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MANAGING THE RISK: AN OVERVIEW OF CFTC SWAP DEALER ENFORCEMENT ACTIONS UNDER DODD-FRANK

In the decade since the passage of the Dodd-Frank Act, the CFTC has brought 28 enforcement actions against swap dealers. The authors describe these actions in the categories of reporting, recordkeeping, risk management, business conduct, and supervision. They then turn to traditional enforcement actions, discussing spoofing, market manipulation, and fraudulent misrepresentation. They close with a note on the CFTC's recent issuance of proposed rules that would amend certain reporting requirements for swap dealers and management of cross-border activity.

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This article summarizes trends in swap dealer regulatory enforcement actions since the 2010 passage of the Dodd-Frank Act, providing insight into the U.S. Commodity Futures Trading Commission's ("CFTC's") past enforcement priorities and potential future focus. A central tenet of Dodd-Frank was to reduce risk, increase transparency, and promote market integrity within the financial system by, among other efforts, providing for the registration and regulation of swap dealers. In the 10 years since Dodd-Frank's passage, there have been approximately 28 enforcement actions involving swap dealers.¹ The first of these came in 2012. Each such action is reflective of the Commission's view that integrity in the financial system is promoted, not only through registration with the CFTC but also active enforcement of the Commission's rules and regulations. Further, swap dealers, as a registration category, are

under intense scrutiny largely because of the view that their impact on market stability and integrity is outsized.

This article divides the review of enforcement into two parts. First, it examines "regulatory" enforcement actions, which stem from regulatory requirements, including recordkeeping, reporting, and internal control requirements. Second, it examines "traditional" enforcement actions, which target market misconduct, such as spoofing, manipulation, and fraud. In tracing the enforcement actions brought against swap dealers, a few key themes emerge: (1) the CFTC is equally committed to bringing enforcement actions in both of these areas; (2) as part of these actions, the CFTC often charges the swap dealers with a failure to supervise, an easy, non-intent based charge that focuses on the systems and controls designed to prevent bad behavior; and (3) self-reporting, cooperation with Commission investigations, and full remediation are key factors in potentially reducing penalties assessed. Therefore, it is essential that swap dealers maintain robust compliance and

¹ A table describing the types of violations charged in these enforcement actions is included as Appendix A.

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