

# Practice sheet – A Guide to Commodities, Futures and Derivatives Law

By William Henry “Hank” Bell – Chicago-Kent College of Law, class of 2011

## **Introduction**

The futures and derivatives practice is one of the most dynamic areas of law today. The global derivatives industry is currently experiencing significant changes in the U.S., the EU and other jurisdictions around the world. Futures and derivatives law focuses on legal, regulatory and policy issues relating to exchange-traded and over-the-counter (“OTC”) derivative instruments (e.g. futures contracts, options, swaps, hybrid securities, and foreign exchange) and their related cash and forward transaction markets. Derivatives and futures attorneys focus their practice on the regulation of these markets and their participants (e.g. exchanges, clearing organizations, commercial market users, speculators, intermediaries, investment managers and hedge funds) by the Commodity Futures Trading Commission, Securities Exchange Commission, federal banking and energy regulators and a variety of other regulators at the state and federal levels.

The field of futures and derivatives law offers law school graduates the opportunity to experience, firsthand, an area of law which is currently undergoing enormous changes. Many clients are facing increasing regulatory burdens in the U.S. and other global markets following the financial crisis. For example, the Dodd-Frank Act and the European Market Infrastructure Regulation have a significant impact on derivatives business globally. Title VII of the Dodd-Frank Act establishes a new framework for regulatory and supervisory oversight of the OTC derivatives market. Lawyers practicing futures and derivatives law must navigate a challenging and evolving regulatory landscape in order to properly advise their clients in the post-Dodd-Frank era.

The following is an overview with career planning pointers for law students and graduates interested in developing a career in commodities, futures and derivatives law.

## **Categories of Employers**

There are several categories of employers for whom one can practice futures and derivatives law, including law firms, derivatives exchanges and clearing houses, futures commission merchants, proprietary trading firms, commercial market users, investment management companies and government regulators.

### **Law Firms**

Law firms with large commodities, futures and derivatives practice groups include:

- Cleary Gottlieb Steen & Hamilton LLP
- Cadwalader, Wickersham & Taft LLP

- Davis Polk & Wardwell LLP
- Dechert LLP
- Foley & Lardner LLP
- Fulbright & Jaworski LLP
- K & L Gates LLP
- Katten Muchin Rosenman LLP
- McDermott Will & Emery LLP
- Morrison & Foerster LLP
- Schiff Hardin LLP
- Sidley Austin LLP
- Skadden, Arps, Slate, Meagher & Flom LLP
- Sullivan & Cromwell LLP
- Sutherland Asbill & Brennan LLP
- Wilkie Farr & Gallagher LLP
- Winston & Strawn LLP

#### Derivatives exchanges and clearing houses

A futures exchange is a central financial exchange where people can trade standardized futures contracts; that is, a contract to buy specific quantities of commodity or financial instrument at a specified price with delivery set at a specified time in the future.

Chicago has the largest futures exchange in the world, the Chicago Mercantile Exchange. Chicago is located at the base of the great lakes, close to the farmlands and cattle country of the U.S. Midwest, making it a natural center for transportation, distribution and trading of agricultural produce. Gluts and shortages of these products caused chaotic fluctuations in price, and this led to the development of a market enabling grain merchants, processors, and agriculture companies to trade in “to arrive” or “cash forward” contracts to insulate them from the risk of adverse price change and enable them to hedge.

Prominent futures and derivatives exchanges with operations in Chicago include CME Group, Intercontinental Exchange Inc., the Chicago Board of Options Exchange, Eris Exchange and North American Derivatives Exchange (NADEX). Other derivatives exchanges operating outside Chicago include Eurex Group, Singapore Exchange (SGX), Hong Kong Exchanges and Clearing (HKEx), Dubai Mercantile Exchange (DME) and BM&F Bovespa.

There is usually a division of responsibility between provision of trading facility, and that of clearing and settlement of those trades. While derivatives exchanges like the CBOE take responsibility for providing efficient, transparent and orderly trading environments, settlement of the resulting trades are usually handled by clearing houses that serve as central counterparties to trades done in the respective exchanges. For instance, the Options Clearing Corporation (OCC)

is the clearing corporation for CBOE. Well-known exceptions to this are the cases of CME Group and ICE, which clear trades themselves.

Job opportunities available at derivatives exchanges for law school graduates include positions in market regulation, compliance and in-house legal departments.

#### Futures Commission Merchants

A futures commission merchant (“FCM”) is an individual or organization which (1) solicits or accepts orders to buy or sell futures contracts, options on futures, or retail off-exchange forex contracts, and (2) accepts money or other assets from customers to support such orders.

Many prominent FCMs are located in Chicago, including Newedge USA, ABN Amro Clearing Chicago, R.J. O’Brien & Associates and Jefferies Bache. Job opportunities available at FCMs for law school graduates include compliance positions, in-house legal positions and regulatory analyst positions.

#### Proprietary trading firms

Proprietary trading (commonly called “prop trading”) occurs when a firm trades stocks, bonds, currencies, commodities, their derivatives, and other financial instruments with the firm’s own money as opposed to its customers’ money, so as to make a profit for itself.

Because of impending financial regulation (including the Volcker Rule), major banks such as Goldman Sachs and Deutsche Bank have spun off their proprietary trading desks or shut them down altogether. However, proprietary trading is still carried out at specialized proprietary trading firms. Many of the largest and most notable proprietary trading firms are based in Chicago, including GETCO LLC, Jump Trading LLC and DRW Trading Group. The proprietary trading done at these firms is usually highly technology driven, utilizing complex quantitative models and algorithms. Job opportunities available at proprietary trading firms to law school graduates include positions as futures compliance analysts and regulatory attorneys.

