

## CFTC Commissioner O'Malia Resigns from the CFTC to join International Swaps and Derivatives Association (ISDA)

Article By:

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On Monday, July 21, **CFTC** Commissioner Scott D. O'Malia [announced](#) his resignation from the Commission as of August 8, 2014. On July 23, the **International Swaps and Derivatives Association** (ISDA) announced that Mr. O'Malia was appointed chief executive officer and a director of ISDA. See [Scott O'Malia Appointed Chief Executive Officer of International Swaps and Derivatives Association](#). Commissioner O'Malia was considered a strong advocate for **end-user issues**, specifically those impacting energy companies. Therefore, energy companies should be sure to meet with the new Commissioners to discuss the impact of the new CFTC regulations on their businesses.

Commissioner O'Malia's departure will, once again, leave vacant a Republican seat on the Commission. Once Commissioner O'Malia departs, the sole Republican Commissioner will be Christopher Giancarlo, who was recently sworn in on June 16. Commissioner O'Malia began his service on October 16, 2009, prior to the passage of the Dodd-Frank Act, and is currently the most senior Commissioner at the CFTC. Upon his departure, Commissioner Mark Wetjen will be the longest serving Commissioner; his term began on October 25, 2011.

Commissioner O'Malia reconstituted the CFTC's Technology Advisory Committee and served as its chairman. The Committee was very active during O'Malia's tenure and took a leading role in examining market issues such as the "flash crash," and "high frequency trading," as well as highlighting the importance of investments in technology by the CFTC. It is as yet unknown who will be the next chairman of the Committee, but it is of particular importance as international regulatory scrutiny surrounding "high frequency trading" continues.

During his term, Commissioner O'Malia was an advocate for the impact of the CFTC's Dodd-Frank regulations on end-users, including energy companies, and their ability to hedge commercial risk. Earlier this month Commissioner O'Malia continued to express concerns for the increased costs of the CFTC regulatory reforms:

. . . CFTC regulations are negatively impacting liquidity for end-users and making hedging too costly. These increased costs will ultimately trickle down to consumers through higher prices for commodities . . . The legitimate hedging and risk mitigation activities of commercial businesses like end-users were not supposed to be impacted by the OTC derivatives reforms

in Dodd-Frank because they did not contribute to the financial crisis.

See [Keynote Address by Commissioner Scott D. O'Malia at the Federal Reserve Bank of New York](#). Commissioner O'Malia also voiced support in his speech for the CFTC reauthorization bill recently passed by the U.S. House of Representatives that provided, among other things, relief to end-users. The bill would excluded end-users from the "financial entity" definition, which would potentially relieve entities such as energy companies from registration as a "swap dealer." CFTC reauthorization and the House bill still need to be considered by the U.S. Senate before any changes to the end-user provisions become law. The specifics and timing of the ultimate outcome of the CFTC reauthorization remain unclear.

Mr. O'Malia's statement in the press release announcing his CEO appointment notes the importance of hedging commercial risks through the use of derivatives: "The need by thousands of companies around the world to manage and hedge their business and financial risks via derivatives remains as important as ever. ISDA's role is to ensure derivatives markets help to fulfill this promise." According to ISDA, 42% of its members are end-users of derivatives and 8% are energy and commodity firms. Therefore, it would appear that end-user issues will have a place on Mr. O'Malia's agenda at ISDA.

The recent changes at the Commission continue to be of importance to energy companies. The energy industry and market participants should follow developments at the CFTC, particularly as the agenda under new Chairman Timothy Massad takes shape over the next months.

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