

CFTC's Project KISS Gets Underway: Giancarlo Makes the First Move

May 15, 2017

Few have embraced President Trump's [Executive Order on Core Principles for Regulating the U.S. Financial System](#) as swiftly and decisively as CFTC Acting Chair Christopher Giancarlo. His [Project KISS—Keep It Simple, Stupid](#), announced within weeks of the Executive Order, is an agency-wide internal review focused on simplifying and modernizing CFTC rules, regulations and practices to ease regulatory burdens in the spirit of job creation and economic growth. Project KISS's primary focus is on streamlining the implementation of existing regulations and practices, rather than on re-writing or repealing those rules and regulations.

On May 3, the CFTC furthered its efforts toward implementing the Core Principles. It released a [request for public input](#) on Project KISS and a [Proposal](#) to amend certain duties of swap dealer and FCM chief compliance officers ("CCOs") and requirements concerning the content of required CCO annual reports.

More specifically, the Proposal would:

- **Eliminate the requirement for the CCO annual report to map, assess the effectiveness of and discuss areas of improvement for the swap dealer or FCM's written policies and procedures with respect to each applicable CFTC requirement.** This amendment would reduce regulatory burdens for swap dealers and FCMs by eliminating the need for a detailed appendix to the CCO annual report and the requirement-by-requirement assessment as described in [CFTC Staff Advisory No. 14-153](#). In the Proposal, the CFTC clarified that (1) it expects to see a meaningful, substantive discussion in the body of the CCO annual report, including in the assessment and material noncompliance issues sections, focusing on areas of improvement and recommended changes to the compliance program rather than a check-the-box exercise in an appendix covering all applicable requirements; and (2) inter-related requirements may be addressed collectively. For example, all of the external business conduct requirements could be discussed holistically, rather than through a separate assessment of each requirement or sub-requirement.
- **Reduce and clarify CCO responsibilities by:**
 - requiring the CCO to ensure that the swap dealer or FCM *establishes, maintains and reviews* policies and procedures reasonably designed to achieve compliance, in lieu of the existing requirement that the CCO take reasonable steps to *ensure compliance*;
 - adding a reasonableness qualifier to the CCO's duty to resolve conflicts of interest and removing the requirement to consult with the board or senior officer on noncompliance issues, recognizing that a CCO need not personally resolve every potential conflict that may arise and clarifying that routine conflicts and noncompliance issues could be resolved in the normal course of business; and
 - limiting the CCO's duty to administer policies and procedures to those specifically related to the business for which the swap dealer or FCM is required to register with the CFTC, rather than all of the business engaged in by the entity.
- **Implement mechanical changes to the rules that largely align with market practice and the SEC's analogous rules for security-based swap dealers**, including by defining the senior officer as the CEO or equivalent officer, clarifying that the resources discussion in the annual

report should be limited to those resources allocated to the specific activities for which the swap dealer or FCM is registered and permitting the annual report to be furnished to the audit (or equivalent) committee of the swap dealer or FCM.

The Proposal does not address all issues of interest to swap dealer and FCM CCOs, however, particularly those relating to the content of CCO annual reports for non-U.S. swaps dealers that can rely on substituted compliance.

The Proposal likely presages the approach that the CFTC will take as part of Project KISS and in conducting a review of its regulations for streamlining and updating under the Core Principles. In the Proposal, the CFTC takes into account, and seeks to be responsive to, a number of concerns that swap dealer and FCM CCOs have raised since the CCO rules were implemented. It seeks to clarify regulatory responsibilities and reduce burdens in a targeted manner. Finally, the Proposal evidences a commitment to harmonize rules with those of the SEC to the extent possible. We believe this approach bodes well for further progress on harmonization with U.S. and non-U.S. regulatory regimes, including through substituted compliance determinations.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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