The Work Goes On

The Commodity Futures Trading Commission moved quickly in March to provide regulatory relief in response to the coronavirus outbreak. **IQ** *talks to CFTC chairman* ***Heath Tarbert*** *about the agency's reaction and its broader policy initiatives*

IQ: What is the Commodity Futures Trading Commission (CFTC) doing to address the coronavirus pandemic and respond to its impact on the markets?

Heath Tarbert (HT): The agency has been closely tracking this issue since the beginning of the year. When it became clear we were dealing with something that would be a major disruptor to our markets, I quickly pivoted the agency's resources to take this crisis head on. This new posture focuses on five main objectives: 1) increased monitoring of our derivatives markets and their participants; 2) using our regulatory framework to promote orderly and liquid markets; 3) responding swiftly to changing conditions with practical, targeted relief; 4) communicating consistently and transparently with all stakeholders; and 5) maintaining our commitment to advancing our strategic policy goals. The good news is that, so far, the derivatives markets are absorbing the stress. They've been quite resilient – this is not 2008, that much is clear. We're going to be nimble and responsive as this continues to unfold. Your readers can learn more about what we're doing by visiting: www.cftc.gov/coronavirus.

IQ: How has the coronavirus pandemic affected your policy agenda?

HT: The short answer is, 'the work goes on'. To be sure, responding to market disruptions caused by the coronavirus pandemic is our primary focus. At the same time, we'll continue to advance the CFTC's strategic goals that pre-existed the outbreak. So, in the near term, we'll propose an update to our bankruptcy provisions for the first time in 37 years, as well as enhancements to the quarterly reports filed by commodity focused investment funds. In the medium term, we're aiming to finalise our cross-border proposals for clearing houses and swap dealers, as well as our long-awaited capital rule. And by year end, we plan to finalise our recently proposed position limits and swap data reporting rules. We'll also continue negotiations with our European and other foreign counterparts to reduce market fragmentation and enhance international comity.

IQ: How important was it for you to publish a proposal on position limits, and how does the current proposal differ from earlier versions?

HT: This was extremely important. Position

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limits will help protect the agricultural and energy sectors from excessive speculation in our markets. Corners and squeezes reflect malicious conduct we want to prevent. This is the fifth formal proposal put forward by the commission. The prior iterations failed because they didn't offer enough flexibility for the end users our futures markets are meant to serve. We're avoiding those mistakes by doing two things: 1) ensuring that any market participant with a genuine need to exceed position limits can do so with a workable bona fide hedge exemption; and 2) leveraging the work done by derivatives exchanges over the past three decades administering their own position limits to cut down on red tape.

IQ: You have highlighted the importance of deferring to overseas rules that achieve comparable outcomes, as well as reducing the extraterritorial reach of the CFTC. How does the current cross-border proposal do that?

HT: I've always said that we should afford comity to other regulators that have adopted comparable regulations, just as we expect them to do for us. I believe the proposal advanced by the commission in December finds a middle ground on the question of when foreign transactions should fall within the CFTC's swaps registration and related requirements. Most importantly, we shouldn't try to regulate swaps activities in far-flung lands simply to prevent every risk that might have a nexus to the US. That would be a markedly poor use of American taxpayers' dollars. It'd also divert the CFTC from channelling our resources where they matter the most – to our own markets and participants. The proposal therefore focuses on instances when material risks from abroad are most likely to come back to the US and where no one but the CFTC is responsible for those risks. It's my sincere hope that our domestic and international counterparts will view the proposal the commission advanced in December as a concrete step toward working together to provide sound regulation to the global swaps market.

IQ: Could the level of supervisory cooperation and coordination across jurisdictions be improved? How?

HT: Much progress has been made since the Group-of-20 (G-20) leaders met in Pittsburgh in 2009, but more work needs to be done. That's why the CFTC has been a leader in a range of international standard-setting bodies and workstreams. For example, the CFTC is a leading participant in workstreams and committees at the International Organization of Securities Commissions, as well as other international bodies such as the Financial Stability Board and the Committee on Payments and Market Infrastructures. The CFTC's engagement with our foreign counterparts has furthered the development and implementation of a number of key principles and standards. That's helped to improve supervisory cooperation and coordination across jurisdictions.

IQ: Market participants are working to shift away from LIBOR in favour of alternative risk-free rates. Are you satisfied with the progress that has been made so far, and what role can the CFTC play in encouraging timely transition?

HT: This year is going to be crucial for our collective efforts to transition away from LIBOR. I'm concerned that firms aren't transitioning fast enough. I've warned that failing to do so is a source of risk to both themselves and the global financial system. We also want to avoid what I've dubbed 'zombie LIBOR', where LIBOR is still published for some limited period but isn't representative of a real rate. If that happens, we'd face a situation where swaps would be priced against a seemingly alive rate whose integrity as a benchmark is completely dead. Regulators are also discussing how a period of non-representative LIBOR might work. I certainly don't think that's the ideal outcome, but I appreciate it's necessary to plan for all eventualities. For our part, I'm proud that the CFTC was one of the first agencies out of the gate to provide LIBOR-transition relief. As we move into this critical period, I remain committed to working with market participants and our fellow regulators on this important issue.

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IQ: Swap data reporting is a critical component of the G-20 reform agenda, but market participants face duplicative and inconsistent rules and reporting requirements across jurisdictions. What more needs to be done to encourage data harmonisation?

HT: Simplicity should be a central goal of our swap data reporting rules. After all, making rules simple and clear facilitates compliance, price discovery and risk monitoring. The commission recently took action on this front, proposing two rules and reopening the comment period for a third. Together, these actions will streamline reporting, enhance transparency, provide relief for end users and foster harmonisation. While we shouldn't harmonise for the sake of harmonising, we can reap real efficiencies by carefully building consistent data reporting frameworks. For instance, our proposed rules would harmonise our swap data reporting timelines with the Securities and Exchange Commission by moving to a T+1 system for swap dealers, major swap participants and derivatives clearing organisations. They would also remove duplicative confirmation data and lift the requirement that end users provide valuation data. As it relates to cross-border harmonisation, we're incorporating many of the critical data elements fields to bring our reporting system more in line with that of the European Securities and Markets Authority.

IQ: How concerned are you about market fragmentation and what do you think can be done to mitigate it?

HT: Perhaps President Eisenhower said it best: "The world must learn to work together, or finally it will not work at all." Fragmentation leads to less liquid and less functional markets – something current events show we can ill afford. My commitment to international regulatory comity and deference, as well as clarity in our supervisory activities, is ironclad. They're essential components of vibrant and resilient global derivatives markets. Clarifying our cross-border regulatory commitments – like we recently did with our 30.10 amendments, for example – is one part of the equation. Another step would be finalising our cross-border rule for swap dealers and major swap participants.

IQ: You've recently led the CFTC through a re-examination of its mission, vision and values. How would you summarise the process and its results? How does this translate into the role you believe the CFTC plays as a market regulator and a prudential supervisor?

HT: This is a process I'm particularly proud of because we got the buy-in of the entire agency. It's also the first time the CFTC has ever adopted a vision statement and a set of core values. We solicited ideas from the staff and put them forward for a vote. It was important to me that the men and women on the front lines of regulating our derivatives markets had a say in what our identity will be going forward. A top-down approach wouldn't have been as effective. Now we as an agency have a better understanding of who we are, what kind of regulator we want to be and what principles we'll use to guide us along the way. When we say 'clarity' is a core value, for instance, that means the culture of the agency must have a bias towards providing transparency to market participants about our rules and processes. Having this degree of focus will make us an even better regulator. IQ