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Katten Muchin Rosenman LLP

Corporate & Financial
Weekly Digest

February 2, 2018 Volume XIII, Issue 5

BROKER-DEALER

FINRA Proposes Rule Change To Provide Additional Hearing Options for Parties in Certain Arbitrations

On January 30, the Financial Industry Regulatory Authority filed a proposed rule change with the Securities and Exchange Commission to adopt amendments to FINRA Rules 12600 and 12800 of the Code of Arbitration Procedures for Customer Disputes (Customer Code) and FINRA Rules 13600 and 13800 of the Code of Arbitration Procedure for Industry Disputes (Industry Code).

The proposed rule change will amend the provisions of the Customer Code and Industry Code to provide an additional hearing option for parties in arbitration with claims of $50,000 or less, excluding interest and expenses. It will give the applicable parties, under both the Customer Code and the Industry Code, the ability to choose between (1) arbitration under the current provisions or (2) a special proceeding held by telephone (or another method agreed to by the parties) and limited in time.

FINRA's proposed rule change is available here.

ANTITRUST

FTC Releases Revised Hart-Scott-Rodino Filing Thresholds for 2018

The Federal Trade Commission (FTC) recently announced new filing thresholds that will apply to mergers and acquisitions under the Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976, as amended (the Act). These new thresholds will go into effect on February 28.

Under the revised notification thresholds, transactions valued above $84.4 million will require HSR notification when they satisfy other requirements of the Act. This threshold is an increase from the current threshold of $80.8 million. The FTC adjusted the filing thresholds for larger transactions as well. The current $161.5 million threshold will be increased to $168.8 million, and the current $807.5 million threshold will be increased to $843.9 million. Under the new thresholds, the filing fee for notifiable transactions valued: (1) above $84.4 million, but less than $168.8 million, remains at $45,000; (2) above $168.8 million, but less than $843.9 million, remains at $125,000; and (3) above $843.9 million remains at $280,000.

Transactions valued between $84.4 million and $337.6 million also must satisfy the "size of person" test in addition to the "size of transaction" test for a filing to be required. The FTC also announced new size of person thresholds. Under the new thresholds, one party to the transaction must have net sales or total assets of at least $16.9 million, and another party to the transaction must have net sales or total assets of at least $168.8 million. Transactions valued greater than $337.6 million under the HSR rules will require a filing regardless of the size of the persons involved.

The FTC's announcement on the revised thresholds is available here.

UK/BREXIT DEVELOPMENTS

House of Lords European Union Committee Publishes Report on Brexit and The Future of Financial Regulation

On January 27, the House of Lords European Union Sub-Committee on Financial Affairs (Sub-Committee) published a report (Report) on its inquiry (Inquiry), launched in July 2017, into Brexit and the future of financial regulation and supervision.

The Inquiry examines how financial regulation and supervision could evolve post-Brexit in order to promote the stability and development of the UK's domestic market, while enabling it to continue to serve international business.

Key recommendations made to the UK government in the Report include the following:

- Considering allowing regulators to issue guidance and set standards for the areas of European Union (EU) law that will be domesticated in the UK, where it is important that rules be flexible and dynamic. The Sub-Committee also recommends an increased scrutiny of UK regulators, assuming that UK regulators will gain increased powers following Brexit. They also suggest that the UK government consider consulting on adding a duty on UK regulators to promote international competitiveness to their current objectives, given the intensity of international competition facing the UK after its withdrawal from the EU;

- Ensuring the continuity of financial services contracts after Brexit, including the "grandfathering" (the treatment of pre- and transition-Brexit contracts according to current terms) of insurance contracts, and providing services relating to derivatives contracts within the time-limited confines of a transition period;

- Ensuring market access for financial services, such as through a free trade agreement to include services, a mutual recognition regime and possibly some form of so-called "enhanced equivalence," but not the current equivalence regime, as the Sub-Committee has expressed that would not provide the level of market access that both sides would require;

- Ensuring that post-Brexit immigration and visa policies assure that the wider financial services sector and the UK's FinTech industry can still access skilled labor and the best global talent; and

- Considering a three-stage process of transitioning to the new relationship with the EU, the absence of which would most likely require financial services firms to activate their contingency plans:

    - a standstill period during which the UK and EU can agree on the terms of their future relationship;

    - a period of adaptation, once the future relationship between the UK and EU has been determined; and

    - the "seamless" commencement of trade under the terms of the new relationship.

A copy of the Sub-Committee's Report is available here.

EU DEVELOPMENTS

Draft Report on Proposed EMIR REFIT Regulation Published By The European Parliament's Economic and Monetary Affairs Committee

On January 30, the European Parliament's Economic and Monetary Affairs Committee (ECON) published its draft report (Draft Report), dated January 26, on the proposal for a regulation (EMIR REFIT Regulation) to amend the European Market Infrastructure Regulation (EMIR).

The proposed EMIR REFIT Regulation is part of the European Commission's Regulatory Fitness and Performance (REFIT) program, which aims to ensure that European Union (EU) legislation delivers results for EU citizens and businesses effectively, efficiently and at minimum cost. The REFIT program aims to keep EU law simple, remove unnecessary burdens and adapt existing legislation without compromising on policy objectives. The European Commission (EC) published its legislative proposal for the EMIR REFIT Regulation in May 2017.

In the explanatory statement to the Draft Report, the reporter, Werner Langen MEP, states that he mainly supports the EC's proposed amendments and welcomes the EC's intention to reduce the burden on non-financial counterparties, including their intra-group transactions.

Mr Langen, however, proposes amendments with regard to the following aspects of the proposed EMIR REFIT Regulation:

- Modifying the reporting obligation to clarify that if a company under certain derivatives thresholds is contracting with a financial counterparty established in a third-country, the non-financial counterparty will not be in charge of the reporting;
- Amending the clearing obligation, including adding relief for small financial counterparties and non-financial counterparties;
- Modifying the classification of securitization special purpose entities;
- Making clearing access more effective; and
- Harmonizing, at a global level, legislation relating to physically-settled foreign exchange (FX) forwards and physically settled FX swaps.

The next step for the European Parliament is for ECON to vote on finalizing the Draft Report, before it is considered by the European Parliament in plenary session later this month.

A copy of the Draft Report is available here.

A copy of the EC's legislative proposal for the EMIR REFIT Regulation 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		
Janet M. Angstadt	+1.312.902.5494	janet.angstadt@kattenlaw.com
Henry Bregstein	+1.212.940.6615	henry.bregstein@kattenlaw.com
Kimberly L. Broder	+1.212.940.6342	kimberly.broder@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
ANTITRUST		
James J. Calder	+1.212.940.6460	james.calder@kattenlaw.com
UK/EU/BREXIT DEVELOPMENTS		
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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