

## BROKER-DEALER

### **FINRA Requests Comment on the Effectiveness and Efficiency of Its Carrying Agreements Rule**

On March 23, the Financial Industry Regulatory Authority (FINRA) announced it is conducting a retrospective review of FINRA Rule 4311, governing carrying agreements. As part of its review, FINRA has requested comment to determine the Rule's effectiveness and efficiency.

The Rule governs requirements applicable to FINRA members when entering into agreements for the carrying of customer accounts. It prohibits FINRA members, unless otherwise permitted by FINRA, from entering into an agreement for the carrying of any customer account in which securities transactions can be effected unless the carrying firm is a FINRA member. The Rule also requires that the carrying firm receive approval from FINRA prior to any such agreement becoming effective.

The comment period expires May 23.

More information is available [here](#).

## CFTC

### **NFA Issues Notice Regarding Reporting Requirements for CPOs, CTAs and IBs That Deal in Virtual Currencies**

On March 27, the National Futures Association (NFA) issued Notice I-18-07, reminding commodity pool operators (CPOs), commodity trading advisors (CTAs) and introducing brokers (IBs) to immediately notify NFA by amending the firm-level section of their respective annual questionnaires if they trade any virtual currency products or solicit or accept any order in virtual currency products, as applicable. (See notice I-17-28 and I-17-29, as reported in the *Corporate & Financial Weekly Digest* [edition of January 12, 2018](#).)

The Notice also stated that these CPOs, CTAs and IBs are not required to comply with the other reporting and filing requirements outlined in Notices I-17-28 and I-17-29 at this time. However, NFA may reach out to individual firms to request additional information as necessary.

Notice I-17-28 is available [here](#).

Notice I-17-29 is available [here](#).

Notice I-18-07 is available [here](#).

## BREXIT/UK DEVELOPMENTS

### ESMA Further Updates Its Q&As on the Benchmarks Regulation

On March 22, the European Securities and Markets Authority (ESMA) updated its Q&As on the European Union (EU) Benchmarks Regulation (BMR). The Q&As aim to promote common supervisory approaches and practices in the day-to-day application of the BMR.

The updated Q&As on the BMR add one new question and answer which considers the application of governance and control requirements by supervised contributors during the transitional period, the varying timeframes of which are further detailed in Article 51 of the BMR.

ESMA previously updated its Q&As on the BMR in December 2017, as reported in the *Corporate & Financial Weekly Digest* [edition of December 15, 2017](#). Other new questions and answers were included in an update to the Q&As on the BMR published on February 5, 2018 in relation to:

- commodity benchmarks—how the threshold in the exemption under the BMR should be calculated; and
- the definition of a benchmark and investment funds—clarification of the cases in which a benchmark is used to measure the performance of an investment fund.

The updated Q&As on the BMR are [here](#).

## EU DEVELOPMENTS

### ESMA Updates MiFID II Q&As on Investor Protection

On March 23, the European Securities and Markets Authority (ESMA) updated its Q&As relating to investor protection under the revised Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR).

The Q&As include updated existing questions and answers relating to inducements, information on costs and charges, and post-sale reporting.

The updated Q&As also contain a new question and answer relating to the meaning of the term “ongoing relationship,” which is used in various Articles of MiFID II and MiFIR.

The Q&As are available [here](#).

### ESMA Updates Q&As on Market Abuse Regulation

On March 23, the European Securities and Markets Authority (ESMA) updated its Q&As on the Market Abuse Regulation (MAR).

ESMA last updated the Q&As on December 14, 2017, as reported in the *Corporate & Financial Weekly Digest* [edition of December 15, 2017](#).

The updated Q&As now consider the disclosure of inside information related to the Pillar II requirements of MAR.

The Q&As are available [here](#).

## ECB Finalizes General Guide and FinTech Guide on Bank Licensing Applications

On March 23, the European Central Bank (ECB) published two guides (together, Guides):

- a guide to assessing license applications (General Licence Application Guide) which covers the general application process and the assessment requirements regarding, for example, governance, risk management, capital; and
- a guide to assessing financial technology (FinTech) credit institution license applications (FinTech Licence Application Guide)—intended to complement the General Licence Application Guide with a focus on FinTech entities that are considering an application for a banking license.

In September 2017, the ECB published drafts of the Guides for public consultation—the ECB’s response to the public consultation is set out in a feedback statement.

The Guides do not have legal effect; however, according to the feedback statement, their aim is to ensure “consistency in the implementation of the licensing assessment criteria in order to achieve common supervisory practices and increase transparency.”

