

## BROKER-DEALER

### **SEC and FDIC Adopt Final Rule on the Orderly Liquidation of Covered Broker-Dealers Under Dodd-Frank**

On July 24, the Securities and Exchange Commission announced that the SEC and the Federal Deposit Insurance Corporation (FDIC) have adopted a final rule clarifying and implementing provisions relating to the orderly liquidation of certain brokers or dealers (covered broker-dealers) in the event the FDIC is appointed receiver under Title II of the Dodd–Frank Wall Street Reform and Consumer Protection Act.

The liquidation of a covered broker-dealer must be accomplished in a manner that ensures that customers of such covered broker-dealer receive payments at least as beneficial to them as they would have received had the liquidation occurred under the Securities Investor Protection Act of 1970 (SIPA). The final rule clarifies how the relevant provisions of SIPA would be incorporated into a Title II proceeding. Specifically, upon the appointment of the FDIC as receiver, the FDIC would appoint Securities Investor Protection Corporation (SIPC) to act as trustee for the broker-dealer. SIPC would determine and satisfy customer claims in the same manner as it would in a proceeding under SIPA.

The final rule will be effective 60 days after publication in the *Federal Register*.

The SEC press release is available [here](#).

### **SEC Announces Creation of the Event and Emerging Risk Examination Team in the Office of Compliance Inspections and Examinations**

On July 28, the Securities and Exchange Commission announced the creation of the Event and Emerging Risks Examination Team (EERT) in the Office of Compliance Inspections and Examinations (OCIE). The EERT will engage with financial firms about emerging threats and current market events so that it can provide expertise and resources to the SEC's regional offices when critical matters, such as exchange outages, liquidity events, or cybersecurity or other operational resiliency concerns, arise. The EERT, through examinations and other engagement, also will ensure that firms are better prepared to address such threats and risks.

The SEC press release is available [here](#).

### **FINRA Requests Comment on Proposed Changes to TRACE Reporting Relating to Delayed Treasury Spot and Portfolio Trades**

On May 22, the Financial Industry Regulatory Authority (FINRA) issued a regulatory notice seeking comment on two proposed changes to the Trade Reporting and Compliance Engine (TRACE) reporting rules recommended by the Securities and Exchange Commission's Fixed Income Market Structure Advisory Committee. The changes would require firms to identify (1) delayed treasury spot trades; and (2) corporate bond trades that are a part of a larger portfolio trade.

Interested parties are encouraged to comment by September 14, 2020. Further details and comment instructions are available in FINRA Regulatory Notice 20-24, which is available [here](#).

## **Upcoming Effective Date of Amendments to FINRA Rule 6730 (Transaction Reporting)**

On June 21, 2019, the Securities and Exchange Commission approved amendments to FINRA Rule 6730 (Transaction Reporting), which requires members to report transactions in US Treasury Securities executed to hedge a primary market transaction with an appropriate identifier. The amendments, further discussed in the [June 8, 2018 edition of \*Corporate & Financial Weekly Digest\*](#), provide that members will have additional time to report such transactions — until the next business day during Trade Reporting and Compliance Engine (TRACE) system hours. The effective date of such amendment is August 3, 2020.

FINRA Regulatory Notice 19-30, which discusses the amendments, is available [here](#).

## **FINRA Proposes Extension to Temporary Rule Change of Certain Timing, Method of Service and Other Procedural Requirements in FINRA Rules**

On July 27, the Financial Industry Regulatory Authority (FINRA) filed with the Securities and Exchange Commission a proposed rule change to extend the expiration of the temporary amendments to some timing, method of service and other procedural requirements in SR-FINRA-2020-015, previously discussed in the [May 15, 2020 edition of \*Corporate & Financial Weekly Digest\*](#). FINRA has proposed to extend the expiration date of such temporary amendments from July 31, 2020 to a date to be specified in a public notice issued by FINRA, which date shall be no later than December 31, 2020.

The proposed rule change is available [here](#).

## **SEC Seeking Comments on Adoption of FINRA Rule 3241**

The Securities and Exchange Commission is seeking comment on a proposed rule change filed by the Financial Industry Regulatory Authority (FINRA) to adopt FINRA Rule 3241 (Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer). The proposed rule would create a uniform, national standard to govern registered persons holding positions of trust. The comments period expires July 30, 2020.

The *Federal Register* notice is available [here](#).

## **FINRA Publishes FAQ on Interactive Virtual Business Entertainment Events**

The Financial Industry Regulatory Authority (FINRA) issued an FAQ on whether FINRA Rule 3220 (Influencing or Rewarding Employees of Others) and the non-cash compensation provisions of FINRA Rules 2310, 2320, 2341 and 5110 would prohibit an associated person from hosting a virtual business entertainment event and providing food and beverage to the employees of an institutional customer or third-party broker-dealer. The non-cash compensation rules provide that business entertainment provided by member firms to their clients is not subject to the \$100 gift limit set forth in FINRA Rule 3220 as long as it does not raise any question of propriety. Accordingly, FINRA indicated that it would view the associated persons' provision of reasonable amounts of food and beverage designed to be consumed by the recipient employees and their guests during that virtual business entertainment or meeting as not being subject to the \$100 gift limit, provided that it does not raise questions of propriety.

The FAQ is available [here](#).

## **DERIVATIVES**

See "London Weekly Fireside Chat" in the UK Developments section.

