

BROKER-DEALER

FINRA Proposes Data Service for Corporate Bond New Issues

The Financial Industry Regulatory Authority (FINRA) has filed with the Securities and Exchange Commission a proposed rule change to establish a new issue reference data service for corporate bonds. FINRA currently requires underwriters of initial offerings for corporate bonds to submit information relating to the bonds to FINRA under Rule 6760. This information is limited to a handful of data fields generally needed to set up a bond on TRACE for trade reporting purposes. If adopted, the rule change will expand the number of fields to include a more comprehensive set of data for corporate bond new issues.

In addition, FINRA will disseminate the corporate bond new issue data to subscribers of a new FINRA data service. A subscription for the data service will cost \$250 per month for subscribers that use the data internal purposes only, and \$6,000 per month for subscribers that retransmit or otherwise disseminate the data to outside persons or organizations.

The proposed rule change is based, in part, on the recommendations of the SEC's Fixed Income Market Structure Advisory Committee.

FINRA's proposed rule change filing is available [here](#).

DERIVATIVES

See "CFTC Passes Provision to Provide Greater Brexit-Related Market Certainty by Unanimous Vote," "CFTC Adopts Final Rule to Help Small Businesses and Job Creators in the US," and "Segregation of Assets Held as Collateral in Uncleared Swaps Transactions" in the CFTC section; and "ESMA Updates Q&As on MiFID II and MiFIR Commodity Derivatives" in the EU Developments section.

CFTC

CFTC Passes Provision to Provide Greater Brexit-Related Market Certainty by Unanimous Vote

On May 25, the Commodity Futures Trading Commission adopted an interim final rule designed to provide greater certainty to the global marketplace in the event of a "no-deal Brexit."

In the event that the UK leaves the EU without a negotiated withdrawal agreement, affected swap dealers and major swap participants may be required to transfer certain uncleared swaps that were entered into before the relevant compliance dates under the CFTC Margin Rule or Prudential Margin Rule. The interim final rule is designed to allow an uncleared swap to retain its legacy status under the CFTC Margin Rule or Prudential Margin Rule when so transferred.

Comments to the interim final rule must be submitted within 60 days of publication in the *Federal Register*.

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

CFTC Adopts Final Rule to Help Small Businesses and Job Creators in the US

On March 25, the Commodity Futures Trading Commission adopted an amendment to the definition of a swap dealer found in CFTC Rule 1.3 to allow certain insured depository institutions (IDIs) to provide risk mitigating swaps to customers in connection with the origination of loans without counting the swaps towards their *de minimis* threshold. Under CFTC Rule 1.3, an entity that would otherwise be required to be registered as a swap dealer is exempt from registration if the swaps the entity enters into over the course of the immediately preceding 12 months have an aggregate gross notional amount of no more than \$8 billion. The amendment provides that, in calculating its aggregate gross notional amount, an IDI may exclude swaps entered into with a customer in connection with originating a loan to that customer, subject to the terms and conditions set out in the amendment.

The Rule is available [here](#).

CFTC Staff Issues Research Report on Impact of Automated Orders in Commodity Futures Markets

On March 27, the Commodity Futures Trading Commission's Market Intelligence Branch in the Division of Market Oversight (DMO) issued a report analyzing the entering of manual and automatic orders in commodity futures markets in the United States to determine how technological change is affecting futures trading. DMO staff used internal CFTC transactional data for 30 futures contracts during the period January 2013 – December 2018, and examined what effect the order placement mechanism had on the respective transaction.

The research produced the following findings:

- the percentage of automated orders has increased in all futures markets;
- automated orders are smaller in size than manual orders and their resting times are shorter than the resting times of manual orders;
- automated orders are typically limit orders; and
- while automation of orders increased steadily each year, historical volatility of end-of-day prices did not exhibit the same trend.

