

FINANCIAL MARKETS

IOSCO Consults on Regulating Crypto-Asset Trading Platforms

On May 28, the International Organization of Securities Commissions (IOSCO) published a consultation paper on regulating crypto-asset trading platforms (CTPs).

The consultation paper describes issues and risks identified by IOSCO in relation to CTPs. The consultation paper describes key considerations and provides related toolkits that are intended to assist regulatory authorities who may be evaluating CTPs within the context of their regulatory frameworks. The key considerations relate to matters including:

- Access and on-boarding;
- Safekeeping of participant assets, including custody arrangements;
- Identification and management of conflicts of interest;
- Transparency of operations;
- Market integrity, including the rules governing trading on the CTP, and how those rules are monitored and enforced;
- Price discovery mechanisms; and
- Technology, including resiliency and cyber-security.

In preparing the consultation paper, IOSCO conducted a survey of the regulatory approaches to CTPs that are currently applied or are being considered in member jurisdictions. The consultation paper includes a summary of the findings of the survey.

Comments can be made on the consultation until July 29.

The consultation paper is available [here](#).

DERIVATIVES

See “NFA Amends Swaps Supervision Requirements and Makes Technical Changes to NFA Rules and Interpretive Notices” in the CFTC section.

CFTC

NFA Amends Swaps Supervision Requirements and Makes Technical Changes to NFA Rules and Interpretive Notices

On June 12, the National Futures Association (NFA) amended several of its rules and interpretive notices to incorporate expressly supervision requirements for NFA members' swaps activities. [NFA Compliance Rule 2-9\(a\)](#), as amended, will apply specifically to futures commission merchant (FCM), introducing brokers (IB), commodity pool operator (CPO) and commodity trading advisor (CTA) members. New NFA Compliance Rule 2-9(d) will require swap dealer (SD) members to diligently supervise the swaps activities of their employees and agents. Finally, as part of the overhaul to the supervision requirements, the NFA adopted a new [interpretive notice](#) titled, *NFA Compliance Rule 2-9(d): Supervision Requirements for Swap Dealer and Major Swap Participant Members*.

The amendments and interpretive notice will become effective September 30. A complete copy of the March 8 submission letter detailing the amendments is available [here](#).

DIGITAL ASSETS AND VIRTUAL CURRENCIES

See *"IOSCO Consults on Regulating Crypto-Asset Trading Platforms"* in the *Financial Markets* section.

UK DEVELOPMENTS

FCA Publishes Policy Statement and Final Rules on the Shareholder Rights Directive II and Related Party Transactions

On May 31, the UK Financial Conduct Authority (FCA) published its policy statement titled "Proposals to Promote Shareholder Engagement: Feedback to CP19/7 and Final Rules" (PS19/13), which implements aspects of the Shareholder Rights Directive II (SRD II).

PS19/13 follows the FCA's consultation on its draft rules relating to SRD II. The FCA states that PS19/13 provides additional clarifications to aid asset managers and life insurers in interpreting the policy intent of the new rules.

The final rules require asset managers and asset owners to make disclosures about their engagement policies and investment strategies:

- Life insurers and asset managers must publish an engagement policy and annual information on how it has been implemented, or publicly explain why they are not doing so;
- Life insurers must disclose, on an annual basis, their arrangements with asset managers, how the main elements of their equity investment strategy are consistent with the profile and duration of their liabilities, and how these elements contribute to the medium- to long-term performance of their assets; and
- Asset managers must provide information to asset owners, including on how their investment strategies contribute to the medium- to long-term performance of the assets.

While the above rules are a close copy-out of relevant SRD II requirements, the FCA proposed that the rules should apply to investments in shares traded not only on markets in the European Economic Area (EEA), the minimum requirement of SRD II, but also comparable markets outside the EEA.

Asset managers and life insurers will have to publish their engagement policy, or explain why they have not done so, by June 10, the date that the final rules go into effect. However, the FCA has acknowledged that the rules become effective quickly after publication and therefore, for an initial period, a firm can comply with the relevant rule by explaining what it is doing to develop an engagement policy. This may include, for example, simply explaining that it is developing one, or considering whether or not to have one.

PS19/13 also contains changes to the proposals in CP19/7 relating to the rules on related party transactions (RPTs) for issuers. The FCA states that it has reduced the materiality threshold at which issuers will be required to disclose their RPTs and have them approved, to give investors greater transparency and protections.

PS19/13 is available [here](#).

FCA Confirms Extension of Temporary Permissions Regime to October 30

On May 24, the UK Financial Conduct Authority (FCA) published a press release confirming that it is extending the deadline for notifications for the temporary permissions regime (TPR) to October 30.

TPR would allow European Economic Area-based firms passporting into the UK to continue new and existing regulated business within the scope of their current permissions in the UK for a limited period, while they seek full FCA authorization. The TPR will go into effect upon Brexit taking effect, if there is no transition period. The TPR deadline had previously been extended from April 11 to May 30 (as reported in the April 19 edition of the *Corporate & Financial Weekly Digest*).

The FCA's TPR webpage has also been updated to confirm details of the extension.

