

SEC/CORPORATE

US District Court Orders SEC To Revise Resource Extraction Issuer Rule

On September 2, the US District Court for the District of Massachusetts ordered the SEC to file with the District Court in 30 days an expedited schedule for promulgating a final resource extraction issuer disclosure rule as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act. In its ruling, the District Court stated that it would retain jurisdiction over the rulemaking process so as to ensure compliance with its order. The District Court's order followed an action by Oxfam America, Inc. to compel the SEC to promulgate a final resource extraction issuer disclosure rule. Section 1504 of the Dodd-Frank Act mandates the SEC to issue rules requiring a resource extraction issuer to disclose payments made by the issuer, a subsidiary of the issuer or another entity under the issuer's control to the US federal government or foreign governments in connection with the development of natural gas, minerals and oil resources.

As discussed in the July 12, 2013, edition of the *Corporate and Financial Weekly Digest*, on July 2, 2013, the US District Court for the District of Columbia vacated the resource extraction issuer disclosure rule that the SEC had adopted, remanding the rule to the SEC to correct two "substantial errors." Following the ruling, the SEC announced a projected proposed rule date of March 2015, and the SEC subsequently stated that it planned to consider a revised proposal by October 2015. Currently, however, the SEC does not have a publicly announced timeline for promulgating a final resource extraction issuer disclosure rule.

To view the order, click [here](#).

SEC Charges Four Individuals and Nutrition Company for Failure To Disclose Executive Perks

On September 8, the SEC charged a sports supplements and nutrition company, its former audit committee chairman and three of its current and former executive officers with committing accounting, disclosure and other violations of federal securities laws. The charges arose primarily from the company's failure to properly report as compensation perks provided to its executives.

According to the SEC, the company failed to disclose nearly half a million dollars of perks related to automobiles, apparel, meals, golf club memberships and personal tax and legal services, among other things. The SEC's investigation found other disclosure and accounting irregularities, including failures on the part of the company to implement appropriate internal accounting controls and sufficient policies to identify and disclose related party transactions, as well as violations of Rule 302 of Regulation S-T, which requires that signature pages to electronic filings with the SEC be manually signed, and that filers retain manually executed signature pages for five years.

In addition, according to Andrew J. Ceresney, Director of the SEC's Division of Enforcement, the company's former audit committee chairman "subjected himself to liability when he substituted his wrong interpretation of SEC rules for the views of experts the company had hired, resulting in incorrect disclosure." The SEC also found that various transactions in which third parties agreed to pay the company's obligations to its vendors in exchange for company stock violated Section 5 of the Securities Act of 1933, as amended, because the shares were sold without an effective registration statement, and were not sold in accordance with an exemption from registration.

The parties settled the charges (without admitting or denying the SEC's findings). As part of the settlement, the company agreed to pay a \$700,000 penalty; the CEO, who received a portion of the unreported compensation, agreed to pay a \$150,000 penalty; a former CFO of the company and its former audit committee chairman each agreed to pay a \$30,000 penalty; and each of the two former CFOs charged with wrongdoing were suspended from practicing as an accountant on behalf of any SEC-regulated entities, with a right to reapply after two or three years.

Click [here](#) to view the SEC's press release and orders against the company and individuals.

NYSE Proposes Rule To Expand Pre-market Notice Period Prior to Disseminating Material News

On August 27, the New York Stock Exchange (NYSE) filed with the SEC a proposed rule change to:

(1) require NYSE-listed companies to notify the NYSE prior to disseminating material news if such dissemination occurs between 7:00 a.m. and 4:00 p.m. (ET), and to advise the NYSE whether a trading halt is appropriate during pre-market hours; and

(2) provide the NYSE with authority to halt trading in circumstances in addition to those already in effect, including when the NYSE believes it is necessary to request certain information from listed companies.

In addition, the NYSE proposed to:

- include advisory text in its Listed Company Manual requesting that listed companies intending to release material news after the close of trading wait until the earlier of the publication of their security's official closing price on the NYSE or 15 minutes after the scheduled closing time on the NYSE; and
- update its Listed Company Manual, which requires companies to release material news by the fastest available means, to include a concise statement that listed companies releasing material news should either (1) include the news in a Form 8-K or other SEC filing or (2) issue the news in a press release to the major news wire services, including Dow Jones, Reuters and Bloomberg.

