

Corporate Department

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## CFTC Adopts Long-Awaited SEF Rule and Other Swaps Trading Rules

***The US Commodity Futures Trading Commission (CFTC), on May 16, 2013, took long-awaited action to approve four separate rules and guidance***

The rulemakings, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) concern:

- Core principles and other requirements for swap execution facilities (SEFs);<sup>1</sup>
- The process for a designated contract market (DCM) or SEF to make a swap available to trade under Section 2(h)(8) of the Commodity Exchange Act (CEA);<sup>2</sup> and
- Procedures to establish the appropriate minimum block size for large notional off-facility swaps and block trades.<sup>3</sup>

That same day, the CFTC also issued interpretive guidance and a policy statement regarding the application of Section 747 of the Dodd-Frank Act, which amends the CEA to prohibit certain “disruptive trading practices.”<sup>4</sup> This *Client Alert* offers a succinct summary of the three rulemakings as well as the Antidisruptive Practices Guidance.

### The Final SEF Rule

Title VII of the Dodd-Frank Act amended the CEA to add a definition for SEFs, creating a new category of regulated markets for the execution of swaps on a multilateral basis. Under new Section 5h of the CEA, entities that fall within the scope of the definition of a SEF must register with the CFTC and comply with certain core principles. The creation of SEFs is an important step in implementing Title VII’s trade execution requirement, which mandates that swaps that have been made available to trade on a SEF or a designated contract market (DCM) must be traded on one of these regulated platforms unless an exception applies.

Market participants and swaps trading platforms have been awaiting a final rulemaking regarding the registration and core principle requirements for SEFs for more than two years. The SEF rules were initially proposed in January 2011.<sup>5</sup> Debate regarding certain key components of the rule, however, led to significant delay. The Final SEF Rule thus represents a significant step toward completion of the Title VII reforms and provides much-needed clarity to many swaps trading platforms.

## **1. Definition of “Facility”**

In response to numerous requests for clarification regarding the scope of the SEF registration requirement, the CFTC clarified that “any person operating a facility that offers a trading system or platform in which one or more market participant has the ability to execute or trade swaps with more than one other market participant on the system or platform shall register the facility as a swap execution facility . . . or as a designated contract market.”<sup>6</sup> Additionally, the CFTC indicated that a facility would be required to register as a SEF if it operates in a manner that meets the SEF definition even though the facility only executes or trades swaps that are not subject to the CFTC’s mandatory trade execution requirements.<sup>7</sup> In practice, this means that any platform that facilitates the execution of swaps through a multiple-to-multiple trading mechanism must register as a SEF and comply with the core principles set forth in the Final SEF Rule.

Single-dealer platforms, on the other hand, which facilitate the execution of swaps that are not subject to the CFTC’s mandatory trading requirement are not required to register as SEFs because they are limited to a single liquidity provider and therefore do not have the ability to conduct multiple-to-multiple trading.<sup>8</sup> The CFTC noted, however, that transactions in swaps that are subject to the CFTC’s trade execution mandate, may not be executed on a one-to-many system or platform.<sup>9</sup> Other types of entities that the CFTC determined would not, in most circumstances, be required to register as a SEF include: (i) aggregation or service portals providing users with the ability to access multiple SEFs but that do not provide for execution on their aggregation services;<sup>10</sup> (ii) service providers facilitating portfolio compression transactions;<sup>11</sup> and (iii) swap processing services.<sup>12</sup> Although service providers facilitating portfolio compression generally do not have to register, those that offer risk management exercises do have to register because new transactions are executed on those platforms.

## **2. Application Process and Temporary Registration**

In recognition of the fact that the CFTC may receive a large number of applications for SEF registration and that it will take a substantial amount of time for the CFTC to process such applications, the CFTC established a temporary registration process designed to allow a prospective SEF applicant to operate as a SEF during the pending application review process.<sup>13</sup> Temporary registration is available to those applicants that provide a complete Form SEF as part of their registration application and submit a notification requesting that the CFTC grant temporary registration.<sup>14</sup> The CFTC will then review and grant a SEF applicant temporary registration if it determines that the SEF applicant’s Form SEF is, in fact, complete, but without conducting any substantive review.<sup>15</sup> After granting a SEF applicant temporary registration, the CFTC will then review the applicant’s SEF application to assess whether the applicant is fully compliant with requirements of the CEA and the Final SEF Rule.<sup>16</sup> If the application is denied, the temporary registration will also terminate.

