

# Shifting Signals

April 17, 2025

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## Relief for Swap Dealer Pre-Trade Disclosures

April 17, 2025



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On April 4, 2025, the staff of the Commodity Futures Trading Commission ("CFTC") Market Participants Division ("MPD") **issued** compliance relief for registered swap dealers ("SDs") from the requirement to provide the so-called pre-trade mid-market marks ("PTMMM"). CFTC Regulation § 23.431 that was promulgated in 2012 under the Dodd Frank Act of 2010 mandates that SDs provide PTMMM to their non-SD counterparties to allow them to compare the PTMMM with the executable quote for the swap with the same PTMMMs and swap quote provided by other dealers. It became clear, however, that the PTMMM is essentially an academic value that is determined by each SD pursuant to their own methodology and on the basis of their own assumptions and scenarios that may not be comparable between SDs. As a result, the CFTC had issued several no action letters providing relief to SDs under various conditions.

The MPD relief also specifically notes that PTMMM disclosures also apply to "foreign exchange forwards" and "foreign exchange swaps" (as defined in the Commodity Exchange Act (CEA)) that are otherwise exempted by the 2012 Treasury Determination from the definition of "swaps." Requirement to provide PTMMMs for this class of FX contacts has been particularly burdensome for SDs. In consideration of limited utility of PTMMMs to SDs' counterparties, compliance burdens and previously-issued relief, the MPD stated that "MPD will not recommend the Commission commence an enforcement action against a [SD] for failure to satisfy the PTMMM Requirement for its non-[SD] counterparties," and noted that this relief will continue until the CFTC adopts regulations "addressing the PTMMM Requirement."

It is not clear at this time whether SDs will collectively stop providing PTMMMs altogether considering that this is only MPD staff relief and that both the CEA and CFTC regulations require providing of "daily marks" (the MPD relief does not apply to "daily marks") and there are several CFTC enforcement actions as well as court decisions on the basis of § 23.431 requirements. Further, the MPD relief itself states that it is effective until the CFTC "addresses" this requirement, instead of saying "repeals or abolishes." Once a uniform market compliance approach emerges, the SDs will be best advised to follow this approach in consultation with the trade associations.

## Cabinet Capital Corner – the Big Picture in Bank Balance Sheets

April 17, 2025



Capital management strategies continue to be a focus area for banks in 2025, even though regulatory capital rulemaking has taken a new direction in the U.S.

As the credit risk transfer ("CRT") market matures, the conversation continues to broaden beyond capital implications to loan concentration management and potential return on equity benefits of reducing risk weighted assets.

To help frame these trends in the broader business context, we're launching the new *Cabinet Capital Corner* feature, beginning with a big picture banking industry update.

Read more [here](#).

## CFTC's Doge-Inspired Drive to Enforcement May Fall Short

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Partner [Peter Malyshev](#) spoke with *Risk.net* about the Commodity Futures Trading Commission's attempt to encourage market participants to come forward with possible regulatory violations in an article, "CFTC's Doge-inspired drive to enforcement may fall short," published on April 7.

On February 25, the CFTC published an advisory laying out the amount of credit it will give to firms for co-operating with it over possible infringements of its laws. Many experts expressed skepticism about how impactful this change would be.

"I frankly think that there will be no change at all," said Peter.

The advisory sets out criteria to decide the discount on penalties it will give to firms for self-reporting any violations, ranging from 0-55%.

According to Peter, without knowing the size of the possible penalty upfront, it still leaves uncertainty as to the precise value of self-reporting.

"If I tell you [that] you can get 50% off of X if something happens, but I don't tell you what X is, this whole formula becomes completely meaningless," he said, pointing out that the notification of the amount of the penalty happens at the very end of the process.

Furthermore, the standard that needs to be met for each category isn't clear.

"You self-report to the CFTC if you think there was a violation," said Peter. "So, you spend quite a bit of time doing an investigation internally and then they might ask you for every conceivable record that you may have.... Asking for every record is unreasonable, but if you push back, does it mean you're not fully co-operating?"

One potential positive of the advisory is that firm's can self-report to the CFTC's operating divisions rather than the enforcement department.

"The [CFTC] lawyers talk to enforcement, but they will explain what was going on, [and] be an advocate," he says.

Peter added that if the CFTC wants to improve firms' adherence to rules – thereby lowering enforcement costs – it needs to reconsider them.

"If you have so many enforcement cases against the largest financial institutions in the world, who spend millions of dollars on their compliance and these gold-plated financial institutions cannot get things right, it means there's probably something wrong with the rule itself," he said. "They're not trying to cheat the CFTC or the markets, they really are trying to comply."

Read the full article [here](#).

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Take a look at some of Cadwalader's recent Clients & Friends Memos covering two high-impact developments on both sides of the Atlantic: a new Executive Order from President Trump targeting state-level climate change policies, and a closely watched UK Supreme Court case that could reshape how broker commissions are handled in consumer lending.

### **President Trump's Executive Order on State Climate Change Policies**

[Peter Malyshev](#) has authored a Clients & Friends memo which discusses the following:

On April 8, 2025, President Trump issued an executive order to protect "American Energy from State Overreach." The Order states that it is necessitated because certain States promulgated "climate change" policies and requirements that are burdensome for American energy producers and consumers.

Read more [here](#).

### **Broker Deal Commissions: UK Supreme Court Hears Appeal in Johnson, Wrench, Hopcraft v Close Bros. and FirstRand**

[Tom Grodecki](#), [Bevis Metcalf](#), [Alix Prentice](#) and [Suzanne Bell](#) have authored a Clients & Friends Memo which discusses the following:

The UK Supreme Court has heard the final appeal in the *Johnson, Wrench and Hopcraft* test cases. At issue is the surprising finding by the UK Court of Appeal that dealer brokers (in this case car dealerships acting as both seller and credit broker) owe fiduciary duties to their customers, such that payment of commission from lender to broker introduces a conflict of interest that must be brought to the borrower's attention in the clearest terms. The Court of Appeal found that lenders could otherwise be liable to the customer for the full sum of the commission paid to the broker, without discount to reflect the customer/borrower's actual loss. The case is of significant importance to the consumer lending market, lenders to HNW individuals, and to financial market participants more generally.

Read more [here](#).

## Copper Ingots to Crypto: Derivatives Crash Course With Peter Malyshev

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CADWALADER

**Peter Malyshev**

Partner  
Washington

**Appeared as a Guest On**  
*The CFTC Observer Podcast:  
An Agency-Outsider's  
Perspective of the  
Derivatives Industry*

**Peter Malyshev** was a featured guest on the latest episode of the “The CFTC Observer Podcast: An Agency-Outsider's Perspective of the Derivatives Industry.”

Peter provided a framework for assessing new matters in the derivatives space and discussed his background, including the nascent derivatives markets in post-Soviet Russia, OTCs and the Dodd-Frank Act, and now crypto and digital assets.

The podcast is now streaming live on [Spotify](#), [Apple Music](#) and elsewhere.