

BROKER-DEALER

SEC Chairman Clayton Provides Public Statement Regulation Best Interest and Form CRS

On June 15, Securities and Exchange Commission Chairman Jay Clayton made a public statement (Statement) covering several topics related to Regulation Best Interest (Reg BI) and Form CRS. Chairman Clayton confirmed that the compliance date for Reg BI and Form CRS will be June 30, 2020 and emphasized the SEC's focus on issues related to Main Street investors, including the creation of a new investor-focused resource to assist such investors with reviewing the Form CRS and researching firms and financial professionals.

Noting the ongoing effects of the COVID-19 pandemic and various related actions, Chairman Clayton emphasized that under Reg BI and the Investment Advisers Act of 1940, as amended, broker-dealers and investment advisers should review their operations to ensure the best interests of retail investors are being addressed when making recommendations or providing investment advice to such investors. In particular, Chairman Clayton noted that firms should focus on recommendations and advice related to the following: (1) rollovers and withdrawals from 401(k) and other plans; (2) complex or risky products (including significantly leveraged products that rely on derivatives strategies to enhance returns, or those that focus on investments in less liquid and more volatile markets); (3) COVID-related investments; and (4) special purpose acquisition companies and other structured investment vehicles.

A copy of the Statement is available [here](#).

NYSE Proposes Rule Changes Regarding the Partial Re-Opening of the Trading Floor

On June 17, the New York Stock Exchange (NYSE) filed with the Securities and Exchange Commission a series of proposed rule changes (Rule Changes) that aim to support the partial return of Designated Market Makers (DMMs) to NYSE's New York trading floor. For a temporary period that begins on June 17, 2020, and ends on the earlier of a full reopening of the New York trading floor facilities to DMMs or after the NYSE closes on June 30, 2020 (Covered Period), the following Rule Changes would apply:

- 1) **Commentary .06 to Rule 7.35A:** The applicable price range specified in paragraphs (d)(3)(A) and (B) of Rule 7.35 will be suspended and such applicable price range will be 10 percent for securities with an indication reference price higher than \$3.00 and \$0.30 for securities with an indication reference price equal to or lower than \$3.00.
- 2) **Commentary .03 to Rule 7.35B:** Floor broker interest will not be eligible to participate in the closing auction.
- 3) **Supplementary Material .20 to Rule 76:** The availability of "crossing" orders described in Rule 76, including the "Cross Function" as specified in Supplementary Material .10 to Rule 76, will be suspended.
- 4) **Supplementary Material .30 to Rule 36:** A new paragraph to Supplementary Material .30 will be added stating that a DMM unit may maintain a telephone line at its trading post location to communicate with DMM unit personnel working in locations other than the off-floor offices of the DMM unit, provided that the telephone numbers of such persons are provided in advance to the NYSE.

Pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934, as amended, and Rule 19b-4 thereunder, the Rule Changes became effective upon filing.

A description of the Rule Changes is available [here](#).

DERIVATIVES

See “London Weekly Fireside Chat” in the *Brexit/UK Developments* section and “FCA Statement on Amendments to MiFID II Position Limits” in the *EU Developments* section.

BREXIT/UK DEVELOPMENTS

London Weekly Fireside Chat

Katten hosts a weekly, 15-minute fireside chat podcast series on notable UK and European developments from the prior week’s *Corporate & Financial Weekly Digest*. This week, [Carolyn Jackson](#) speaks on the obligation of financial counterparties (FCs) to mandatorily report OTC derivatives transactions on behalf of their non-financial counterparties (NFCs)-counterparties commencing June 18, 2020; [Nathaniel Lalone](#) provides commentary on the new EU proposals to regulate (or not) non-European clearinghouses; and [Neil Robson](#) explains the mechanism and requirements for UK financial services firms to file a ‘market observation’ with the Financial Conduct Authority (FCA).

To listen to the podcast recording, click [here](#).

HM Treasury Responds to House of Lords EU Financial Affairs Committee Recommendations on Financial Services Post-Brexit

On June 11, the House of Lords EU Financial Affairs Sub-Committee (the Committee) published a letter dated May 27 from HM Treasury to the Committee in relation to the Committee’s review of the financial services sector after Brexit (the Letter).

The Letter considers a number of areas of concern for the UK regarding financial services after Brexit, including:

1. the importance of equivalence — the UK government aims to seek equivalence for the UK in a similar manner to the regimes that currently exist under EU legislation. The Letter notes that the UK and EU have a mutual interest to conclude any equivalence discussions;
2. improvements to the equivalence process — the UK government believes that this process should include transparency and appropriate consultation in the process of adoption, suspension and withdrawal of equivalence decisions, while respecting the principles of autonomy;
3. a new approach to regulation — the next phase of the future regulatory framework review will set out how the UK government intends to approach financial regulation post Brexit. The timing of this next phase is still under review and the UK government intends to provide clarity here in the second half of 2020; and
4. the need for global regulatory cooperation and leadership — the UK government should take the opportunity after Brexit to develop closer bilateral relations with jurisdictions that share a similar approach to financial services.

The Letter is available [here](#).

FCA Updates Webpage on Reporting Market Abuse

On June 12, the UK Financial Conduct Authority (FCA) updated its webpage on how firms and trading venues should report suspected market abuse (the Webpage).

Under the Market Abuse Regulation (MAR), all FCA-regulated firms and individuals professionally arranging or executing transactions in certain financial instruments, and operators of a trading venue, must report suspicious transactions, orders, and ‘attempted market abuse’ (known as suspicious transaction and order reports (STORs)) to the FCA without delay. A suspicious transaction or order is one where there are ‘reasonable grounds’ to suspect it might be market abuse, such as insider dealing or market manipulation. Firms and trading venues should make sure that staff, especially those responsible for managing financial crime risks, are given the appropriate training to identify suspicious transactions and orders.

The updated Webpage includes a new section on submitting 'market observations.' The FCA requests that firms and trading venues submit a market observation to notify it of activity they have observed in the market that is not required to be reported as a STOR. For example, where the firm or trading venue is not involved in the activity it therefore does not have complete information.

Whether a STOR or a market observation, firms should submit their notification to the FCA by logging in to the FCA's online filing portal called FCA Connect, and complete the market observation form or the STOR form under the 'Notifications' tab.

The Webpage is available [here](#).

EU DEVELOPMENTS

European Commission Publishes FAQs on Taxonomy Regulation

On June 10, the European Commission published a set of FAQs in relation to its work and that of the EU Technical Expert Group (TEG) on sustainable finance on EU Taxonomy and the EU green bond standard (the FAQs).

The FAQs are available [here](#).

FCA Statement on Amendments to MiFID II Position Limits

On June 16, the UK Financial Conduct Authority (FCA) published a statement setting out the changes it has made to a number of position limits for commodity derivative contracts traded on ICE Futures Europe (the Statement).

The Statement includes a table that clearly outlines the changes to the relevant contract's spot month position limit and other months' position limit. Where position limits have been increased, this change will apply immediately. In contrast, the FCA has granted a two-months' notice period for the application of position limits that have been reduced.

In the Statement, the FCA notes that the position limits are published in advance of the publication of the European Securities and Markets Authority (ESMA) opinions on position limits, and they may change in light of an ESMA opinion, or in the event that the FCA decides it is necessary.

The Statement 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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