In the Final SEF Rule, the CFTC shortened the proposed 90-day effective date of the regulations to 60 days subsequent to publication of the Final SEF Rule in the Federal Register.<sup>17</sup> In addition, the CFTC exercised its discretion to establish a general compliance date of 120 days subsequent to Federal Register publication for those entities qualifying as SEFs.<sup>18</sup> By using an effective date in combination with a compliance date, the CFTC noted that a prospective SEF that is already operating a swaps trading platform could potentially submit its SEF application and receive temporary registration before the Final SEF Rule’s effective date such that it would begin operating as a SEF upon the effective date of the Final SEF Rule.<sup>19</sup>

## **3. Minimum Functionality and Execution Methods**

An entity that is required to register as a SEF must ensure that its operations comply with a minimum trading functionality requirement. Although not mandated by the Dodd-Frank Act, the CFTC interprets this

requirement to mean that all SEFs must offer an “order book,” defined generally as an electronic trading facility, a trading facility, or a trading system or platform in which all market participants have the ability to enter multiple bids and offers, observe or receive bids and offers, and transact on such bids and offers.<sup>20</sup>

In the Proposed SEF Rule, the CFTC would have required that all transactions subject to the mandatory trade execution requirements, other than block trades (Required Transactions) be executed on an order book or a request for quote (RFQ) system involving no fewer than five market participants.<sup>21</sup> In a significant departure from the Proposed SEF Rule, however, the Final SEF Rule permits Required Transactions to be executed on an Order Book or on an RFQ system involving no fewer than two market participant during a phase-in compliance period and, subsequent to that period, no fewer than three market participants.<sup>22</sup> The CFTC also clarified that SEFs are not required to disclose responses to RFQs to all market participants.<sup>23</sup> Rather, RFQ systems must merely permit RFQ requesters the option to make an RFQ visible to the entire market.<sup>24</sup>

For transactions that are not subject to the CFTC’s mandatory trade execution requirements (Permitted Transactions), a SEF may offer any method of execution, including voice-based systems. Even for Permitted Transactions, though, a SEF must offer an order book in order to comply with the Final SEF Rule’s minimum trading functionality requirement.<sup>25</sup>

#### **4. Time Delay Requirement for Required Transactions**

Consistent with the Proposed SEF Rule, the Final SEF Rule requires that traders who have the ability to execute against a customer’s order or to execute two customers against each other be subject to a 15-second time delay between the entry of the two orders such that one side of the potential transaction is disclosed and made available to other market participants before the second side of the potential transaction is submitted for execution.<sup>26</sup> The stated purpose of this requirement is to ensure a minimum level of pre-trade transparency for Required Transactions by allowing other market participants to participate in a trade where a broker engages in some form of pre-arrangement or pre-negotiation.<sup>27</sup>

Unlike the Proposed SEF Rule, however, the Final SEF Rule clarifies that the 15-second time-delay requirement only applies to a SEF’s order book.<sup>28</sup> Moreover, the Final SEF Rule acknowledges that the time-delay requirement should take into account a product’s characteristics and, therefore, allows SEFs to adjust the time period of the delay based upon liquidity or other product-specific considerations.<sup>29</sup>

#### **5. Core Principles**

Consistent with the CEA’s statutory requirements, the Final SEF Rule establishes rules implementing and expanding upon the 15 core principles listed in the CEA. SEFs are required to comply with these Core Principles initially and on a continual basis in order to register and operate as a SEF. The Core Principle requirements, as implemented by the Final SEF Rule, are similar to those set forth in the Proposed SEF Rule, but there are certain modifications and clarifications. For example, in the Final Rule, the CFTC clarified that with respect to Core Principle 2 pertaining to “access requirements,” all members of the SEF and all market participants accessing the SEF through a member must submit to the SEF’s jurisdiction.<sup>30</sup> In addition, the CFTC modified the core principle requirements to provide SEFs flexibility in creating “disciplinary panels” rather than requiring a specific “Review Panel” and “Hearing Panel” for assessing potential violations of SEF rules.<sup>31</sup>

