

## SEC/CORPORATE

### **SEC Commissioners Announce Search for First-Ever Advocate for Small Business Capital Formation**

On September 13, the Commissioners of the Securities and Exchange Commission (SEC) announced the launch of a nationwide search for candidates to fill the new senior executive position of Advocate for Small Business Capital Formation. The position will be responsible for establishing and overseeing a new SEC office—the Office of the Advocate for Small Business Capital Formation. The establishment of this new senior executive position and new SEC office, with “the mission of advocating for the interests of small business and small business investors,” is consistent with the SEC’s recent efforts to facilitate small business capital formation.

The full text of the announcement by the SEC’s commissioners is available [here](#).

### **SEC Issues Statement on September 5 Implementation of “T+2” Settlement Cycle for Securities Transactions**

As previously discussed in the [March 24 edition](#) of the *Corporate & Financial Weekly Digest*, the Securities and Exchange Commission (SEC), on March 22, adopted an amendment to Rule 15c6-1(a) that has shortened the standard settlement cycle for most broker-dealer securities transactions from three days (known as T+3) to two days (known as T+2), effective September 5. On September 11, the SEC issued a statement regarding the implementation of this shorter settlement cycle. In its statement, the SEC noted the benefits of the shortened settlement cycle, including the likely reduction of credit, market and liquidity risks in the clearance and settlement process, as well as the enhanced efficiency of the US securities markets (for example, because market participants will be able to receive proceeds from securities transactions sooner).

The full text of the SEC’s statement is available [here](#).

## UK DEVELOPMENTS

### **New FCA Webpage on Updates to MiFID Notifications Obligations**

On September 11, the UK Financial Conduct Authority (FCA) published a new [webpage](#) with an update on MiFID II notification requirements and procedures for certain MiFID-impacted firms in the UK—specifically systematic internalizers (SIs), providers of direct electronic access (DEA) to EU/EEA markets and algorithmic trading firms.

The stated purpose of the webpage is to provide such firms with a summary of updates concerning MiFID II notifications that the FCA has made since January 2017, when the FCA published its MiFID II application and notification user guide.

**Systematic Internalizers:** The webpage notes that notification to the FCA is needed when a firm commences activity as an SI in a class of financial instruments. All in-scope firms must monitor their trading levels and calculate whether their activities bring them into the SI regime in the various instruments they trade. When they do so, firms must notify the FCA that they are operating as an SI and in which classes of financial instruments. Firms must also notify the FCA when they cease to be an SI in relation to a particular class or classes of financial instruments. It should be noted that the webpage also states that firms can also “opt in” to the SI regime by

notifying the FCA that they will operate as an SI in a particular class of financial instrument—even where they do not exceed the pre-defined MiFID II thresholds.

DEA Providers and Algorithmic Trading Firms: Authorized firms, and certain firms exempt from MiFID II, must notify the FCA if they are providing DEA or undertaking algorithmic trading under MiFID II. The FCA notes that its Electronic Trading Notification form will need to be filed and existing regulated firms may need to amend their current filings with the FCA to obtain access to the form.

The FCA has also published a [guide](#) to assist firms submitting systematic internalizer notifications and electronic trading notifications.

The webpage also amends an error in the FCA's application and notification user guide, clarifying that firms are not required to inform the FCA if they act as a general clearing member.

## EU DEVELOPMENTS

### **MiFID II Direct Electronic Access Template Questionnaire Published**

The revised Markets in Financial Instruments Directive (MiFID II) imposes a new regulatory and compliance regime on providers of direct electronic access (DEA) to European trading venues. In particular, the relevant regulatory technical standards (RTS) require investment firms acting as DEA providers to undertake a due diligence review of their DEA clients to ensure that such clients comply with the provisions of the RTS and the rules of the relevant European trading venue. On September 8, the Futures Industry Association's European E-Trading Committee published a template due diligence questionnaire (Template) to facilitate the reviews that must be undertaken by DEA providers.

The Template requires a DEA client to provide identifying information about itself, such as its name and legal entity identifier, as well as more descriptive information such as the DEA client's governance, financial and technology arrangements. The Template is also designed to ensure that DEA providers are able to identify where a given DEA client is itself "sub-delegating" DEA to one of its own clients. Completion of the Template is not mandated by law, nor is the order or content of the questions set out in the Template; however the associations believe that generating a reasonably standardized set of questions will facilitate the ability of DEA providers to comply with their obligations under the RTS.

The Template was prepared in cooperation with the Association for Financial Markets in Europe, the Alternative Investment Management Association and the Managed Funds Association. The Template is available [here](#).

### **ESMA Publishes Further Guidance on Open Access Transitional Periods**

The Markets in Financial Instruments Regulation (MiFIR) provides for a new "open access" regime between trading venues and central counterparties (CCPs) whereby, subject to meeting certain enumerated conditions, a trading venue may request that a CCP clear trades executed on its platform, and a CCP may request that a trading venue route trades to it for clearing. The new open access framework contains several exemptions. For example, a trading venue that lists exchange-traded derivatives for trading may also file for a limited time, renewable exemption from the open access regime, provided that it trades less than an annual notional amount of €1million in the calendar year preceding entry into force of MiFIR. In addition, given that the European Commission (EC) has determined not to exclude exchange-traded derivatives from the open access regime, trading venues and CCPs are eligible to apply to their national regulator for one, non-renewable, 30-month transitional period from the open access regime.

However, neither MiFIR nor the relevant regulatory technical standards establish a timeframe or format for making these filings. On September 12, the European Securities and Markets Authority (ESMA) updated its questions and answers on market structures topics to provide additional guidance on these matters. In both cases, ESMA recommends that the relevant applications be filed before the end of September.

ESMA's updated questions and answers on market structure topics 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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