#### Investment management firms, investment funds and alternative investment advisers

Investment management is the professional management of various securities and assets in order to meet specified investment goals for the benefit of the investors. Investors may be institutions (insurance companies, pension funds, corporations, charities, educational establishments, etc.) or private investors (both directly via investment contracts and more commonly via collective investment schemes such as mutual funds or exchange-traded funds).

Lawyers representing investment management firms are responsible for the formation and operation of all types of alternative investment vehicles, including hedge funds, funds-of-funds, commodity pools, venture capital and private equity funds, private real estate funds and other public and private pooled investment vehicles. Lawyers may also represent clients with respect

to more traditional investment funds, such as mutual funds, closed-end funds and exchange-traded funds.

Investment management firms face a broad range of legal and compliance issues under the laws and regulations of the various jurisdictions in which the funds operate. In particular, lawyers must advise investment management firms regarding complex federal laws, including the Dodd-Frank Act, the Investment Company Act of 1940 and the Investment Advisers Act of 1940. Such lawyers must also advise investment management firms in structuring and negotiating OTC derivatives transactions.

### Government regulatory agencies

A financial regulatory agency (also called a regulatory body or regulator) is a public authority or government agency responsible for exercising autonomous authority over the financial markets in a regulatory or supervisory capacity. Federal regulatory agencies subject financial institutions to certain requirements, restrictions and guidelines, aiming to maintain the integrity of the financial system. Job opportunities for law school graduates interested in futures and derivatives law can be found at several financial regulatory agencies within the federal government.

The **Commodity Futures Trading Commission** (“CFTC”) is an independent agency of the U.S. government that regulates futures and options markets. The CFTC assures the economic utility of the futures and options markets by encouraging their competitiveness and efficiency, ensuring their integrity, protecting market participants against manipulation, abusive trading practices, and fraud, and ensuring the financial integrity of the clearing process. As a result of the Dodd-Frank Act, the CFTC is currently writing rules to regulate the swaps marketplace. Under the CFTC’s rulemaking as mandated by Title VII of the Dodd-Frank Act, swap dealers will be subject to oversight, standardized derivatives will be required to trade on open platforms and be submitted for clearing to central counterparties.

The **Securities and Exchange Commission** (“SEC”) is a federal agency which holds primary responsibility for enforcing the federal securities laws and regulating the securities industry, the nation’s stock and options exchanges, and other electronic securities markets in the United States. The Dodd-Frank Act divides regulatory authority over the swaps market between the CFTC and the SEC. The SEC has regulatory authority over “security-based swaps,” which are defined as swaps based on a single security or loan or a narrow-based group or index of securities, or events relating to a single issuer or issuers of securities in a narrow-based security index. The CFTC and SEC share authority over “mixed swaps,” which are security-based swaps that also have a commodity component. In addition, the SEC has anti-fraud enforcement authority over swaps that are related to securities but that do not come within the definition of “security-based swap.”

## Self-regulatory organizations

A self-regulatory organization (“SRO”) is an organization that exercises some degree of regulatory authority over an industry or profession. The ability of an SRO to exercise regulatory authority does not necessarily derive from a grant of authority from the government. In the financial services industry, an SRO is a membership-based organization that creates and enforces rules for members based on the federal securities laws. SROs are the front line in regulating broker-dealers. Job opportunities for law school graduates interested in futures and derivatives law are available at several SROs with operations in Chicago.

The **National Futures Association** (“NFA”) is an independent SRO and watchdog of the commodities and futures industry in the United States. The NFA oversees and protects investors from fraudulent commodities and futures activities. The NFA also provides mediation and arbitration for resolving consumer complaints. The NFA is headquartered in Chicago and also maintains an office in New York City.

The **Financial Industry Regulatory Authority** (“FINRA”) is a private corporation that acts as an SRO, and is the successor to the National Association of Securities Dealers, Inc. Though sometimes mistaken for a government agency, it is a non-governmental organization that performs financial regulation of member brokerage firms and exchange markets. FINRA regulates trading in equities, corporate bonds, securities futures and options. FINRA has regional offices throughout the United States, including Chicago.

## Locations

Chicago has one of the world’s largest and most diversified economies, and the city’s derivatives industry is among the most prominent in the global financial community. The city’s derivatives exchange community, which started with commodity futures trading at the Chicago Board of Trade in 1848, established the city as a global financial center. To this day, even though the trading of derivatives is conducted on an ever-expanding international scale, Chicago arguably remains the geographic center of global derivatives trading.

- Over \$4 billion in global derivatives trading volume takes place in Chicago, 20% greater trading volume than New York.
- Chicago-based Options Clearing Corporation clears all U.S. options contracts – a record 4.6 billion in 2011.
- Chicago futures and options exchanges collectively dominate exchange-based derivatives trading, with 50% of exchange-based derivatives trading in the U.S.
- Chicago accounts for 16% of the global derivatives trading market; more than New York (13%) and nearly as much as all exchanges in Europe combined (20%).

Other prominent global financial centers where the trading of derivative instruments is conducted include New York, Houston, London, Dubai, Singapore and Hong Kong.

## **Organizations and Associations**

The following is a listing of organizations and associations which can be a valuable resource for information relating to your futures and derivatives law job search. These organizations provide industry information and a gold mine of networking opportunities.

- Futures Industry Association – Law & Compliance Division
- American Bar Association – Business Law Section: The Committee on Derivatives and Futures Law
- Chicago Bar Association – Futures & Derivatives Law Committee