

BROKER-DEALER

FINRA Proposes Rule to Modify Fees and Transaction Credits for the FINRA/NYSE Trade Reporting Facility

On September 28, the Financial Industry Regulatory Authority proposed an amendment to modify fees and transaction credits applicable to FINRA members that use the FINRA/NYSE Trade Reporting Facility (TRF). The FINRA/NYSE TRF is a facility members use to report over-the-counter trades in NMS stocks.

The FINRA Rule 7600B Series contains the required fees for members using the FINRA/NYSE TRF and outlines member eligibility for transaction credits. Currently, a member pays monthly fees based on the member's average trades per day during a calendar month. The proposed rule contains a new fee schedule based on a member's market share. The proposed rule also would amend the schedule for calculating transaction credits.

The FINRA release is available [here](#).

SEC Adopts Rules for Enhanced Regulatory Framework for Securities Clearing Agencies

On September 28, the Securities and Exchange Commission adopted rules enhancing standards for securities clearing agencies deemed systemically important or engaged in certain complex transactions (Covered Clearing Agencies). The SEC also proposed a rule that would subject other types of securities clearing agencies (including SEC-registered central counterparties) to the same standards.

Under the adopted rule, Covered Clearing Agencies are required to establish, implement, maintain and enforce written policies and procedures reasonably designed to address the following subjects:

- general organization (including legal basis, governance and a framework for the comprehensive management of risks);
- financial risk management (including credit risk, collateral, margin and liquidity risk);
- settlement (including settlement finality, money settlements and physical deliveries);
- central securities depositories and exchange-of-value settlement systems;
- default management (including default rules and procedures and segregation and portability);
- business and operational risk management (including general business risk, custody and investment risks, and operational risk);
- access (including access and participation requirements, tiered participation arrangements, and links);
- efficiency (including efficiency and effectiveness and communication procedures and standards); and
- transparency.

The new rules will become effective 60 days after publication in the *Federal Register*. The compliance date will be 120 days after the effective date.

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

The proposed rule to expand the definition of Covered Clearing Agencies is available [here](#).

SEC Proposes Amendment to Expedite Settling Securities Transactions

On September 28, the Securities and Exchange Commission proposed amending SEC Rule 15c6-1 to shorten the settlement cycle for securities transactions involving broker-dealers from three business days after the trade date to two business day after the trade date.

In the [rule proposal](#), the SEC stated that shortening the settlement cycle from three business days to two business days may reduce credit, market and liquidity risk. The SEC further noted that the proposal is consistent with its focus on the resiliency and efficiency of the national clearance and settlement system and the role of systemically important financial market utilities in managing risk.

Comments on the proposed amendment will be due to the SEC 60 days after the proposal is published in the *Federal Register*.

DERIVATIVES

See “*CFTC Expands Clearing Requirement to Include Additional Interest Rate Swaps*” in the *CFTC Section*.

CFTC

CFTC Expands Clearing Requirement to Include Additional Interest Rate Swaps

The Commodity Futures Trading Commission has expanded the list of swaps subject to the clearing requirement in CFTC Regulation 50.4 to include additional classes of interest rate swaps. Specifically, the expanded list of interest rate swaps includes the following:

fixed-to-floating interest rate swaps denominated in Australian dollar, Canadian dollar, Hong Kong dollar, Mexican peso, Norwegian krone, Polish zloty, Singapore dollar, Swedish krona and Swiss franc;

basis swaps denominated in Australian dollar;

forward rate agreements denominated in Norwegian krone, Polish zloty and Swedish krona;

overnight index swaps denominated in Australian dollar and Canadian dollar; and

overnight index swaps denominated in US dollar, euro and British sterling with termination dates up to three years.

In the adopting release, the CFTC set forth a compliance schedule for each class of interest rate swap ranging from 60 days to two years after publication in the *Federal Register*. In contrast with previous mandatory clearing determinations, there is no compliance date phase-in by type of market participant.

The CFTC’s adopting release is available [here](#).

NFA Makes Minor Change to CPO Form PQR and Reminds CPOs and CTAs About Late Fees

National Futures Association (NFA) has revised its CPO Form PQR to allow member firms to enter in separate boxes the dates for each redemption halt, material limitation on redemptions, and the lifting of a halt or limitation. Previously, the form required member firms to enter all disclosure dates in one box.

