are less clear-cut. For example, where a trader trades using an algorithm downloaded from the internet (as in the Da Vinci case) and that trader does not properly understand or monitor the orders which that algorithm generates, can he be said to have the "beyond reckless" intent necessary for the CFTC to take civil action under the anti-spoofing provision, or the willful intent necessary for the DOJ to prosecute? In the United Kingdom, the authorities would have an easier case under the civil regime, having no need to prove intent, and may also be able to prosecute the conduct as a criminal offense given that the relevant provisions of U.K. criminal law cover circumstances in which the defendant is reckless as to whether his trading is giving a misleading impression to the market.

Similar issues may also arise in other cases where the person placing the trade is not the person who originates the trading strategy. For example, under the U.K. regime, in principle the regulator could pursue a direct market access provider (a "DMA provider") for market abuse in relation to spoofing effected by its clients, because there is no need to show any intent on

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the part of the DMA provider. It is not clear that such action would succeed, but the regulator in the U.K. would be in a stronger position to bring a case than the U.S. regulators would be seeking to take action under the anti-spoofing provision in similar circumstances.

Spoofing remains at the top of the regulatory agenda on both sides of the Atlantic. In due course we are likely to see an increasing number of civil and criminal enforcement actions against those who engage in spoofing and most if not all of these are likely to involve traders using algorithms and high frequency trading strategies. In the meantime, market participants would gratefully receive any further guidance that the authorities can offer regarding the scope of the offense.

ENDNOTES:

[1]*United States v. Michael Coscia*, Case No. 14-cr-00551 (N.D. Ill. Nov. 3, 2015).

[2]Section 747 of the Dodd-Frank Act amended CEA § 4c(a) by expanding its prohibitions to include other "disruptive practices," including one commonly known as "spoofing." Proscribing the conduct by name has greatly enhanced the CFTC's and DOJ's ability to bring cases against alleged spoofers.

[3]Liability for spoofing can also extend to employers. The CEA provides that companies are liable for the acts of their agents that are "within the scope of [their] employment or office." CEA § 2(a)(1)(B). In the Coscia matter, the CFTC's final order stated that both Coscia and Panther Energy Trading violated the CEA's anti-spoofing provision by designing an algorithmic trading program to place orders giving the impression of market interest on one side of the market. However, it is not clear from the order whether the CFTC relied on a *respondeat superior* theory in holding Panther Energy Trading liable.

[4]Willful violations of the CEA or CFTC rules or regulations promulgated under the CEA are punishable by a fine of not more than $1 million or imprisonment for not more than 10 years, or both, together with the costs of prosecution. 7 U.S.C. § 13(a)(5).

[5]Tom Polansek, *CFTC head issues warning to spoofers after U.S. verdict*, REUTERS, (Nov. 4, 2015, 12:44 PM), http://www.reuters.com/article/court-spoofing-cftc-idUSL1N12Z28T20151104 (last visited Dec. 15, 2015).

[6]*See CFTC v. Nav Sarao Ltd. PLC, et al.*, No. 15-civ-03398 (N.D.Ill.) (civil case); *United States v. Sarao*, Case No. 15-cr-00075 (N.D. Ill.) (complaint filed Feb. 11, 2015) (criminal complaint).

[7]According to the CFTC's complaint, Sarao's conduct on May 6, 2010, contributed to an extreme order book imbalance in the E-mini S&P market, which caused the E-mini S&P price to fall 361 basis points, which contributed to the flash crash.

[8]*CFTC v. Khara et al.*, No. 15-civ-03497 (S.D.N.Y.) (complaint filed May 5, 2015).

[9]*See CFTC v. Igor B. Oystacher, et al.*, No. 15 Civ. 9196 (N.D. Ill. Oct. 19, 2015). The CFTC alleges that Oystracher would place large orders on one side of the market, which he would then cancel and "flip" his position by placing at least one aggressive order on the other side of the market to trade with participants that had been induced to enter the market by the spoofed orders.

[10]This is a particularly extraordinary remedy, as a preliminary injunction is not commonly employed to prevent a U.S. trader from trading on a U.S. exchange due to alleged violations of the CEA.

[11]Financial Conduct Authority Final Notice to Michael Coscia, dated 7 July 1962 (https://www.fca.org.uk/your-fca/documents/final-notices/2013/michael-coscia).