### **The Final Made Available To Trade Rule**

Section 723(a)(3) of Dodd-Frank added Section 2(h)(8) of the CEA to require that swaps subject to the CFTC’s mandatory clearing requirement must be traded on either a DCM or SEF, unless no DCM or SEF “makes the swap available to trade.” In the Final Made Available Trade Rule, the CFTC chose to leave

the determination of whether a swap had made available to trade to the SEFs and DCMs, but set forth a number of factors that a DCM or SEF must consider when making that determination, including:

- Whether there are ready and willing buyers and sellers;
- The frequency or size of transactions;
- The trading volume;
- The number and types of market participants;
- The bid/ask spread; or
- The usual number of resting firm or indicative bids and offers.<sup>32</sup>

If, after considering these factors, a DCM or SEF determines that a given swap should be made available to trade, the DCM or SEF must submit its determination to the CFTC, either for approval or self-certification, pursuant to the rule filing procedures of part 40 of the CFTC's regulations.<sup>33</sup> Then, upon a determination that a swap is available to trade on any DCM or SEF, all other DCMs and SEFs must comply with the mandatory trade execution requirement until the CFTC issues a determination that the swap is no longer available for trading because no DCM or SEF lists such swap for trading.<sup>34</sup> A SEF or DCM cannot make a determination that a swap has been made available to trade until it has listed that swap for trading, but there is no minimum listing period preceding that determination.

Under the Final Made Available to Trade Rules, the CFTC has established a compliance schedule under which swaps subject to the rule will be subject to mandatory trading upon the later of: (i) the applicable deadline established under the CFTC's mandatory clearing determination; or (ii) 30 days after the available-to-trade determination submission or certification for that swap is deemed approved or certified.<sup>35</sup> The CFTC noted that it expects, at least initially, that there will be a 90-day period between submission and the time that the swap is deemed approved or certified, which will thus give market participants a longer time to prepare for complying with the trade execution requirement.

## The Final Block Trade Rule

Dodd-Frank added Section 2(a)(13) of the CEA, which authorizes the CFTC to promulgate regulations for the real-time public reporting of swap transaction and pricing data. Section 2(a)(13) of the CEA also requires, however, that the CFTC prescribe regulations specifying the criteria for determining what constitutes a "large notional swap transaction" (block trade) for particular market transactions and the appropriate measures to protect the identities of swap counterparties and to maintain anonymity of their business transactions and market positions. If a given transaction qualifies as block trade, then it will be subject to a time delay prior to being reported pursuant to the CFTC's real-time public reporting rules.<sup>36</sup>

Under the Final Block Trade Rule, the CFTC established a two-period phase-in approach to establish minimum block trade thresholds in different asset classes:

- **Initial Appropriate Minimum Block Sizes:** In the initial phase, the CFTC will prescribe initial appropriate minimum block sizes in the following asset classes: (i) interest rate swaps; (ii) credit swaps; (iii) foreign exchange swaps; and (iv) other commodity swaps. Equity swaps do not qualify as block trades. For interest rate and credit swaps, the initial minimum block sizes are based on a 50-percent notional amount calculation (used to determine what block size would cause at least 50% of the notional amount of transactions in that swap to fall below the minimum block size), whereas the

initial minimum block size for foreign exchange and other commodity swaps are based, in large part, on the block sizes for economically equivalent futures contracts.<sup>37</sup>

- **Post Initial Appropriate Minimum Block Sizes:** After a registered swap data repository (SDR) has collected at least one year of reliable data for a particular asset class, the CFTC will then establish the post-initial minimum block sizes. In the post-initial phase, the CFTC must determine the appropriate minimum block sizes utilizing a one-year window of swap transaction and pricing data and by applying a 67-percent notional amount calculation similar to the 50% calculation described above.<sup>38</sup>

In the event that a reportable swap transaction has a notional amount at or above the appropriate minimum block size, and the swap is executed on a SEF or DCM, the market participant must notify the registered SEF or DCM, as applicable, of its election to have the publicly reportable swap transaction treated as a block trade.<sup>39</sup> Similarly, a reporting party who executes an off-facility swap that has a notional amount at or above the appropriate minimum block size must notify the applicable SDR that such swap transaction qualifies as a block trade.<sup>40</sup>