The General Licence Application Guide is available [here](#).

The FinTech Licence Application Guide is available [here](#).

The feedback statement is available [here](#).

## EU Publishes RTS Supplementing ELTIF Regulation

On March 23, the *Official Journal of the European Union* published the European Commission Delegated Regulation 2018/480 (Delegated Regulation).

The Delegated Regulation sets out regulatory technical standards (RTS) on financial derivative instruments solely serving hedging purposes, sufficient length of the life of the European long-term investment funds (ELTIFs), assessment criteria for the market for potential buyers and valuation of the assets to be divested, and the types and characteristics of the facilities available to retail investors.

The Delegated Regulation was adopted by the European Commission on December 4, 2017 and will go into effect on April 12.

The Delegated Regulation is available [here](#).

## ESMA Updates Q&As on the Central Securities Depositories Regulation

On March 23, the European Securities and Markets Authority (ESMA) updated its Q&As on the implementation of the Central Securities Depositories Regulation (CSDR). The aim of the Q&As is to promote common supervisory approaches and practices in the application of the CSDR.

The updated Q&As include two new questions and answers regarding:

- the assessment of central securities depository (CSD) links to be made by the competent authorities in the context of the authorization procedure; and
- whether links between CSDs participating in TARGET2-Securities (a single, pan-European platform for securities settlement in central bank money, more commonly known as T2S) are interoperable links, as defined in the CSDR.

The updated Q&As also provide an update to the existing question and answer regarding the implementation of the CSDR provision to specify the extent of the flexibility that can be granted to CSDs in their use of international standards to communicate with their participants or with other market infrastructures.

The updated Q&As on the implementation of the CSDR are available [here](#).

## **ESMA Publishes List of Trading Venues and CCPs Benefitting From a Transitional Exemption From the Access Provisions of MiFIR**

On March 26, the European Securities and Markets Authority (ESMA) published a list of the trading venues and central counterparties (CCPs) benefitting from a temporary exemption from the access provisions set out in Articles 35 and 36 of the Markets in Financial Instruments Regulation (MiFIR).

CCPs and trading venues had until January 3 to apply for a transitional exemption under Article 54(2) of MiFIR. If the exemption has been granted to the relevant CCPs and trading venues, it lasts until July 3, 2020 (originally 2019, but this has been subsequently extended).

On March 28, ESMA updated its Q&As on transparency (Transparency Q&As) and market structures issues (Market Structures Q&As).

These Q&As provide responses to questions posed by the general public and market participants in relation to MiFIR, the revised Markets in Financial Instruments Directive (MiFID II) and their level 2 implementing legislation. ESMA expects to continue to review and update the Q&As in the coming months.

The list is available [here](#).

The Transparency Q&As are [here](#).

The Market Structures Q&As are [here](#).

## **ESMA Clarifies Quoting Obligations Under MiFIR for Systematic Internalizers**

On March 26, the European Securities and Markets Authority (ESMA) published its final report on proposed amendments to the regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments. The report included amendments regarding transaction execution obligations in respect of certain shares on a trading venue or by a systematic internalizer (RTS1), supplementing the Markets in Financial Instruments Regulation (MiFIR). ESMA also submitted the report to the European Commission (EC) on the same date.

RTS1 provides additional details regarding the transparency requirements for equity instruments, including the quoting obligations for Systematic Internalizers (SIs) under MiFIR. By proposing to amend RTS1, ESMA's intention is to "level the playing field" between trading venues and SIs, and contribute to an efficient price discovery mechanism.

ESMA has identified over the past few months that further clarity might be needed regarding the concept of "prices reflecting prevailing market conditions," to avoid SIs benefitting from a competitive advantage compared to trading venues. Therefore, ESMA decided to make clear that SI quotes should reflect the minimum price increments applicable to trading venues in the European Union. This means that SIs' quotes would only reflect prevailing market conditions where, for instruments subject to the tick size regime, those quotes mirror the minimum price increments applicable to on-venue orders and quotes.

The EC has three months to review the Report and to decide whether or not to endorse the proposed amendments to RTS1.

The report is available [here](#).

For additional coverage on financial and regulatory news, visit [Bridging the Week](#), authored by Katten's [Gary DeWaal](#).

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BREXIT/UK/EU DEVELOPMENTS

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\* Click [here](#) to access the *Corporate & Financial Weekly Digest* archive.

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