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SWAP EXECUTION FACILITIES

In 2020, the CFTC made permanent and codified previously informal fixes to rules governing Swap Execution Facilities ("SEF"). In this article, after an introduction, the authors discuss these fixes, including: exemption from required trade execution; block trades away from SEF; error trades; and impartial access. They then turn to uncleared swap confirmations; the embargo rule; name give-ups; and three operational issues: audit trail data; financial resources; and the CCO position. They close noting that the SEC has finalized a package of rules for security-based swaps and that other rules regarding security-based SEFs have been proposed but are not yet final.

By Paul M. Architzel and Aaron Friedman *

The Dodd-Frank Act[1] established a new regulatory framework for the trading of over-the-counter ("OTC") swaps. Under this new framework, in 2013, the Commodity Futures Trading Commission ("CFTC") adopted rules under its Title VII mandate governing the registration, operations, and compliance requirements for swap execution facilities ("SEFs"), and the trading of swaps.[2] In many ways, the new rules governing SEFs and the trading of swaps were modeled after the CFTC's framework for futures. Since then, the CFTC typically has responded to issues arising in the implementation of these rules informally, by issuing no-action or interpretative relief or guidance, much of which was time-limited. In 2020, the Commission made permanent and codified a number of these previously informal fixes.

OVERVIEW OF DODD-FRANK REFORMS

Derivatives are used widely throughout the United States and global economies to manage commercial and market risks. Derivatives enable market participants to hedge the risk of volatile markets and to increase price certainty. Trading of derivatives generally falls into two broad categories: exchange-traded and OTC. Historically, futures were the only form of derivatives available, and were required to be traded on exchanges, known as designated contract markets ("DCMs"). Beginning in the 1980s, OTC derivatives in the form of "swaps" began to be traded.

Title VII of the Dodd-Frank Act amended the Commodity Exchange Act, 7 U.S.C. Section 1 et seq. ("CEA"), to establish a comprehensive new regulatory framework for swaps. Traditionally, swaps have varied significantly in their fungibility, from highly customized

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[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 929-Z, 124 Stat. ("Dodd-Frank Act" and "Dodd-Frank").

[2] Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33,476 (June 4, 2013) ("SEF Rules Adopting Release"), *available at* https://www.govinfo.gov/content/pkg/FR-2013-06-04/pdf/2013-12242.pdf.

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