[12]Financial Conduct Authority Final Notice to 7722656 Canada Inc formerly carrying on business as Swift Trade Inc, dated 24 January 2014 (https://www.fca.org.uk/your-fca/documents/final-notices/2014/7722656-canada-inc). Before the FCA issued its Final Notice to Swift Trade, Swift Trade had challenged the FCA's case in the Upper Tribunal and the Court of Appeal, see 7722656 Canada Inc and Peter Beck v Financial Services Authority [2013] Lloyd's L.R.(F.C). 381ff, and 7722656 Canada Inc and Peter Beck v Financial Conduct Authority [2013] EWCA Civ 1662 respectively.

[13]The Financial Conduct Authority v Da Vinci Invest Limited and others [2015] EWHC 2401 (Ch).

[14]CEA § 4c(a)(5)(C). The CEA disruptive practices provision makes it "unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that—(A) violates bids or offers; (B) demonstrates intentional or

reckless disregard for the orderly execution of transactions during the closing period; or (C) is of the character of, or is commonly known to the trade as, "spoofing" (bidding or offering with the intent to cancel the bid or offer before execution). *Id.*

[15]CEA § 6c.

[16]*Id.*

[17]Note that each count of commodities fraud for which Coscia was also convicted carries a maximum sentence of 25 years in prison and a $250,000 fine.

[18]*Id.*

[19]Antidisruptive Practices Authority, Interpretive Guidance and Policy Statement, 78 Fed. Reg. 31890 (May 28, 2013) at 31896.

[20]The CFTC lists partially filled orders and properly placed stop-loss orders as examples where cancelling a bid or offer before execution can be part of a legitimate, good-faith attempt to consummate a trade. *Id.*

[21]*Id.*

[22]The CFTC guidance does not define "beyond reckless," but courts have consistently defined "recklessness" as conduct that "departs so far from the standards of ordinary care that it is very difficult to believe the actor was not aware of what he or she was doing." *See, e.g., Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988) (quoting *First Commodity Corp. v. CFTC*, 676 F.2d 1, 7 (1st Cir. 1982)). Other courts have even defined "reckless" in the securities context to be "the functional equivalent of intent." *See Sundstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977) (interpreting "recklessness" under Rule 10b-5). Under this heightened standard, recklessness "may serve as a surrogate concept for willful fraud." *See Rolf v. Blyth, Eastman Dillon & Co., Inc.*, 570 F.2d 38, 46 (2d Cir. 1978).

[23]The Dodd-Frank amendments added criminal sanctions for "knowing" violations of the statute of up to 10 years imprisonment and a fine of not more than $1 million. CEA § 9(a)(2); 7 U.S.C. § 13(a)(2).

[24]While the amendments allow criminal sanctions for spoofing in the futures and derivatives markets, there is no parallel provision under the securities statutes. Regardless, the Securities and Exchange Commission has attacked spoofing in the past by characterizing it as a manipulative practice in violation of the antifraud and antimanipulation provisions of Section 10(b) of the Exchange Act, as well as Rule 10b-5 and 17(a) of the Securities Act. *See, e.g.*, *Visionary Trading LLC, et al.*, Exchange Act Release No. 71871 (SEC Apr. 4, 2014); *Briargate Trading, LLC, et al.*, Securities Act Release No. 9959 (SEC Oct. 8, 2015).

[25]Antidisruptive Practices Authority, Interpretive Guidance and Policy Statement, 78 Fed. Reg. 31890 (May 28, 2013) at 31896.

[26]CME, CBOT, NYMEX & COMEX, CME Group RA1405-5R, MARKET REGULATION ADVISORY NOTICE: GUIDANCE ON RULE 575, (Sept. 15, 2014).

[27]ICE FUTURES U.S., EXCHANGE NOTICE: DISRUPTIVE TRADING PRACTICES, (January 14, 2015).

[28]CME, CBOT, NYMEX & COMEX, CME Group RA1405-5R, MARKET REGULATION ADVISORY NOTICE: GUIDANCE ON RULE 575, (Sept. 15, 2014).

[29]FCA Handbook, MAR 1.6.2E (Descriptions of behavior that amount to market abuse (manipulating transactions): false or misleading impressions) subparagraph 4 (https://www.handbook.fca.org.uk/handbook/MAR/1/6.html).