The FCA reminds firms that it has published information on areas where transitional relief is not being provided and advises that firms should use the additional time to prepare for these obligations. If firms are not ready to meet these obligations in full, the FCA will expect to see evidence about why this was not possible.

The FCA's press release is available [here](#).

The FCA's TPR webpage is available [here](#).

EU/BREXIT DEVELOPMENTS

ESMA Updates AIFMD and UCITS Q&As

On June 4, the European Securities and Markets Authority (ESMA) announced that it had published an updated version of each of its questions and answers documents (Q&As) on the application of the Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings for the Collective Investment in Transferable Securities (UCITS) Directive.

Each of the Q&As have been updated to include information relating to the following issues involving depositaries:

- The distinction between depositary functions and mere supporting tasks that are not subject to the delegation requirements set out in the AIFMD and UCITS Directive;
- Delegation of safekeeping functions;
- Performance of depositary functions where there are branches in other Member States;
- Supervision of depositary functions in case of branches in other Member States; and
- Delegation of depositary functions to another legal entity within the same group.

The updated AIFMD Q&A is available [here](#).

The updated UCITS Q&A is available [here](#).

EIOPA Consults on Opinion on Sustainability Within Solvency II

On June 3, the European Insurance and Occupational Pensions Authority (EIOPA) published a consultation paper on a draft opinion on sustainability within the Solvency II Directive, following a request from the European Commission in August 2018.

EIOPA states in a related press release that the draft opinion aims at integrating sustainability risks, in particular those related to climate change, in the investment and underwriting practices of (re)insurers. EIOPA goes on to state that the opinion addresses the valuation of assets and liabilities, assesses current investment and underwriting practices, and seeks to contribute to the integration of sustainability risks in market risks and natural catastrophe underwriting risks for the solvency capital requirements for standard formula and internal model users.

The consultation closes July 26.

EIOPA's consultation follows sustainability initiatives by other European authorities, including the European Securities and Markets Authority's recent technical advice on sustainability risks in investment activities (for more information, see the May 10 edition of [Corporate & Financial Weekly Digest](#))

EIOPA's press release and consultation paper are available [here](#).

ESMA Updates MiFID II Q&As on Transparency Topics

On June 3, the European Securities and Markets Authority (ESMA) published an updated version of its questions and answers document (Q&As) on transparency topics under the revised Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR).

The updated Q&As provide clarification on the following topics:

- The mandatory systematic internalizer (SI) regime;
- The voluntary SI regime; and
- The quoting obligation for SIs in instruments that are not traded on a trading venue.

ESMA also removed and amended obsolete questions, such as those pertaining to the initial implementation of MiFID II.

The updated Q&A is available [here](#).

ESMA Updates Statement on the Impact of Brexit on the MiFIR Trading Obligation for Shares

On May 29, the European Securities and Markets Authority (ESMA) published a revised statement outlining its approach relating to the trading obligation for shares (TO) under Article 23 of the Markets in Financial Instruments Regulation (MiFIR), if the United Kingdom were to leave the European Union (Brexit) without a withdrawal agreement (no-deal Brexit) and without an equivalence decision made by the European Commission.

ESMA explains that its first public statement on this issue published in March 2019 (for more information, see the March 22 edition of *Corporate & Financial Weekly Digest*) significantly reduced the scope of the TO in the event of a no-deal Brexit. However, its new statement is intended to further mitigate potential adverse effects of the application of the TO and to reflect concerns raised by some stakeholders about its earlier guidance.

ESMA believes that an approach to the TO based only on the ISIN of the share would be more likely to minimize risk of market disruption that conflicting EU and UK TOs may create. Therefore, it has decided that the EU TO would not be applied to the 14 GB ISINs included in its previous guidance. Under this revised approach, ESMA assumes that all European Economic Area (EEA) shares (that is, with ISINs from all EEA states) are within the scope of the EU TO. GB ISINs, meanwhile, are outside the scope of the EU TO.

ESMA explains that this approach will avoid any overlaps if the United Kingdom adopts an approach that does not include EEA ISINs under the UK TO. However, if EEA ISINs are included in the scope of the UK TO, this would introduce overlapping obligations and potentially damaging consequences for market participants.

On the same date, the UK Financial Conduct Authority (FCA) published its response to ESMA's statement. While the FCA states that it is encouraged by ESMA's revised approach, it believes that applying the EU TO to all

shares with EEA ISINs would still cause market disruption, leading to fragmentation and reduced liquidity in both the EU and UK. It explains that a number of shares with EEA ISINs have both a listing and their main or only significant center of market liquidity on UK markets. Therefore, the ISIN that a share carries does not and should not determine the scope of the TO.

The FCA believes that reciprocal equivalence remains the best way of dealing with overlapping TOs in the European Union and United Kingdom, especially in light of the fact that the United Kingdom has on-shored the same regime. However, in the absence of reciprocal equivalence, the FCA suggests that both UK and EU TOs should be applied in a way that maintains the status quo for a limited period of time after Brexit, enabling longer term solutions to be found.

