

THE

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emerging daylight

KISS it

Acting CFTC chief Chris Giancarlo reintroduced us to the Clinton-era term KISS (keep-it-simple-stupid) a few months ago. The term was officially unveiled at the FIA Boca event in mid-March, “an agency-wide review of CFTC rules, regulations and practices to make them simpler, less burdensome and less costly ...” But the process had actually been in motion well before Boca. He foreshadowed the concept at an ISDA meeting in December. In a speech Dec. 9, he noted that, “As we enter the new year and, perhaps, a new regulatory environment, I believe regulators and others with responsibility for financial markets must do the following ... “review and reduce poorly designed rules and regulations that are causing service-provider concentration and market fragmentation ...” In our exclusive interview with Giancarlo in late January, shortly after he was named acting chairman, but before President Trump issued an executive order directing federal agencies to designate a regulatory reform officer and establish a regulatory reform task force, he had already developed a laundry list of rules, regs and procedures worthy of scrutiny. In a way, he was almost front-running Hill efforts and the current WH team’s planned deregulatory slog through Dodd-Frank. While the new administration was working out a reg reform executive order strategy and the GOP-led Congress was sharpening its pencils on an earlier version of the Financial Choice Act, a 500-plus page bill introduced by House Financial Services Committee Chairman Jeb Hensarling, R-Texas, the CFTC was already moving forward to review all measure of Dodd-Frank and related agency rules that in one way or another were thought to hinder market growth and liquidity, or, were potentially unnecessary or over-complicated. As we learned in February, Giancarlo’s chief of staff, Mike Gill, is serving as the agency’s regulatory reform officer. He leads Project KISS and directs the internal review task force.

In advance of last week’s big, FIA Legal/Regulatory conference here in DC, the agency put out a press release further detailing Project Kiss and announced its intent to open the process to market participants through a *Federal Register* listing (the formal solicitation for comments appeared in the FR on May 9). The listing noted that the agency is “seeking suggestions from the public about how the commission’s existing rules, regulations, or practices could be applied in a simpler, less burdensome, and less costly manner.” Chairman Giancarlo further qualified the request in the press release on Project KISS last week: “This exercise is not about identifying existing rules for repeal or even rewrite. It is about taking CFTC’s existing rules as they are and applying them in ways that are simpler, less burdensome and less of a drag on the American economy.”

At the FIA event last week, chief of staff Gill sat on a panel called, “Where Are We Going?” which discussed potential legislative changes to the Commodity Exchange Act and regulatory changes to CFTC regulations. Gill offered the following comments on the task force he heads up and walked the group through how Project KISS will work.

“In a nutshell,” Gill began, “we’re trying to do something a little different. We are a government agency seeking to modernize, become efficient and we’re looking to you, to help us in this process.”

“The CFTC is a very smart agency. We’re an elite agency. But we look forward to hearing from different parts of the community on ways that we can make things better for the industry and better for the staff,” Gill said, noting the KISS program was Giancarlo’s version of what former commissioner Bart Chilton mentioned a couple years ago about ‘keeping it simple’ with CFTC rules. “... the way it developed in our office, there was a list of cumbersome regulations that the commissioner and Amir Zaidi, who is now the director of the division of market oversight, (but) when he was senior counsel in the commissioner’s (Giancarlo) office, they kept a list of regulations they found burdensome. And at the time, the commissioner put it to Amir this way: “In most tasks in life there is simplicity behind the complexity. And we must hone in on the simple to be successful.

“The chairman stated at the FIA

conference in March, too, (that) often the CFTC’s rules for derivatives are applied in a needlessly complex manner, across many areas. They make it too complex, costly or time-consuming for market participants, especially those end-users, producers ranchers, farmers ... and the complexity does not serve the staff at the commission either. They deserve a fresh look at how rules can be amended and how they were intended to be allied. So, shocker alert, we’re going to try to use some common sense,” Gill said.

“So, after the election we formalized the process within our own office. having whiteboard sessions on rule harmonization ideas and reviewing no-action letters. but, and this is important, we set the ground rules such that the brainstorming sessions that we were doing were not about identifying existing rules for repeal, or even rewrite. After all, for regulatory policy changes Commissioner Giancarlo’s thoughts have been well articulated in speeches and writings including his white paper on swaps execution. Rather, these sessions were about taking out existing rules and policies as they are and applying them in ways that are simpler, less burdensome and less of a drag on the American economy.

