

BROKER-DEALER

FINRA Releases 2019 Annual Risk Monitoring and Examination Priorities Letter

On January 22, the Financial Industry Regulatory Authority (FINRA) issued its annual Risk Monitoring and Examination Priorities Letter. This year's letter includes a number of new areas for firms to consider in seeking to improve their compliance, supervisory and risk management programs.

Among other things, FINRA will focus on the following items in 2019:

1. sales of securities through online platforms in reliance on Rule 506(c) of Regulation D and Regulation A under the Securities Act of 1933;
2. compliance with the mark-up and mark-down disclosure obligations for fixed income transactions pursuant to recent amendments to FINRA Rule 2232 (Customer Confirmations) and MSRB Rule G-15;
3. regulatory technology, such as supervision and governance systems, third-party vendor management and safeguarding customer data;
4. sales practices, such as suitability determinations, protection of senior investors, outside business activities and private securities transactions;
5. supervision of digital assets business, including how firms determine whether a given digital asset is a security and whether members have implemented adequate controls and supervisions related to digital assets;
6. compliance with FinCEN's Customer Due Diligence rule, which requires firms to identify beneficial owners of legal entity customers;
7. market risks, including best execution, market manipulation, market access, short sales and short tenders; and
8. financial risks, including credit risks, funding and liquidity planning.

FINRA also will continue to review for the adequacy of firms' cybersecurity programs to protect sensitive information, including personally identifiable information.

FINRA's full letter is available [here](#).

DERIVATIVES

See "ESMA Publishes Opinion on Position Limits on ICE Low Sulphur Gasoil Futures and Options Commodity Contracts" and "ESMA Updates MiFID II Transitional Transparency Calculations for Electricity Derivatives" in the EU Developments section.

DIGITAL ASSETS AND VIRTUAL CURRENCIES

See "FINRA Releases 2019 Annual Risk Monitoring and Examination Priorities Letter" in the Broker-Dealer section and "FCA Consults on Guidance Clarifying When Cryptoassets Should Be Regulated" in the UK Developments section.

UK DEVELOPMENTS

FCA Consults on Optimizing the SM&CR and Proposes Excluding Heads of Legal From Senior Managers Regime

On January 23, the UK Financial Conduct Authority (FCA), published a consultation paper on optimizing the senior managers and certification regime (SM&CR) (for further details on the SM&CR, see the March 11, 2016 edition of the [Corporate & Financial Weekly Digest](#)). Its proposals intend to help firms adjust to the SM&CR and to identify some of the rules which need to be revised, as currently drafted in the Individual Accountability (Amendment) (No 1) Instrument 2019.

The FCA's key proposals include:

1. excluding the Legal Function (i.e., heads of legal) from the Overall Responsibility requirement and having to be approved as a senior manager under the Senior Managers Regime;
2. amending the scope of the Client Dealing Function under the Certification Regime to allow firms to exclude purely administrative roles that participate in "managing" or "arranging" investment activities, as interpreted under the current draft rules;
3. ensuring that the Certification Regime applies to individuals performing roles that were Systems and Controls Functions under the Approved Persons Regime, but that are no longer approved under the SM&CR, which will therefore involve the introduction of a new certification function; and
4. applying Senior Manager Conduct Rule 4 (which requires relevant individuals to appropriately disclose any information of which the FCA would reasonably expect notice) to non-approved executive directors at limited-scope firms to ensure that executive and non-executive directors at such firms are subject to equivalent requirements.

The deadline for submitting comments on the consultation paper is April 23. The FCA will consider feedback and publish its rules and guidance in a policy statement scheduled for the third quarter of 2019.

The FCA's consultation paper is available [here](#).

FCA Consults on Guidance Clarifying When Cryptoassets Should Be Regulated

On January 23, the UK Financial Conduct Authority (FCA) published a consultation paper proposing new guidance further clarifying the circumstances under which cryptoassets are to be regulated.

The guidance is in response to one of the commitments made by the joint Bank of England (BoE), FCA and HM Treasury (HMT) Cryptoassets Taskforce in October 2018 to provide more clarity to firms about the regulation of current cryptoassets (as detailed in the November 2, 2018 edition of the [Corporate & Financial Weekly Digest](#)).

The consultation focuses on circumstances where cryptoassets interact with the FCA's regulatory perimeter. It considers where cryptoassets would constitute specified investments under the Regulated Activities Order (RAO), financial instruments such as transferable securities under the revised Markets in Financial Instruments Directive (MiFID II), or whether they would be subject to the Payment Services Regulations 2017 or the Electronic Money Regulations 2011. It also covers where cryptoassets would not come under the definition of "specified investments" under the RAO.

Additionally, the FCA sets out the wider context to the proposed guidance by explaining the key concepts related to cryptoassets. It also provides an overview of the UK market, its assessment of harm and the action it has taken so far.