In addition to establishing the appropriate minimum block sizes, the CFTC also established cap sizes that would mask the total size of a swap transaction if it equals or exceeds the appropriate minimum block size for a given swap category. As an example, if the block size for a category of interest rate swaps is \$1 billion, the cap size is \$1.5 billion, and the actual transaction had a notional value of \$2 billion, then the swap transaction would be publicly reported with a delay (because it is above the minimum block size threshold) and with a notional value of only \$1.5 billion. According to the CFTC, utilizing caps would help protect the anonymity of counterparties and business transactions while also mitigating the impact that real-time public reporting could have in reducing market liquidity.<sup>41</sup>

As with the procedures for establishing the minimum block trade thresholds, the CFTC adopted a two-period phase in approach to establish the appropriate cap sizes in different asset classes:

- **Initial Cap Sizes:** In the initial phase, the initial cap size for each swap category is equal to the greater of the initial appropriate minimum block size for the respective swap category or a pre-determined initial cap size.<sup>42</sup>
- **Post Initial Cap Sizes:** After a registered SDR has collected at least one year of reliable data for a particular asset class, the CFTC will then establish the post-initial cap sizes utilizing a one-year window of swap transaction and pricing data and applying a 75-percent notional amount calculation.<sup>43</sup>

Finally, in an effort to further protect the identities of market participants, the Final Block Trade Rule requires SDRs to limit the geographic information associated with commodity swaps. Specifically, rather than reporting specific delivery or pricing points, the SDR would provide details as to the region only.<sup>44</sup>

## Antidisruptive Practices Guidance

Section 747 of Dodd-Frank amends Section 4c(a)(5) of the CEA to add a new section entitled “Disruptive Trading Practices,” which makes it unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that: (i) violates bids or offers; (ii) demonstrates an intentional or reckless disregard for the orderly execution of transactions during the closing period; or (iii) is, is of the character of, or is commonly known to the trade as, “spoofing”—*i.e.*, bidding or offering with the intent to cancel the bid or offer before execution. The Antidisruptive Practices Guidance is intended to further clarify the scope of these three categories of prohibited activity.

As a preliminary matter, the CFTC clarified that Section 4c(a)(5) of the CEA applies to any trading, practices, or conduct on a registered entity, such as a DCM or SEF.<sup>45</sup> The CFTC also clarified that it does not read a “manipulative intent” requirement into Section 4(a)(5) prohibitions, meaning that the CFTC views its anti-disruptive trading practice authority as wholly distinct from its anti-manipulation authority.<sup>46</sup>

## 1. Violating Bids or Offers

With respect to the prohibition on violating bids or offers, the CFTC stated that the Antidisruptive Practices Guidance prohibits a person from buying a contract on a registered entity at a price that is higher than the lowest available price offered for such contract or selling a contract on a registered entity at a price that is lower than the highest available price bid for such contract.<sup>47</sup> The CFTC reiterated that it interprets this prohibition as a *per se* offense and that the CFTC would not be required to demonstrate that a person acted with *scienter* in violating bids and offers.<sup>48</sup> The CFTC did note, however, that it does not intend to exercise its enforcement action against those individuals who, purely by accident, make a “one-off trade” in violation of the prohibition on violating bids or offers.<sup>49</sup>

The CFTC further clarified that, with respect to SEFs, the prohibition only applies when a person is using a SEF’s order book, and not when a person uses a SEF’s other execution methods.<sup>50</sup> The CFTC also interprets the prohibition on violating bids or offers as not applying to non-cleared swap transactions—even when transacted through a registered entity—because in such transactions credit considerations are important components of choosing which bid or offer to accept.<sup>51</sup> Finally, the CFTC noted that it does not interpret the prohibition on violating bids or offers as creating a “best execution standard” across multiple registered entities; rather, the CFTC interprets the prohibition as applying only to the specific registered entity being utilized at a particular time.<sup>52</sup>

Additionally, although not addressed in the Antidisruptive Practices Guidance, at the open meeting on May 16, 2013, CFTC Commissioner O’Malia posed three trading scenarios that may raise questions under the CFTC’s antidisruptive trading practices rules: (i) strobing, which is a high-frequency trading strategy that rapidly sends and cancels the same order many times to create the (false) appearance of liquidity; (ii) priority positioning (or laddering), which involves a high frequency strategy that exacts profits from a market by using speed to gain superior positioning; and (iii) front running, which relies on ultra-high speeds to observe a trade take place in the marketplace (that they took no part in), so as to rush and buy or sell the underlying stock or future in front of the anticipated forthcoming hedge orders.

