

CFTC Commissioner Giancarlo Forecasts Swap Market Reforms

Article By:

Jason Grimes

Stephen M. Humenik

Anne M. Termine

On January 18, 2017, **Commodity Futures Trading Commission (“CFTC”)** Commissioner J. Christopher Giancarlo [delivered](#) a keynote address at SEFCON VII in which he gave an indication of the types of reforms in the swap markets he plans to implement as Acting Chair and, if nominated and confirmed, as permanent Chair. His comments echoed a theme that has been [consistent](#) throughout his time as Commissioner, in which he has urged a more forward-thinking, flexible, market-oriented approach to regulation instead of a prescriptive, heavy-handed approach.

- **Swaps Market Reform:** Commissioner Giancarlo reiterated his longstanding criticism of the CFTC’s implementation of the Dodd-Frank Act’s swap trade execution mandate, as detailed in his [2015 white paper](#) on the subject. In particular, he criticized current CFTC rules that unnecessarily limit the execution methods available for swaps subject to the trading execution mandate to an order book or request for quote sent to at least three market participants. However, Commissioner Giancarlo argued, the Dodd-Frank Act contains no such requirement, and this limitation on flexibility ignores the nature of the swaps market, in which swaps trade “each day through a variety of execution methods tailored around their episodic liquidity.” Commissioner Giancarlo stated he would “move forward with the proposed alternative regulatory framework” detailed in his white paper.
- **Swap Data Reporting:** Commissioner Giancarlo argued that the lack of transparency regulators had into the counterparty credit risk of large banks and swap dealers was at “the heart of the 2008 financial crisis,” and stated that the failure to accomplish the mandate to increase transparency into swaps counterparty exposure of major financial institutions was the “most disappointing” failure. To remedy this, he argued that the CFTC and its overseas counterparts must engage in a “concerted and cooperative effort,” along with market participants, technology vendors, and academia, to make “swap data reporting a reality.” Commissioner Giancarlo also argued that part of this effort would involve decreasing the complexity and expense caused by the CFTC’s implementation of Dodd-Frank.
- **Cross-Border Harmonization:** Commissioner Giancarlo stated that the CFTC’s current

cross-border approach, which emphasizes “identical, rule-by-rule substituted compliance analysis,” is inconsistent with the approach agreed upon by the G20, which urged a commitment to “consistent,” rather than “identical,” implementation. Ultimately, Commissioner Giancarlo urged “thoughtful deference to fellow G-20 regulators within...the goal of rule consistency.” Commissioner Giancarlo also addressed the impending March 1st deadline for variation margin for uncleared swaps, arguing that “regulators imposed an unrealistic deadline on the marketplace,” and that regulators are holding fast to the deadline despite the possible negative effects “on the health of the market and market participants.”

- **FinTech Innovation:** Commissioner Giancarlo continued his advocacy of financial technological (“FinTech”) innovation, arguing that technologies such as distributed ledger technology promise to allow market participants to better manage the complexities brought about by Dodd-Frank. Commissioner Giancarlo argued that regulators must take a “do no harm approach” to FinTech innovations. He cited approvingly to the [Innovation Hub](#) created by the United Kingdom’s Financial Conduct Authority, which allows FinTech firms to bring products and services to the market and to test ideas through its “Regulatory Sandbox.” He urged the CFTC to adopt a similar approach, rather than taking actions that would stifle innovation.
- **Forward-Thinking:** Finally, Commissioner Giancarlo argued that the CFTC’s approach to regulation has failed to keep pace with the fundamental transformations taking place in global markets, including automated trading, big data analytics capability, artificial intelligence, and similar breakthroughs. In particular, Commissioner Giancarlo noted the CFTC’s recent supplemental Regulation Automated Trading [proposal](#), and indicated that, as Acting Chair, he intended to allow more time for comments on the proposal due to its complexity.

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