



The U.S. Commodity Futures Trading Commission's (CFTC) Director of the Division of Swap Dealer & Intermediary Oversight (DSIO), alongside fellow panelist and National Futures Association's (NFA) General Counsel, fielded wide-ranging questions from co-panelists and audience members alike in a discussion focused on Intermediaries & Advisors at the [ABA's Derivatives & Futures Law Committee Winter Meeting](#) in Naples, Florida (January 23-25, 2020).



Chief among the topics addressed were views regarding DSIO and NFA's evolving approach to swap dealer oversight, particularly on the heels of DSIO's [recently issued guidance](#) on the Chief Compliance Officer Annual Report for futures commission merchants, swap dealers, and major swap participants. ***Sterling's DSIO "Taking a Hard Look" at Registrants*** DSIO Director Josh Sterling, who began his appointment in August 2019, indicated that he has prioritized "taking a hard look at registrants" and is, in fact, personally meeting with firms to ensure that swap dealers understand DSIO's "meaning" with respect to meeting expectations on swap dealer compliance obligations. While Sterling conceded that the CFTC's rules "aren't perfect," he also told practitioners representing swap dealers that "it's possible you'll be hearing from" DSIO and will be asked to provide specific information regarding compliance deficiencies, resource allocation, commitment, structural impediments, and governance issues. Sterling explained that with markets placid, the "time is now" for registrants to ensure that they have sufficient resources in place to enforce CFTC rules. Significant portions of the discussion focused on DSIO's December 2019 [Advisory Guidance](#) addressing the preparation of the Chief Compliance Officer Annual Report, with Sterling remarking that he personally believes that the agency ought to use delegated authority "sparingly," and that historically, "a lot of time" has been expended fashioning individual letters for firms. Sterling suggested that no-action letters should only be used to address a "truly unique and novel problem," but if there is an issue of general applicability then firms should petition for a rulemaking. When asked about the effect of the Staff Advisory guidance on CCO Annual Reports, Sterling stated that it was an "effort to convey how to efficiently present information" to DSIO staff, in such a way that would make the reports "more useful" to DSIO. ***NFA Moving to "Risk Based" Exam Approach*** For her part, NFA General Counsel Carol Wooding's remarks addressed NFA's new exam priorities, explaining that NFA is transitioning from exams that historically focused on "thematic reviews" and moving to a risk-based approach. As described by Wooding, NFA is "looking at each swap dealer and trying to identify areas" that present "the greatest risk of non-compliance." She flagged that surveillance of bulk communications and trading is coming up in a lot of exams, and that NFA wants to make sure that firms have an effective surveillance framework that is actually being followed. Wooding also discussed NFA's changed exam focus on cyber security, noting that it is moving away from its past "educational approach" and now examining members on their implementation of paper programs. For example, NFA is looking at controls, due diligence questionnaires for onboarding technology vendors, and then probing for evidence that firms effectively addressed red flags raised during the due diligence process for recently onboarded vendors. In terms of its expectations on timeliness of remediation, Wooding said that issues of material non-compliance are expected to be remediated "ASAP," although NFA recognizes that some technological fixes "don't happen quickly." Nevertheless, even in such cases, NFA expects that some remediation measure be put in place immediately. Wooding also indicated that when NFA exam staff find a "significant deficiency" during an exam they tell the firm "immediately" so that the firm can start working on the remediation right away and, ideally, have the issue addressed by the end of the exam. ***Close Coordination between DSIO and NFA*** Both Sterling and Wooding underscored the close coordination that occurs between NFA exam staff and DSIO. In addition to quarterly meetings, there is "near daily" contact between staff. Firms should expect that information can, and will, be shared between these co-regulators.

## Explore more in

[White Collar & Investigations](#)

Blog series

## White Collar Briefly

Drawing from breaking news, ever changing government priorities, and significant judicial decisions, this blog from Perkins Coie's White Collar and Investigations group highlights key considerations and offers practical insights aimed to guide corporate stakeholders and counselors through an evolving regulatory environment.

[View the blog](#)