

An Update and Overview of U.S. and Canadian Derivatives Reform

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- Goal For Today:
 - Provide an Overview and Update of Regulatory Changes that Impact U.S. Energy Derivatives Markets
 - Provide Background on and an Overview of Derivatives-Related Regulatory Reform in Canada

Impact of Recent Changes to U.S. Derivatives Regulation on U.S. Energy Markets

- Six Years Post Dodd-Frank the Regulatory Environment Remains in Flux
 - Continuing Regulatory Change in the U.S.
- Focus For Today:
 - Trade Options and Forward Contracts
 - Clearing Changes
 - OTC Margin Requirements
 - Pending Position Limits
 - Resolution Reform
 - Swap Dealer De Minimis
 - Enforcement

- Under Dodd-Frank, Certain Physical Contracts are Swaps
 - Certain Forwards With EVO and Options Are Trade Options
 - Remaining Uncertainty on “Swing Contracts”
- Trade Options Are Subject to Limited Regulation

- New CFTC Final Rule on Trade Options:
 - Expected in the Near Future
 - Likely Eliminated Most TO Regulatory Requirements
 - Recent CFTC No-Action Letter Stayed Obligation to File Form TO for One Month

- Central Clearing: Regulatory Panacea?
 - For Energy Derivatives- Not Quite
- Cleared Energy Markets Face Challenges
 - FCMs- An Endangered Species?
 - Customer Selectivity
 - Reduced Out-Month Liquidity

- Cleared Energy Markets Face Challenges
 - Increased Margin Requirements
 - Cross Border Bifurcation
 - Block Markets- More Changes to Come?

- New OTC Margin Requirements in the U.S.
 - What Do The Rules Do?
- Generally Do Not Apply to Energy Companies
 - Proprietary Traders May Be Subject
- Good News?
 - Not Entirely

- Why Not Entirely Good News?
 - Inter-Dealer Market is Subject
 - Costs “Roll Down Hill”
 - Bank Capital Requirements
 - Cost to Going Unsecured

- CFTC Position Limits Rule is in Process
 - Compliance is Likely Required in 2017
- What Would the Rule Do?
- Remaining Open Issues
 - What Constitutes a *Bona Fide* Hedge?
 - Who Decides?

- Remaining Open Issues
 - Economically Appropriate for Whom?
 - Physical Reporting
 - Out-Month Limits and Liquidity

- Resolution Reform- What is it?
 - Global Effort on Resolution of Complex Financial Institutions
 - Cross-Border Recognition
 - Mandatory Insolvency Stays
 - Elimination of Cross-Default in U.S.

- What Entities Are Covered?
 - Certain Banks and Their Counterparties
- What Products Are Covered?
 - Includes Derivatives and Commodities Contracts
- How Will it be Implemented?
 - Regulation
 - ISDA Protocol

- *De Minimis* Level Due to Drop December 2017 from \$8b to \$3b
- Recent CFTC Report on *De Minimis*
- Implications for Energy Derivatives Markets?

- Increased Enforcement Focus on End-Users = Increased Regulatory Risk
 - CFTC and Kraft
- Spoofing- Not Just For HFTs
 - Increased Exchange Focus

Overview of Derivatives Regulation Reform in Canada

- Derivatives Are Regulated at the Provincial Level
- Implications:
 - Each Province Has to Approve its Own Regulations
 - Reform is Largely Being Implemented on a Province-By-Province Basis
 - Coordination and Consistency is the Goal, But Not the Rule

- Where are we in the Process?
 - Reporting Live in Three Provinces
 - Multiple Proposed Rules
 - Mandatory Clearing
 - Margin
 - Collateral Protection
 - Multiple Consultation Papers
 - Derivative Dealer

- Scope of the Definition of “Derivative” is Broad
 - Exclusions Include:
 - Spot FX
 - Transactions Intended to be Physically Settled
 - Similar to U.S., Except for Treatment of Options and EVO
 - Treatment of Power Products

Overview of Reporting Rules

- Reporting Live in Three Provinces
 - Ontario, Manitoba, Quebec
- Rules Final in Remaining Provinces
 - Dealer Reporting- July 29, 2016
 - End-User Reporting- November 1, 2016
- Amendments Proposed

Overview of Reporting Rules

- Reporting Rules Substantively Similar to U.S.
 - Data Nearly Identical
 - Dealers Report
 - Substituted Compliance
 - Commodities End-User Exemption
 - Guaranteed Affiliates
- Open Issues:
 - Ontario End-User Documentation
 - Public Dissemination
 - Inter-Affiliate Reporting

- Each Province Currently Requires Derivatives Dealer Registration
 - Most Provinces Exempt Entities That Only Transact with Qualified Parties or Accredited Counterparties
 - Ontario Differs
- Consultation Paper on New Registration Rules

- Consultation Paper and MI on Reporting Provide a Framework on Who Would be a Dealer
- No *De Minimis* Exception
- Registered Dealers Subject to:
 - Capital
 - Margin
 - Mandatory Clearing
 - Business Conduct
 - Licensing

- Proposed National Instrument
 - Derivatives Must be Subjected to Mandatory Clearing
 - Two Exemptions Available:
 - “End-User” Exemption
 - Intragroup Exemption
- Open Issues:
 - End-User Exemption “Pass-Through”
 - Limited Designation
 - Which Products?

Customer Collateral and Margin

- OSFI Proposed Margin Guidelines
 - Potentially Applies to Physical Transactions
- Provincial Regulators to Propose Margin Requirements
- Proposed Cleared Customer Collateral Protection Rules
 - Intended to be Flexible

Thank You

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