[30]The Financial Conduct Authority v Da Vinci Invest Limited and others [2015] EWHC 2401 (Ch) at [161].

[31]Winterflood Securities Limited v FSA [2010] EWCA Civ 423, per Moore-Bick LJ at [25]. *See also* The Financial Conduct Authority v Da Vinci Invest Limited and others [2015] EWHC 2401 (Ch) at [112].

[32]The Financial Conduct Authority v Da Vinci Invest Limited and others [2015] EWHC 2401 (Ch) at [196].

[33]The leading authority is Meridian Global Funds Management v Securities Commission [1995] 2 AC 500. The phrase "directing mind and will" originates in the speech of Viscount Haldane L.C. in Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. [1915] A.C. 705, 713.

[34]Regulation (EU) No. 596/2014.

[35] Regulation (EU) No. 596/2014 Article 12(1).

[36] Regulation (EU) No. 596/2014 Article 12(2).

[37]HM Treasury, Bank of England, Financial Conduct Authority, Fair and Effective Markets Review, Final Report, June 2015 (http://www.bankofengland.co.uk/markets/Documents/femrjun15.pdf).

[38]A violation of CEA § 4c previously required

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"knowing" participation in a prohibited transaction, like a wash or fictitious trade. *See*, *e.g.*, *CFTC* v. *Savage,* 611 F.2d 270, 284 (9th Cir. 1979) ("a violation of section 4c requires knowledge"); *Reddy* v. *CFTC*, 191 F.3d 109, 119 (2d Cir. 1999).

[39]For example, supply, demand, false impression, misleading impression, abnormal price, artificial price.

[40]Although there is no requirement under the U.K. regime when proving that an order gave a misleading impression, to adduce evidence as to the subjective understanding of other market participants. In The Financial Conduct Authority v Da Vinci Invest Limited and others [2015] EWHC 2401 (Ch) the court held as follows at [156]:

> *In my judgment section 118(5) FSMA plainly does not require actual evidence to be adduced from any market participant. The section is drafted in objective terms, and, particularly in the context of modern algorithmic and high speed trading, it would be wholly impracticable and would defeat the legislative purpose to require the FCA to have to find and adduce subjective evidence from individuals who were actually engaged in the relevant market and who responded to the offending behaviour at the time in question.*

SIFMA AMG SEEKS STRONGER CUSTOMER PROTECTIONS FOR SWAPS EXECUTED WITH CENTRAL COUNTERPARTIES

By Timothy Cameron and Laura Martin

Timothy Cameron is Head and Managing Director, Asset Management Group of the Securities Industry and Financial Markets Association and Laura Martin is Managing Director and Associate General Counsel of the SIFMA Asset Management Group.

In the fall of 2015, the Asset Management Group ("AMG")[1] of the Securities Industry and Financial Markets Association ("SIFMA") asked regulators to strengthen standards protecting customer margin posted for centrally-cleared derivatives transactions, including the international standards set through the *Principles of Financial Market Infrastructures* ("PFMIs")[2] for central counterparties ("CCPs") established by the Committee on Payments and Market Infrastructures ("CPMI") and the International Organization of Securities Commissions ("IOSCO"), and those standards implemented in the U.S. by the Commodity Futures Trading Commission (the "CFTC").[3]

CCP risk standards are important to a wide range of investors, including retirement savers and mutual fund investors whose funds are managed by asset managers. Asset managers use derivatives (*e.g.*, futures and swaps) cleared at CCPs for their clients for a range of purposes, including as a means to manage or hedge investment risks, such as changes in interest rates, exchange rates, and commodity prices. Some clients of asset managers, including pension funds and mutual funds, among others, have regulatory directives and investor profiles that require asset managers to protect invested assets from counterparty risk, including the failure of a CCP. All end users of a CCP, irrespective of regulatory directives relating to protection of funds, should be protected from a CCP failure through robust risk standards aimed at incentivizing behavior to maximize CCP resiliency and providing sufficient transparency to permit customers and asset managers who invest their funds to make informed decisions on the risks presented by CCPs.

