

drums along the potomac

In the commodity business, the September-October block is known as the shoulder period. Temperatures are more or less mild, markets less volatile, kids are securely back in school and everybody has eased back into their usual routines. It's the final stretch of the year basically, so folks tend to take fewer risks as well. This year, however, we have this contentious national election to contend with, and so it's thrown off everybody's usual calculus for a mild shoulder period. Lawmakers and regulators are on the firing line. They need to either produce more or make noise like they are producing. Generally, lawmakers are happy to make noise and not produce a thing, but regulators aren't so lucky. In these big election cycles, regulators are pressed to produce more regulations, provoking lawmakers to make more noise. And depending on their political vantage, lawmakers may take the credit for all these new policies, or damn them to hell. In any case, there is much more noise.

Regulators may also be looking at new bosses in the next 45 days, which also might mean they're off-handedly looking for new lines of work. You'll note that regulators are making lots of speeches these days, and not just the CFTC commissioners. All the regulatory commissioners on the speaker circuit during this shoulder season isn't a coincidence. Travel is also up among regulators. Also not a coincidence. Most importantly, we need to keep our eyes on regulatory and compliance deadlines. CFTC Chairman Tim Massad is hard-pressed to finish a lot of key stuff before the clock strikes 12 on Nov. 8 or Dec. 31. And given all the hijinks lately from Wall Street's finest, lobbyists and other outside interests are at a definite disadvantage. Don't anticipate too many delays or deferrals from the Massad administration on several key rules. He received the "go" codes. So outside the climate, this should be an extremely volatile shoulder season for all of us. Enjoy the weather, as it's forecast to be fairly mild, through mid-November. May the ironies never cease. —the editor.

On the subject of priorities, the ill-begotten capital requirements rule for swap dealers and major swap participants is now at the top of the pecking order at the CFTC, Chairman Massad told a rapt audience at this week's SIFMA conference at the resplendent Mayflower Hotel in DC. More money has been wasted, more ink expended, more words exchanged and more ulcers were formed related to this one policy than quite possibly the balance of Dodd-Frank. Well, maybe if you don't include position limits or cross-border stuff or market manipulation policy or ... Well, maybe not. But it's true a lot of time has been devoted to these capital requirement rules, and rightly so. Depending on how it plays out, this may determine what your firm might be when it grows up. This is a problem. The original rules were written and proposed over five years ago! The proposal was never signed off on because a blanket rule potentially spelled doom for a lot of very different companies. Companies impacted by the rule range from mega-banks to small FCMs, brokers, merchants, commercials and everything in between. "We've got some swap dealers who are affiliates of bank entities and therefore I think it makes sense ... to provide the option that they are subject to a very similar regime as the bank regulators' capital rules," Massad said during his post-speech Q&A. "There are either broker-dealers, FCMs or nonfinancial companies. So, we need to have a different approach there," he said. First come capital requirement rules; then he'll pick up the de minimus question again, once and for all. Later in his speech he also noted Reg AT as another key piece of policy he hope to complete very soon. Pre election? Most folks think so. The supplemental piece of the AT puzzle he referred to in the speech we understand to be already complete. Timing of the release is one nagging issue, and securing the necessary buy-in from several key players in that industry is the current focus. The last thing a rule like this needs

is to be tied up in court forever; apparently, this is the threat. So, he clarified: "Our goal has never been a rule that requires large numbers of firms to register with us just for the sake of doing so. But the reality is that some of the biggest traders in our markets are not currently subject to our oversight, and we need a way to make sure they are following reasonable risk controls. And in fact, some of those traders have supported a registration requirement ... " Really? "Second, as I've said many times, our desire has never been to require that source code be turned over to us routinely. I want to make sure this rule respects the proprietary value and confidentiality of source code, while at the same time ensuring that we have access when necessary. I will have more to say about this in the weeks to come as we finalize the supplemental proposal ..."

Source code. Huge issue. Commissioner Chris Giancarlo has come down solidly against the CFTC's easy access to source code. Commissioner Bowen is less sanguine. And Chairman Massad needs a final rule. Arguments against access to source code include the potential for these proprietary algos falling into the wrong hands – that is, the CFTC isn't secure enough to be trusted with algo source codes. We find this argument pretty thin, considering all the proprietary data this and 25 other agencies handle each day, quite successfully. Yahoo was hacked, the DNC was hacked, the White House was hacked and so was Jennifer Lawrence's phone. Security is a relative thing. We tend to agree with other insiders at the agency that source code can be viewed as the ultimate smoking gun in an investigation, since codes don't change or think, they just do what they're told to do. That said, we think that Massad will ultimately stand behind the subpoena policy in the context of requesting source code. He needs a rule, and that element seems to be the likely car-

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rot. As for registration, well, sharpen your pencil. If you've as much as heard of Reg AT, you'll likely be requested to register.