In addition, NFA has reminded its commodity pool operator and commodity trading advisor members that, beginning with reports for the quarter ending on September 30, it will impose a \$200 late fee for each business day the member files its quarterly NFA Form PQR or PR after the due date.

NFA Notice I-16-20 is available [here](#).

UK DEVELOPMENTS

FCA Publishes September 2016 Issue of *Market Watch*

On September 27, the UK Financial Conduct Authority (FCA) published the 51st edition of *Market Watch*, its periodic newsletter on market conduct and transaction reporting issues in the United Kingdom. The latest *Market Watch* provides the FCA's commentary on its recent thematic review (Review) of market abuse systems and controls in place at UK-regulated firms engaging in market making, and also provides an update on the regulator's work in relation to payment for order flow (see the following article for more details). The Review focuses on four areas: 1) market abuse risk awareness; 2) information barriers; 3) wall-crossing procedures and insider lists; and 4) ongoing monitoring and surveillance.

The latest *Market Watch* can be read [here](#).

FCA Publishes Further Commentary on Payments for Order Flow

On September 27, the UK Financial Conduct Authority (FCA) published an update on its work in relation to payments for order flow (PFOF) in its latest *Market Watch* newsletter on market conduct and transaction reporting issues. Notably, the commentary on PFOF follows previous guidance on the practice (PFOF Guidance) published by the UK Financial Services Authority in May 2012, and follows findings from a thematic review of PFOF published in July 2014 (PFOF Review). In the latest *Market Watch*, the FCA provides a further bi-annual update on PFOF, including:

- the FCA's findings on PFOF practices in follow-up supervisory work since the PFOF Review was published;
- a reminder for firms of their ongoing requirements to manage conflicts of interest with respect to eligible counterparties (ECPs); and
- a further reminder for firms of upcoming changes under the amended and restated Markets in Financial Instruments Directive (MiFID II) with respect to best execution, inducements and conflicts of interest.

PFOF involves firms (most often brokers) executing client orders and charging and receiving fees or commissions for execution from: (1) the client initiating the order; and (2) the counterparty to the trade (often market makers). The FCA reiterates in *Market Watch* that in its view, PFOF is "bad" for markets due to the conflict of interest created between firms and their clients, and also (especially for proprietary trading firms) for the distortion to the price formation process that the practice may cause. The FCA reports that since the PFOF Review, most large integrated investment banks have stopped charging PFOF across all markets and segments. The FCA notes that independent brokers have mostly ceased PFOF charges in relation to professional client business in products and markets that focus of the FCA's supervisory work. However, it also notes that some independent brokers are continuing to charge market makers for order flow from ECP business.

The FCA emphasizes in the *Market Watch* that firms must continue to meet their obligations in relation to conflicts of interest management in the FCA's Systems and Controls Handbook Rules (SYSC). Under SYSC 10, firms are required to have effective arrangements in place to identify, manage and prevent conflicts of interest, particularly any conflicts presenting a material risk of damage to the interests of clients. The FCA notes that throughout its PFOF supervisory work, it did not identify a single firm with effective arrangements to manage conflicts of interest with respect to PFOF for ECP trades. The FCA also confirmed that practices of equalizing commission paid by market makers providing quotes and relying on disclosures in relation to PFOF for ECP business does not mitigate the conflicts of interests created by PFOF and that such practices are inconsistent with the requirements in SYSC 10.

The FCA further reminds firms of upcoming changes under MiFID II that will restrict PFOF payment practices once it comes into full effect on January 3, 2018. Article 27(2) of MiFID II prohibits third-party payments and/or non-monetary benefits for routing client orders to a particular trading venue or execution venue where this might infringe conflicts of interest requirements or inducements. The FCA notes that MiFID II requires firms to act honestly, fairly and professionally in respect of services to ECPs, among other general principles. The FCA further notes that conflicts of interest requirements in MiFID II have been enhanced, and that disclosure of a conflict to a client as a means of managing the conflict should only be used as a "last resort" when the firm's other arrangements fail to prevent a conflict.

The latest *Market Watch* can be read [here](#).

The PFOF Guidance can be read [here](#).

The PFOF Review can be read [here](#).

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UK DEVELOPMENTS

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