“After Jan. 20, the acting chairman asked me to broaden the effort and seek input from the agency staff. We are not the first to come up with the notion that some things can be done more efficiently ... within a few days, we had many suggestions on this topic. In fact, our team from DSIO took us through a very extensive slide deck of areas that they thought were areas ripe for modernization of CFTC regulation. I’m pleased to report we have a solid start on the project. (And) without committing to action on any of these, some of the items in the pipeline -- what I mean by this is, ideas that have been generated and that have been shared with Commissioner Bowen’s office, and we get a sense of how we feel on areas (for example) when we can better harmonize our rules with the SEC. Including some areas in which perhaps just one agency’s oversight and reporting requirement is sufficient. We are looking at codifying longstanding no-action letters, such as the minimum transfer amount for uncleared swaps. And, looking at areas where full compliance

(Continued)

is not possible, such as swap confirmation and affirmation timing. In total, we have generated some 35 individual regulations that we believe can be streamlined ... and this is only in our first two months.

“Just in the last two days the commission has published guidance on the collection of projected operating costs by DCMs and SEFs that provide a more common sense way to attack this issue. The commission has also published a proposal to clarify the scope of CCO duties that if fi-

nalized will increase the efficiencies for dual CFTC/SEC registrants.

“On Feb. 24, 2016, President Trump issued an executive order on enforcing the regulatory reform agenda. Although the CFTC is an independent agency is not strictly bound by the president’s executive order, we believe the KISS effort is in line with his objectives. Hence, the acting chairman has directed staff to expand our efforts not just to review regulations implemented stemming from Dodd-Frank, but all exist-

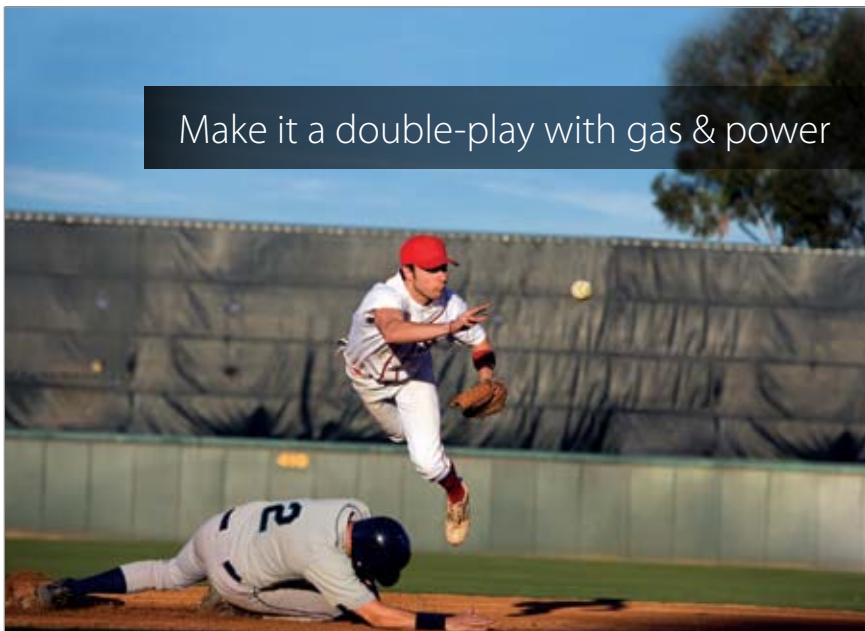
ing rules, for suggestions.

“The next step is to seek the public’s input. Today (May 3), through a commission vote, the agency has requested public comment, outside the rulemaking process, for ways that the CFTC can improve, streamline or modernize our work. We have also launched a KISS portal on our website which interested parties may submit proposals. We will treat submissions to KISS like we would treat any other correspondence we receive. Of course, any submission may not result in commission action. For clarity sake, the ideas we receive will be kept on a different page from our rulemaking comments part of the CFTC website. We hope for submissions from a variety of parties, market participants, of course, but also scholars, economists, current and former regulators and all members of the public who feel they have something of value to contribute to this rule review. What’s in scope? You can send anything. But our aim is to identify duplicative examinations, duplicative document requests, out-of-date file formats and forms. Please suggest technical amendments to codify existing relief, modernize rules and allow technology-neutral compliance. We would also like suggestions that would clarify and simplify rules and ease burdens and promote efficiencies. Remember, the degree to which we can remove unnecessary burdens is predicated on the appropriateness of the submissions we receive. The caveat, of course, is that these are just suggestions. We reserve the right to ignore them. (laughter)

“I believe that we will be smarter for the effort and achieve the results that will last beyond our tenure here at the commission. Please use this resource ... ”

Following the speech, Gill also noted that since everybody’s submissions will be publicly accessible on the CFTC website, “keep your comments appropriate.” Funny guy.

Project KISS submissions need to be received by the CFTC by Sept. 30. Comments should be identified by RIN number 3038-AE55. Submit comments on the CFTC website through the public comment form (Project KISS), or mail your comments to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.



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