## UK DEVELOPMENTS

### London Weekly Fireside Chat

Katten hosts a weekly, 15-minute fireside chat podcast series on notable UK and European developments from the prior week's *Corporate & Financial Weekly Digest*. This week, [Carolyn Jackson](#) covers the Commodity Futures Trading Commission's approval of the final cross-border swaps rule, including a discussion of the CFTC's revised rules applicable to non-US swap dealers that use US personnel to arrange, negotiate or execute swaps with non-US persons; James Gledhill, a trainee solicitor in the London office, reports on the launch of the UK's Financial Conduct Authority's (FCA) enhanced Financial Services Register; and [Nathaniel Lalone](#) discusses the addition of certain multilateral and organized trading facilities to the list of EU entities exempted from swap execution facilities (SEF) registration in the United States, together with the expansion of the list of qualifying US exchanges under the EU's revised Markets in Financial Instruments Directive (MiFID II) transparency opinion.

To listen to the podcast recording, click [here](#).

### FCA Launches Enhanced Financial Services Register

On July 27, the UK's Financial Conduct Authority (FCA) launched its enhanced Financial Services Register (the Register) and published an accompanying statement.

The new Register aims to further protect consumers by making it easier for users to navigate and understand the information provided.

The statement also confirms that FCA intends to publish its directory of certified and assessed persons to the Register later in 2020.

For more information on the Register, please listen to Katten's latest [London Weekly Fireside Chat](#).

The statement is available [here](#) and the Register is available [here](#).

## EU DEVELOPMENTS

### COVID-19: European Commission Adopts a Set of Measures for the Recovery of EU Capital Markets

On July 24, the European Commission adopted a set of measures to help facilitate bank lending to households and businesses throughout the EU (the Measures).

The Measures aim to make it easier for capital markets to support EU businesses in their recovery from the COVID-19 pandemic by encouraging greater investments in the economy, allowing for the rapid recapitalization of companies and increasing banks' capacity to finance the recovery.

The Measures propose changes to:

1. the Capital Requirements Regulation;
2. the revised Markets in Financial Instruments Directive (MiFID II);
3. the Prospectus Regulation (for more information on the changes to the Prospectus Regulation, see the [July 31, 2020 edition of Corporate & Financial Weekly Digest](#); and
4. the Securitisation Regulation.

The Measures are available [here](#).

## COVID-19: European Commission Adopts Proposal to Amend Prospectus Regulation

On July 24, the European Commission (the Commission) adopted a legislative proposal to amend the Prospectus Regulation and assist with the recapitalization of companies that have been affected by the COVID-19 pandemic (the Proposal).

The key changes under the Proposal are:

1. the introduction of a new simplified, short-form, temporary prospectus. The temporary prospectus reduces the number of pages typically required for a prospectus from hundreds to just 30. It will be available in relation to secondary issuances of shares by issuers that are already admitted to trading on a regulated market or a small and medium enterprises (SME) growth market for a continuous period of at least 18 months;
2. extensions to certain deadlines regarding supplementary prospectuses; and
3. temporarily increasing the prospectus exemption threshold from EUR 75 million to EUR 150 million for certain non-equity securities issued by a credit institution in a continuous or repeated manner.

The Commission has confirmed that the temporary prospectus regime and the measures mentioned above will expire 18 months after the date of application of the amending Prospectus Regulation.

In order for the proposal to go into effect, it must be adopted by the European Parliament and the Council of the EU.

The Proposal is available [here](#).

## ESMA Updates Transparency Opinions for Third-Country Trading Venues Under MiFID II

On July 28, the European Securities and Markets Authority (ESMA) published an updated version of its opinion on determining third-country trading venues (TCTVs) for the purpose of post-trade transparency under the revised Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR) (the Opinion).

ESMA previously updated the Opinion on June 3, (for more information, see the [June 5, 2020 edition of Corporate & Financial Weekly Digest](#)) and subsequently received a number of requests from market participants to assess additional trading venues against the transparency criteria. As a result, ESMA published the following:

1. an updated annex to the Opinion, which includes TCTVs that have now received a positive or partially positive assessment (the Annex); and
2. additional guidance on the implementation of the list of TCTVs (the Guidance).

The Opinion is available [here](#).

The Annex is available [here](#).

The Guidance is available [here](#).

## ESMA Statement on Its Intention to Postpone the CSDR Settlement Discipline Regime

On July 28, the European Securities and Markets Authority (ESMA) published a statement confirming that it is working on a proposal to delay the enactment of the Central Securities Depositories Regulation (CSDR) settlement discipline regime until February 1, 2022 due to the impact of the COVID-19 pandemic and subsequent request from the European Commission (the Statement).

The Statement is available [here](#).

## **ESMA Confirms Extension of 0.1 Percent Net Short Position Reporting in EU Shares Until September 17**

On July 30, the European Securities and Markets Authority (ESMA) published its decision in the *Official Journal of the EU* to extend the reporting requirement for holders of 0.1 percent net short positions in EU shares until September 17, 2020 (the Decision).

As a result of the impact of the COVID-19 pandemic on EU financial markets, ESMA adopted the Decision on June 10 to renew its decision originally made on March 16, requiring net short position holders of shares traded on an EU regulated market to temporarily report positions to their EU financial regulator that equal or exceed 0.1 percent of the relevant company's entire issued share capital. For more information on the Decision, see the [June 12, 2020 edition of \*Corporate & Financial Weekly Digest\*](#).

The decision went into effect on June 17 and applies until September 17, 2020.

The Decision is available [here](#).

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

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FINANCIAL MARKETS AND FUNDS

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UK/EU DEVELOPMENTS

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