CFTC Unanimously Approves Rule Amendments to Ease Regulatory Burdens

On March 28, the Commodity Futures Trading Commission announced that it has unanimously approved two final rule amendments designed to ease registrants' regulatory burdens. Both final rule proposals originated from the CFTC's Project KISS Initiative, which is intended to simplify and reduce burdens by revisiting our rules based on staff implementation experience and public comment. The two rule amendments will become effective 30 days after publication in the *Federal Register* and are detailed below:

Segregation of Assets Held as Collateral in Uncleared Swaps Transactions

Subpart L of Part 23 of the CFTC's rules 23.700 – 23.704 implement the requirements for segregation of initial margin for uncleared swaps transactions, where the swap is between a swap dealer and either 1) a nonfinancial end-user; or 2) a financial end-user without "material swaps exposure", as defined in the CFTC's rules. In response to comments received in connection with Project KISS, the CFTC had proposed a number of amendments to Subpart L to "simplify and rationalize" existing requirements. The rules have been adopted as proposed and, among other changes, in Rule 23.701:

- 1) the required notification of the right to segregate is to be made at the beginning of the first uncleared swap transaction that provides for exchange of initial margin;
- 2) the exception to the notification requirement in cases where segregation is required under the CFTC Margin Rule is expanded to include cases where segregation is required under Prudential Regulator Margin Rules;
- 3) the annual notification requirement is eliminated;
- 4) the requirement to identify in the notification one or more creditworthy custodians and to provide information regarding the cost for segregation for each named custodian is eliminated;

- 5) the requirement to provide the notification to a person with specific job title at the counterparty is eliminated;
- 6) the terms of segregation are to be established by written agreement with the counterparty; and
- 7) the requirement to obtain from the counterparty and maintain written confirmation of receipt of the notification is eliminated.

In addition, specific requirements in Rule 23.702 regarding the withdrawal or turnover of control of initial margin are replaced with a provision that the segregation agreement provide that instructions to withdraw initial margin be in writing and that withdrawal notification be given immediately to the non-withdrawing party. Further, the restriction in Rule 23.703 on investment of segregated margin to investments permitted under Regulation 1.25 is eliminated.

The amended rule takes effect 30 days after publication in the *Federal Register*, which is available [here](#).

Financial Surveillance Examination Program Requirement for Self-Regulatory Organizations

CFTC Rule 1.52 requires a self-regulatory organization (SRO) to adopt written policies and procedures concerning the examination of its member registrants, and in particular, futures commission merchants (FCMs). Further, the rule requires an SRO to retain an “examinations expert” to evaluate its supervisory program prior to its initial use and to evaluate the SRO’s application of the supervisory program at least once every three years after its initial use. Among other changes that the CFTC has adopted, the amendments to Rule 1.52 revise the scope of a third-party expert’s evaluation of an SRO’s financial surveillance program to cover only the examination standards used by SRO staff in conducting FCM examinations. The amendments also extend the minimum timeframe from three years to five years between when an SRO must engage a third-party consultant to evaluate its FCM examination standards.

The amended rule takes effect 30 days after publication in the *Federal Register*, which is available [here](#).

BREXIT / UK DEVELOPMENTS

See “*CFTC Passes Provision to Provide Greater Brexit-Related Market Certainty by Unanimous Vote*” in the *CFTC section*.

OECD Publishes Follow-up Report on UK’s Implementation of Anti-Bribery Convention

On March 21, the Organisation for Economic Co-operation and Development’s (OECD’s) Working Group on Bribery (Working Group) published its “Phase 4 Two-Year Follow-Up Report” on the United Kingdom’s implementation of the OECD anti-bribery convention. The Working Group’s report follows the written responses the United Kingdom submitted in March 2019 to the OECD’s “Phase 4” evaluation in March 2017.

