

BROKER-DEALER

SEC Proposes Changes to Market Data Plans

On January 8, the Securities and Exchange Commission (SEC) released a proposed order to improve the governance of National Market System (NMS) data plans that produce consolidated equity market data and disseminate trade and quote data. Currently, the equities exchanges and the Financial Industry Regulatory Authority (the Participants) together collect, consolidate and disseminate information regarding trades and quotes in NMS stocks pursuant to three separate national market system plans. According to the press release, “the current governance structure of these plans perpetuates disincentives to enhance consolidated equity market data feeds, which are often slower and contain less information than the proprietary market data feeds offered by the participants that control much of the voting power for the NMS plans.” The proposed order would direct the Participants to create a single equity data plan that would address these conflicts of interests between the exchanges’ commercial interests and their regulatory obligations to produce and provide consolidated market data.

The SEC also published for comment amendments to the existing NMS data plans to require mandatory disclosure policies with respect to conflicts of interest and to institute a confidentiality policy for certain data and information. Comments on the proposals must be submitted on or before 45 days from publication in the Federal Register.

The SEC’s press release regarding the proposed order is available [here](#). The proposed order is available [here](#).

FINANCIAL MARKETS

See “European Commission Grants Temporary Equivalence to UK CCPs” in the EU and UK Developments Sections.

See “ESMA Issues SFTR Guidelines” in the EU Developments section.

See “European Commission Finalizes Taxonomy Regulation” in the EU Developments section.

See “Fifth Money Laundering Directive Becomes Operational” in the EU Developments section.

CFTC

NFA's Swaps Proficiency Requirements Become Effective on January 31

On January 7, the National Futures Association (NFA) issued Notice to Members 1-20-01, announcing that a webpage devoted to Swaps Proficiency Requirements will become accessible on January 31, 2020.

Individuals registered as Associated Persons (AP) at Swap Dealers (SD), Futures Commission Merchants (FCM), Introducing Brokers (IB), Commodity Pool Operators (CPO) and Commodity Trading Advisors (CTA), who engage in swaps activity subject to the Commodity Futures Trading Commission’s jurisdiction must satisfy the NFA’s

Swaps Proficiency Requirements by January 31, 2021 to remain approved as a swap AP or continue acting as an AP at an SD after this date.

Following January 31, 2021, any individual who wants to start engaging in swaps activity for the entities listed above will need to satisfy NFA's Swaps Proficiency Requirements prior to being approved as a swap AP or acting as an AP at an SD.

The Notice is available [here](#). NFA has posted Frequently Asked Questions, help guides and other resources on NFA's Swaps Proficiency Requirements webpage [here](#).

CFTC Issues No-Action Letter Supplementing Relief to SEFs and DCMs

On January 8, the Commodity Futures Trading Commission Division of Market Oversight issued a no-action letter (the Letter) supplementing the relief provided in CFTC Letter 17-27. CFTC Letter 17-27 generally permitted swap execution facilities (SEFs) and designated contract markets (DCMs) to correct clerical or operational errors discovered after a swap has been cleared.

The Letter provides an alternative error correction process by which SEFs and DCMs may permit counterparties to determine that an error has occurred and correct the error, subject to ex post facto review by the SEF or DCM. The Letter does not replace CFTC Letter 17-27, and SEFs and DCMs may still continue to implement policies pursuant to the conditions set forth in CFTC Letter 17-27.

A full copy of the release is available [here](#).

UK DEVELOPMENTS

See "European Commission Grants Temporary Equivalence to UK CCPs" in EU Developments section.

EU DEVELOPMENTS

European Commission Grants Temporary Equivalence to UK CCPs

On December 23, 2019, the European Commission's (EC) Implementing Decision, which grants temporary equivalence to UK central counterparties (CCPs), was published in the *Official Journal of the European Union* (EU). This means that the Implementing Decision became law on December 24, 2019.

This is the latest Implementing Decision issued by the EC to ensure that UK CCPs can continue to provide CCP services to EU trading venues and EU clearing members following Brexit. The last Implementing Decision on this topic was published on April 4, 2019 (more information is available in the April 5, 2019 edition of *Corporate & Financial Weekly Digest*), and this recent Implementing Decision was issued to reflect the change of the date of the UK's departure from the EU from October 31, 2019 to January 31, 2020.

The Implementing Decision is available [here](#).

ESMA Issues SFTR Guidelines

On January 6, the European Securities and Markets Authority (ESMA) issued a series of documents concerning the Securities Financing Transaction Regulation (SFTR). SFTR came into force in January 2016, and the reporting obligations will "go live" on April 13.

ESMA issued the following documents:

- Final Report: Guidelines on reporting under Article 4 and 12 SFTR (available [here](#));
- Guidelines: Reporting under Article 4 and 12 SFTR (available [here](#));
- Amended SFTR validation rules (available [here](#)); and
- ESMA statement on implementation of the Legal Entity Identifier (LEI) requirements under the SFTR reporting regime (available [here](#)).