AMG's Recommendations to CPMI and IOSCO

AMG provided CPMI and IOSCO with its recommendations and observations on the PFMIs in a letter dated October 23, 2015.[4] AMG's comments were provided in conjunction with the CPMI and IOSCO commencement of the first "Level 3" PFMI Principles Assessment for the PFMIs for Financial Market Infrastructures (FMIs) (the "Level 3 Assessment"), and focused on issues related to CCP resilience, recovery, and resolution.[5]

AMG advocated for enhancement of the PFMIs so that CCPs would be required to provide the same type and level of information other market participants have traditionally provided in the bilateral derivatives market, sufficient information to appropriately assess

and monitor an entity's financial stability and ability to survive financial stress.

AMG's comments focused on five key areas of recommended improvements.

First, financial end users who enter into transactions with CCPs should have minimal exposure to CCP disruptions. A non-defaulting end user's initial and variation margin should never be at risk or used in a CCP disruption. The purpose of margin is to cover the value of the derivative, not to cover disruptions to the CCP.[6] Margin levels should reflect the potential future exposure and current exposure of the position, and should not be included on the default waterfall for the CCP—even as a resource of last resort prior to resolving the CCP.

Second, a CCP's risk management and stress testing should be robust, standardized and transparent. AMG's letter included many detailed recommendations on these issues, including the following main points:

- Clear standards should be set regarding the appropriate level of a CCP's financial resources and the timeframe for testing of the sufficiency of those resources.
- Further specificity should be provided regarding the use and reporting of stress test results.
- Regulators, CCPs and other market constituencies should jointly develop minimum standards for CCP stress tests. In addition to the standardized stress tests, CCPs would also be required to perform stress tests based on their historical and evolving practices and to test according to their own unique profile.[7] Additionally, stress test standards should include global CCP stress tests that focus on areas where risk from one CCP could cascade to other CCPs or risk from clearing firm overlap could cascade across CCPs.[8]
- CCPs should be required to obtain independent validations of stress tests and risk management models at the outset and on a semi-annual or annual basis.[9]
- CCPs should be required to increase frequency of stress testing during times of market stress.
- The CCPs should be required to disclose stress testing scenarios, including the relevant inputs into the scenarios (*i.e.*, pricing data, correlations, liquidity conditions), the relationship between stress testing and the size of the guarantee fund and a summary of stress testing reporting procedures.[10]
- The responsibilities of the risk committee and the standards used should be defined and disclosed.
- Stakeholder committees should be required to include representatives of the different interests (i.e., sell-side, buy-side, asset manager, corporate end-user, etc.) and the CCP should be required to consider their input on risk matters.

Third, CCP financial safeguards should be risk-based, funded and transparent. A CCP's capital commitment to the guarantee fund should be standardized and assessed in a robust manner, and commensurate with the risk managed by the CCP.[11] Given the current and growing role that CCPs play in the risk management of derivatives, current CCP guarantee fund contributions are generally insufficient and should be increased. CCP contributions to the guarantee fund should be mandated (where not already in place) and should be set at a minimum, risk-based level. The PFMIs and standards set by regulators should require prefunding of certain financial resources available to the CCP. Clearing firm assessments (i.e., contributions to the guarantee funds) should be pre-funded and held in escrow accounts or by some other means for the funds to be readily available. CCPs should disclose in detail the totality of resources available for loss absorbency, including a

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CCP's capital commitment to the guarantee fund and the size of the guarantee fund in the event of a clearing firm default.[12]

Fourth, CCP recovery measures should be robust and clear. CCP recovery measures should be clarified and enhanced. CCPs should be required to establish clear rules for portfolio auctions in advance of a recovery event that permit the participation of clearing firms, as well as other market participants, specifically those with expertise in the asset classes composing a CCP's portfolio.

Fifth and finally, when default management fails, the CCP should quickly transition from recovery to resolution in order to protect the CCP's end users. Regulators should establish a clear standard as to when the Point of Non-Viability has been reached and the CCP should be closed.[13] When the recovery measures have failed, there must be an established, clear and rapid process to close out positions (including immediately establishing a "tear up" price) to limit end-user losses and systemic impact.

CFTC's November 2015 Market Risk Advisory Committee

On November 2, 2015, the CFTC's Market Risk Advisory Committee ("MRAC"), a committee sponsored by Commissioner Sharon Bowen and consisting of a range of market participants, academia and regulators that advise the CFTC "on matters relating to evolving market structures and movement of risk across clearinghouses, exchanges, intermediaries, market makers and end-users,"[14] held a public meeting to discuss CCP risk standards, including a panel presentation of the buy-side perspectives on the topic.[15]

The buy side panel views expressed at the MRAC were built upon those stated in the letter to CPMI and IOSCO.

