

BROKER-DEALER

FINRA Proposes to Make New TRACE Security Activity Reports Available

On June 19, the Financial Industry Regulatory Authority filed a proposed rule amendment that would make new Trade Reporting and Compliance Engine (TRACE) Security Activity Reports available. Currently, FINRA Rule 7730 enumerates the TRACE data products that FINRA offers in connection with TRACE-Eligible Securities (i.e., certain debt and US Treasury securities). Under the amendment, Rule 7730 would provide for a TRACE Security Activity Report, which would include monthly aggregated statistics by security for corporate and agency bonds.

Among other things, the Security Activity Report would include basic information about each bond, transaction totals, a measure of market concentration and detailed aggregate par value volume information. The fee for this report will be established pursuant to a separate rule filing.

Comments on the rule amendment are due 21 days after the proposal is published in the *Federal Register*. A copy of FINRA's rule proposal is available [here](#).

DERIVATIVES

See "MiFID II Implementing Legislation Published" in the UK Developments section and "EC Launches Systematic Internalizer Amendment Consultation and Publishes Commodities Reporting ITS" in the EU Developments section.

CFTC

CFTC Unanimously Approves Revisions to Delegated Authorities and Technical Amendments

As a result of the recent Commodity Futures Trading Commission restructuring, the CFTC recently approved a Final Rule on Revisions to CFTC Delegated Authority Provisions and Technical Amendments.

The Final Rule amends certain organizational and procedural provisions to facilitate the movement of the Division of Market Oversight Surveillance Branch to the Division of Enforcement. Specifically, the Final Rule establishes new and amends certain existing delegations of authority to CFTC staff, and makes a limited number of conforming technical corrections to certain CFTC regulations.

The Final Rule will be effective upon publication in the *Federal Register*. More information is available [here](#).

CFTC Revisions to Freedom of Information Act Regulations

The Commodity Futures Trading Commission is revising certain provisions of its regulations for disclosing records under the Freedom of Information Act (FOIA) to comply with the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538 (June 30, 2016) (Act).

The Act requires each agency to review its regulations and issue new regulations in accordance with the Act's provisions. Among other things, the Act requires agencies to: (1) notify requesters of the availability of dispute resolution services from the agency's FOIA Public Liaison and the National Archives and Records Administration's Office of Government Information Services; (2) incorporate the US Department of Justice's foreseeable harm standard, which specifies that an agency only withhold information if it reasonably foresees that disclosure would harm an interest protected by an exemption; and (3) increase the time limit for requesters to file an administrative appeal to 90 days.

The CFTC is issuing an interim rule to revise its FOIA regulations to comply with the Act. This approach enables these regulatory changes to take effect sooner than would be possible with the publication of a Notice of Proposed Rulemaking in advance. However, the CFTC is accepting and will consider all public comments in drafting the final rule.

The interim rule is effective July 20 and comments for the final rule must be received on or before August 21. More information on the rule is available [here](#).

BANKING

CFPB Seeks Comment on Proposed Changes to Prepaid Rule

On June 15, the Consumer Financial Protection Bureau (CFPB), announced that it is seeking comments on proposed updates to its prepaid rule, "Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z)" (Prepaid Rule). The Prepaid Rule incorporates prepaid accounts under Regulations E and Z and was originally published in the *Federal Register* on November 22, 2016 (81 FR 83934) and amended on April 25, 2017 (82 FR 18975).

The CFPB's proposal requests comment on potential modifications to several aspects of the Prepaid Rule, including error resolution and limitations on liability for prepaid accounts where the financial institution has not completed its consumer identification and verification process; application of the rule's credit-related provisions to digital wallets that are capable of storing funds; certain other clarifications and minor adjustments; and two issues relating to the effective date of the rule.

The proposed rule is available [here](#).

UK DEVELOPMENTS

MiFID II Implementing Legislation Published

On June 22, the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701) were presented to Parliament. The Regulations transpose elements of the revised Markets in Financial Instruments Directive (MiFID II) and related Markets in Financial Instruments Regulation (MiFIR) into UK law. Member States of the European Union are required to implement MiFID II and MiFIR into national law by July 3, before MiFID II and MiFIR go into effect on January 3, 2018. Other elements of MiFID II and MiFIR have been implemented in the United Kingdom by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (SI 2017/488), which was made by HM Treasury in March 2017 having been presented to Parliament in draft form in February 2017.

