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drums along the potomac

This is a sort of limbo period for the CFTC, and, by extension, the markets in general. No commission quorum means no big decisions. No big decisions means we can only look forward to a continuous barrage of clarifications, no-action letters, deadline extensions, meetings, roundtables, comments and speeches. This isn't necessarily a bad thing, many market observers tell us. A bit of breathing space is not something folks have had a lot of in the past 36 months, and that goes both for commission staff and the folks on the receiving end. The pace of rules writing and implementation has been heavy lifting for all sides. And, it's far from over, if the FIA Legal/Compliance Summit in Baltimore is any measure. This is actually an ideal lull in the fighting to have a good hard look at what's transpired and to fix what is fixable – sans a quorum – and to punt the rest. Chairman Wetjen has been busy on the former, we're told. He's been a hard guy to read over the past couple years, largely overshadowed by The Gary in just about everything. These past few months, however, have been quite telling, we think, and give us a much clearer idea as to what has been important all along to then backbencher Wetjen. For example, he seems to

want to make end-users whole. From what we understand, he has assigned staff to take another read on about six fairly considerable rules, with the understanding that clarification or new guidance is needed. Pre- and post-trade transparency are but two, we're told. Maybe fixing SEFs, too. Meantime, enjoy the pause. Catch up on your reading. Though the new guy (Tim Massad) won't be given the same marching orders as The Gary, and we hope the pace of things will be a bit more reasonable, know too that a whole lot of policy has yet to be made on the Dodd-Frank front.

And we thought the era of cool conference chotchkies was over. Nope. At the Annual FIA Compliance event in Baltimore this week, the CFTC's Chris Ehrman takes (or rather gave out) the prize (see below). Manning a somewhat austere booth at the event, the agency's whistleblower office chief told us that traffic at the show was decent and generally, "business is very good..." Ehrman you might recall worked in the SEC's Enforcement Division, as assistant director of the SEC's Office of Market Intelligence. He joined the CFTC last year. The CFTC will pay cash awards to

eligible whistleblowers who provide information about violations of the CEA. Go to <http://www.cftc.gov/ConsumerProtection/WhistleblowerProgram/index.htm>

The HFT story has been a whirlwind lately. Everybody is talking about it. A recent speech by CFTC Commissioner Scott O'Malia at a TABB forum event was meant to do two things: first, to let everybody know that (believe it or not) the markets aren't rigged, as some best-selling authors would have you believe, and secondly, that the commission is *on it*. The forthcoming TAC meeting that O'Malia chairs will be focused on all things HFT. The world will be watching. We bet Michael Lewis would be willing to serve as a witness, er, panelist. Then the world would definitely be watching. Just saying. And the timing couldn't be better. As this is a political year, we imagine lots of congressional staff will make the trip across town to take it in. We rang up O'Malia this week about all this HFT stuff.

"Despite what you've read this week in the press, we don't have a new HFT rule," O'Malia tells us. "We're looking at it ... we're making recommendations, but we don't have a rule."

We wondered if these HFT issues might become part of the political football that's now emerging in advance of the mid-term elections.

"I don't want to overstate the political on this. I think people want to be informed and prepared on these issues, of the assertions made in the book (*Flash Boys*) ... that the markets are somehow rigged ... and I want to address these matters."

In Lewis' book, he writes almost exclusively about the rigged nature of the *equity* markets. However, in the "60 Minutes" segment that coincided with the re-

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lease of the book (everybody needs a PR machine like Lewis), the program rather broad-brushed all markets, suggesting that every financial market was essentially rigged.

“We want to make sure what we’re looking at is correct – and we understand markets quite a bit better than Michael Lewis or 60 Minutes -- and that the public understands that markets are different. That the potential for gaming is different, depending on the market. The public needs to know that we are in the midst of a great evolution of financial markets, and we (CFTC) are on-guard.”

So, a couple weeks have passed since the release of the book and only now it seems that folks are making a concerted effort to offer up some reality – that perhaps markets aren’t rigged after all. Or, at least not all markets. Futures regulators say their markets aren’t rigged. Securities regu-

lators say their markets aren’t rigged. And so on. “We’ve asked all the questions ... and we have a concept release out there for HFT. If there’s something in the book that points to an area we missed, then good, we’ll address it,” O’Malia says. “Lewis gets credit for putting this complex issue on the Amazon best seller list. Scott Patterson I think did a better job describing these markets, (he was) much more granular in details (with his book *Dark Pools*), and much more balanced, yet, go figure, he never made the same list.”

O’Malia says the agenda for next month’s TAC will be out shortly. He says there will likely be fewer presentations this time, and more depth. Two likely topics: order types and incentive payments and fees. He says that \$270 million is spent on rebates in these markets. “Who do they go to? To what end? Who benefits? We hope to put it all on the table for discussion,”

O’Malia tells us. The event falls on the fourth anniversary of the flash crash. Watch the CFTC site.

So, we’ve told you about our favorite online all-things regulatory and policy database, the Cadwalader Cabinet. This week the firm announced a new initiative called Knowledge Driven System (KDS), “which allows financial service professionals to conduct a variety of legal, compliance and transactional tasks through an interactive online solution.” We’ve not tested it, but Cabinet chief Steve Lofchie tells us it’s the bomb. You can get legal questions answered, generate contracts, representation letters and disclosure documents, train and educate employees, document compliance procedures and more. We’ll review it soon. Go to www.cadwalader.com/thecabinet/index.php.



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