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**DUE TO THE HOLIDAY, *CORPORATE AND FINANCIAL WEEKLY DIGEST* WILL NOT BE PUBLISHED ON NOVEMBER 28. THE NEXT ISSUE WILL BE DISTRIBUTED ON DECEMBER 5.**

## SEC/CORPORATE

### US Court of Appeals for the District of Columbia Circuit Grants Petition for Rehearing of Decision on Conflicts Minerals Rule

On November 18, the US Court of Appeals for the District of Columbia Circuit granted the petitions of the Securities Exchange Commission and Amnesty International for a panel rehearing of the lawsuit challenging the SEC's conflict minerals rule.

As discussed in the *Corporate and Financial Weekly Digest* edition of April 18, 2014, the court of appeals generally upheld the conflict minerals rule, but found that, to the extent that the rule requires an issuer to disclose that any of its products "have not been found to be 'DRC conflict free,'" the rule violates the First Amendment's prohibition against compelled speech. As noted in the *Corporate and Financial Weekly Digest* edition of May 2, 2014, in response to the court of appeals' decision, the SEC announced that it expected issuers to file reports required by the conflict minerals rule on or before the scheduled due date, but did not require issuers to comply with the portion of the rule that was invalidated by the court of appeals.

In its order, the court of appeals directed the parties to file supplemental briefs addressing questions that were raised, in part, by a case that was decided subsequent to the court's original conflict minerals rule decision. The SEC and Amnesty International argue that this subsequent decision supports the notion that the disclosure requirement that was previously struck down by the court of appeals is permissible under the First Amendment.

Read more.

### Register for Our 2015 Proxy Season Update Webinar

On Thursday, December 11 at 12:00 p.m. CST, please join Katten Muchin Rosenman LLP, Ernst & Young LLP and Georgeson Inc. for a webinar discussion of key developments and trends impacting public companies in the 2015 annual report and proxy season.

Further details are available here; click here to register.

## BROKER-DEALER

### SEC Adopts Regulation Systems Compliance and Integrity Rules

On November 19, the Securities and Exchange Commission adopted new Regulation Systems Compliance and Integrity (Regulation SCI), a set of rules designed to strengthen the technology infrastructure of the US securities markets by reducing the occurrence of systems issues and improving resiliency when systems problems do occur.

Specifically, Regulation SCI requires self-regulatory organizations, certain alternative trading systems (ATSs), plan processors and certain exempt clearing agencies to have comprehensive policies and procedures in place for their technological systems as well as a framework for taking appropriate corrective action when systems issues occur, providing notifications and reports to the SEC regarding systems problems and systems changes, informing members and participants about systems issues, conducting business continuity testing and conducting annual reviews of their automated systems.

Regulation SCI will become effective 60 days after it is published in the *Federal Register*. Covered entities must comply with the requirements nine months after the rules become effective. However, ATSs that meet the volume thresholds for the first time have been given an additional six months from the time that the ATS first meets the applicable thresholds. Further, all covered entities will have 21 months from the effective date to comply with the industry- or sector-wide coordinated testing requirement.

Click here for SEC Press Release 2014-260.

### FINRA and the MSRB Release Companion Proposals That Would Require Additional Disclosures for Transactions in Fixed Income Securities

On November 17, the Financial Industry Regulatory Authority, Inc. and the Municipal Securities Rulemaking Board (MSRB) released companion proposals that would require disclosure of pricing reference information in customer confirmations for transactions in fixed income securities.

Specifically, the proposals would require bond dealers in retail-sized fixed income transactions to disclose in customer confirmations the price of certain same-day principal trades in the same security as well as the difference between this price and the price the customer received.

FINRA and the MSRB are seeking input on the likely economic implications of the proposals and on alternative regulatory approaches, including a potential disclosure requirement that would target trades that could be considered riskless principal transactions. Comments should be submitted to FINRA and the MSRB no later than January 20, 2015.

Click here for FINRA Regulatory Notice 14-52. Click here for MSRB Regulatory Notice 2014-20.

## CFTC

### CFTC Proposes to Revise Interpretation on Forward Contracts with Embedded Volumetric Optionality

On August 13, 2012, the Commodity Futures Trading Commission published for comment an interpretation to clarify the circumstances in which a contract that provides for variations in delivery amount (*i.e.*, embedded volumetric optionality) is considered a forward contract. The CFTC has proposed to revise its previously issued interpretation to clarify that the embedded volumetric optionality must be primarily intended, at the time that the parties enter into the agreement, contract or transaction, to address physical factors or regulatory requirements that reasonably influence demand for, or supply of, a nonfinancial commodity.

The CFTC is seeking public comment on its proposal, which must be received by December 22.

The CFTC's proposed interpretation is available here.

