

CFTC

CFTC Approves Proposed Regulations for CPOs and CTAs

On October 9, the Commodity Futures Trading Commission approved proposed rules intended to simplify regulations for commodity pool operators (CPOs) and commodity trading advisors (CTAs) generally by codifying existing staff advisory and no-action letter relief and streamlining registration requirements for CPOs that operate in multiple jurisdictions.

Among other things, the rules propose to:

- Permit pool operators to claim an exemption from CPO registration and compliance requirements with respect to offshore pools that have a limited nexus with the US (including by only soliciting and accepting funds from non-US persons), while maintaining their CPO registrations with respect to other pools (generally consistent with existing Advisory 18-96);
- Allow US-based CPOs of offshore commodity pools with US participants to maintain the pool's original books and records in the offshore location of the pool, as opposed to a US business location;
- Codify no-action relief exempting CPOs and CTAs to "family offices" from registration with respect to investment management and advisory activities conducted on behalf of family clients;
- Expand the exclusion from the CPO definition under CFTC Rule 4.5 to include advisers to business development companies, under circumstances consistent with the existing exclusion for advisers to registered investment companies;
- Permit qualifying CPOs to engage in certain general solicitation activities with respect to their pool offerings, consistent with the Jumpstart Our Business Startups (JOBS) Act and prior no-action relief; and
- Codify exemptive relief from the requirement to file Forms CPO-PQR or CTA-PR for CPOs or CTAs that do not otherwise have reporting obligations under Part 4 of the CFTC's regulations.

The proposed rules would also prohibit certain statutorily disqualified persons from registering as a CPO or claiming an exemption from CPO registration, subject to limited exceptions.

Any comments on the proposed rules must be received by the CFTC within 60 days after the proposed rules are filed in the Federal Register.

The CFTC's notice of proposed rulemaking is available [here](#).

NFA Bylaw 1303 Amendments To Take Effect October 31

On October 11, the National Futures Association (NFA) issued a notice to its members that amendments to NFA Bylaw 1303 take effect on October 31.

NFA Bylaw 1303 allows the NFA to deem an NFA member's failure to pay certain fees as a request for withdrawal from NFA membership. Bylaw 1303 will be deemed amended, effective as of October 31, to specify that failure to pay fees related to NFA Financial Requirements Section 10 (Late Financial Reports), NFA Financial Requirements Section 13 (Forex Dealer Member Reports), NFA Compliance Rule 2-46 (CPO and CTA Quarterly Reporting Requirements) and NFA Compliance Rule 2-48 (Forex Dealer Daily Trade Data Reports) will each result in a withdrawal of NFA membership. The amendments also make consistent the time periods upon which withdrawals under Bylaw 1303 are effective.

Bylaw 1303 and the amendments are available [here](#).

UK/BREXIT DEVELOPMENTS

HM Treasury Publishes Draft Brexit Statutory Instruments Relating to MiFID II and Trade Repositories

On October 5, HM Treasury published two draft statutory instruments (SIs) together with explanatory notes, which will make amendments to retained EU law relating to the revised Markets in Financial Instruments Directive (MiFID II) and Trade Repositories (TRs).

The purpose of the draft SIs is to ensure that the regimes established under MiFID II and the regime relating to the reporting of derivative trades to TRs under the European Market Infrastructure Regulation (EMIR) continue to operate effectively after the United Kingdom's withdrawal from the European Union (Brexit) on March 29, 2019 (Exit Day).

The draft version of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (Draft MiFID SI) includes provisions relating to:

1. **The transfer of MiFID II functions** carried out by the European Securities and Markets Authority (ESMA) to the UK Financial Conduct Authority (FCA) and UK Prudential Regulation Authority (PRA). Functions of the EU Commission will transfer to HM Treasury;
2. **Equivalence decisions and the temporary permissions regime** being introduced by HM Treasury (for further details of the temporary permissions regime, see the July 27 edition of [Corporate & Financial Weekly Digest](#));
3. **The MiFID II transparency regime**. The FCA will be granted temporary powers to amend certain transparency calibrations (which are otherwise frozen on Exit Day), direct the application of certain waiver mechanisms and freeze the obligation to publish trading information in respect of certain instruments; and
4. **Transaction reporting**, so that UK branches of EU firms will be required to send transaction reports to the FCA. The scope of instruments that need to be reported (those admitted to trading or traded on trading venues in the UK and in the EU) will remain the same.

The draft version of the Trade Repositories (Amendment and Transitional Provision) (EU exit) Regulations 2018 (Draft SI for TRs) includes provisions designed to:

1. Amend the retained version of EMIR to transfer ESMA's functions concerning the registration of TRs to the FCA;
2. Establish a temporary registration regime for UK and EU TRs. Such a regime will last for three years from Exit Day and will allow TRs that wish to establish a new UK legal entity to benefit from temporary registration while their application is being considered by the FCA; and
3. Create a conversion regime that allows for UK TRs that are currently registered by ESMA to be registered as authorized UK TRs by the FCA from Exit Day.

HM Treasury will lay the draft SIs before Parliament in autumn 2018, and the SIs will come into force on Exit Day, with the exception of certain provisions of the Draft MiFID SI.

The Draft MiFID SI is available [here](#).

The Draft SI for TRs is available [here](#).