## 2. Disregard for Orderly Execution During the Closing Period

In terms of demonstrating disregard for the orderly execution of transactions during the closing period, the Antidisruptive Practices Guidance clarifies the scope of the three elements that make up the offense. First, the Antidisruptive Practices Guidance makes clear that the prohibition covers only intentional or reckless conduct during the closing period; accidental or even negligent conduct will not suffice.<sup>53</sup> Second, the Antidisruptive Practices Guidance defines the “closing period” as the period in the contract or trade when the settlement price is determined under the rules of a trading facility such as a DCM or SEF.<sup>54</sup> The “closing period” may include:

- The time period in which a daily settlement price is determined;
- The expiration day for a futures contract; or
- Any period of time in which the cash-market transaction prices for a physical commodity are used in establishing a settlement price for a futures contract, option, or swap (as defined by the CEA).<sup>55</sup>

Notably, however, the CFTC also determined that conduct outside the closing period may also disrupt the orderly execution of transactions during the closing period and may thus form the basis of a violation under CEA.<sup>56</sup> For example, a violation may occur when a market participant accumulates a large position in a product or contract in the period immediately preceding the closing period with the intent (or reckless disregard) to disrupt the orderly execution of transactions during that product's, or a similar product's, defined closing period.<sup>57</sup>

Last, the Antidisruptive Practices Guidance listed certain "parameters" that characterize an orderly market, which include:

- A rational relationship between consecutive prices, a strong correlation between price changes and the volume of trades, and levels of volatility that do not dramatically reduce liquidity;
- Accurate relationships between the price of a derivative and the underlying, such as a physical commodity or financial instrument; and
- Reasonable spreads between contracts for near months and for remote months.<sup>58</sup>

According to the CFTC, to avoid violating the prohibition against demonstrating disregard for the orderly execution of transactions during the closing period, market participants should assess market conditions before placing a bid or offer, or executing an order, because this will help prevent market participants from engaging in trading, practices, or conduct that disrupts fair and equitable trading in CFTC-regulated markets.<sup>59</sup>

### 3. Spoofing

As to the prohibition on spoofing, the CFTC provided four "non-exclusive" examples of conduct that may qualify as "spoofing," including:

- Submitting or cancelling bids or offers to overload the quotation system of a registered entity;
- Submitting or cancelling bids or offers to delay another person's execution of trades;
- Submitting or cancelling multiple bids or offers to create an appearance of false market depth; and
- Submitting or canceling bids or offers with intent to create artificial price movements upwards or downwards.<sup>60</sup>

The Antidisruptive Practices Guidance clarifies that market participants must act with some degree of intent beyond recklessness to violate the CEA's prohibition on spoofing.<sup>61</sup> Additionally, the CFTC interprets that a spoofing violation will not occur when the person's intent when cancelling a bid or offer before execution was to cancel such bid or offer as part of a legitimate, good-faith attempt to consummate a trade.<sup>62</sup> Thus, the Antidisruptive Practices Guidance makes clear that a legitimate, good-faith cancellation or modification of orders (e.g., partially filled orders or properly placed stop-loss orders) would not violate the CEA's prohibition on spoofing.<sup>63</sup>

As with the prohibition on violating bids or offers, the CFTC intends to apply the prohibition on spoofing to bid and offer activity on all products traded on all registered entities, including DCMs and SEFs—however, the CFTC does not interpret the prohibition to apply only to trading platforms only having order book functionality.<sup>64</sup> According to the CFTC, spoofing may possibly occur on any trading platform or venue

where a market participant has the ability to either (i) send executable bids and offers to market participants or (ii) transact against resting orders.<sup>65</sup>

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#### Endnotes

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- <sup>1</sup> See Core Principles and Other Requirements for Swap Execution Facilities (the Final SEF Rule), available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister051613b.pdf>.
  - <sup>2</sup> See Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade under Section 2(h)(8) of the Commodity Exchange Act; Swap Transaction Compliance and Implementation Schedule; Trade Execution Requirement under Section 2(h) of the CEA (the Final Made Available to Trade Rule), available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister051613c.pdf>.
  - <sup>3</sup> See Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades (the Final Block Trade Rule), available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister051613.pdf>.
  - <sup>4</sup> See Antidistruptive Practices Authority - Interpretive Guidance and Policy Statement (Antidistruptive Practices Guidance), available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister051613d.pdf>.
  - <sup>5</sup> See Core Principles and Other Requirements for Swap Execution Facilities, proposed rule, 76 Fed. Reg. 1214 (Jan. 7, 2011) (the Proposed SEF Rule).
  - <sup>6</sup> See Final SEF Rule at 418, to be codified at 17 C.F.R. § 37.3(a).