"Working to finalize the position limits rule by year's end..." – Tim Massad

Last week we ran our third annual Weather & Price Tealeaves event in Houston – great show. We invited a handful of meteorologists, price forecasters and other experts to give us a clear view on the coming Winter season. (See the Winter Weather story on page XX). The lead batter this year was EIA's Steve Harvey, who's recently transitioned from the role of assistant administrator of EIA to "special adviser." He noted that the new role will allow him to focus in on specific issues and matters around the agency, to directly investigate, solve, build or recommend possible solutions, sans delays and endless red tape. He will basically serve as the agency's own tiger team. Good idea. Harvey spent a good deal of time at our Tealeaves event going over the agency's latest effort, the Southern California Daily Energy Report (<http://www.eia.gov/special/disruptions/socal/>). It reminds us of a commercial offering – good looking and great info, such as hourly electric load stats across Southern California, prices, storage data, daily natural gas receipts and sendout levels, all sorts of stuff. From Chris Peterson's publishing skunkworks, no doubt. He noted that the new report was largely designed as a quick reference sheet for policymakers. Harvey also mentioned that a similar publication is now on the drawing board covering the New England region. Good idea. Other regions as well? Very possible, he says, if the interest and demand is sufficient. Now's the time to put your Christmas list together. Harvey is looking for suggestions on stuff to fix or improve the dozens of reports and feeds coming out of the agency. The beauty of EIA is that unlike FERC or the CFTC, tweaks and changes don't necessarily need OMB or congressional approval around every turn. We hope to chat with Harvey soon for more details on his activities and potential activities. Harvey also noted some changes and additional bits in the monthly Drilling Productivity Report, such as the inclusion (new this month) of estimates of the number of drilled but uncompleted wells (DUCs) in the seven DPR

regions. Read the details on the EIA site for what is formally considered a DUC and what isn't and when they are counted as such. Harvey also spent a bit of time going over our favorite report, the Weekly Gas Storage Report, and further, the agency's latest error assessment of same. EIA did an assessment earlier this year, but that was associated with the old three-region storage map. He says another error assessment will be complete by year-end, focused on the new five-region map.

On Nov. 14, 2016, the SEC will host a public forum to examine financial technology ("FinTech") innovation. Panels will discuss: (1) blockchain technology (2) automated investment advice or "robo-advisors" and (3) the impact on investors from online marketplace lending and crowd funding. The public forum will be held at SEC headquarters and will be webcast live on the SEC website.

Back in 2012-2013, we recall the CFTC took a serious amount of heat for what was then described as "overzealous" and "intrusive" (Energy Risk) use of "special calls" out of the agency's office of market Oversight. We pulled a piece by professor Craig Pirrong on the subject that was particularly biting. The blog was titled, "EFS about EFS." (5/13)

"This story is very bizarre, and I can't figure out what is going on, exactly. Or put differently, what has put a bee in the CFTC's bonnet about CME Clearport's Exchange of Futures for Swaps (EFS) facility after all these years. The Commodity Futures Trading Commission has issued a "special call" asking Wall Street banks and other traders to provide documents that would prove recent derivatives transactions known as "exchanges of futures for swaps" were legal. Lawyers at the CFTC enforcement division are also scrutinizing the trades for possible violations. The new inquiry centers on whether large traders and market-makers used unregulated over-the-counter swaps markets to trade what were in fact futures, strictly regulated contracts that are economically identical to swaps. Trading futures off an exchange is illegal, and regulators are concerned that traders may have used these deals, known as EFSs, to agree to prices that did not reflect the market. "They've made information re-

quests to everybody that's ever traded an EFS. They're saying, 'prove to us that the swap was legitimate'," said a recipient of a CFTC document request. The only thing that makes sense is that the CFTC believes that market participants engaged in EFS transactions without having a legally binding swap agreement in place first, meaning that the parties would have engaged in futures trades off-exchange. Or something..."

Or, better put, no confirmations to be had.

"So what's up? A burdensome, intrusive "special call" to investigate a possible technical violation that the exchange would be hurt by a violation it doesn't seem to care about, and which is of little relevance going forward." See the full story from 2013 at <http://streetwiseprofessor.com/?p=7262>.

Did you read the CFTC enforcement news this week? So, about those 'intrusive' special calls a few years ago ... The CFTC simultaneously filed and settled charges with Barclays Bank for failing to create, maintain and promptly produce required confirmations for "Exchange for Related Position" (EFRP) trades.

Among other violations, the CFTC order asserted that the bank:

- entered into at least 3,717 metals and energy EFRP trades;
- failed to maintain and produce confirmations during the relevant period for at least 1,358 of these metals and energy EFRP trades; and
- took almost 14 months to locate and produce confirmations for the remaining metals and energy EFRP trades at issue as requested by the CFTC's Division of Enforcement.

The CFTC Order required the bank to: (1) cease and desist from further violations and (2) pay a \$500,000 civil monetary penalty. The CFTC order recognized the bank's cooperation during the investigation of this matter, as well as the "remedial action (the bank) undertook relating to its internal controls and policies for documenting and reporting confirmations for metal and energy EFRPs after October 16, 2012."