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CFTC ENFORCEMENT PROGRAM 2020-2021: THE SWAPS MARKET UNDER REVIEW

In FY 2021, the CFTC has brought enforcement actions with a special focus on the swaps market and swap dealers. In this article the authors discuss the commission's recent cases, involving charges of (1) failures in reporting, recordkeeping, and supervision; (2) violation of business conduct standards; and (3) failures to register as an SEF. They then discuss the commission's new penalty mitigation guidelines. They close with a look ahead at FY 2022 under a new commission completely appointed by the Biden administration.

By Anne M. Termine and Annie Willett *

In Fiscal Year 2021, which ran from October 1, 2020 through September 30, 2021, the U.S. Commodity Futures Trading Commission ("CFTC") remained active on the enforcement front, both generally and with respect to the swaps market. Although enforcement activity at the Commission was quieter in FY 2021 compared with the record-breaking number of actions brought in FY 2020, the tally still reached 55 total enforcement actions, nine of which targeted the swaps market. While the CFTC was slow to bring cases in this space in FY 2021, by no means should this be understood as the CFTC not being active or interested in enforcement investigations concerning swaps.¹ This

¹ There are many reasons for the pace of disclosed investigations seemingly slowing down this year. First, the on-going pandemic caused the CFTC to continue operations fully remotely. This did not prevent investigations but may have impacted the speed with which they were brought. Second, the CFTC brought a record number of cases in the prior FY 2020, a total of 113 actions, the most in its history. This high level of

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Article summarizes trends in the Commission's enforcement actions in FY 2021 involving the swaps market and centering on "regulatory" enforcement actions, which stem from violations of recordkeeping, reporting, and internal control requirements.² It also

footnote continued from previous column...

activity coincided with the Director of Enforcement departing in advance of the presidential administration change that came in the latter part of the year. To recap, the cases brought by the CFTC in FY 2020 included:

- 20 filed federal court actions, which are resource draws potentially impacting the agency's ability to bring new cases;
- 14 cases involving allegations of spoofing and manipulation;
- 41 cases involving various registration failures; and
- 8 cases involving recordkeeping and reporting failures, the type of cases that typically involve swap dealers.

² The CFTC is currently in active litigation against an individual swaps trader for engaging in a scheme to deceive and

FORTHCOMING

- **THE EVOLUTION OF SPOOFING ENFORCEMENT AND ... AVOIDANCE**