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934, and Rule 19b-4(f)(6) thereunder.

For more information, see the SEC's release [here](#).

BROKER-DEALER

SEC Proposes Security-based Swap Data Repositories Make Data Available to Regulators

The SEC is proposing amendments to rules related to regulator access to security-based swap data held by security-based swap data repositories. If adopted, the amendments would require security-based swap data repositories (SBSDR) to make certain data available, including counterparty trade and position data, to regulators and other authorities. The proposed amendments regarding the data access requirement is conditioned on each recipient entity agreeing to indemnify the SBSDR and the SEC for any expenses arising from litigation relating to information provided.

Comments are due within 45 days of publication in the *Federal Register*.

To see the proposed amendments, click [here](#).

DERIVATIVES

See "SEC Proposes Security-based Swap Data Repositories Make Data Available to Regulators" in the *Broker/Dealer* section.

See "NFA To Host Audio Conference for SDs and MSPs" in the *CFTC* section.

CFTC

CFTC Requires IBs, CPOs and Certain CTAs To Be NFA Members

The CFTC has adopted a rule, Rule 170.17, requiring all registered introducing brokers (IBs), commodity pool operators (CPOs) and certain commodity trading advisors (CTAs) to become a member of a registered futures association. (National Futures Association (NFA) is currently the only registered futures association.)

With respect to CTAs, the new rule provides that a CTA must become a member of a registered futures association unless it is eligible for the exemption from CTA registration under CFTC Regulation 4.14(a)(9). CFTC Regulation 4.14(a)(9) provides an exemption from CTA registration to persons that do not direct client accounts or provide commodity trading advice based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients.

CFTC Rule 170.17 will be effective 60 days after publication in the *Federal Register*. However, the compliance date has been delayed to December 31 in order to provide each affected registrant time to review and possibly reorganize its business activities to assure compliance with NFA's rules.

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

CFTC Publishes RED List

The CFTC has announced that it has initiated a Registration Deficiency List (RED List), which identifies unregistered foreign entities that the CFTC believes may be illegally soliciting and/or accepting funds from US residents. The RED List is part of the CFTC's SmartCheck campaign, an online service that connects investors to tools that allow them to check the registration, license and disciplinary history of certain financial professionals, among other services.

The RED List is available [here](#).

More information is available [here](#).

NFA To Host Audio Conference for SDs and MSPs

National Futures Association (NFA) will hold an audio conference on Thursday, September 24, at 11:00 a.m. ET to help prepare swap dealers (SDs) and major swap participants (MSPs) for their upcoming examinations. Interested persons should register in advance [here](#).

A recording of the conference will be available on NFA's website beginning September 25, and a transcript of the conference will be available the following week.

BANKING

FFIEC and Member Agencies Propose Call Report Changes

On September 8, three member agencies of the Federal Financial Institutions Examination Council (FFIEC), the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, proposed to eliminate or revise various call report entries to make the reporting process easier for reporting institutions. The proposed changes would delete certain items, raise reporting thresholds and revise certain instructions. The agencies also stated that they have advanced the next scheduled review of call report items from 2017—the statutorily mandated review date—to an earlier date. Surveys of insured institutions will be used to inform the regulatory agencies.

The agencies also are contemplating creating a less-burdensome version of the quarterly call report for certain institutions, planning to conduct a dialogue with certain institutions that have expressed their willingness to host a visit from agency personnel during the third quarter of 2015 and are preparing training sessions for bankers via

teleconferences and webinars to explain upcoming reporting changes. Comments on the proposal are due within 60 days of publication in the *Federal Register*.

For more information, click [here](#).

UK DEVELOPMENTS

FCA Launches New UK Financial Services Register

On September 3, the Financial Conduct Authority (FCA) published a press release in connection with its September 7 launch of a new and updated version of the UK Financial Services Register (the “Register”).

The release states that the aim of the new Register is to make it easier to find information on firms, individuals and other bodies that are, or have been, regulated by the FCA or the Prudential Regulation Authority (PRA).

