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Tips for Trading Compliance During a Pandemic

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*By: **Michael W. Brooks***

As many workplaces shutter and transition to telecommuting in response to the Novel Coronavirus (COVID-19), we are reminded that change always brings with it compliance risk. Even if your company has an emergency plan in place, assessing its effectiveness early and making adjustments as needed can avoid lapses in compliance. So what should compliance professionals at energy trading companies be thinking about right now?

First, ensure compliance with existing policies. Most companies limit out-of-office trading and after-hours-trading and may prohibit it except under limited circumstances. Companies might also require certain methods of communication, execution, confirmation, and documentation that currently are not practical. Rather than allowing policies to be broken (even if out of necessity), compliance teams should review existing policies and determine what adjustments are required to conform to the current reality. If formally changing the policy is not practical under the circumstances, then at least memorializing the decision to waive existing requirements will serve as a record that compliance was modified and not simply overlooked. Addressing policies that need to be tweaked also can serve as a reminder that other compliance policies remain in full effect.

One specific risk that can materialize with the shift to remote access is sharing of login information and trader IDs (e.g., Tag-50 user IDs). Sharing of access among individuals not only may violate exchange rules, it also complicates the ability to monitor or determine post-hoc which individuals were responsible for specific activities. Reminding employees about limits on sharing IDs where prohibited, and discouraging the sharing of login information where optional, can mitigate these risks. To the extent that login information may be shared, documenting and limiting the distribution of the login information can reduce the risk of unauthorized use and/or identify the individuals responsible for specific activities.

Beyond trader remote access issues, there may be ongoing compliance procedures that are no longer viable in the current environment. If this is the case, waiving certain compliance procedures may be appropriate. It also may be necessary to develop new practices for monitoring communications and trading activities.

Second, consider compliance with or seeking waiver of any impending deadlines. With interruptions to our daily routine, it is important to forecast upcoming deadlines and make decisions about whether and how they can be met. This may include periodic reporting requirements (such as annual and quarterly reports due in April and May) as well as event-driven reporting (such as swaps reporting, hedge exemption requests, Form 40 updates, Interlocking Directorates, or regulatory authorizations and renewals). Reviewing and updating your applicable deadlines now may avoid challenges in the coming months.

Of special note, we are approaching a number of deadlines for annual and quarterly filings at FERC. For example, the following reports are due in the next several months:

1. FERC Form 715 – Transmission Planning/Evaluation Report for Electric Transmission Owners with Integrated Transmission Facilities (**April 1**)
2. FERC Forms 1 and 1-F – Major/Non-Major Electric Utility Annual Reports (**April 18**)
3. FERC Form 2 – Major Natural Gas Pipeline Annual Report (**April 18**)
4. FERC Forms 6 and 6-Q – Annual and Quarterly Reports of Oil Pipeline Companies (**April 18**)
5. FERC Form 730 – Report of Transmission Investment Activity for Electric Transmission Owners with Transmission Incentives (**April 18**)
6. FERC-920 – Electric Quarterly Reports (**April 30**)
7. FERC-561 – Interlocking Directorates for individuals holding certain positions with Electric Public Utilities (**April 30**)
8. FERC Form 60 – Annual Report of Centralized Service Companies (**May 1**)
9. FERC Form 552 – Annual Report of Natural Gas Transactions (**May 1**)
10. FERC Form 3-Q – Major/Non-Major Financial Report of Electric Utilities (**June 1/June 9**)
11. FERC Form 549-D – Transport/Storage Report for Intrastate and Hinshaw Pipelines (**June 30**)

Any and all of these and other deadlines may be candidates for waivers from regulators, but exploring that option early can reduce stress and the risk that regulators may be slow to respond due to their own COVID-19 challenges. We have been in touch with FERC staff to explore options for companies who may miss deadlines and also have made arrangements to continue to be available to assist our clients with filings while they operate remotely. Whatever the approach, recognizing the issue early and planning ahead can reduce anxiety and potential errors.

Similarly, compliance teams also should consider necessary authorizations on the horizon. It is one thing to miss a reporting deadline, but it is another to need prior authorization before moving forward with business activities and to be unable to get a timely order from the relevant regulator, particularly where authorizations and/or deadlines are mandated by statute. For example, companies planning to import or export natural gas or LNG and pipelines and generators anticipating coming online this year should consider how best to ensure the necessary authorizations will be obtained in time to avoid delays in commercial operations.

Third, compliance should consider its role in the current environment and what new practices or controls may be necessary to ensure compliance. No longer being able to sit on the trade floor or witness and participate in ad hoc meetings may make compliance less visible and limit compliance's visibility into trading activities. At the same time that the Coronavirus is making it difficult to monitor trading compliance, its impact on the economy also may make traders more vulnerable to risk-taking and compromised judgment. In this environment, it is important for compliance to think about how to inject itself into activities occurring remotely. Finding ways to reinsert compliance into processes will elevate the profile of compliance and create new opportunities for input from compliance.

Specific things to consider include:

1. What devices and applications are available to traders (and other employees) and what are the implications for surveillance and document retention?

    1. Are communications being recorded, including possibly on local hard drives?

    2. Does the company have access to the records?

    3. Can activities be limited to systems that provide for surveillance and retention?

    4. If there are activities that need to occur outside of such systems, is there a means for logging those activities (e.g., daily forwards of communications)?Note: before instituting mandatory practices such as forwarding, consider the purpose and risks associated with the practice as ineffective practices can increase company risk.

2. Are procedures in place to ensure timely reporting of swaps and prearranged futures trades?

3. Are there any implications for tracking and communicating positions and position limits?

4. What regular (telephonic or video) meetings are occurring that compliance can join?Who can facilitate inserting compliance into those meetings?

5. While responsibility often resides outside of compliance, companies also should be taking into account increased cybersecurity threats and considering how to mitigate those risks.With respect to trading compliance, this includes the risk of unauthorized trading.Consider whether new controls are needed to address this risk?

Finally, address compliance training. In the short-term, it likely is most appropriate to postpone compliance training activities normally conducted live and in person. However, if social and physical distancing persists, it will be important to not allow training to fall by the wayside. This might mean conducting compliance training by video that can be offered to employees working remotely. Compliance teams also should consider opportunities to inject compliance discussions into new routines. For example, if in-person meetings have been canceled, compliance may need to request time during daily or weekly calls to discuss compliance challenges and remind employees of compliance obligations.

Conclusion. With all of the changes in our daily lives, it might be easy to forget that change is a compliance trigger. With that in mind, rather than relaxing compliance, companies should adjust their expectations for compliance and reform their practices as needed to meet the temporary challenges and elevated risks associated with remote trading in volatile markets.