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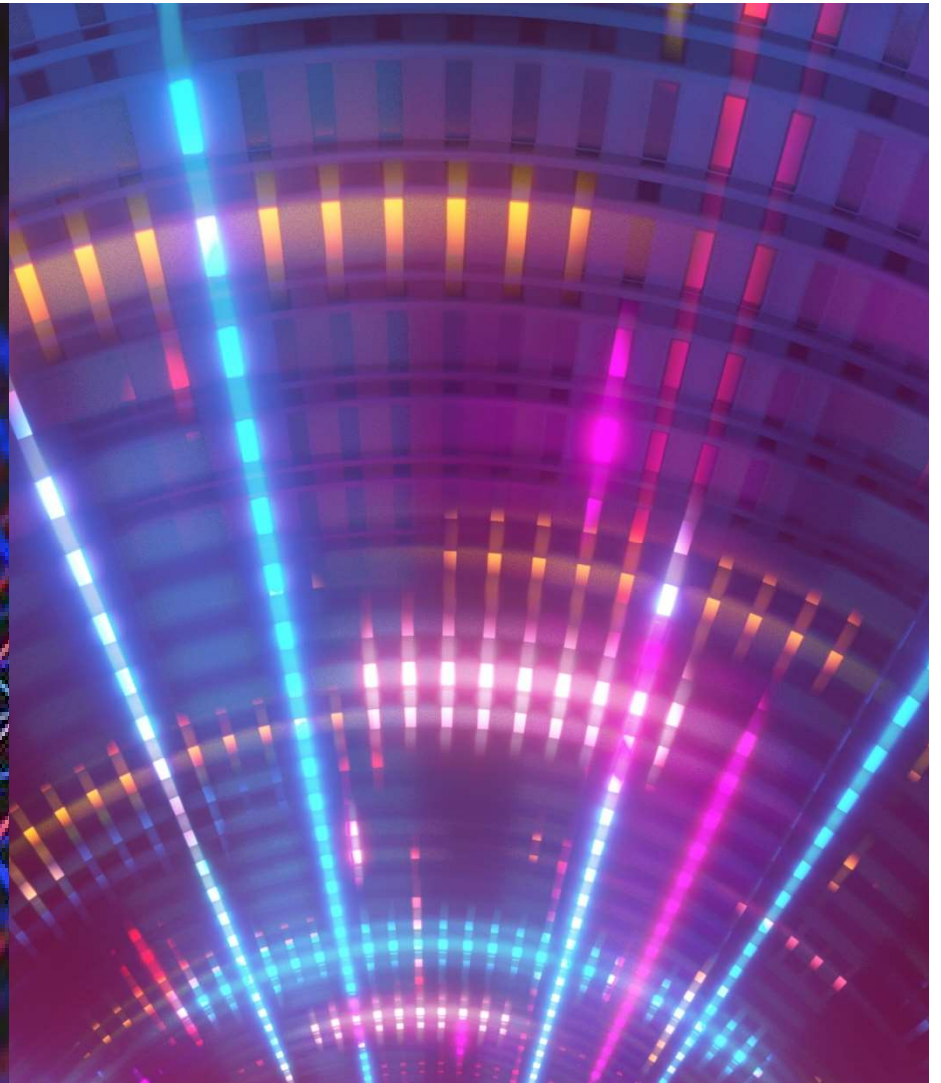
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**An Energy Industry
Webinar Series**

- **Effective Compliance Oversight of Energy Commodity Trading in a Remote Trading Environment**

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Presenters



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Introduction and Overview

- Following the declaration of a global pandemic due to the widespread transmission of the coronavirus (COVID-19), the issuance of shutdown and/or stay-at-home directives cascaded from commercial enterprises and state and local governments across the United States.
- We expect many personnel to remain in a WFH environment for the foreseeable future.
 - It is essential that energy compliance, legal, and risk management personnel draw on lessons learned since the onset of COVID-19 and adapt existing compliance programs or oversight to the new normal.
- Three elements:
 - Maintaining an Effective Compliance Program
 - Key Considerations for Energy Trading Compliance
 - Responding to a Regulatory Inquiry



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Maintaining an Effective Compliance Program

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Effective Compliance

- Energy commodity regulators take the position that there is not a “one size fits all” approach to a compliance program or effective compliance oversight.
- A strong compliance program provides traders and other company personnel with the tools required to maximize benefit to the company while minimizing risk exposure.
- Existing compliance programs or compliance oversight mechanisms are almost entirely premised on a paradigm whereby front- and back-office trading personnel are often (or exclusively) working from a company campus while connected to secure company technology and IT networks and compliance personnel have in-person access to such trading staff.