The FCA also informs firms that HMT will publish a consultation paper in early 2019 discussing legislative change, which could potentially broaden the 'FCA's regulatory remit to bring in further types of cryptoassets. Furthermore, it also indicates on its new cryptoassets webpage that it will be issuing the following additional publications during 2019:

1. consumer research on cryptoassets (early 2019);
2. a policy statement on cryptoassets in response to the FCA's consultation on cryptoassets (summer 2019); and
3. a consultation on potentially banning the sale of derivatives linked to certain cryptoassets to retail customers (2019).

The FCA's consultation closes on April 5.

The FCA's consultation paper is available [here](#).

The FCA's new cryptoassets webpage is available [here](#).

EU DEVELOPMENTS

ESMA Publishes Opinion on Position Limits on ICE Low Sulphur Gasoil Futures and Options Commodity Contracts

On January 23, the European Securities and Markets Authority (ESMA) published an opinion, dated January 18, on position limits on ICE Low Sulphur Gasoil futures and options commodity contracts.

ESMA received a notification from the UK Financial Conduct Authority (FCA) in February 2018, under Article 57 of the revised Markets in Financial Instruments Directive (MiFID II), regarding the exact position limits the FCA intends to set for ICE Low Sulphur Gasoil futures and options contracts, in accordance with the methodology for calculation established in Delegated Regulation 2017/591 (RTS 21) and taking into account the factors set out in Article 57(3) of MiFID II.

In its opinion, ESMA concluded that the spot month position limit and other months' position limits comply with the methodology established in RTS21 and are consistent with the objectives under Article 57 of MiFID II.

ESMA's opinion is available [here](#).

ESMA Updates MiFID II Transitional Transparency Calculations for Electricity Derivatives

On January 22, the European Securities and Markets Authority (ESMA) published an updated version of its transitional transparency calculations (TTC) for the purposes of the revised Markets in Financial Instruments Directive (MiFID II) and the related Markets in Financial Instruments Regulation (MiFIR).

The update relates to the TTC for commodity derivatives and only affects electricity derivatives. Further information on the update is contained in section E10 of ESMA's FAQs on the TTC, which explains that the last TTC results for commodity derivatives, published on December 6, 2017, have been modified due to the inconsistent reporting of one specific field. Under the new version of the TTC, some electricity derivative sub-classes have changed liquidity status from illiquid to liquid, and vice versa.

For sub-classes that used to be liquid and are now illiquid, the updated results can be applied from the date of publication. For subclasses that used to be illiquid and are now liquid, ESMA has invited trading venues to contact their national competent authority to agree on a reasonable application date, as the change in liquidity status may require trading systems to be adjusted.

The updated TTC and the TTC FAQ are available [here](#).

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

For more information, contact:

FINANCIAL SERVICES

Janet M. Angstadt	+1.312.902.5494	janet.angstadt@kattenlaw.com
Henry Bregstein	+1.212.940.6615	henry.bregstein@kattenlaw.com
Wendy E. Cohen	+1.212.940.3846	wendy.cohen@kattenlaw.com
Guy C. Dempsey Jr.	+1.212.940.8593	guy.dempsey@kattenlaw.com
Gary DeWaal	+1.212.940.6558	gary.dewaal@kattenlaw.com
Kevin M. Foley	+1.312.902.5372	kevin.foley@kattenlaw.com
Jack P. Governale	+1.212.940.8525	jack.governale@kattenlaw.com
Arthur W. Hahn	+1.312.902.5241	arthur.hahn@kattenlaw.com
Christian B. Hennion	+1.312.902.5521	christian.hennion@kattenlaw.com
Carolyn H. Jackson	+44.20.7776.7625	carolyn.jackson@kattenlaw.co.uk
Fred M. Santo	+1.212.940.8720	fred.santo@kattenlaw.com
Christopher T. Shannon	+1.312.902.5322	chris.shannon@kattenlaw.com
Robert Weiss	+1.212.940.8584	robert.weiss@kattenlaw.com
Lance A. Zinman	+1.312.902.5212	lance.zinman@kattenlaw.com
Krassimira Zourkova	+1.312.902.5334	krassimira.zourkova@kattenlaw.com

UK DEVELOPMENTS

John Ahern	+44.20.7770.5253	john.ahern@kattenlaw.co.uk
David A. Brennand	+44.20.7776.7643	david.brennand@kattenlaw.co.uk
Carolyn H. Jackson	+44.20.7776.7625	carolyn.jackson@kattenlaw.co.uk
Neil Robson	+44.20.7776.7666	neil.robson@kattenlaw.co.uk
Nathaniel Lalone	+44.20.7776.7629	nathaniel.lalone@kattenlaw.co.uk

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