In its report, the Working Group expresses some concern at the low level of finalized and ongoing foreign bribery enforcement cases in the United Kingdom, given the size of the UK economy. The Working Group’s findings include the following:

- 1) there has only been a partial enforcement of the recommendations regarding the use and protection of whistleblowers in foreign bribery cases;
- 2) the reform of the suspicious activity reports (SAR) system has still not been implemented even though it has been promised since 2015;
- 3) improvements need to be made to the transparency of court decisions regarding foreign bribery cases to ensure routine publications of judgments and sentencing remarks;
- 4) information sharing, bribery detection and case management needs to be improved by increasing collaboration between government agencies; and
- 5) no steps have been taken to address long-standing recommendations to ensure the independence of foreign bribery investigations and prosecutions, or to enhance detection through mechanisms for reporting anti-money laundering.

However, the Working Group welcomed the adoption of the Criminal Finances Act 2017, which grants new powers to the UK Financial Intelligence Unit, including the authority to direct reporting entities to disclose additional information based on a SAR.

The Working Group has invited the United Kingdom to report back in writing by March 2021 on outstanding recommendations. The United Kingdom also will report to the Working Group on its foreign bribery enforcement actions in the context of its annual update.

The Working Group's report is available [here](#).

FCA and PRA Publish Updates to the Temporary Permissions Regime

On March 25, the UK Financial Conduct Authority (FCA) updated its webpage on the temporary permissions regime (TPR) to announce that it intends to extend the notification window for European Economic Area (EEA) firms and fund managers wishing to enter the TPR to the end of April 11. On March 26, the UK Prudential Regulation Authority (PRA) also updated its webpage on the TPR to make an equivalent announcement. (For more information on the TPR, please see the [Corporate & Financial Weekly Digest](#) edition of January 11, 2019.)

The FCA's and the PRA's decisions follow the European Council's decision to agree to a short extension to the Article 50 period to April 12 if the UK government's Withdrawal Agreement is not approved by the House of Commons (and May 22, if it is).

The FCA also announced the publication of supplementary directions to provide guidance on how a firm can withdraw its notification. Firms that withdraw their notification in writing to the FCA before exit day will not enter the TPR. The PRA published an equivalent supplementary direction on withdrawals of notifications before exit day on March 22.

The updated FCA webpage is available [here](#).

The updated PRA webpage is available [here](#).

BREXIT/EU DEVELOPMENTS

ESMA Updates Q&As on MiFID II and MiFIR Commodity Derivatives

On March 27, the European Securities and Markets Association (ESMA) published an updated version of its questions and answers document (Q&As) on commodity derivatives topics under the revised Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR). The Q&As, were last updated on January 4, (as reported in the January 11, 2019 edition of [Corporate & Financial Weekly Digest](#)).

Q&A 6 under section 3 clarifies that any ancillary activity notifications need to be made annually by April 1 of the year for which the exemption applies. Q&A 14 under section 3 clarifies that a third-country firm (or a third-country subsidiary of an EU firm) dealing on an EU trading venue in commodity derivatives or emission allowances or derivatives thereof is not in scope of the ancillary activity test.

The updated Q&As are available [here](#).

ESMA Publishes Statement on Preparations Regarding Clearing and Settlement for a No-Deal Brexit

On March 28, the European Securities and Markets Association (ESMA) published a statement updating market participants on its preparations for the United Kingdom's withdrawal from the European Union, in the event of an agreement on transitional arrangements (Withdrawal Agreement) not being in place (No-Deal Brexit). ESMA's update follows the European Council's (EC's) agreement to the UK government's request to extend the United Kingdom's withdrawal from the European Union (Brexit) to either April 12 if the House of Commons does not approve a Withdrawal Agreement by March 29, or to May 22 if it does.

In relation to clearing and settlement, ESMA stated that the extension of Brexit means that ESMA's decision to recognize three UK central counterparties (CCPs) and the one UK central securities depository (CSD) (as reported in the [Corporate & Financial Weekly Digest](#) edition on February 22, 2019), would no longer apply from March 30.

ESMA intends to amend its recognition decisions to ensure the recognition of UK CCPs and the UK CSD in the event of Brexit occurring on April 12. The EC also announced on March 25 that it intends to adopt amended equivalence decisions in relation to UK CCPs and CSDs to take into account the extension of Brexit.

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

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

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

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UK DEVELOPMENTS

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