UK FCA Publishes Consultations Relating to Brexit

On October 10, the UK Financial Conduct Authority (FCA) published two consultation papers relating to the United Kingdom's withdrawal from the European Union (Brexit). The first, CP18/28, is the FCA's first consultation paper on proposed changes to the FCA Handbook and to binding technical standards (BTS) resulting from Brexit. The second, CP18/29, focuses on the temporary permissions regime for inbound firms and funds. The temporary permissions regime will allow EU firms and funds to continue regulated business in the United Kingdom, if the United Kingdom leaves the European Union in March 2019 without an implementation period in place (for further details, see the July 27 edition of [Corporate & Financial Weekly Digest](#)).

In CP18/28, the FCA considers:

- Its approach to reviewing the Handbook and BTS to ensure an operational regulatory framework after Brexit;
- Proposed changes to the Handbook and to BTS arising from financial services Brexit statutory instruments (SIs) published by the government to date;
- Its approach to EU level 3 materials after Brexit, including guidance published by the European Supervisory Authorities;
- Its approach to the use of powers to phase in Brexit regulatory requirements.

CP18/29 sets out the following:

- Details of the temporary permissions regime for firms and fund marketing activities, including which firms and investment funds can use the regime;
- How the temporary permissions regime will operate for firms, including what the FCA expects from firms and how it will supervise them;
- The rules that the FCA proposes to apply to firms and fund marketing activities during the temporary permissions regime;
- Additional information for Electronic Money Institutions, Payment Institutions and Registered Account Information Service Providers;
- How the temporary permissions regime will operate for investment funds; and
- The FCA's proposals for how the regime will be funded.

Comments can be made on CP18/28 and CP18/29 until December 7, . The FCA also intends to launch a further consultation, following CP18/28, in autumn 2018.

CP18/28 is available [here](#).

CP18/29 is available [here](#).

HM Treasury Publishes Draft Brexit Statutory Instruments for Investment Funds and Their Managers

On October 8, HM Treasury published two draft statutory instruments (SIs), together with explanatory notes, which will make amendments to retained EU law relating to collective investment schemes (CIS) and alternative investment fund managers (AIFMs).

The purpose of the draft SIs is to ensure that the regimes established under the latest Undertakings for the Collective Investment in Transferable Securities Directive (UCITS IV Directive) and the Alternative Investment Fund Managers Directive (AIFMD) continue to operate effectively for investment funds and their managers after the United Kingdom's withdrawal from the European Union (Brexit) on March 29, 2019 (Exit Day).

The draft version of the Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018 (Draft SI for AIFMs), among other things:

1. Amends the definition of alternative investment fund (AIF);
2. Disapplies the UK National Private Placement Regime information and reporting requirements for funds marketing to retail investors;
3. Sets out the design and structure of a "temporary permissions regime" for AIFs and AIFMs, including, for example, money market funds using an AIF structure; and
4. Ensures that a UK AIFM will only be required to report on portfolio companies and comply with the restrictions on asset stripping when it acquires control of a UK company, instead of an EU company.

The draft version of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2018 (Draft SI for CIS), among other things:

1. Sets out the design and structure of a "temporary permissions regime" for EEA UCITS; and
2. Introduces a UK UCITS regime for funds established and authorized in the United Kingdom, which will be called "UK UCITS."

HM Treasury will lay the draft SIs before Parliament in autumn 2018, and the SIs will come into force on Exit Day.

The Draft SI for AIFMs is available [here](#) and its explanatory note is [here](#).

The Draft SI for CIS is available [here](#) and its explanatory note is [here](#).

EU DEVELOPMENTS

ESMA Updates Q&A Relating to Commodity Derivatives

On October 2, the European Securities and Markets Authority (ESMA) published an updated version of its question and answer document (Q&A) on commodity derivatives topics under the revised Markets in Financial Instruments Directive (MiFID II) and the related Markets in Financial Instruments Regulation (MiFIR).

The update includes two new answers. The first relates to position limits and clarifies that position limits apply to contracts entered into prior to January 3, 2018, while the second relates to position reporting. The Q&A also features three modified questions in relation to ancillary activities.

The updated Q&A is available [here](#).

ESMA Publishes Opinion on Position Limits on UK Natural Gas Contracts Proposed by the FCA

On October 5, the European Securities and Markets Authority (ESMA) published an opinion, dated September 24, on position limits on UK natural gas commodity futures and options contracts proposed by the UK Financial Conduct Authority (FCA).

ESMA received a notification from the FCA on February 7, under Article 57 of the revised Markets in Financial Instruments Directive (MiFID II), regarding the exact position limits the FCA intended to set for UK natural gas commodity futures and options contracts, in accordance with the methodology for calculation established in Delegated Regulation 2017/591 (RTS 21) and taking into account the factors set out in Article 57(3) of MiFID II.

In its opinion, ESMA concluded that the spot month position limit and the other months' position limits comply with the methodology established in RTS 21 and are consistent with the objectives under Article 57 of MiFID II. Additionally, ESMA notes that the position limits set for the spot month and the other months "appear to achieve a

reasonable balance between the need to prevent market abuse and to ensure an orderly market and orderly settlement, while ensuring that the development of commercial activities in the underlying market and the liquidity of the ICE Natural Gas contracts are not hampered.”

ESMA’s opinion is available [here](#).

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UK DEVELOPMENTS

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