The Register now has a single search field to help users find a regulated firm, individual or collective investment scheme (i.e., a regulated fund) by looking up its name, reference number or postcode. Users can also now search for certain investment exchanges. Results can be filtered and, for the first time, will show whether the firm is covered by the UK Financial Ombudsman Service, the Financial Services Compensation Scheme or if they are a consumer credit firm with interim authorization (the latter previously were subject to a separate register search function).

The UK registers of mutual societies and regulated covered bonds have not been included in the updated Register, and will continue to be available from their existing register websites.

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

The UK Financial Services Register is available [here](#).

The mutual societies register is available [here](#).

The UK regulated covered bonds register is available [here](#).

FCA Issues Consultation on Implementation of UCITS V and Changes to UK Investment Funds Rules

On September 3, the Financial Conduct Authority (FCA) published a consultation paper covering changes to its handbook of rules for Undertakings for the Collective Investment of Transferable Securities (UCITS) funds and other investment funds necessitated by the UK implementation of the UCITS V Directive (the Consultation Paper).

The Consultation Paper has three sections with proposed rule changes:

- **Part I:** Draft rules and FCA guidance for the transposition of UCITS V into UK regulation. The FCA is required by EU law to transpose UCITS V into UK regulation by March 18, 2016, at the latest. Some of the more significant elements of the new UCITS rules include: (1) UCITS management companies will become subject to compensation rules similar to those applying under the AIFM Directive. The FCA will add a new section to the existing compensation rules in the Handbook for regulated alternative investment fund managers (AIFMs) and other investment firms, SYSC 19E. The FCA’s approach closely follows that used for AIFMs in SYSC 19B. (2) Disclosures that must be provided to UCITS investors (which also is broadly consistent with the AIFM Directive requirement); and (3) depositary requirements (again, principles broadly consistent with the AIFM Directive requirements). The FCA’s consultation on these draft rules closes on November 9 in order for the FCA to finalize the new UCITS rules before the deadline.
- **Part II:** Draft rules and FCA guidance to ensure that the FCA Handbook is aligned with the new Regulation on European Long-Term Investment Funds (ELTIF Regulation). The ELTIF Regulation has direct effect in UK law (and that of all other EU countries), and does not need to be implemented in national law; the ELTIF Regulation applies beginning December 9. The FCA’s deadline for comments on Part II is October 5.

- **Part III:** Draft incidental changes to the FCA Handbook so as to update the FCA’s rules and guidance for authorized (i.e., licensed) investment funds and set forth the FCA’s views on several matters on which it would like market views before consulting on new rules. The deadline for comments on this part is December 7.

The Consultation Paper is available [here](#).

FCA Publishes New Market Watch Focusing on Commodities Traders and Market Abuse

On September 3, the Financial Conduct Authority (FCA) published issue 49 of Market Watch, its newsletter on market conduct and transaction reporting issues. In it, the FCA sets out its findings following a thematic review it conducted into commodities trading. In the review, the FCA reviewed a sample of 12 brokers, interdealer brokers and commodities trading firms and their activities in the oil, energy, metals and soft commodities sectors, and assessed how robust their front office and market abuse controls were.

The FCA’s “key messages” are:

- The effectiveness of the controls, management and governance structures assessed varied widely. The FCA noted that the more positive practices were typically demonstrated by firms with cultures that fully recognized the potential risks from their front office activities.
- Many firms had not embedded the lessons learned from recent market abuse cases (such as LIBOR, forex and gold). In some firms, the FCA found complacency toward the risk of market abuse.
- Most firms had not carried out a risk assessment and could not demonstrate they had adequate monitoring and surveillance across the full range of market abuse risks to which they were exposed. In addition, many firms could not demonstrate effective procedures to identify suspicious transactions and escalate them to the FCA in the form of suspicious transactions reports.
- Although some firms had embedded risk, such as risk analysts and risk systems on the trading desk, few firms demonstrated intraday management information or risk monitoring.

In its final comments in Market Watch 49, the FCA commented that it will continue its supervisory work relating to commodities firms. The FCA noted that with Markets in Financial Instruments Directive (MiFID) II coming into force (January 3, 2017) and its own expanded powers under the Market Abuse Regulation, more commodities trading firms are likely to become subject to FCA regulation and—it should be inferred—both those firms and the existing regulated commodities trading firms should focus on the issues identified by the FCA.

Market Watch 49 is available [here](#).

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