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unfinished

dmo is oversight, not surveillance

Quorum or not, the CFTC has wasted little time on “turning the tide of over-regulation.” Since Jan. 20, the acting chief, Chris Giancarlo, has been on a mission to reorient the agency according to his three-part agenda. During our exclusive interview with Giancarlo in January, he offered a broad, less-prescriptive vision for the agency, but since he had yet to be nominated for the chairman position by the new administration, specifics were few. All that changed last week. Delivered -- and in great detail -- for the first time at the FIA’s massive annual Boca event, Giancarlo drilled down fairly deep into his agenda, the core of which seems to pivot on a fairly specific “reinterpretation of its (the CFTC’s) regulatory mission.” His three-part agenda is designed to: foster economic growth, enhance US financial markets and right-size the CFTC’s regulatory footprint.

President Trump has directed agency leadership to designate a regulatory reform officer and establish a regulatory reform task force. The acting chairman designated his chief of staff Mike Gill to lead the task force. The effort is hereafter known as “Project KISS” (as in, *keep it simple stupid*), according to Giancarlo, “an agency-wide review of CFTC rules, regulations and practices to make them simpler, less burdensome and less costly.”

Back in the day, say 2009 through early 2014, the guy in charge was known for “staff work arounds.” That is, if certain people or offices weren’t on board with the policy concept of the moment, Chairman Gary Gensler may have created a new internal implementation path to get it done. Offices were scrambled, work flows were disconnected and reconnected again. In the early days of Dodd-Frank, the agency often worked at a rapid, though chaotic pace, we’re told. One source inside the agency noted that some current roles in certain offices made little or no sense, “though it

may have made sense once, I don’t know.” When the new regulatory reform task force was trying to get its hands on an up-to-date position or task flow chart for every warm body in the agency, there was none to be found apparently, sources tell us.

Nobody said that regulatory reform was going to be easy, eh?

This week we spoke to the CFTC’s new director of market oversight, Amir Zaidi, his first public interview in this new role. Zaidi has been with the commission since 2010. Prior to joining Giancarlo’s staff in 2014, you might recall that Zaidi also served as chief counsel and policy adviser to former CFTC Commissioner Scott O’Malia. Prior to that, private sector law firms, a stint at Goldman and the Fed. He knows the drill.

Zaidi tells us that early elements of the agency’s internal review have involved key organizational restructuring; the Division of Market Oversight’s surveillance group (Matthew Hunter’s unit) will be moved to the Division of Enforcement, and inside the DMO a new unit will be formed called Market Intelligence. A newly-minted chief market intel officer, who will be named at a later date, he tells us, “will develop the vision for the new unit.”

Moving surveillance to enforcement just makes sense, Zaidi says, as the two functions are already more or less joined at the hip. Why should they be seated in different divisions? A fair question. We note too that Vince McGonagle, the former head of DMO, is now head of enforcement. The surveillance group was previously under his command at DMO, and now it’s under his command in the enforcement division. Again, makes sense. “The general realignment of oversight and surveillance into enforcement is along the lines of the FERC model. They’re also in the same division, so when they’re working on referrals or other matters, it’s a tight re-

lationship, and the leadership is the same. So, they’re better aligned in their mission and roles,” he says. “And so there should be much better focus and synergy to the surveillance function.”

On the new market intelligence function, Zaidi notes that the agency hasn’t really covered it before or at least not as an elevated function, “certainly not for many years.” Heretofore, most effort and energy has centered on enforcement, almost to the detriment of all else. He says Giancarlo’s “vision also involves a very strong commitment to enforcement, but along with it is also a strong focus on strengthening the markets, economic growth and reform.”

He notes that the market intel function will involve a lot of dialogue and direct interaction with market participants, “and getting much more color from the exchanges, about what’s going on in the markets and in the data. We need to better understand what they’re seeing, so we’re better informed on policy decisions.”

A lot of this has been missing in recent years, he says, and certainly not as a formally organized function, as it will be in the new market intelligence operation. “The results have been obvious in the past six to seven years. Reg AT is a perfect example of policy being developed without a comprehensive understanding of what’s really going on in the market. So, market intelligence will look at those longer-term trends, but also the short-term developments that may occur over night, with an eye toward how these developments might impact market structure and market polices going forward.”

In past stories we’ve noted the relationship between certain offices at the agency and SROs has been a bit strained – that the trust factor hasn’t exactly been as strong as it could be. One exchange source noted to us that the CFTC enforce-

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ment division generally treated SRO and exchanges as little more than "one-way referral services," as opposed to partners in keeping the markets safe.

"A big part of this market intelligence function will be communicating with the industry, to understand developments from their perspective. We have a good deal of work ahead of us to rebuild our relationships with participants and in particular with exchanges, to build the trust factor back up. It will simply make us better regulators; better information and understanding of the market will translate to better policy," Zaidi says.

Apart from the new market intel function, and surveillance moving to enforcement, he says that structurally, not much else will be changing at DMO. He says the data and reporting branch will lay out a comprehensive plan to improve SDR data and the examinations branch that conducts rule and system safeguard reviews of SEF and DCM applications and new product reviews will continue as always. The real change, is the focus: "The focus is different, to better align with Chris's three-point vision for the agency."

So, going forward, DMO won't necessarily be centered on looking for bad guys in the market, but rather working to get a better view of the market, a deeper understanding, to support better policy-making and enhance US derivatives market structure, he says.

He says his division is deeply involved in KISS. "Keeping it simple ... so we're trying to streamline processes and procedures, reduce costs and burdens where the benefits just aren't there, or are hard to justify. It's a huge holistic review of everything we do, and not just outstanding policies, like position limits or SEF policy. We're also looking for new ways to increase participation and liquidity in the markets. Better price discovery and better harmonized data with the rest of the world," he says.


In addition, Zaidi notes that his office will go back to "actually assisting companies" get in compliance with certain rules, "and not just bringing the hammer down." Market oversight, he says, "was all about that many years ago," he adds. "In many ways, this division will be getting

back to its original mission and in other ways we're building new tasks and functions from the ground up."

Zaidi will be joining us at our upcoming New Risk in Energy meeting in Houston on April 3-4, for the oversight and surveillance panel. Sean Collins, director of oversight at FERC, will also be featured on the panel. And Rahul Varma

will be on hand to discuss the CFTC's new market intelligence operation.

We recommend you give a thorough read to acting Chairman Giancarlo's recent FIA speech for additional hints on the new direction of the CFTC at <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20>.



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