

BROKER-DEALER

SEC Proposes Transaction Fee Pilot Program

On March 14, the Securities and Exchange Commission proposed new Rule 610T of Regulation National Market System (Reg NMS), which would create a Transaction Fee Pilot program for all NMS stocks. The pilot program is designed to produce data on the effect of transaction fees and rebates on order routing behavior, execution quality, and market quality of the equities exchanges, including taker-maker exchanges.

In 2005, the SEC adopted Rule 610(c) of Regulation NMS to limit the maximum access fee that could be charged by maker-taker exchanges. The fee limit is imposed to ensure the fairness and accuracy of displayed quotations. The SEC now intends to launch a pilot program to determine if changes to Rule 610(c) or other regulatory action are needed.

To collect data, the proposed two year pilot program would include several test groups. One test group would prohibit rebates and linked pricing, and other groups would impose fee caps for removing and providing displayed liquidity. The pilot program would also have a control group in which the Rule 610(c) cap would continue to apply to fees for removing displayed liquidity.

Comments on the proposal should be submitted within 60 days of publication in the *Federal Register*. A link to the SEC proposing release is available [here](#).

FINRA Releases Report from Board of Governors Meeting

On March 14, the Financial Industry Regulatory Authority (FINRA) published a report from the Board of Governors meeting held on March 7–8. The Board approved FINRA's corporate goals for 2018, which included the following categories:

- Enhancing Investor Protection Through Coordinated, Risk-Based Oversight of Member Firms and Registered Representatives
- Enhancing Market Integrity Through Effective Surveillance Programs
- Remediating and Preventing Misconduct Through Timely, Predictable Enforcement
- Enhancing Transparency for Investors and Other Market Participants
- Providing Fair and Efficient Dispute Resolution Forums
- Promoting Operational Excellence and Effective Relationships With FINRA Stakeholders
- Fostering an Attractive, Diverse and Inclusive Workplace

In addition, FINRA approved two rule proposals for publication and comment. First, FINRA will publish a Regulatory Notice seeking comment on the membership application rules following a retrospective review of those rules. Second, FINRA will file with the Securities and Exchange Commission amendments that would provide uniform payments to arbitrators for deciding contested requests to issue subpoenas and orders.

More details are available [here](#).

DERIVATIVES

See “CFTC Seeks Market Risk Advisory Committee Membership Nominations and Public Comment on Committee Priorities” in the CFTC section.

CFTC

CFTC Seeks Market Risk Advisory Committee Membership Nominations and Public Comment on Committee Priorities

On March 15, the Commodity Futures Trading Commission published in the *Federal Register* a request for nominees for the membership positions on the Market Risk Advisory Committee (MRAC). MRAC is a discretionary advisory committee that conducts public meetings and submits reports and recommendations to the CFTC on matters including systemic risk and changes in the market structure of the derivatives markets and other financial markets. In addition to requesting MRAC membership nominations, the *Federal Register* release also invited the public to recommend additional topics that should be prioritized by the committee.

The deadline for nominations and meeting topics is March 29.

A copy of the *Federal Register* release is available [here](#).

BREXIT/UK DEVELOPMENTS

FCA Launches Survey of Firms that Passport Into the UK

On March 9, the UK Financial Conduct Authority (FCA) launched a short online survey for firms providing cross-border services into the UK from other European Union/European Economic Area (EEA) jurisdictions (“passporting”), or marketing funds in the UK.

The survey follows the UK government’s December 2017 announcement that, if necessary, it will legislate to provide a temporary licensing/authorization regime for firms in the EEA and funds passporting into the UK (for more information please see the *Corporate & Financial Weekly Digest* [edition of January 5, 2018](#)).

The FCA anticipates that firms and funds that would be solo-regulated in the UK by the FCA would notify it of their desire to benefit from the temporary regime before the UK’s departure from the EU (Brexit); HM Treasury would legislate to set up the temporary scheme.

The information collected as part of the survey is intended to inform future FCA communications and help to identify firms for which a temporary permission may be relevant. Questions include asking for contact details, the relevant EU directives under which firms are passporting, and firms’ intentions in relation to UK market access following Brexit. The survey is scheduled to close on May 11.

The FCA’s survey is available [here](#).

FCA Publishes Webpage on Review of Closet Trackers

On March 14, the UK Financial Conduct Authority (FCA) published a webpage in relation to its review of potential closet tracker funds and closet constrained funds. The review forms part of the FCA’s supervision to protect investors and maintain a competitive market.

On its webpage, the FCA explains that both types of funds look like and charge similar fees to funds that strive to beat a benchmark (active funds), but are managed in a way that is similar to funds that track a benchmark (passive funds).

The FCA’s priority is for promotional material and investment objectives to be clear, fair and not misleading. Therefore, the FCA expects fund managers to communicate fund investment objectives and policies clearly,

including changes to these, even if they are merely clarifying existing disclosures. The FCA also emphasizes the importance of investors having clear information and the best possible understanding of the funds they are looking to invest in or are invested in.

By the end of 2017, the FCA had reviewed 84 funds, consisting of a mix of equity, fixed income and multi-asset funds. In the FCA's findings following its review, 20 funds were considered as adequately describing how investors' money was being managed. The FCA is working together with firms on 42 of the remaining funds to ensure that disclosures are made clearer. The webpage notes that, overall, £34m in compensation has been paid to funds and investors, and one firm is currently under enforcement investigation by the FCA.

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

EU DEVELOPMENTS

EC Legislative Proposals on Cross-Border Distribution of Collective Investment Funds

On March 12, as part of the development of the EU's Capital Markets Union (CMU), the European Commission (EC) published two legislative proposals in relation to the cross-border distribution of collective investment funds within the EU:

1. a Regulation (Proposed Regulation) facilitating the above and amending existing Regulations on European venture capital funds and European social entrepreneurship funds; and
2. a Directive (Proposed Directive) amending the Undertakings for Collective Investment in Transferable Securities (UCITS) IV Directive and the Alternative Investment Fund Managers Directive (AIFMD).

The Proposed Regulation contains harmonized EU requirements in respect of:

1. marketing communications;
2. pre-marketing; and
3. European Securities and Markets Authority (ESMA) central databases for:
 - a. all alternative investment fund managers (AIFMs), UCITS management companies, alternative investment funds (AIFs) and UCITS;
 - b. all applicable national provisions governing marketing rules for AIFs and UCITS; and
 - c. fees and charges levied by competent authorities.

The Proposed Directive would amend the UCITS IV Directive in several ways, including:

1. banning member states from requiring local facilities in the member states where UCITS are marketed;
2. aligning the procedure for notification to competent authorities of changes that UCITS are planning in relation to their managed funds with the procedures set out in AIFMD—competent authorities will have 10 working days to notify a manager not to implement a change if it would lead to non-compliance; and
3. setting out conditions for UCITS who plan to stop marketing activities in a member state.

The Proposed Directive would amend AIFMD in several ways, including:

1. providing a “pre-marketing” definition—pre-marketing is not “marketing” as long as the information provided does not:
 - a. relate to or contain reference to an established AIF;
 - b. enable investors to commit to investing in an AIF; or
 - c. amount to draft or final-form documents allowing investors to take an investment decision. This widens “marketing” to include circulation of draft documents, which raises potential issues with regards to obtaining marketing passports;
2. amending notification procedures for changes to AIFs—similar to the amended UCITS notification procedure, except that competent authorities have 20 working days to notify the AIFM; and
3. setting out conditions for AIFMs who plan to stop marketing activities in a member state.

The proposals and other related documents are 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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