

DERIVATIVES

See “*CFTC Divisions Announce 2019 Examination Policies*” in the CFTC section.

CFTC

CFTC Divisions Announce 2019 Examination Policies

On February 12, the Commodity Futures Trading Commission announced 2019 Examination Priorities (the “Examination Priorities”) for registrants of the Division of Market Oversight (DMO), Division of Swap Dealer and Intermediary Oversight (DSIO), and Division of Clearing & Risk (DCR). This marks the first time that the agency has published Examination Priorities for its divisions.

DMO

DMO’s Compliance Branch currently conducts examinations of designated contract markets to monitor their compliance with the Commodity Exchange Act (CEA) and CFTC regulations through Rule Enforcement Reviews. DMO Examination Priorities for 2019 will focus on: (1) cryptocurrency surveillance practices; (2) surveillance for disruptive trading; (3) selected aspects of trade surveillance practices; (4) block trade surveillance practices; (5) selected aspects of market surveillance practices; and (6) real-time market monitoring practices.

DSIO

DSIO’s Examinations Branch is primarily responsible for overseeing derivative markets intermediaries, including futures commission merchants (FCMs), swap dealers (SDs), major swap participants (MSPs) commodity pool operators (CPOs), commodity trading advisors, introducing brokers and retail foreign exchange dealers.

DSIO’s Compliance Branch’s 2019 Examination Priorities will focus on customer funds protections, including: (1) withdrawal of residual interest from customer accounts; (2) accepted forms of non-cash margin; (3) compliance with segregation requirements; (4) FCM use of customer depositories; and (5) FCM customer account documentation.

DCR

DCR examination of derivative clearing organizations (DCOs) will examine the DCO’s financial resources, risk management, system safeguards and cyber-security policies, practices, and procedures to assess the maturity, capabilities, and overall resilience of the DCO.

The CFTC announcement is available [here](#).

CFTC Requests Public Comment on a Rule Amendment Certification Filing by ICE Futures U.S.

The Commodity Futures Trading Commission is requesting public comment on a rule amendment certification filing by ICE Futures U.S., Inc. (IFUS). As described in the certification, the proposed amendment to IFUS Rule

4.26 would allow for the implementation of Passive Order Protection (POP) Functionality, which is intended to reduce latency advantages between traders engaged in arbitrage strategies against related markets. The POP Functionality proposed by the certification would be implemented in the daily gold and silver futures markets.

CFTC's Division of Market Oversight has determined to stay IFUS Submission No. 19-119 (February 1, 2019) pursuant to Section 5c(c)(2) of the Commodity Exchange Act (CEA) and CFTC Regulations 40.6(c) and 40.7(a)(2) because the certification presents novel or complex issues that require additional time to analyze and may be inconsistent with the CEA or CFTC regulations.

Comments on the proposed amendments must be submitted by March 15. Comments may be submitted electronically through the CFTC's Comments Online Process, available [here](#).

UK DEVELOPMENTS

FCA Publishes Policy Statement on Further Asset Management Market Study Remedies

On February 4, the UK Financial Conduct Authority (FCA) published a Policy Statement on further remedies to promote competition in the asset management sector, following its asset management market study (AMMS) (see the June 30, 2017 edition of [Corporate & Financial Weekly Digest](#) for further details on the FCA's Final Report on AMMS).

In its Policy Statement, the FCA confirms that it will proceed (with minor drafting amendments) with its remedies on the basis on which it had consulted. The FCA will introduce new rules and guidance which will:

1. explain how authorized fund managers (AFMs) should describe fund objectives and investment policies to make them more useful to investors;
2. require AFMs to explain how or why their funds use particular benchmarks or, if they do not use a benchmark, how investors should assess the performance of a fund;
3. require AFMs who use benchmarks to refer to them consistently across all fund documentation;
4. require AFMs who present a fund's past performance to do so against each benchmark used as a constraint on portfolio construction or as a performance target; and
5. clarify that where a performance fee is specified in a fund's prospectus, it must be calculated on the basis of the fund's performance after deducting all other fees.

Appendix 1 to the Policy Statement sets out the Collective Investment Schemes Sourcebook (Miscellaneous Amendments) Instrument 2019, which amends the FCA Handbook's Conduct of Business Sourcebook (COBS) and its Collective Investment Schemes Sourcebook. The FCA also clarifies how COBS applies to the key investor information documents and that this change went into effect on February 4.

Appendix 2 to the Policy Statement contains final non-FCA Handbook guidance about the description of fund objectives and investment policies that applies to all UK-authorized funds.

The rules and guidance on benchmarks in the FCA Handbook will go into effect on May 7 for new funds, and on August 7 for existing funds. The FCA's rules on performance fees will go into effect on August 7.

The FCA expects AFMs to take its guidance into consideration when reviewing fund documentation from February 4.

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

EU DEVELOPMENTS

ESAs Publish Final Report on Amendments to the PRIIPs Key Information Document

On February 8, the Joint Committee of European Supervisory Authorities (ESAs) published a final report on proposed amendments to Commission Delegated Regulation (EU) 2017/653 (Delegated Regulation) on key information documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs).

The ESAs originally consulted on the proposals in a consultation paper issued in November 2018, proposing amendments that would allow the KID to be applied to all types of investment funds (including undertakings for collective investments in transferable securities (UCITS)), as well as amendments designed to resolve perceived issues concerning performance scenarios.

The ESAs state in the final report that, having reviewed the feedback on the consultation, stakeholders did not support the proposed amendments. In the meantime, the European Parliament and Council have also been discussing deferring the application of the KID by UCITS and certain non-UCITS funds until December 31, 2021. In light of the above, the ESAs have decided not to propose substantive amendments to the Delegated Regulation at this time.

Instead, the ESAs have begun work to provide input to a review of the Delegated Regulation during 2019. The final report sets out how the ESAs plan to conduct this work and discusses the next steps that the ESAs intend to take.

At the same time, the ESAs also believe that an immediate supervisory response is needed in relation to the issues discussed in the consultation paper concerning performance scenarios. The ESAs consider that there is a risk that retail investors may have developed inappropriate expectations about the possible returns they may receive. Therefore, the ESAs recommend that PRIIP manufacturers include a warning in KIDs to ensure that retail investors are fully aware of the limitations of the figures provided in the performance scenarios.

The final report is available [here](#).

The joint supervisory statement is available [here](#).

ESMA Publishes List of Thresholds Below Which an EU Prospectus Is Not Required

On February 8, the European Securities and Markets Authority (ESMA) published a document listing the thresholds relating to the value of an offering of securities to the public below which such an offer does not require a prospectus to be prepared in accordance with Regulation (EU) 2017/1129 (Prospectus Regulation).

The Prospectus Regulation introduces a new 1 million Euro threshold below which an offer does not require a prospectus. However, Member States may decide to raise that threshold to a maximum of 8 million Euros, provided that an offer will not be passported to another Member State.

ESMA's document therefore contains information provided by national competent authorities setting out:

- a short description of the national thresholds below which no prospectus is required;
- a summary of any national rules which apply to offers below that threshold; and
- hyperlinks to the relevant national legislation and rules.

ESMA's document is available [here](#).

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UK/EU DEVELOPMENTS

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