Specifically, Angela Patel, Senior Vice President, Putnam Investments, explained that concentration of clearing activity among a few CCPs and FCMs has increased the level of risk at each CCP and said there is a need for clear resolution processes. She explained that asset managers were in some respects "better off" before market reforms because they were capable of assessing the viability and risks of their counterparties.

William Thum, Principal, Vanguard, and on behalf of SIFMA AMG, stressed the importance of CCP resilience, recovery and resolution, noting that asset managers have a fiduciary duty to assess the risk of their counterparties. He explained that implementation of the PFMIs across jurisdictions lacked consistency, standardization, and transparency, which leaves asset managers unable to compare processes across products and regimes. Thum explained that SIFMA AMG's letter to CPMI and IOSCO recommended: 1) minimum standards for resolution processes; 2) enhanced safeguards in instances of multiple entity failures; 3) mandatory public reporting of CCP stress test results; 4) standardized CCP capital commitments; 5) clear resolution standards, including for determining the "point of no return;" 6) preventing use of non-defaulting parties' initial and variation margin in a CCP resolution; and 7) independent verification of stress testing, among others. He also stated that CCP contributions to the guarantee fund should be increased and that these levels should be mandated and set at certain risk-based levels. Thum suggested that contributions to guarantee funds be prefunded, that the totality of a CCP's loss absorbing capacity be disclosed, and that a CCP's margin methodology be disclosed.

Kristen Walters, Managing Director, BlackRock, explained that it is critical for the voice of end-investors to be heard and said that using variation or initial margin in a default would be tantamount to a tax on end-users of financial products. Walters said that CCP loss absorbing resources are insufficient and that default waterfalls need to be strengthened. She summarized BlackRock's recommendations, which

include: 1) increasing CCP's risk based contribution to the guarantee fund; 2) pre-funding member assessments to make sure resources are available to the CCP during a market disruption; 3) increasing transparency and consistency of risk management practices; 4) having stress tests subject to independent validation and regulatory oversight; and 5) requiring products to be cleared by at least two CCPs, among others. She added that CCPs should be allowed to fail and noted that, in BlackRock's opinion, the majority of customers would "rather be money good than position good."

Looking Ahead

In January 2016, CCPs will be required to provide broader disclosures pursuant to CPMI and IOSCO's Public Quantitative Disclosure Standards for Central Counterparties.[16] According to CPMI and IOSCO:

> The disclosures are intended to support the objectives of enabling stakeholders, including authorities, participants (direct, indirect and prospective) and the public, to:
>
> - compare CCP risk controls, including their financial condition and financial resources to withstand potential losses;
> - have a clear, accurate and full understanding of the risks associated with a CCP (in accordance with Principle 23, Key Consideration 5);
> - understand and assess a CCP's systemic importance and its impact on systemic risk in all jurisdictions and currency areas for which it provides services, from which it has material membership or in which there are linked infrastructures; and
> - understand and assess the risks of participating in CCPs (directly, and, to the extent relevant, indirectly).[17]

AMG and its member firms will continue to review the evolving CCP risk standards, and work with regulators and market participants to advance protections of pension funds, mutual funds and other clients' funds managed by asset managers.

ENDNOTES:

[1]AMG's members represent U.S. asset management firms whose combined assets under management exceed $30 trillion. The clients of AMG member firms include, among others, registered investment companies, endowments, state and local government pension funds, private sector Employee Retirement Income Security Act of 1974 pension funds, undertakings for collective investments in transferable securities ("UCITS") and private funds, such as hedge funds and private equity funds.

[2]The Committee on Payments and Market Infrastructures ("CPMI") (formerly known as the Committee on Payment and Settlement Systems) and the Technical Committee of the International Organization of Securities Commissions ("IOSCO"), Principles for Financial Market Infrastructures, April 2012, available at: http://www.bis.org/cpmi/publ/d101.htm. Throughout this letter we provide specific citation to pages in the PFMIs as follows: "PFMI at ____." Our comments regarding areas where the PFMIs could be modified will ultimately result in implementation and enforcement of the PFMIs by the appropriate national regulator.