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<sup>7</sup> See *id.* at 22. Notably, however, the CFTC clarified that if a facility offers a trading system or platform solely for the execution of foreign exchange swaps or foreign exchange forwards exempt from the “swap” definition under the Treasury Secretary’s written determination, then the facility would not be required to register as a SEF.

<sup>8</sup> See *id.* at 24.

<sup>9</sup> See *id.*

<sup>10</sup> See *id.* at 25. The CFTC noted, though, that to the extent an aggregation service or portal itself provides a trading system or platform whereby more than one market participant has the ability to execute or trade swaps with more than one other market participant on the system or platform, the aggregation service would be required to register as a SEF.

<sup>11</sup> See *id.* at 26.

<sup>12</sup> See *id.* at 29.

<sup>13</sup> See Final SEF Rule at 39.

<sup>14</sup> See *id.* at 44.

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

<sup>17</sup> See *id.* at 49.

<sup>18</sup> See *id.*

<sup>19</sup> See *id.* at 45. The CFTC clarified that in no case may an applicant begin operating as a temporarily registered SEF until the effective date of the Final SEF Rule.

<sup>20</sup> See Final SEF Rule, 419, to be codified at 17 C.F.R. § 37.3(a)(2)

<sup>21</sup> See Proposed SEF Rule, 1241.

<sup>22</sup> See Final SEF Rule at 80.

<sup>23</sup> See *id.*, 87.

<sup>24</sup> See *id.*

<sup>25</sup> See *id.* at 107.

<sup>26</sup> See *id.* at 101.

<sup>27</sup> See *id.* at 104.

<sup>28</sup> See Final SEF Rule at 105.

<sup>29</sup> See *id.*

<sup>30</sup> See *id.* at 127.

<sup>31</sup> See *id.* at 177.

<sup>32</sup> See Final Made Available to Trade Rule at 95, to be codified at 17 C.F.R. § 37.10(b).

<sup>33</sup> See *id.*, to be codified at 17 C.F.R. § 37.10(a).

<sup>34</sup> See *id.* at 96, to be codified at 17 C.F.R. § 37.10(c).

<sup>35</sup> See *id.* at 97, to be codified at 17 C.F.R. § 37.12.

<sup>36</sup> See 17 C.F.R. § 43.5

<sup>37</sup> See Final Blok Trade Rule at 92.

<sup>38</sup> See *id.* at 275.

<sup>39</sup> See *id.* at 276.

<sup>40</sup> See *id.*

<sup>41</sup> See *id.* at 147.

<sup>42</sup> See *id.* at 267.

<sup>43</sup> See Final Block Trade Rule at 268.

<sup>44</sup> See *id.* at 266.

<sup>45</sup> See Antidisruptive Practices Guidance at 9.

<sup>46</sup> See *id.* at 10.

<sup>47</sup> See *id.* at 15.

<sup>48</sup> See *id.* at 12-13.

<sup>49</sup> See *id.* at 13.

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<sup>50</sup> See *id.* at 13.  
<sup>51</sup> See Antidisruptive Practices Guidance at 14.  
<sup>52</sup> See *id.* at 15.  
<sup>53</sup> See *id.* at 18.  
<sup>54</sup> See *id.* at 20.  
<sup>55</sup> See *id.*  
<sup>56</sup> See *id.*  
<sup>57</sup> See Antidisruptive Practices Guidance at 20.  
<sup>58</sup> See *id.* at 22.  
<sup>59</sup> See *id.*  
<sup>60</sup> See *id.* at 25.  
<sup>61</sup> See *id.* at 24.  
<sup>62</sup> See *id.*  
<sup>63</sup> See Antidisruptive Practices Guidance at 24.  
<sup>64</sup> See *id.* at 25.  
<sup>65</sup> See *id.*