Katten
Katten Muchin Rosenman LLP

Corporate & Financial
Weekly Digest

May 24, 2019 Volume XIV, Issue 21

BROKER-DEALER

FINRA Issues Regulatory Notice Reminding Member Firms about CAT Reporting Deadlines

On May 21, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 19-19 (Notice), which reminds applicable member firms that they must register with FINRA CAT, LLC (FINRA CAT) on or before June 27 for purposes of reporting to the Consolidated Audit Trail (CAT). This reporting requirement relates to 1) member firms or national securities exchanges that handle orders or quotes in National Market System (NMS) stocks, over-the-counter equity securities or exchange listed options (each, an Industry Member); and 2) third-party CAT reporting agents that are or will be authorized to submit data to the CAT on behalf of an Industry Member. The CAT rules do not provide for any firms to be excluded or exempted from this reporting requirement.

Testing related to file submissions and data integrity are intended to occur in two phases: 1) for Equities (Phase 2a), such testing is scheduled to begin in December 2019 and go-live in April 2020; and 2) for Options (Phase 2b), such testing is scheduled to start as early as December 2019 and go-live in May 2020.

The registration form, which must be completed online, is available here.

The Notice is available here.

FINRA Proposes Rule to Extend the Implementation of Rule Related to Margin Requirements for Credit Default Swaps

On May 21, the Financial Industry Regulatory Authority (FINRA) filed with the Securities and Exchange Commission a proposed rule (Rule Change) extending the implementation date for FINRA Rule 4240, which implements an interim pilot program with respect to margin requirements for certain transactions in credit default swaps that are security-based swaps. The implementation date has been changed from July 18 (Previous Implementation Date) to July 20, 2020. The Rule Change was effective upon filing and will be implemented on the Previous Implementation Date.

The text of the Rule Change is available here.

DERIVATIVES

See "FINRA Proposes Rule to Extend the Implementation of Rule Related to Margin Requirements for Credit Default Swaps" in the Broker-Dealer section, and "CFTC and SEC Participate in the Signing Ceremony for the IOSCO Enhanced Multilateral MOU Concerning Cross-Border Enforcement" and "Proposed Amendments to NFA Bylaw 1301 Regarding the Schedule of Dues and Assessments" in the CFTC section.

CFTC

CFTC and SEC Participate in the Signing Ceremony for the IOSCO Enhanced Multilateral MOU Concerning Cross-Border Enforcement

At the 44th Annual International Organization of Securities Commissions (IOSCO) Conference in Sydney, Australia, the Chairmen of the Commodity Futures Trading Commission and the Securities and Exchange Commission took part in a signing ceremony on May 15 for the IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (EMMoU).

In 2002, IOSCO established the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (2002 MMoU). The 2002 MMoU created a framework for international information-sharing among securities and derivatives regulators to facilitate cross-border enforcement investigations, and is widely viewed as the international benchmark for cross-border cooperation in enforcement matters.

IOSCO established the EMMoU to allow its signatories to avail themselves of new forms of assistance and support, including greater cross-border enforcement cooperation and assistance among securities regulators, as well as access to powers to compel subscriber records from telephone and internet communications providers.

The 2002 MMoU currently has 123 signatories that have agreed to comply with minimum standards for obtaining and sharing with fellow signatories banking, brokerage and beneficial ownership information. Both the CFTC and the SEC became signatories to the 2002 MMoU on December 19, 2002. The 2002 MMoU will remain in effect as long as and until the signatories migrate to the EMMoU.

For a more detailed discussion, please see the following CFTC Release: here.

Proposed Amendments to NFA Bylaw 1301 Regarding the Schedule of Dues and Assessments

On May 21, the National Futures Association (NFA) submitted to the Commodity Futures Trading Commission proposed amendments to NFA Bylaw 1301 regarding the schedule of dues and assessments for swaps firms. NFA Bylaw 1301 imposes dues and assessments on futures commission merchants (FCM) (for which NFA is the designated self-regulatory organization (DSRO)), introducing brokers (IB), commodity pool operators (CPO) and commodity trading advisor (CTA) Members that are approved swaps firms under Bylaw 301(l).

In order to fund the regulatory costs associated with NFA Members' swaps-related activities, NFA's Board unanimously approved amendments to NFA Bylaw 1301 to impose an annual dues surcharge of $1750 on NFA Members that are approved swaps firms under Bylaw 301(l). This dues surcharge is identical to the one imposed by NFA in 2011 on IB, CPO and CTA Member firms approved as forex firms in order to defray the costs associated with regulating this forex activity.

Pending CFTC approval, NFA intends to make the dues surcharge effective January 1, 2020 for all annual dues payable after that date.

NFA proposed amendments are available here.

Proposed Amendments to NFA Interpretive Notice Compliance Rule 2-9: Supervision of Branch Offices and Guaranteed IBs

On May 21, the National Futures Association (NFA) submitted to the Commodity Futures Trading Commission proposed amendments to NFA Interpretive Notice *Compliance Rule 2-9: Supervision of Branch Offices and Guaranteed IBs*. The proposed amendments would replace and supersede an existing Interpretive Notice with the same title.

Interpretive Notice *Compliance Rule 2-9: Supervision of Branch Offices and Guaranteed IBs* establishes minimum requirements that a member firm should implement to supervise its branch offices' and guaranteed introducing brokers' (IB) compliance with certain regulatory requirements. The updated Notice reflects advances in electronic trading, electronic communications and other technologies that have impacted both the ways NFA Members conduct their commodity interest business and the methods they use to perform supervision and surveillance. The updated Notice also provides NFA Members with increased flexibility, particularly regarding the on-site inspection that NFA Members are required to perform on their branch office(s) and guaranteed IB(s) each year, while ensuring that branch offices and guaranteed IBs remain subject to robust supervision, surveillance and annual inspection requirements. Because the Notice has been substantially restructured, NFA has elected to delete the existing Interpretive Notice in its entirety and replace it with the updated Interpretive Notice.

