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Quick Update on CFTC (Dodd-Frank) Regulation; and Where the Policy Discussion Might Go in the Next Four Years under Clinton or Trump

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Speaker Biography

- **Phil Lookadoo, Partner, Haynes and Boone, LLP**

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Phil is a partner in the Washington, DC, office of Haynes and Boone, where he represents clients with respect to: (i) electricity, natural gas, oil, petroleum products, biodiesel, ethanol, RINs, and renewable energy credit physical trading and financial hedging transactions, (ii) power plant and pipeline development, project finance, and M&A transactions, (iii) refinery and petroleum storage monetization transactions, and (iv) related regulatory compliance and enforcement matters before the CFTC, the FERC, the EPA, the DOT, and various State public service commissions. Prior to joining Haynes and Boone in December 2014, Phil was a partner in Reed Smith's Washington, DC, office, and from 1992 to 2008, he was a partner at Thelen Reid & Priest (and its predecessor Reid & Priest). Since October 2010, Phil has chaired the Dodd-Frank Working Group of the International Energy Credit Association (IECA). Phil began his legal career in 1980 representing interstate natural gas pipelines before the FERC. He received his J.D. from Emory University School of Law, his M.S. in Nuclear Physics from the University of Virginia, and his B.S. in Physics from West Virginia University.

Quick Dodd-Frank Update

- It's been six years since the Dodd-Frank Act (DFA) was passed on July 21, 2010. Regarding the effects of the DFA on Energy Trading, where are we today?

Clearing/Exchange Trading Mandate

- The DFA amended the Commodity Exchange Act (CEA) to mandate central clearing of specific types of swaps as soon as such a swap completes the made available to trade (MAT) process.
- Central clearing is now well-established for interest rate derivatives (IRD) and credit default swaps (CDS). At the end of December 2015, as reported by the Bank for International Settlements (BIS), only \$1.3 trillion of the \$493 trillion global OTC derivatives market involved OTC commodity derivatives.
- Under the DFA, swaps subject to mandatory clearing are also subject to mandatory exchange trading on designated contract markets (DCMs) and swap execution facilities (SEFs).

MAT for Energy Swaps

- The MAT process has not yet been undertaken for nonfinancial commodities, such as energy swaps. Discussion during one or more public meetings at the CFTC during Summer of 2015 considered modifications to the MAT process.
- On June 23, 2016, the CFTC requested comments to be filed by July 25, 2016, on requests received over the past several years from 7 DCOs seeking 34 swap clearing requirements, including some for oil, natural gas and LNG. The CFTC said that if it chose to propose a swap clearing requirement for any of these swaps, it would publish a proposed rulemaking and seek public comments.

End-User Exception

- A bilaterally negotiated (i.e., uncleared) swap, for a product that has completed the MAT process, will nevertheless be eligible for the end-user exception to mandatory clearing and mandatory exchange trading (17 CFR 50.50) if: (i) one party to that swap is not a Financial Entity, (ii) that party is using the swap to hedge or mitigate its commercial risk, and (iii) that party provides, trade-by-trade or annually, the required information to its counterparty or annually to an SDR (including certain Board resolutions if that party is publicly traded).

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