HM Treasury also published an explanatory memorandum to the Regulations. In relation to Brexit, HM Treasury states that until exit negotiations have been concluded and the United Kingdom has left the European Union, the United Kingdom is still bound to implement and apply EU legislation.

In summary, the Regulations cover the following:

- Part 1 of the Regulations designates the Financial Conduct Authority (FCA), Prudential Regulatory Authority (PRA) and the Bank of England as competent authorities for the purposes of MiFID II and MiFIR;
- Chapter 1 of Part 2 of the Regulations supports Article 3 of MiFID II and enables investment firms authorized in the United Kingdom to be exempt from the requirements of MiFID II, subject to various

restrictions. Chapter 2 of Part 2 contains provisions concerning third-country (non-EU) firms providing investment services in the European Union;

- Part 3 implements Article 57 of MiFID II, which requires Member States to both put in place limits on the size of positions that can be held in commodity derivatives and to enforce position limits put in place by other Member States;
- Part 4 imposes controls relating to algorithmic trading and direct electronic access on certain firms and individuals, such as insurance undertakings, that are otherwise exempt from MiFID II;
- Part 5 gives the FCA and PRA power to remove a person from the management board of an investment firm, credit institution, or recognized investment exchange, in accordance with Article 69 of MiFID II;
- Part 6 contains a number of miscellaneous provisions, such as duties to inform the European Securities and Markets Authority (ESMA) of certain matters. Part 7 contains further miscellaneous provisions dealing with the transition to the new regime under MiFID II and MiFIR, amendments to legislation and review of the Regulation by HM Treasury; and
- the Schedules to the Regulations contain modifications and amendments to the Financial Services and Markets Act 2000 and other primary and secondary legislation.

Certain aspects of the Regulations go into effect on June 29, July 3, and July 31, to allow, among other things, further rules to be made and notices given. For all other purposes, the Regulations go into effect on January 3, 2018.

The Regulations and accompanying explanatory memorandum are available [here](#) and [here](#).

EU DEVELOPMENTS

EC Launches Systematic Internalizer Amendment Consultation and Publishes Commodities Reporting ITS

On June 20, the European Commission (EC) published a consultation and draft amendment to Delegated Regulation (EU) 2017/565 (Delegated Regulation) supplementing the revised Markets in Financial Instruments Directive (MiFID II). The Delegated Regulation specifies, among other things, additional criteria to be considered in determining whether a firm is a systematic internalizer (SI) for the purposes of the SI definition in Article 4(1)(20) of MiFID II.

The amendment addresses concerns regarding a potential “loophole” in the SI regime, whereby networks of firms may have been able to engage in matched principal trading (for further information, please see the *Corporate & Financial Weekly Digest* edition of [February 17, 2017](#)). MiFID II defines an SI, in part, as a firm that “deals on [its] own account when executing client orders.” The amendment states that an investment firm shall not be considered to be “dealing [its] on own account” for the purposes of the SI definition where it participates in matching arrangements with the objective or consequence of carrying out *de facto* riskless back-to-back transactions.

The effective date of the Delegated Regulation also has been amended to match that of MiFID II: January 3, 2018. The EC’s consultation on the amendment will close on July 17.

On June 21, implementing technical standards (ITS) relating to commodity position reporting were published in the *Official Journal of the European Union*. The ITS set out the format of the weekly and daily position reports for commodity derivatives, emission allowances and derivatives thereof under Article 58 of MiFID II. The ITS goes into effect 20 days following its publication, and shall apply from January 3, 2018, when MiFID II comes into force.

The amendment is available [here](#), and the ITS is available [here](#).

FCA Updates Cyber Resilience Advice

On June 19, the Financial Conduct Authority (FCA) published an infographic to help firms develop good cybersecurity practices. The FCA also has updated its cyber resilience webpage (for further information on the webpage, please see the *Corporate & Financial Weekly Digest* edition of [May 26, 2017](#)).

The infographic highlights a number of alarming statistics, such as the 1,700% increase in cyber-attacks reported to the FCA from 2014 (five reported attacks) to 2016 (90 reported attacks) and that 54% of UK businesses in the financial sector have been attacked by ransomware.

The infographic features a number of best practices to combat cyber-attacks, including managing risk, using encryption, gaining accreditation and raising awareness of cybersecurity among staff.

The infographic 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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UK/EU DEVELOPMENTS

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

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