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BROKER DEALER

SEC Chair Gives Speech on Equity Market Structure

On June 5, Securities and Exchange Commission Chair Mary Jo White gave a speech titled “Enhancing Our Equity Market Structure” in New York. The Chair addressed the importance of strengthening the existing market structure and noted several recommendations to enhance market structure. Among the recommendations are:

- creating a new Market Structure Advisory Committee of experts to review specific initiatives and rule proposals;
- developing an anti-disruption trading rule tailored to apply to active proprietary traders in short time periods when liquidity is most vulnerable and the risk of price disruption caused by aggressive short-term trading strategies is highest;
- clarifying the status of unregistered active proprietary traders to subject them to SEC rules as dealers;
- eliminating the Financial Industry Regulatory Authority, Inc. membership exception for dealers that trade in off-exchange venues;
- improving firms’ risk management of trading algorithms and enhancing regulatory oversight over their use;
- expanding the information about alternative trading system operations submitted to the SEC and making that information publically available; and
- requiring disclosure of customer-specific information upon request by an institutional customer.

The full text of the Chair’s remarks are available [here](#).

CFTC

New CFTC Commissioners Confirmed; Chairman Sworn In

On June 3, the Senate confirmed the appointment of Timothy Massad, Christopher Giancarlo and Sharon Bowen as Commissioners of the Commodity Futures Trading Commission. Mr. Massad, who previously served as the Assistant Secretary for Financial Stability at the US Department of the Treasury, was subsequently sworn in as Chairman of the CFTC. Mr. Giancarlo, a financial services industry veteran, joins the CFTC from GFI Group where he served as the Executive Vice President. Prior to joining the CFTC, Ms. Bowen was a securities attorney and the acting chair of the Securities Investor Protection Corporation.

More information is available [here](#).

CFTC Extends No-Action Relief for Certain Transaction-Level Requirements for Non-US Swap Dealers

On June 4, the Commodity Futures Trading Commission’s Division of Swap Dealer and Intermediary Oversight (DSIO) issued a no-action letter extending the relief provided by CFTC Letter No. 14-01. Pursuant to this relief, the DSIO will not recommend enforcement action against a non-US swap dealer that uses personnel or agents located in the United States to arrange, negotiate or execute certain swaps with non-US persons for failing to

comply with the transaction-level requirements, provided the non-US persons are not guaranteed affiliates or conduit affiliates of a US person. This relief will now be available until December 31.

The no-action letter is available [here](#).

CFTC and Reserve Bank of Australia Sign Memorandum of Understanding Regarding Cross-Border Clearing Organizations

The Commodity Futures Trading Commission and Reserve Bank of Australia signed a memorandum of understanding (MOU) regarding the cooperation and the exchange of information in the supervision and oversight of clearing organizations that operate on a cross-border basis in both the United States and Australia. The MOU calls for communication between the CFTC and Reserve Bank of Australia, including event-triggered notifications, request-based information sharing and periodic meetings.

The MOU is available [here](#). The CFTC press release regarding the MOU is available [here](#).

NFA Issues Notice Regarding Changes to Form PQR and Form PR

On June 5, National Futures Association issued a notice to its members informing them that NFA has made several minor changes to the commodity pool operator Form PQR and commodity trading advisor Form PR. These changes will become effective for the quarter ending June 30 and will be available in the Easy File System the first week of July.

The notice, which includes a description of the changes, is available [here](#).

LITIGATION

Delaware Court of Chancery Invalidates Consent Due to Inadequate Disclosures

The Delaware Court of Chancery recently invalidated a written consent of a Delaware pharmaceutical corporation due to inadequate disclosures to stockholders.

A board member (Plaintiff) of CardioVascular BioTherapeutics, Inc. asked the court to ratify a board appointed through a written consent action led by one of Cardio's largest creditors, Calvin Wallen. Wallen negotiated a deal with a Cardio board member and stockholder's bankruptcy trustee, whereby Wallen would purchase one million shares from the bankruptcy estate in exchange for money and a director seat on the Cardio board for the trustee's designee. However, proxy solicitation materials failed to disclose the negotiations or the details of the stock purchase agreement, including the granting of a director seat.

The court, emphasizing the importance of stockholders' right to vote and choose directors, denied Plaintiff's request to ratify the consent. The court found that the directors owed a duty of candor to the stockholders, and the promise to grant a board seat to the trustee's designee should have been disclosed to stockholders either in the initial solicitation materials or in a supplement. The court then ordered an annual election for Cardio's board.

Flaa v. Montano, et al., No. 9146-VCG (Del. Ch. May 29, 2014).

Eleventh Circuit Upholds Convictions in "Pump-and-Dump" Stock Fraud Scheme

The US Court of Appeals for the Eleventh Circuit recently upheld convictions for defendants who engaged in an illegal pump-and-dump stock manipulation scheme.

Defendants, who participated with seven others in a conspiracy to defraud the investing public through a pump-and-dump scheme of shares of CO2 Tech Ltd. stock, issued false and misleading press releases and other promotional materials and coordinated the activities of CO2 Tech stock sellers and buyers. The scheme left unsuspecting investors with worthless shares of CO2 Tech stock. Defendants were charged with conspiracy to commit securities fraud, wire fraud and mail fraud. They were found guilty on all counts after a jury trial.

Defendants appealed on numerous grounds, including on the ground that the US District Court for the Southern District of Florida erred in admitting evidence in violation of the Federal Rules of Evidence. The Eleventh Circuit found that, while there may have been a question about whether the district court abused its discretion in admitting such evidence, any error was harmless as the record provided “overwhelming evidence of defendants’ fraud.” Therefore, the court affirmed the defendants’ convictions and sentences.

US v. Curshen, et al., Nos. 12-12658, 12-12659 (11th Cir. May 28, 2014).

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