Derivatives & Commodities

Stradley Ronon's derivatives and commodities practice is an integrated, multidisciplinary team that advises asset managers, collective investment vehicles and other institutional market participants on the evolving regulatory landscape for transactions in derivatives resulting from the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 in the United States and similar regulatory initiatives abroad. We assist our clients in navigating the emerging global regulatory regimes that affect derivatives trading and staying abreast of developments. This involves drawing on our experience with derivatives regulations established by the Commodity Futures Trading Commission (CFTC) and the U.S. Securities and Exchange Commission (SEC) under Title VII of the Dodd-Frank Act, as well as providing advice from a cross-border perspective by incorporating consideration of the emerging derivatives regimes in the European Union (European Market Infrastructure Regulation, or EMIR), Canada and other non-U.S. jurisdictions.

Who We Help

Our clients include financial institutions, such as investment advisers, banks, broker-dealers and insurance companies, as well as pooled vehicles such as registered investment companies, collective trusts, hedge funds and other private funds. They range in size from some of the largest financial institutions in the world to some of the smallest, fastest-growing companies. We counsel experienced CFTC registrants, such as asset managers that have been registered as commodity pool operators (CPOs) or commodity trading advisors (CTAs) for some time, as well as financial institutions that have more recently become subject to CFTC registration and other derivatives regulation as a result of the Dodd-Frank Act, equivalent non-U.S. regulation or new CFTC rules. Stradley Ronon's longstanding practice of representing SEC-registered investment advisers and broker-dealers enables the derivatives and commodities practice to advise clients on the intricacies of dual SEC and CFTC regulation, and clients benefit from the valuable market perspective of our broad practice.

Our Services

Swaps and Derivatives Documentation and Regulatory Compliance

We regularly counsel a wide variety of financial institutions on establishing and modifying their derivatives trading documentation, including:

- International Swaps and Derivatives Association (ISDA) master agreements.
- Repurchase agreements.
- Securities lending agreements.
- Futures agreements.
- Execution agreements, futures commission merchant (FCM) and central counterparty (CCP) agreements, and other documents related to centrally cleared swap transactions.
- Swap execution facility (SEF) participant/user agreements.

- ISDA protocols relating to Dodd-Frank, EMIR, Foreign Account Tax Compliance Act (FATCA) and other issues.
- Master securities forward transaction agreements (to-be-announced, or TBA, market).
- Collateral account control agreements.
- Master confirmation agreements.
- Master netting agreements.
- Underlying trade confirmations.

We also counsel clients in keeping apprised of and in compliance with changing regulatory requirements, including:

- New swap reporting and recordkeeping requirements under the Commodity Exchange Act (CEA), EMIR and National Futures Association (NFA) rules, and other regimes.
- Emerging uncleared swap margin requirements.
- Block trading, off-facility trading, cross-border and other swaps trading issues.
- Special calls for reports on CFTC Form 40/40S.
- Rules established by SEFs.
- Speculative position limits.

Our lawyers engage in advocacy with regulators on behalf of our clients' evolving regulatory issues, including customer protection, cross-border application of CFTC swap rules and application of position limits to asset managers.

CPO and CTA Regulation

We assist fund sponsors, advisers, pooled vehicles and other financial institutions with complex questions regarding the regulatory implications of their activities relating to commodities and commodity interests, including:

- Evaluating organization-wide activities and entities to determine status and registration requirements and/or the availability of applicable exemptions.
- Considering organizational adjustments to take advantage of available exclusions and exemptions.
- Guiding clients through the NFA process.
- Advising on licensing requirements and related exemptions for associated persons.
- Assisting registered investment companies and their advisers in complying with the CFTC's Rule 4.5 and "harmonization" regime.
- Evaluating swaps and derivatives risks and other disclosures in fund offering documents.
- Assisting with CFTC and NFA compliance programs and ongoing compliance obligations.
- Assisting clients in navigating NFA exams.
- Providing interpretive advice on new disclosure forms and reporting requirements.
- Addressing complex issues involving offshore funds, unconventional pools, funds-of-funds and unit investment trusts.
- Engaging in direct advocacy with the CFTC and NFA on interpretive and policy issues arising from dual regulation.

What Sets Us Apart

We are well-versed in structuring and negotiating documentation for both over-the-counter and exchange-traded derivatives transactions. We focus in particular on helping clients develop and implement the infrastructure necessary for derivatives trading in the post-Dodd-Frank markets, including establishing new relationships and assisting with the documentation necessary for centrally cleared swaps and trading on SEFs.

We also assist with developing policies and procedures for operating in new markets and under new regulations. These include establishing onboarding procedures such as protocols for determining the regulatory status of parties to derivatives transactions as eligible contract participants (ECPs) and U.S. persons under CFTC regulations; special aggregation and “block trade” procedures appropriate for swaps and other non-securities transactions; and procedures for keeping pace with new recordkeeping, reporting and disclosure requirements.

Our derivatives and commodities lawyers routinely counsel clients on their status and regulatory obligations under the CEA and related regulations of the CFTC and NFA, as well as on available exemptions from regulation. We have particular experience assisting SEC and FINRA regulated entities in structuring their businesses and derivatives transactions and related compliance programs to address dual regulation by the SEC and FINRA, on the one hand, and the CFTC and NFA, on the other hand, and to the extent possible, help them minimize the impact of multiple regulators.

Publications

CFTC Raises the Bar for Rule 4.7 QEP Status but Holds Off on Controversial Disclosure Requirements
September 18, 2024

CFTC Staff Permits Registered CPO to Treat Certain Employees as Qualified Eligible Persons
May 20, 2024

New “Digital Asset Commodity” Requirements for NFA Members
April 6, 2023