Issues to Maintain an Effective Program

- Whether compliance and legal personnel are regularly interfacing with commodity traders, risk management committees, and back-office personnel to remain abreast of existing (and anticipated) company trading strategies, products, and locations;
- Reassessing existing compliance “hotline” technology or similar tools designed to provide a forum for personnel to raise questions or compliance-related issues and continue to make available sufficient avenues to personnel in a WFH environment;
- Whether existing policies and procedures require modification to facilitate WFH trading or transaction execution;
- How to implement and maintain interactive and effective ongoing training modules or programs for front-office personnel to demonstrate a robust trading compliance program;
- How to timely follow up on any alert for potential noncompliance that may arise in the normal course of transaction oversight/monitoring

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Remote Trading and Effective Energy Trading Compliance

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Issue 1 - Effective Supervision of Trading Personnel: *Training and Monitoring*

- Supervisors must notify trading personnel about new regulatory developments.
 - Short-selling bans
 - Position limits
 - New or different reporting requirements.
- Supervisors must continue to provide ongoing training and should schedule meetings or “check-ins” with their supervised personnel.
- WFH presents challenges in monitoring traders.
 - Supervisors should more frequently review trading personnel email correspondence and instant messages.
 - Supervisors should also continue to monitor for insider trading where family members may have access to material, nonpublic information, which an employee could use to facilitate trading.

Issue 1 - Effective Supervision of Trading Personnel: *Technology Considerations*

- Are new technologies needed to monitor trading activity?
- Are traders permitted to use video conferencing?
- Will traders require additional bandwidth or other systems requirements?

Issue 1 - Effective Supervision of Trading Personnel: *Testing*

- More frequent testing of supervisory protocols may be needed to ensure that these protocols are working effectively in a WFH environment and to determine whether gaps exist.
- Testing may demonstrate that new systems are needed to monitor trading activities in a WFH environment.
- Changes to supervisory protocols should be well-documented.

Issue 2 - Compliance Access to Traders and the Floor

- Do compliance personnel have:
 - Access to the trading floor?
 - Visibility and direct and physical access to trading personnel throughout a trading day?
 - The ability to review potential transactions or strategies in near-real time?
- The WFH situation has rendered this difficult or impossible

Issue 2 - Compliance Access to Traders and the Floor

- How can a company promote direct access between compliance and trading personnel?
 - Ensuring contact information of compliance and trading personnel is up-to-date
 - Scheduling regular compliance check-ins between compliance and trading personnel
 - Holding regular consults between compliance and trading personnel
 - Distributing a “compliance minute” regularly

Issue 3 - Recordkeeping Compliance

- Can compliance and legal personnel ensure recordkeeping obligations are satisfied?
- FERC and CFTC recordkeeping obligations include:
 - FERC books and records obligations for holding companies
 - FERC standards of conduct retention requirements for transmission providers
 - FERC natural gas secondary market and shipper-must-have-title retention requirements
 - CFTC recordkeeping obligations for futures and swaps and related cash or forward transactions
 - CFTC recordkeeping obligations for end-user exception and inter-affiliate exemption

Issue 3 - Recordkeeping Compliance

- How can a company ensure compliance with the applicable recordkeeping requirements?
 - Ensure awareness of recordkeeping requirements of personnel who create or keep records
 - Confirm records are transferred to company recordkeeping systems
 - Review protocols to determine whether they assume trading, scheduling, and transaction consummations occur at the office, on company network drives, or through company telecommunications equipment

