



Regulatory Alert

Financial Services Regulatory Insight Center



October 2018

CFTC white paper outlines principles for revisions to cross-border swaps regulation

Key points

- CFTC Chairman Giancarlo has authored a whitepaper on recommendations for improvements to the regulation of cross-border swaps; the recommendations will serve as the basis for future proposed rulemakings
- A key attribute of the recommendations is recognition of, or deference to, the requirements of non-U.S. regulators that have adopted comparable G20 swaps reforms.

Summary

CFTC Chairman J. Christopher Giancarlo has authored and released a white paper to guide new rulemakings addressing cross-border swaps reform. The paper, titled “Cross-Border Swaps Regulation Version 2.0: A Risk-Based Approach with Deference to Comparable Non-U.S. Regulation,” introduces recommendations and proposals that, if adopted by the CFTC, would replace the agency’s 2013 cross-border guidance (imposing CFTC transaction rules on swaps traded by U.S. persons in all jurisdictions), its 2016 proposed cross-border rules, and certain positions taken in staff advisories and no-action letters.

Chairman Giancarlo suggests that the CFTC’s current cross-border approach, including the use of “guidance” instead of formal regulations, reliance on a “substituted compliance” regime that encourages rule-by-rule comparisons of CFTC and non-U.S. regulations, and “insufficient deference” to non-U.S. regulators that have adopted comparable G20 swaps reforms, has resulted in a number of adverse consequences. In particular, he suggests this approach has “driven global market participants away from transacting with entities subject to CFTC

swaps regulation and fragmented what were once global markets into a series of separate liquidity pools.”

Chairman Giancarlo recommends the following changes to the CFTC’s cross-border approach:

- **Non-U.S. central counterparties (CCPs):** Expand the use of the CFTC’s exemptive authority for non-U.S. CCPs if they are subject to “comparable, comprehensive supervision and regulation” in their home country and do not pose substantial risk to the U.S. financial system. The exemption would permit non-U.S. CCPs to provide clearing services to U.S. customers indirectly through non-U.S. clearing members not registered with the CFTC.
- **Non-U.S. trading venues:** End the bifurcation of the global swaps markets into U.S. person and non-U.S. person markets by exempting non-U.S. trading venues in jurisdictions with comparable reforms from having to register with the CFTC as swap execution facilities.
- **Non-U.S. swap dealers:** Require non-U.S. swap dealers whose swap dealing activity poses a “direct and significant” risk to the U.S.



financial system to register; recognize risk-mitigating measures in the registration of non-U.S. swaps dealers; and show appropriate deference to non-U.S. regulatory regimes that have comparable requirements for swaps dealing.

- **Clearing and trade execution requirements:** Permit non-U.S. persons to rely on substituted compliance for swap clearing and trade execution in comparable jurisdictions and apply those requirements in noncomparable

jurisdictions that have a “direct and significant” effect on the United States.

- **ANE transactions:** Take a territorial approach to U.S. swaps trading, including trades “arranged, negotiated, or executed” within the United States by personnel or agents of such non-U.S. persons. Nonincidental U.S. swaps trading should be subject to U.S. swaps trading rules.

For additional information please contact [Tracy While](#).

Amy Matsuo
Principal and National Lead
Regulatory Insights
T: 919-664-7302
E: amatsuo@kpmg.com

Contributing authors:
Amy Matsuo, Principal and National Lead,
Regulatory Insights

Karen Staines, Director, Financial Services
Regulatory Insight Center

Phil MacFarlane, Associate Director, Financial
Services Regulatory Insight Center

kpmg.com/socialmedia



All information provided here is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the facts of the particular situation.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

© 2018 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved. Printed in the U.S.A. NDPPS 592774