

# drums along the potomac

The year is figuring to be a slow-boil. We all know what's coming, we all know "it" will be this year, but we're still a little clueless on real timelines. We've heard from all three sitting commissioners in the past month or two that the position limits final rule is coming, sooner rather than later, and we really mean it this time, *honest*. Same with the cross-border morass and half a dozen swaps-related rules and fixes to past badly worded swaps rules. For the most part, the CFTC should be able to get a bit of work done in the next couple quarters and manage to fly under the radar of activist candidates and lawmakers hoping to win points with the folks back home. Maybe. The three-member commission has been a big topic of discussion of late. Will the president try to fill the two empty seats before the election cycle firmly kicks into gear? Will the GOP-dominated Senate allow one seat or both to be filled before the election cycle firmly kicks into gear? Does the White House or the Hill really care? It's a complicated question. The fact that Chairman Tim Massad and GOP Commissioner Chris Giancarlo can actually work well together and actually get stuff done, is, generally speaking, good for the markets, and, as such, OK by GOP leadership too, at least according to the view of one GOP inside-the-beltway fellow we consulted. Makes sense to us too. This cozy relationship may rattle some Democrat firebrands a bit, but possibly not enough to begin a lengthy, ugly, heated process that would have no chance of seeing an end in 2016. But you never know. Sen. Elizabeth Warren isn't exactly predictable. One name that was bandied about until recently for the open GOP seat was FIA's Dawn Stump. She is no longer under consideration, we hear. Not a peep on the Dems' side of aisle, but we reckon Harry Reid has a long list of political hacks who may need a job soon. So much available talent out there with actual experience in law and markets and yet, all too often we seem to get Hill staffers, an inch deep and five miles wide. Alas. This tendency tells us anyway that lawmakers just don't get it. Maybe our "it" is different

from their "it." But, we digress. Maybe it's time to elevate some senior staffers at the agency to the Big Bench. FERC did it, why not the CFTC? Chairman Norman Bay was a heck of an effective enforcement chief at FERC and currently is considered a very effective chairman. Much like Chairman Bay, CFTC's Aitan Goelman worked at the DOJ (assistant U. S. attorney in the Southern District of New York) and was a litigator for years at a big white shoe law firm. He gets it. Former enforcement chief Greg Mocek gets it too. He'd be an ideal candidate for the GOP slot. Just saying.

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Have any spare time to read a new government report? Like, 1,000 pages worth of report? Last week the chairman of the Senate Homeland Security and Governmental Affairs Committee, Sen. Ron Johnson, R-Wis., released a weighty tome that presented the findings of a bipartisan project to better understand the impact of federal regulations on the economy. "One of my priorities as chairman has been to improve the regulatory process. As a former manufacturer, I know how difficult it can be to navigate these burdensome regulations. So I worked with my colleagues to seek out the views of individuals and companies affected by federal overregulation," Johnson said in a statement. The report amounts to a laundry list of gripes and related analysis from a score of top businesses, trade associations, consumer advocacy groups and environmental groups. The report summarizes how oppressive, overbearing, overreaching, expensive and wholly unnecessary the thousands of regulations they must comply with are to these stakeholders. The report is called, "Direct from the Source: Understanding Regulations from the Inside Out." The committee in the past has introduced a number of bills to review bad regs or rather to better regulate how regulators regulate. Sen. Warren, for one, isn't at all convinced and has largely fought with Johnson fairly successfully on torpedoing past bills on this subject. For a copy, go to <http://www.hsgac.senate.gov/download/direct-from-the-source>

*understanding-regulation-from-the-inside-out-final.*

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Attorney Gary DeWaal of Katten Muchin Rosenman LLP in NYC publishes a weekly briefing on (mostly) federal regulatory happenings (mostly) inside and around the Beltway. He does an excellent job sifting through the jargon and delivering a typically nonpartisan assessment of rules, laws and cases that we should be tracking. His weekly briefing, "**Bridging the Week**" is free and comes in video form or as text. In this week's edition, we noted a blurb focused on DRW's woes in a current CFTC enforcement case. The subject market may be interest rates, but the ramifications of the action itself are fairly ubiquitous. And last week, five industry organizations asked the court for permission to weigh in on what are the appropriate legal standards the CFTC must prove in a pending lawsuit against Donald Wilson and DRW Investments, LLC, alleging attempted manipulation. The CFTC initially filed its lawsuit in 2013, claiming the DRW manipulated and attempted to manipulate the settlement prices of the IDEX USD three-month interest rate swap futures contract on numerous occasions in 2011. The firm generally denied the CFTC's allegations. In November 2015, the CFTC moved for partial summary judgment on its attempted manipulation allegation based on, among other matters, purported "undisputed material facts" that the respondents, through their conduct, evidenced "an intent to affect price." The five industry organizations – CME Group, Commodity Markets Council, Futures Industry Association, Intercontinental Exchange and Managed Futures Association – requested the court's permission to file legal papers as a friend of the court, claiming the CFTC misconstrued the correct legal standard of attempted manipulation. According to the five organizations, the CFTC should be required to prove – consistent with prior case law – that respondents intended to create an artificial price – one "that does not reflect the legitimate forces of supply and

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