Issue 4 - Audit Trail Integrity

- An environment in which front-office (and back-office) personnel are engaged in their duties remotely raises unique issues and challenges that must be resolved to ensure that the integrity of a company's response to regulator inquiry is preserved.
 - Whether company personnel are permitted to use personal telephones for trade negotiation, execution, and/or posting of bids and offers
 - Whether use of noncompany instant messaging platforms is permitted for trade negotiation, execution, and/or posting of bids and offers
 - Whether traders working remotely can adhere to company policies requiring the recording of voice recordings or instant message chats
 - How or whether companies are able to memorialize or review for compliance purposes the substance of trader communications that are not recorded or otherwise documented in real time
 - Ensuring that documentation and data necessary to respond to a regulatory inquiry are able to be collected within specified timeframe

Issue 5 - Electronic Security

- Increased remote accessibility to company information and trading systems and the possibility that a remote working environment may exist for a sustained period of time for many personnel present certain risks related to the security of trading systems and data.
 - Home networking software may not reflect the most current security updates or patches that exist.
 - In instances where phishing activities are targeted to other members of an employee's household, those activities can be used as a tool to access and exploit company information.

Issue 6 - Confidentiality

- It is important to preserve and maintain the confidential nature of sensitive information.
 - Ensuring that traders and back-office personnel have access to secure electronic file management systems
 - Documenting company policies requiring personnel who access confidential information to do so only while on company secure networks to the extent practicable
 - Requiring personnel to store confidential information on a secure document management system within a defined period of time of receiving or handling the information if such receipt or handling occurred on an unsecured noncompany network
 - Documenting instructions on storing or transferring confidential information and company records if such storage or transfer cannot readily occur on a company network within a stated period of time

Issue 7 - Potential Insider Trading

- At its core, an act of insider trading in violation of CFTC regulations is a fraud-based offense that concerns trading on the basis of material nonpublic information that was obtained in breach of a duty or via deception.
 - The CFTC's relaxation of voice recording requirements for some regulated entities following the onset of COVID-19 could make it difficult for company compliance personnel to detect and prevent against potential insider trading that was facilitated on the non-recorded lines.
 - Information may be obtained from new sources, thereby creating a risk that the new source is unaccustomed to handling the nonpublic price-sensitive information.

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Responding to an Inquiry

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Regulatory Responses and Interactions

- In preparing to respond to a regulatory inquiry, compliance and legal personnel should give due consideration to the following issues that arise due to a transition to a WFH environment:
 - How to properly and effectively coordinate preparation of data responses between various personnel working remotely from one another
 - The efforts and precise steps that are required to identify all custodians of materials that are potentially responsive to data requests
 - How to effectively collect all responsive materials from identified custodians, including materials that may have been created on off-network systems or personal telecommunications equipment
 - A realistic assessment of the timing required to provide a full and complete data response
 - How to make personnel available to provide responses to regulator questions
 - How to ensure that legal counsel is able to effectively accompany nonlegal personnel in any interactions with regulators conducting an audit or inquiry

Biography



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Levi McAllister advises clients in the natural gas, petroleum, and electric power sectors of the energy industry. Levi's practice focuses on compliance with regulatory provisions administered by the Federal Energy Regulatory Commission (FERC), the Commodity Futures Trading Commission (CFTC), and state public utility commission that affect the energy industry. He also advises clients on transactional matters concerning acquisitions, divestitures, mergers, and development of gas, petroleum, and electric generating infrastructure, with a particular focus on energy storage resource facilities.

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Katherine Dobson Buckley focuses her practice on the application of derivatives in trading, legal, and regulatory issues. She represents hedge funds, investment advisors, mutual funds, endowments and other market participants in complex cross-border and US futures, derivatives, prime brokerage, custodial, and commodities transactions.