Among other things, the updated Interpretive Notice:

- focuses on due diligence review that NFA Member firms should complete in evaluating whether to establish, and determining the appropriate supervisory oversight structure for, a branch office or guaranteed IB relationship;
- establishes minimum requirements for a Member's written supervisory policies and procedures for branch offices and guaranteed IBs; and
- enforces training requirements and outlines policies and procedures that are required to ensure that branch office and guaranteed IB personnel receive adequate training to abide by industry rules and regulations.

NFA has invoked the "ten-day" provision of Section 17(j) of the Commodity Exchange Act and, subject to possible CFTC review for approval, plans to issue a Notice to Members establishing an effective date for this proposal as early as 10 days after receipt of this submission by the CFTC.

For more information, please see the CFTC Release, available here.

UK DEVELOPMENTS

FCA Publishes Supervisory Findings and Dear CEO Letter About Principals and Appointed Representatives in the Investment Management Sector

On May 20, the UK Financial Conduct Authority (FCA) published a webpage with findings from its supervisory work on how principal firms in the investment management sector understand and comply with their regulatory responsibilities in respect of their appointed representatives (ARs).

The FCA conducted a survey of 338 principal firms, each with between one and 80 ARs. The FCA visited 15 of the principal firms for a more detailed review. The FCA was particularly interested in: business model risks; the oversight and ongoing monitoring of ARs; and financial resources.

The FCA found that most principal firms within its survey had weak or under-developed governance arrangements in place, including a lack of effective risk frameworks, internal controls and resources. Other findings of the FCA included the following:

- Onboarding process – When selecting ARs, the lack of effective risk frameworks meant that many principal firms failed to fully assess their ability to oversee prospective ARs effectively. This meant that, once onboarded, some ARs could conduct activities outside their principal firms' core areas of expertise. The principal firm was therefore unable to have adequate oversight.
- Ongoing monitoring – A lack of an effective risk framework meant that most principal firms had not put in place appropriate controls to monitor the activities of their ARs. Some principal firms did not identify or record anything on their conflicts of interest register despite the existence of some obvious conflicts. No principal firm the FCA reviewed was regularly reviewing their ARs' websites, some of which contained non-compliant financial promotion and inaccurate information about the AR's regulatory status.
- Capital and liquidity assessment – Most principal firms were not assessing the risks to their firms arising from the activities of their ARs. In addition, some were not adequately assessing their risks across all risk types, including liquidity risk and their compliance with the overall liquidity adequacy rule.

- Host AIFMs – The FCA had significant concerns about the host alternative investment fund manager (AIFM) model. The FCA is particularly concerned about how conflicts of interest are managed and how many firms have inappropriate control and risk management frameworks. The FCA also found that some principals were failing to maintain effective arrangements, systems and procedures to prevent and detect market abuse because they misunderstood their regulatory obligations.

As a result of these findings, the FCA published a Dear CEO letter that reminds firms about their responsibilities towards ARs.

The FCA also intervened in relation to a number of the principal firms in its sample, which included agreeing the imposition of requirements on their regulatory permissions to either remove or to stop on-boarding ARs, asking principal firms to deregister their ARs and commissioning two skilled-persons reports. These reports will assess whether customers suffered harm and consider the adequacy of related systems and controls.

The FCA expects principal firms to assess how they are meeting requirements in relation to their ARs, as set out in the *FCA Handbook*. Principal firms should ensure that they identify and address any shortcomings in their firm's risk-management frameworks, processes and practices.

The FCA's webpage is available here.

The related Dear CEO letter is available here.

CTI launches Templates for Disclosure of Costs and Charges to Institutional Investors

On May 22, the UK Financial Conduct Authority (FCA) published a statement welcoming the launch by the Cost Transparency Initiative (CTI) of finalized and industry-ready templates for the standardized disclosure of costs and charges to institutional investors in the asset management sector.

The CTI is an independent group working to improve cost transparency for institutional investors and is supported by the Pensions and Lifetime Savings Association, Investment Association and Local Government Pension Scheme Advisory Board. The CTI published a press release on May 21, announcing the launch of the templates, which are available to download from the CTI webpage. The templates are accompanied by guidance for pension schemes and their advisers on how to make use of cost information, and for asset managers on how to provide cost information to their clients.

In its statement, the FCA explains that the templates can be used by institutional investors to access and assess critical information on costs. The FCA notes that the CTI has not focused specifically on creating a method of delivering compliance with the revised Markets in Financial Instruments Directive and other requirements. However, the standards have been designed to be aligned with relevant disclosure obligations, where appropriate. The FCA adds that while firms must therefore continue to ensure that they individually meet all relevant regulatory requirements, if the templates are completed in a comprehensive and accurate way, including reflecting all costs and associated charges, the information they contain should assist firms in meeting those requirements.

The CTI was a key remedy of the FCA's asset management market study (AMMS) (for more information on the AMMS, please see the *Corporate & Financial Weekly Digest* of February 15, 2019).

The FCA's statement is available here.

The CTI's press release is 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

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
Mark D. Goldstein	+1.212.940.8507	mark.goldstein@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
Susan Light	+1.212.940.8599	susan.light@kattenlaw.com
Richard D. Marshall	+1.212.94.8765	richard.marshall@kattenlaw.com
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
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

* Click here to access the *Corporate & Financial Weekly Digest* archive.