The two articles addressed in the Final Report and the Guidelines comprise the two major changes introduced by SFTR: the Article 4 obligation on counterparties to report to a trade repository all Securities Financing Transactions (SFTs) that the counterparty has concluded; and the Article 12 obligation on trade repositories to regularly publish aggregate positions and provide the relevant authorities with "direct and immediate" access to the reported data.

The Final Report and the Guidelines, therefore, cover many different areas, from the types of transactions and financial instruments that must be reported under SFTR, to more technical questions of how to fill in the various fields of the report. The Final Report and the Guidelines are the outcome of a consultation, which closed in July.

Regarding LEIs, ESMA observed in the Statement that "numerous pieces of EU legislation," as well as legislation in other jurisdictions, require or will require the use of an LEI. ESMA also acknowledges that use of LEIs is not widespread outside of the EU and that "EU investors will face problems in using securities issued by non-EU issuers which have not yet obtained an LEI."

For that reason, ESMA is allowing a 12-month "partial relaxation of the validation rules," so that reports for third-country issuers without LEIs will be accepted until April 13, 2021. EU-based issuers and third-country issuers who have an LEI will not benefit from this "partial relaxation." During this 12-month period, ESMA expects counterparties to liaise with third-country issuers "to ensure that they are aware of the requirements" and to encourage them to obtain an LEI.

European Commission Finalizes Taxonomy Regulation

On December 17, 2019, the European Commission published the text of the proposed "regulation on the establishment of a framework to facilitate sustainable investment," which is also known as the "Taxonomy Regulation." This forms part of the EU's sustainable finance reforms. More information is available in the May 10 edition of *Corporate & Financial Weekly Digest* and December 13 edition of *Corporate & Financial Weekly Digest*.

The purpose of the Taxonomy Regulation is to enable firms and investors to identify environmentally sustainable economic activities. It will apply to financial market participants who offer financial products, as well as companies to whom the Non-Financial Reporting Directive applies (generally, large, EU-listed public companies).

In order for an activity to be an "environmentally sustainable economic activity," the activity must make a "substantial contribution" to at least one of six "environmental objectives." The environmental objectives include:

- climate change mitigation;
- climate change adaptation;
- sustainable use and protection of water and marine resources;
- transition to a circular economy (e.g. recycling);
- pollution prevention and control; and
- protection and restoration of biodiversity and ecosystems.

Further requirements for an activity to be environmentally sustainable are that it must not "significantly harm" any of the other environmental objectives, it must meet the "minimum safeguards" (such as complying with the International Bill of Human Rights), and it must comply with any other criteria specified by the European Commission in delegated acts, which will be adopted between now and the end of 2022.

The Taxonomy Regulation will become effective 20 days after its publication in the *Official Journal* but will only apply once all of the delegated acts have become effective. It is currently expected that the first two climate-related environmental objectives will apply from December 31, 2021, and the four remaining objectives will apply from December 31, 2022.

The proposed Taxonomy Regulation is available [here](#).

Fifth Money Laundering Directive Becomes Operational

On January 10, the changes introduced by the European Union's fifth Money Laundering Directive (MLD5) became operational. MLD5 came into force on July 9, 2018, but member states had until January 10 to transpose these changes into national law. MLD5 amends and builds on the fourth Money Laundering Directive (MLD4). More information is available in the February 12, 2016 edition of *Corporate & Financial Weekly Digest*.

Some of the changes to the anti-money laundering (AML) regime brought about by MLD5 include:

- cryptocurrencies are now in scope of the AML regime, and therefore virtual currency platforms and custodian wallet providers operating in the EU must now conduct due diligence and report suspicious transactions;
- the customer due diligence (CDD) regime has been clarified and harmonized. For example, all customer verification must now be done using an electronic source, if possible. EU firms must conduct CDD on existing customers in specified circumstances but also "at appropriate times...on a risk-sensitive basis." In addition, the EU may designate a list of high risk countries for money laundering (the "blacklist") and impose restrictions or special conditions when dealing with countries on that list;
- the spending limit on prepaid cards, above which a firm must conduct CDD, has been reduced from €250 to €150 and to €50 for some transactions. The EU can restrict the use of prepaid cards issued outside of the EU, if that jurisdiction does not have equivalent money laundering controls (this takes effect on July 10);
- the public can now access Registers of Beneficial Ownership for EU corporations and other legal entities, removing the requirement to show some "legitimate interest." Trusts must also prepare Registers of Beneficial Ownership, but these will not be freely accessible by the public;
- member states must make a list of the "prominent public functions" in their jurisdiction, in order to help to identify politically exposed persons. Member states must send these lists to the European Commission, who will publish a single, shared list;
- financial intelligence units at EU national regulators have wider powers. For example, they can now request information from any firm at any time — under MLD4, they could only ask for information if they had received a suspicious activity report from the firm;
- member states must establish a centralized automated mechanism for identifying the holders of bank and payment accounts and safe deposit boxes (this takes effect on September 10); and
- the AML regime has been extended to cover all forms of tax advisory services, lettings agents and art dealers and has increased protection for whistleblowers.

MLD5 is available [here](#), and the sixth Money Laundering Directive will take effect on December 3.

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

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UK/EU DEVELOPMENTS

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* Click [here](#) to access the *Corporate & Financial Weekly Digest* archive.

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