### CFTC Extends Relief for Non-US Swap Dealers from Transaction-Level Requirements

The Division of Swap Dealer and Intermediary Oversight, Division of Clearing and Risk and the Division of Market Oversight (Divisions) of the Commodity Futures Trading Commission have extended the no-action relief previously granted to non-US swap dealers (SDs) using personnel or agents located in the United States to arrange, negotiate or execute swaps.

Pursuant to the relief, non-US SDs using US-located personnel or agents to arrange, negotiate or execute swaps are not subject to the transaction-level requirements for such swaps with non-US persons that are not themselves

SDs. If a swap is with another non-US SD, a non-US SD that is using US-located personnel or agents must comply with the multilateral portfolio compression and swap trading relationship requirements under CFTC Regulations 23.503 and 23.504, respectively, but is otherwise exempt from the transaction-level requirements for such swap.

This relief is set to expire on September 30, 2015.

CFTC Letter No. 14-140 is available here.

### CFTC Agricultural Advisory Committee to Meet on December 9

The Agricultural Advisory Committee of the Commodity Futures Trading Commission will convene on December 9 to discuss deliverable supplies of agricultural commodities and related implications for position limits and the agricultural economy.

The public will have access to a live webcast on the CFTC website or can listen through conference call by calling 1-866-844-9416. The meeting will begin at 10:00 a.m. EST.

More information is available here.

### FinCEN Updates List of Jurisdictions with AML/CFT Deficiencies

On November 12, the Financial Crimes Enforcement Network (FinCEN) issued an advisory announcing that the Financial Action Task Force (FATF) has updated its list of jurisdictions that have strategic deficiencies in their anti-money laundering (AML) and counter-terrorist financing (CFT) regimes.

Specifically, FATF has noted that: (1) Iran and the Democratic People's Republic of Korea are subject to the FATF's call for countermeasures; (2) Algeria, Ecuador, Indonesia and Myanmar are subject to the FATF's call for enhanced due diligence; (3) Argentina, Cuba, Ethiopia, Tajikistan and Turkey have been removed from the FATF listing and monitoring process; and (4) Guyana has been added to the list of jurisdictions identified by the FATF to have AML/CFT deficiencies, which now includes 18 countries.

These changes may affect US financial institutions' obligations and risk-based approaches with respect to the relevant jurisdictions. National Futures Association (NFA) has issued a notice reminding futures commission merchants and introducing brokers to review the FinCEN advisory to ensure that their AML programs have the most current information on FATF-identified jurisdictions with AML/CFT deficiencies, and revise their AML programs accordingly.

The FinCEN Advisory is available here.

The NFA Notice to Members is available here.

### CFTC Seeks Input on New Market Risk Advisory Committee

The Commodity Futures Trading Commission is seeking comments on potential topics for discussion at future Market Risk Advisory Committee (MRAC) meetings. The CFTC indicated that suggested discussion topics should (i) relate to matters of public concern to clearinghouses, exchanges, intermediaries, market makers, end-users and the CFTC regarding systemic issues that threaten the stability of the derivatives markets and other financial markets, and/or (ii) assist the CFTC in identifying and understanding the impact and implications of an evolving market structure and movement of risk across clearinghouses, exchanges, intermediaries, market makers and end-users.

The CFTC additionally is seeking nominations for individuals to serve on the newly formed MRAC. The CFTC expects the MRAC to have approximately 20–25 members drawn from various entities with interests in the derivatives markets.

More information is available here.

# LITIGATION

### Investor Claims NetTALK Executives Took Control of Board

On November 5, Telestrata, LLC brought a derivative shareholder action and direct action against NetTALK.com, Inc., a publicly traded telecommunication company, and NetTALK's directors and officers, alleging that the individual defendants unlawfully took control of the company to the detriment of shareholders and its authorized directors. Telestrata and NetTALK entered an agreement in February 2014 under which Telestrata would restructure $500,000 of NetTalk's existing debt, lend an additional $4 million, grant Telestrata 48.88 percent ownership of the company, and issue a warrant for a grant of stock equal to an additional 20 percent stake in the company. The companies also agreed that Telestrata member Samer Bishay would become president of NetTALK with authority to bind the company to contractual or financing arrangements, limiting the authority of NetTALK's CEO, Takis Kyriakides. According to the complaint, NetTALK erroneously issued Telestrata shares equal to 48.88 percent pre-closing, rather than after issuance, and failed to disclose, among other things, that it executed new employment agreements benefiting executives shortly before closing. The complaint further alleges that Kyriakides and NetTALK's CFO entered into a number of financing transactions without Bishay's approval, attempted to thwart Telestrata's security interest in company property, and failed to inform Bishay of the significant financial matters. Upon discovery of the alleged improprieties, disinterested board members suspended Kyriakides and NetTALK's CFO and attempted to eject them from NetTALK's corporate offices, but were prevented from entering the premises by Kyriakides and other executives. Telestrata seeks an injunction and has asserted claims for breach of contract, breach of fiduciary duty, fraud in the inducement and conspiracy.

