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SEC/CORPORATE

Crowdfunding Portals Can Now Register With the SEC

As discussed in the November 6, 2015 edition of the *Corporate and Financial Weekly Digest*, on October 30, 2015, the Securities and Exchange Commission adopted "Regulation Crowdfunding," which consists of final rules that will enable eligible companies to raise up to $1 million in capital in any 12-month period by offering securities through SEC registered intermediaries, including online "funding portals," in crowdfunding transactions on the Internet. Regulation Crowdfunding will be effective on May 16; however, the forms enabling funding portals to register with the SEC became effective on January 29.

BROKER-DEALER

No-Action Relief Allows Broker-Dealers and OTC Derivatives Dealers to Submit Certain Reports Electronically

On December 21, 2015, the Securities and Exchange Commission's Division of Trading and Markets granted no-action relief that will allow broker-dealers and over-the-counter (OTC) derivatives dealers to submit their annual and supplemental reports (as required under SEC Rule 17a-5 and SEC Rule 17a-12, respectively) electronically via the SEC's Electronic Data Gathering, Analysis and Retrieval system (EDGAR). Such reports previously were required to be submitted to the SEC in paper form.

Reporting firms should take care to follow the reporting instructions that accompany the no-action relief. Notably, while the oath or affirmation required under Part III of Form X-17A-5 can now be made electronically, reporting firms are required to make an original notarized paper copy of such oath or affirmation and retain it for six years (the first two of which it should be in an easily accessible location).

Furthermore, it should be noted that, while OTC derivatives dealers may request that all components of their annual reports be kept confidential, broker-dealers that are not OTC derivatives dealers may not request that certain components of their annual reports (i.e., the statement of financial condition and accompanying notes and accountant's reports) be kept confidential. Such components will be made public on EDGAR immediately after the broker-dealer files its annual report.

A copy of the no-action letter and reporting instructions can be found here.

DERIVATIVES

See "CFTC Approves Registration to 18 Swap Execution Facilities" in the CFTC section.

CFTC

CFTC Approves Registration to 18 Swap Execution Facilities

The Commodity Futures Trading Commission has issued orders granting permanent registration to 18 swap execution facilities (SEFs) that had been operating under temporary registration status. The SEFs approved for registration include: 360 Trading Networks Inc.; BGC Derivatives Markets, L.P.; Bloomberg SEF LLC; Chicago Mercantile Exchange Inc.; DW SEF LLC; GFI Swaps Exchange LLC; ICAP Global Derivatives Limited; ICAP SEF (US) LLC; ICE Swap Trade, LLC; Javelin SEF, LLC; LatAm SEF, LLC; MarketAxess SEF Corporation; SwapEx, LLC; Thomson Reuters (SEF) LLC; tpSEF Inc.; Tradition SEF, Inc.; trueEX LLC; and TW SEF LLC.

More information is available here. Each SEF's order of registration may be accessed by viewing the relevant SEF's associated documents here.

CFTC and German Regulators Sign Memorandum of Understanding

The Commodity Futures Trading Commission, German regulators Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) and Deutsche Bundesbank (Bundesbank) have entered into a memorandum of understanding (MOU) related to the supervision of clearing organizations that operate on a cross-border basis in both the United States and Germany. The MOU addresses various circumstances in which the CFTC intends to cooperate with BaFin and Bundesbank in the interest of fulfilling their respective regulatory mandates.

The MOU is available here.

UK DEVELOPMENTS

Hedge Fund Standards Board Publishes Findings From First Cyber-Attack Simulation

On January 21, the Hedge Fund Standards Board (HFSB) released the results of its first cyber-attack simulation (via a press release dated January 19).

The HFSB is responsible for the Hedge Fund Standards, which set out standards of transparency, integrity and good governance for the hedge fund industry. The HFSB engages with EU and UK regulators on a number of areas, including the EU Alternative Investment Fund Managers Directive, financial stability and short selling, among others. The HFSB also maintains a "Toolbox," which provides further guidance to firms on themes covered by the Hedge Fund Standards. In September 2015, the HFSB published and added a Cyber Security Memo to the Toolbox, which contains practical guidance to assist firms to build risk management tools, identify "key digital assets" and to develop response plans in the event of a cyber-attack.

The cyber-attack simulation was designed to test the responses of fund managers in respect of three scenarios: data theft and leakage of internal sensitive data, financial infrastructure attacks and incidents involving "crypto ransomware.". One of the key findings of the HFSB was that firms must prepare in advance for cyber-attacks and implement a clear incident response plan to establish roles and responsibilities within the firm should an incident occur. A further key finding was that managers must be able to recognise when certain cyber-attack incidents require "external legal and IT expertise" and seek such assistance accordingly.

Cybersecurity remains on the radar for UK and EU regulators. In the *Corporate & Financial Weekly Digest* edition of December 11, 2015, we discussed the European Commissions' announcement that European Parliament, Council and Commission had reached an agreement on the wording of a new EU Cybersecurity Directive. The Directive was expected to be published in December 2015; however, it has yet to be released.

A copy of the HFSB's press release can be found here.
A copy of the Cyber Security Memo can be found here.

FCA Clarifies Senior Managers Regime Expectations for Individuals With Overall Responsibility for a Firm's Legal Function

On January 27, the Financial Conduct Authority (FCA) announced plans to consult on the application of the Senior Managers Regime (Regime) to individuals with overall responsibility for a firm's legal function.

The FCA acknowledged uncertainties in the market regarding whether individuals with overall responsibility for a firm's legal function would require approval under the Regime. It also noted concerns that if such individuals were to be brought within the Regime, they might be required by regulators to disclose otherwise privileged information.

The FCA indicated that it will not be able to conclude its consultation before the Regime comes into force. However, it confirmed that so long as firms have made a "good faith" decision regarding whether an individual with responsibility for a firm's legal function is captured by the requirements of the Regime (based on all published rules and communications), they "should not need to change their approach in the interim."

For additional background information on the Senior Managers and Certification Regime, see our ***Corporate & Financial Weekly Digest*** edition of October 30, 2015.

A copy of the FCA's announcement can be found here.

For additional coverage on financial and regulatory news, visit *Bridging the Week*, authored by Katten's Gary DeWaal.

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