

GENSLER: CFTC MONITORING COMMODITY FUTURES HIGH-FREQUENCY TRADING FIRMS

While speaking at the Futures Industry Association conference in Boca Raton, Florida, Commodity Futures Trading Commission (“CFTC”) Chairman Gary Gensler explained his agency’s intentions to increase monitoring of high-frequency trading firms in the wake of the 2010 “flash crash.” According to a March 15, 2012 report in The Wall Street Journal, half the commodity futures orders placed originate from high-frequency trading firms. However, as “an estimated 80 to 90 orders are put into futures markets for every trade that actually happens,” the CFTC believes the “aggressive, rapid-fire trading strategies” implemented by these firms could “disrupt or distort financial markets.”

As part of its proposed regulatory approach, Chairman Gensler has expressed the CFTC’s desire to develop and implement a computer monitoring system that would download and track all orders, including those that remain unexecuted. While the monitoring will not occur in real time, Chairman Gensler believes the system would provide the agency with a more detailed view of account ownership and control.

Further, under the direction of Commissioner Scott O’Malia, the CFTC is also in the process of forming a 25-member high-frequency trading subcommittee whose purpose will be to directly define high-frequency trading and collaborate with industry participants to develop regulatory strategies. One such strategy proposed by the Securities and Exchange Commission includes implementing a cancellation fee on orders placed by high-speed firms that remain unexecuted. Despite many exchanges and high-frequency firms having expressed their opposition, the CFTC subcommittee has indicated it will consider implementing such a fee.

FINRA FINES CITIGROUP GLOBAL MARKETS INC. FOR RECORD RETENTION VIOLATIONS

Facing charges it violated NASD Rules 3010 and 3110(a), Section 17(a) of the Securities Exchange Act of 1934 (the “1934 Act”) and Rule 17a-4(b)(4), Citigroup Global Markets Inc. (“Citi”) hereunder, the brokerage and securities arm of Citigroup Inc., executed a Letter of Acceptance, Waiver and Consent with the Financial Industry Regulatory Authority’s (“FINRA”) Department of Enforcement stemming from an alleged failure to retain millions of emails. According to FINRA’s charges, Citi upgraded its email systems prior to October 2008 to a journaling system whereby employee emails were routed through one of 58 servers. Once received, those 58 servers would in turn send copies of all sent and received emails to a ‘transport’ server for delivery to a journaling server. From there, a third-party vendor would then archive the emails.

FINRA alleged that Citi did not perform sufficient quality assurance testing during the email upgrade process, and therefore failed to discover that three of the 58 servers were not properly routing copies to the archives from October 21, 2008 to December 26, 2009. In bringing its charges, FINRA further noted that in 2002, while operating under the name Salomon Smith Barney Inc., Citi faced similar charges for failure to maintain electronic communications. The

HIGHLIGHTS

Commodity Futures Trading Commission to increase monitoring of high-frequency trading firms

FINRA fines Citigroup Global Markets Inc. for email retention failures

SEC Chairman Mary Schapiro reinforces her commitment to money market fund reforms

SEC Commissioners call for lawmakers to revamp the Volcker Rule

FINRA: Increases in disciplinary actions, bans and fines in 2011

firm was consequently fined \$1.65 million and required to undertake a certification that it established control systems and procedures to comply with the preservation requirements.

CHAIRMAN SCHAPIRO: CONTINUE TO SEEK MONEY MARKET FUND REFORMS

On March 15, 2012, while speaking at the Society of American Business Editors and Writers Annual Convention in Indianapolis, SEC Chairman Mary Schapiro reinforced her commitment to money market fund reforms. "As a regulator who saw the damaging effects of the 2008 run on money market funds, I find it hard to remain on the sidelines despite calls to declare victory on this issue." Chairman Schapiro continued, "When we passed these reforms, I clearly stated that we needed to do more - that those reforms were just a first step. Because, despite changes in the assets they hold, money market funds remain susceptible to a sudden deterioration in quality of holdings and consequently, remain susceptible to runs."

The two most likely rule proposals discussed include the implementation of a floating net asset value or the institution both a capital buffer system and redemption restrictions. Three of the five SEC commissioners have expressed reservations regarding these potential proposals, Chairman Schapiro provided no indication on when these rules may be proposed.

SEC COMMISSIONERS URGE RE-PROPOSAL OF THE VOLCKER RULE

SEC Commissioners Dan Gallagher and Troy Paredes have both called for lawmakers to revamp the so called "Volker Rule" contained in the Dodd-Frank Act which would prohibit banks from engaging in proprietary trading. Commissioner Gallagher cited both the public comments received and responses from Japanese, Canadian and British regulators. "Even a quick review of the many substantial comment letters the commission received reveals widespread fears regarding the effect of the proposed rules on the proper functioning of global markets and the competitiveness of the U.S. financial industry. These are fears that I share."

FINRA DISCIPLINARY ACTIONS, BANS AND FINES INCREASE IN 2011

On March 12, 2012, Sutherland Asbill & Brennan LLP ("Sutherland") released its annual independent review of FINRA enforcement efforts throughout 2011. As part of the study, Sutherland specifically examined the number of disciplinary actions filed, the number of FINRA-imposed individual bans imposed and the amount of total fines levied by the regulator. The firm's findings showed significant increases in sanctions across the board, specifically:

- A 13.6% increase in the number of disciplinary actions filed, up to 1,488 actions in 2011;
- A 14.2 increase in FINRA-imposed individual barred, totaling 329 for the year;
- Total fines amounting to \$68 million for the year, an increase of 51.1% from the previous year; and
- Advertising sanctions rising from \$4.75 million to \$21.1 million in 2011.

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