*Telestrata LLC v. NetTALK.com Inc., et al.,* No. 1:14-cv-24137 (S.D. Fla. Nov. 5, 2014).

### Global Crowdfunding Site Consents to SEC Censure

Last week, the Securities and Exchange Commission censured Eureeca Capital SPC, an online, securities-based crowdfunding site incorporated in the Cayman Islands, for failing to implement procedures "reasonably designed" to prevent US citizens from accessing and investing in securities through its website. According to the SEC, the website allowed issuers to raise funds in exchange for equity, and hosted securities offerings from non-US companies. Visitors needed to register in order to invest and access certain types of information, but could access the names of offerings, the amount of offerings and informational videos without registering. Although the site had a disclaimer that the services were not being offered to US persons, the SEC found it to be inadequate because visitors who selected "United States" as their country were able to register, access offering materials and deposit funds for purposes of investing. Specifically, the SEC found that Eureeca accepted $20,000 from three US users in 2013 without taking reasonable steps to verify that they were accredited investors. The SEC found that Eureeca violated Sections 5(a) and 5(c) of the Securities Act of 1933 by failing to verify that the US investors were accredited investors, and also violated Section 15(a) of the Exchange Act of 1934 by acting as an unregistered broker-dealer to US users. Without admitting or denying the findings, Eureeca consented to cease and desist from further violations, pay a civil penalty of $25,000, and to a censure.

*In the Matter of Eureeca Capital SPC*, File No. 3-16265, before the Securities and Exchange Commission.

# UK DEVELOPMENTS

### FCA Complaints Review May Impact FCA-Authorized Investment Firms

On November 17, the UK Financial Conduct Authority (FCA) published a report setting out its findings pursuant to a review it carried out earlier in the year into FCA-regulated firms' complaint handling arrangements. The FCA considers that "*Complaints matter, and how they are dealt with can say much about a firm's culture. Firms should deal with complaints fairly and promptly (using competent staff) and, where appropriate, redress should be provided. Dissatisfied consumers should not find it difficult to complain nor should the procedure be anything other than straightforward.*"

While the FCA's review focused on financial services firms operating in the retail sector, the implications of the FCA's report could be far-reaching for all FCA-authorized firms as the report recommends that changes should be

made to the FCA rules in this area, which will likely impact on investment firms in the wholesale sector as well as retail firms.

The FCA recommended that all firms should make further improvements in the five stages of the complaint handling process: (1) the identification, (2) recording and (3) internal reporting of a complaint, followed by (4) the provision of redress and (5) carrying out of root cause analysis.

The FCA report concluded that *all* firms should consider how the FCA's findings relate to their own complaint-handling operating models, policies and practices, and the FCA urged firms to consider:

- whether their complaint-handling policies and processes fully consider whether their approaches to complaints have the interests of consumers at their heart, avoiding a tick-box approach to compliance;
- reviewing the definition of "complaint" and training their staff if the definition is not properly understood;
- whether their systems and processes could inhibit accurate recording of complaints;
- the observations made about consistency of redress and distress and inconvenience payments;
- their approach to root cause analysis; and
- whether they can make any improvements.

The FCA will publish a consultation paper on changes to its complaints rules before the end of the year.

The FCA's report is available here.

## EU DEVELOPMENTS

### European Commission Extends Deadline for the CRR

On November 14, the European Banking Committee (Committee) of the European Commission (EC) voted to extend the December 15 transitional deadline under the EU Capital Requirements Regulation (CRR). If the extension had not been granted, EU banking groups clearing on central counterparties (CCPs) that had not been authorized or recognized by the European Securities and Markets Authority (ESMA) as qualifying central counterparties (QCCPs) would have had to begin applying higher capital charges in accordance with the CRR.

The Committee noted that the authorization process for CCPs established in the European Union had commenced, but that the process would not be completed by December 15. Although many CCPs established outside of the European Union have applied for recognition, the Committee noted that none have currently been recognized. Before any such third-country CCP can be recognized as a QCCP, the EC must first make a determination that the regulation in the applicable CCP's home jurisdiction is equivalent to that of the European Union. The EC recently made equivalency determinations for Australia, Hong Kong, Japan and Singapore. Details of the four equivalency determinations were reported in the *Corporate and Financial Weekly Digest* edition of October 31, 2014 ("European Commission Adopts First Equivalence Decisions for Non-EU CCPs").

The implementing regulation for the transitional extension of the CRR can be found here.

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