[3]While the CFTC's standards have immediate impact on the protections afforded to asset managers' U.S. clients, the PFMIs affect both implementation of standards outside of the U.S. and CCPs to which the CFTC grants substituted compliance. See, e.g., CFTC Issues Order of Exemption from Registration as a Derivatives Clearing Organization to ASX Clear (Futures) Pty Limited, available at: http://www.cftc.gov/PressRoom/PressReleases/pr7214-15 (granting petition for exemption from registration as a designated clearing organization on basis that it is subject to comparable, comprehensive supervision and regulation by the appropriate government authorities in its home country of the DCO, which included its compliance with the PFMIs).

[4]For AMG's full comments, see letter available at: http://www.sifma.org/issues/item.aspx?id=8589957401.

[5]See CPMI and IOSCO Press Release, CPMI and IOSCO begin first "Level 3" PFMI Principles assessment (July 9, 2015), available at: http://www.bis.org/press/p150709.htm.

[6]See Section 3.4.16 (Mitigating and Managing Credit Risk), Principle 4 (Credit Risk), PFMI at 42 (stating "[f]or example, to control the build-up of current exposures, a CCP should require that open positions be marked to market and that each participant pay funds, typically in the form of variation margin, to cover any loss in its positions' net value at least

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daily; such a requirement limits the accumulation of current exposures and therefore mitigates potential future exposures.").

[7]Some CCPs have contended that standardized testing leads to rigidity that does not address dynamic market conditions, as well as model risk and is ineffective for diverse markets. Instead, the CCPs contend that principles for stress testing should permit flexibility to allow for changing market conditions, risk management innovation, and diversity of markets. AMG agrees with these contentions, but submits that stress testing should encompass all of the above principles in a holistic manner. The PFMIs could be structured to set forth standardized stress tests that could be updated on an ongoing basis by the national regulators, as well as a requirement for CCPs to develop their own stress tests that address dynamic market conditions.

[8]AMG noted that in a period of CCP disruption, the ability of a separate CCP to receive positions from the defaulting CCP is limited because there is not yet fungibility among CCPs. However, this metric may assist in assessing the systemic importance of a CCP for a specific product, which would inform the decision to increase margin and guarantee fund contributions.

[9]AMG noted that elsewhere in the PFMIs the concept of model validation by an independent party is discussed. See, e.g., Section 3.2.16 (Model Validation), Principle 2 (Governance), PFMI at 30-31.

[10]AMG acknowledged that the level of detail in certain stress test results should be carefully managed. The disclosures should balance the market participant's need for the information in assessing its own risk to the CCP, as well as understanding the overall risk the CCP presents to the financial system. Some disclosures may be permissible in the form of a pass/fail test result, while other disclosures may provide more detail.

[11]The guarantee fund forms part of the default waterfall and can also be referred to as the prefunded default arrangement, or "clearing fund." See Section 3.6.2 (Margin Requirements), Principle 6 (Margin), PFMI at 51.

[12]AMG notes that the default waterfall does not encompass other losses that can be experienced by the CCP, including losses due to operational disruptions or fraudulent conduct by the CCP, however, the losses incurred in these events may also cascade to the clearing firms and clients. AMG notes that the PFMIs discuss the operational risk inherent in a CCP, however, additional requirements should be put in place, requiring, for example, the existence of insurance policies or the amount of financial resources reserved for operational crises. See, e.g., 3.3.3 (Comprehensive Risk Policies, Procedures, and Controls), Principle 3 (Framework for the comprehensive management of risks), PFMI at 33.

[13]AMG recognizes that this clear standard could be a principles-based standard that allows for some measure of flexibility for regulators to determine the PONV and resolve a CCP.

[14]See CFTC's description of the Market Risk Advisory Committee, available at: http://www.cftc.gov/about/cftccommittees/marketriskadvisorycommittee/index.htm.

[15]A full record of the meeting is available at: http://www.cftc.gov/About/CFTCCommittees/MarketRiskAdvisoryCommittee/mrac_meetings.

[16]See Press Release, available at: http://www.bis.org/press/p150226.htm.

[17]See CPMI and IOSCO's Public Quantitative Disclosure Standards for Central Counterparties, available at: http://www.bis.org/cpmi/publ/d125.pdf.