The FCA adds that, if there is no equivalence determination, it will engage with market participants and trading venues about steps to protect the integrity of UK markets and to ensure that participants in the United Kingdom can continue to achieve high standards of execution for their clients.

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

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

EMIR REFIT Published in the Official Journal of the European Union

On May 28, the regulation amending the European Market Infrastructure Regulation (EMIR), or EMIR REFIT, was published in the *Official Journal of the European Union*. A handful of provisions are subject to delayed implementation (per Article 2, thereof), but the majority will go into effect on June 17, being 20 days after publication.

On the same date, the European Securities and Markets Authority (ESMA) published an updated question and answer document (Q&A) relating to EMIR to clarify, in particular, the clearing obligation for financial and non-financial counterparties and the procedure for notification when a counterparty either exceeds or ceases to exceed the clearing thresholds.

On May 29, the UK Financial Conduct Authority (FCA) also updated its webpage on EMIR and published a news alert detailing changes to the FCA framework for EMIR notifications brought about by EMIR REFIT.

For more information on the requirements of EMIR REFIT, see Katten's advisory, "[EMIR REFIT: What Non-EU Asset Managers Should be Doing Now](#)."

EMIR REFIT is available [here](#).

The updated EMIR Q&A is available [here](#).

The FCA's updated webpage and news alert are available [here](#) and [here](#), respectively.

ESMA Updates Its Opinion on Ancillary Activity Calculations

On May 27, the European Securities and Markets Authority (ESMA) published an updated opinion on the ancillary activities calculation under the revised Markets in Financial Instruments Directive (MiFID II).

Article 2(1)(j) of MiFID II provides an exemption for persons dealing on their own account or providing investment services relating to commodity derivatives, provided that their activity is an ancillary activity to their main business. Market participants are required to measure their own activity against total market sizes in commodity derivatives based on historical data. In the opinion, ESMA provides the estimation of the market size of various commodity derivatives, including metals, oil and coal, as well as emission allowances.

The updated opinion provides the estimation of the market size of commodity derivatives and emission allowances for the year 2018.

The updated opinion is available [here](#).

ESMA Launches Call for Evidence on Position Limits in Commodity Derivatives Under MiFID II

On May 24, the European Securities and Markets Authority (ESMA) published a call for evidence on position limits and position management in commodity derivatives.

The call for evidence has been launched so that ESMA can provide advice to the European Commission for its report on the impact of position limits and position management on commodity derivatives markets by March 31, 2020 (in accordance with a revised timeline agreed with the European Commission and Article 90(1) of the revised Markets in Financial Instruments Directive (MiFID II)).

ESMA's call for evidence is seeking stakeholders' input on the impact of position limits on liquidity, market abuse, and orderly pricing and settlement conditions in commodity derivatives markets. Furthermore, stakeholders are invited to share their experience of the application of the MiFID II position limit and position management provisions, explain how trading in commodity derivatives may have been impacted, either positively or negatively, by this new regime and provide thoughts for potential amendments.

ESMA requests that feedback is provided by July 5. ESMA intends to consult on its draft report to the European Commission in the last quarter of 2019 with a view to finalizing the report by the end of March 2020.

The call for evidence is available [here](#).

European Commission Adopts Fifth Communication Regarding Preparations for a No-Deal Brexit

On June 12, and ahead of the European Council meeting on June 20 and 21, the European Commission (EC) adopted a fifth Brexit Preparedness Communication, taking stock of the European Union's preparations and contingency measures if the United Kingdom exits the European Union without a deal or an implementation period (No-Deal Brexit).

In its Fifth Communication the EC reiterates that, in the event of a No-Deal Brexit, the European Union would not consider discussing a future relationship with the United Kingdom unless the United Kingdom addressed three main separation issues: citizens' rights, the United Kingdom's financial commitments made as a member state, preserving the Good Friday Agreement and peace on the island of Ireland, and preserving the integrity of the single market.

The Fifth Communication also summarizes the No-Deal Brexit preparedness measures taken by the EC since it started planning for such a scenario in December 2017. These include tabling 19 legislative proposals, adopting 63 non-legislative acts and publishing 93 preparedness notices. The EC concludes that these remain fit for purpose and that the remaining EU member states (EU27) are well prepared. The EC does not plan any new measures ahead of the United Kingdom's new date of withdrawal from the EU (Brexit).

However, the EC's Fifth Communication focuses on areas in which continued and particular vigilance is needed over the next few months, i.e., citizens' residence and social security entitlements; medicinal products, medical devices and chemical substances; customs, indirect taxation and border posts; transport; fishing and financial services. Of particular concern is the preparedness of some financial services companies.

The EC believes that the scenario of a No-Deal Brexit remains a possible, but undesirable, outcome, as it could cause significant disruption for EU citizens and businesses, and would have a significantly greater negative economic impact on the United Kingdom than on the EU27. Therefore, it urges all stakeholders to take advantage of the extra time provided by extending Brexit to October 31 to ensure that they have taken all necessary measures to prepare for Brexit.

The EC's press release is available [here](#).

The EC's Fifth Communication is available [here](#).

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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
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/EU/BREXIT 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

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