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Sarah V. Riddell

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Leveraging her experience as a lawyer at the US Commodity Futures Trading Commission (CFTC), Sarah V. Riddell advises domestic and foreign exchanges, derivatives clearing organizations, swap execution facilities, and other financial institutions on a broad range of regulatory matters, including CFTC registration and compliance. Sarah also assists hedge fund clients with CFTC and National Futures Association (NFA) registration, compliance, and examination questions. While at the CFTC, Sarah worked on Dodd-Frank-related rulemakings and participated in examinations of derivatives clearing organizations, including those designated as systemically important.

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Biography



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Pamela Tsang Wu advises clients in the natural gas, oil, and electric power industries before the Federal Energy Regulatory Commission (FERC), the Commodity Futures Trading Commission (CFTC), and the Pipeline and Hazardous Materials Safety Administration (PHMSA) of the US Department of Transportation on rate, regulatory, and transaction matters. Pam's practice focuses on representing clients in administrative litigation before FERC in rate and tariff proceedings, advising and defending clients in FERC and CFTC investigations, and advising clients seeking to acquire or divest assets.

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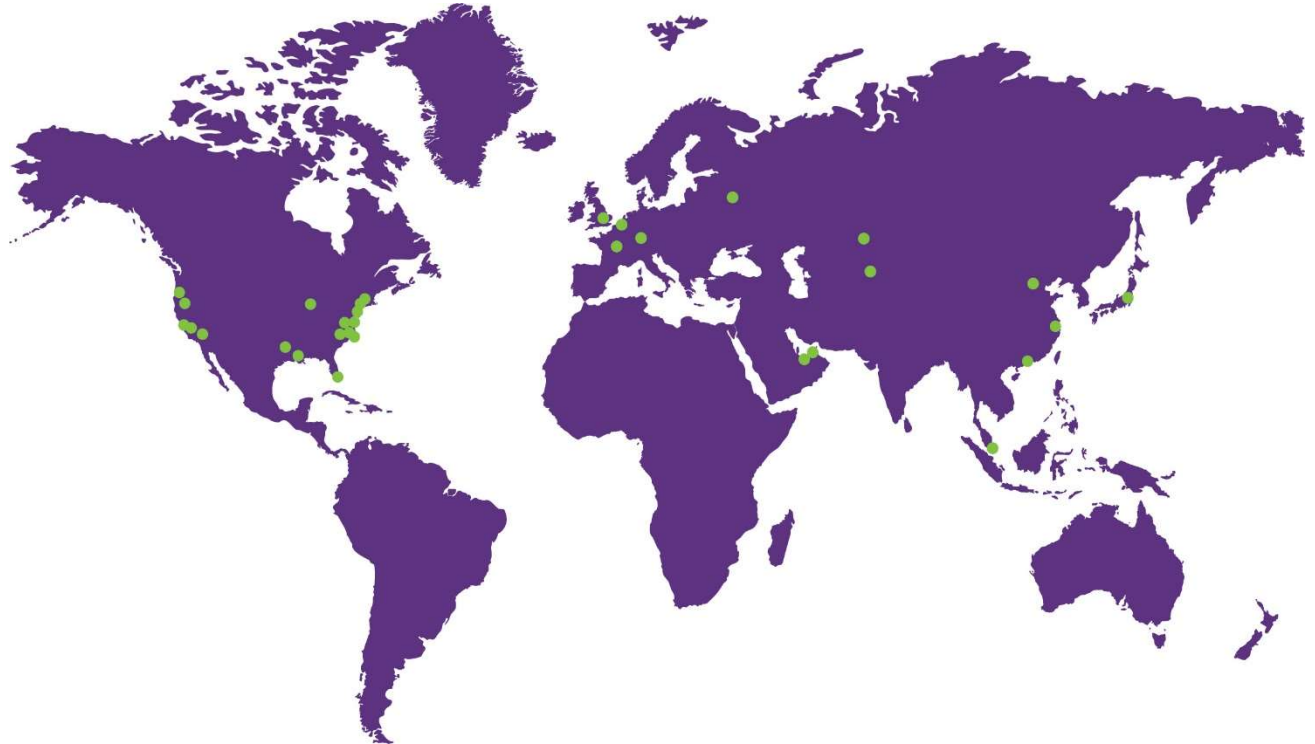
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