FROM THE EDITOR

A Few Good Things

We have a few things to celebrate here at the beginning of the New Year.

First, the CFTC recently published its final rules for margining uncleared swaps. This was one of the last building blocks of the new swaps law regime that remained missing. As anticipated, the Commission followed the same template that was recently adopted by the Prudential Regulators for banking entities. Each set of final rules included an important modification of its corresponding, original proposed rule for margining uncleared swaps.

As originally proposed, the Prudential Regulators and the CFTC would have restricted the form of variation (mark-to-market) margin to just cash. Particularly in the CFTC's version of the proposed rules, the regulators appeared to reason that because VM was a "settlement," VM should take the form of cash rather

than any of the multiple forms of assets that were permitted for uncleared original margin, including treasury, agency and corporate bonds.

Market participants were quick to point out that mark-to-market margin in the uncleared world was *not* a form of settlement, in which legal title passes from the transferor to the transferee, but rather the collateralization of a liability (namely, the out-of-the-money counterparty's obligation to the in-the-money party) in which the transferee obtains a possessory lien on the collateral but ownership of the asset remains at the transferor. In other words, the exchange of VM in the uncleared world was never contemplated to be a settlement like it could be in the cleared world and the regulators' suggestion to the contrary was out-of-step with market practice.

It followed that if passing VM in the uncleared world was not a settlement, there was no compelling reason to restrict the form of VM to cash. Again, market participants argued to the regulators that their practice was to use assets in addition to cash, such as the aforementioned bonds, subject to valuation haircuts that protected the transferee. Some commentators also pointed out to the regulators that the precise wording of the relevant section of the Dodd-Frank Act directed that the regulators "shall permit" the use of noncash collateral for uncleared swaps - a mandate that the regulators apparently overlooked in the proposed rules.

The final rules, however, set the record straight and effectively acknowledged the role of VM as collateral (not settlement) in the uncleared swap world. The regulators agreed that subject to valuation haircuts, market participants that are not swap entities (i.e., they are financial end users not swap dealers) could continue to employ the same types of assets that they are likely to be using currently to collateralize their uncleared mark-to-market exposures. This was an especially significant "victory" for insurers and mutual funds that under the proposed rules faced the prospect of having to transform assets to cash in order to meet their VM requirements, which would have been inefficient and costly. Under the final rules, they can continue to employ the assets that they prefer to hold in their portfolios (e.g., bonds) as VM collateral. If the haircuts and margin calculators remain no less rigorous than they have been, the financial system should not be at any more risk because financial end users exchange assets rather than cash with their swap dealers in the uncleared space, which in any event is a diminishing dimension.

Second, there are new developments on the home front at FDLR. Your editor-in-chief retired from full time employment at the end of the year. He will remain FDLR's editor in chief for the foreseeable future and he will be doing some consulting in the insurance and derivatives industries.

In addition, Kenneth Rosenzwieg and Susan Ervin recently retired from their respective law firms. While we bid Ken a fond farewell as he relocates to lovely Santa Barbara, Susan decided to remain (semi)active and remains on our Board of Editors.

Finally, readers may be interested in knowing that as your editor was cleaning out his office and the detritus of over 40 years of law practice, he looked for an appropriate home for a complete set of this publication's 35 years of back issues. The Library of Congress agreed to accept the donation. Accordingly, the complete run of FDLR will be available to scholars and researchers for years to come.

RAM

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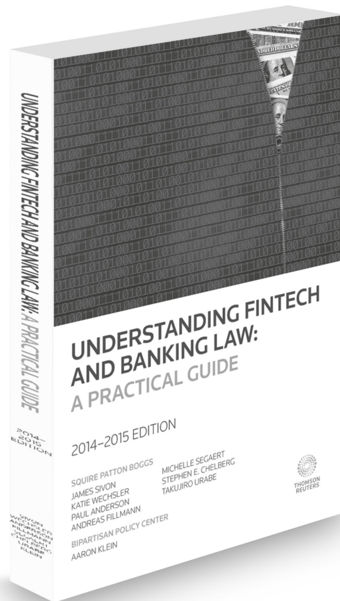

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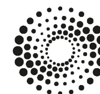
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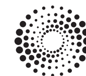
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