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# CORPORATE & FINANCIAL

WEEKLY DIGEST

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## CFTC

### CME Delays Prohibition on Transitory EFRPs

As reported in the *Corporate and Financial Weekly Digest* edition of April 18, 2014, CME Group has issued an advisory notice prohibiting transitory exchange for related positions on each of the Chicago Mercantile Exchange, the Chicago Board of Trade, the New York Mercantile Exchange and the Commodity Exchange. The advisory notice, which was originally scheduled to go into effect on June 2, has been revised to go into effect on August 4. No other revisions have been made to the advisory notice.

The revised advisory notice is available here.

### JAC Issues Guidance on Margin Funds

The Joint Audit Committee (JAC) has issued a regulatory alert regarding the receipt and disbursement of margin funds. As noted in the regulatory alert, a futures commission merchant (FCM) is generally prohibited from applying deposits to a customer's or noncustomer's margin equity until the funds are actually received by the FCM. However, an FCM may apply an unsettled non-US dollar deposit to an account's margin equity if certain conditions are met, including the requirements that the wire is initiated on day one of the margin call and the FCM treat unsettled non-US dollar disbursements from the account in the same manner.

The regulatory alert additionally provides that all accounts maintained for the same beneficial owner within the same account classification (segregated, secured or cleared swaps) must be combined for margin purposes. When making disbursements, FCMs must look at all accounts (including subaccounts) within the same account classification for the same beneficial owner, even if an account is under different control.

The JAC regulatory alert is available here.

### CFTC Hands Out First Whistleblower Award

The Commodity Futures Trading Commission has announced the first award under its whistleblower program. The CFTC will pay an anonymous recipient approximately $240,000 for providing information about violations of the Commodity Exchange Act (CEA). The CFTC did not disclose any other details surrounding the award, including the total amount collected by the CFTC. Under the whistleblower program, individuals who report violations of the CEA leading to more than $1,000,000 in sanctions are eligible to receive between 10% and 30% of monies collected.

The CFTC's press release is available here.

### NFA Adopts Fee for Registration Non-Disclosures

National Futures Association (NFA) has adopted a rule requiring firms and individuals to pay $1,000 fines for failing to disclose disciplinary matters on registration applications or failing to update existing registration records to disclose new disciplinary matters. NFA will impose the fine regardless of whether NFA has initiated an adverse registration action.

In the case of non-disclosure by an associated person (AP) or principal, the individual's sponsor is responsible for paying the fine, but the rule does not prohibit a sponsor from seeking reimbursement from the individual. When an AP or principal is sponsored in such capacity by multiple firms, each sponsor will be assessed the fine.

NFA has also modified its policy on adverse registration actions. Under the new policy, NFA will no longer initiate adverse registration actions when the failure to disclose is the result of negligence or carelessness.

NFA's Notice I-14-11 is available here.

### CME Launches Website Links for Complaints and Self-Reports

CME Group's website has added hyperlinks that allow persons to file complaints or self-report potential rule violations. In addition to the website portal, market participants may also use telephone and email communication to submit complaints and self-reports.

More information, including the complaint and self-report hyperlinks, is available here.

## LITIGATION

### SEC Brings Lawsuit Against Unregistered Broker Dealer

On May 15, the Securities and Exchange Commission filed a complaint against Behrooz Sarafraz in California federal court, alleging Sarafraz violated federal securities laws by acting as an unregistered broker dealer. According to the SEC, between February 2002 and April 2010, Sarafraz participated in the offer and sale of securities by TVC Opus I Drilling Program, LP and its managing partner, Tri-Valley Corporation. The SEC alleged that Sarafraz described the investment program to prospective investors and recommended that they purchase securities. Sarafraz allegedly received approximately $18.3 million in commissions, $1.9 million of which he paid to others for their referrals. The SEC asserted that these actions violated Section 15(a) of the Securities Exchange Act of 1934, and it sought an order requiring Sarafraz to disgorge illicit gains and pay a civil penalty, in addition to an injunction against further violations. The SEC announced that Sarafraz agreed to settle, without admitting or denying the allegations, by paying over $22.4 million in disgorgement plus interest and a civil penalty, and by consenting to an injunction. The US District Court for the Northern District of California has yet to approve the settlement.

*Securities and Exchange Commission v. Behrooz Sarafraz*, C.A. No. 3:14-cv-02252 (N.D. Cal. May 15, 2014).

### SEC Alleges Fraud from Unregistered Offerings of Oil and Gas Securities

On May 12, the Securities and Exchange Commission brought a lawsuit in the US District Court for the Northern District of Texas, alleging that between September 2010 and January 2012, Charles Couch, directly and through his company, Couch Oil & Gas, raised approximately $9.8 million from investors in two unregistered offerings of oil and gas securities. According to the SEC, defendants made false representations to investors in brochures and other documents, including the promise to use all funds to drill and complete wells. The SEC alleged that, contrary to the defendants' representations, defendants spent only 35% of investors' funds on costs associated with drilling and used almost 30% of the funds to pay sales commissions to unregistered brokers. The SEC charged defendants with violating Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b) thereunder. It seeks disgorgement of profits, civil penalties and an injunction preventing defendants from future violations.

*Securities and Exchange Commission v. Charles Couch and Couch Oil & Gas, Inc.*, C.A. No. 3:14-cv-01747-D (N.D. Tex. May 12, 2014).

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