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BROKER-DEALER

CBOE Proposes to Offer Extended Trading Hours for SPX and VIX Options

The Chicago Board Options Exchange (CBOE) has proposed to offer Extended Trading Hours (ETH) on certain index options contracts.

Starting on March 2, CBOE intends to commence ETH session trading in options on the CBOE Volatility Index (VIX). On March 9, CBOE intends to commence ETH session trading in the end-of-month series of S&P 500 Index options as well as S&P 500 Index Weeklys Options. The CBOE's proposed ETH are 2:00–8:15 a.m., Monday through Friday.

In 2010, CBOE Futures Exchange commenced trading in VIX futures during limited ETH. In 2014, ETH for VIX futures expanded to nearly 24 hours per day during the business week.

Click here for the corresponding CBOE Fact Sheet.

CFTC

CFTC Staff to Host Public Roundtable on Recovery and Orderly Wind-Down of DCOs

Commodity Futures Trading Commission staff will host a public roundtable discussion on March 5 on issues related to the recovery and orderly wind-down of derivatives clearing organizations. The roundtable is intended to address haircutting of variation margin gains; the use of auctions, forced allocations and tear-ups to re-establish a matched book after a clearing member default; wind-down; and liquidity risk management.

More information is available here.

CFTC Reopens Comment Period for Position Limits Proposals

The Commodity Futures Trading Commission has re-opened the comment period on (1) its proposed rules establishing position limits on certain exempt and agricultural commodities and (2) its proposed amendments to its aggregation policies with regard to such position limits. The CFTC anticipates that the extended comment period will address questions and comments from the February 26 meeting of the CFTC's Energy and Environmental Markets Advisory Committee. In addition to reopening the comment period, the CFTC updated the numbers of unique persons exceeding the proposed position limit levels to reflect data for the two-year period ending December 31, 2014.

The new comment period extends through March 28. The CFTC's announcement of its re-opening of the comment period is available here; the notice published in the *Federal Register* is available here.

LITIGATION

Delaware Court Grants Petition to Dissolve Joint Ventures

Earlier this month, the Delaware Chancery Court offered further guidance on 8 *Del. C.* § 273, which establishes a mechanism for the dissolution of a joint venture corporation with two 50 percent stockholders. The Chancery Court found that the purpose of Section 273 is to afford relief where the corporation's two equal shareholders are deadlocked and cannot agree upon whether the joint venture should be continued and/or how the corporation's assets should be liquidated. The Chancery Court's discretion to deny a dissolution petition is limited and should be sparingly exercised only upon a showing of bad faith.

The dispute arose from a real estate joint venture jointly owned by the families of Morton Grossman and Bernie Cohen. The limited partnerships that held the joint venture assets were controlled by two Delaware corporations, the stock of which was owned 50/50 by the two families. Over time, the Grossman and Cohen families reached a disagreement with respect to various strategic alternatives, including the extent to which the joint venture assets should be used to create short-term liquidity. A Grossman family member petitioned to dissolve the joint venture under Section 273, and the Cohen family opposed.

The Chancery Court found that the requirements for dissolution under the statute are minimal, and that the court should only exercise its discretion to deny dissolution in the rare case where the petition itself was brought in bad faith, e.g., where there is no genuine disagreement or deadlock between the joint venturers.

The court emphasized that the deadlock or impasse need not exist for any "prolonged period" as the statute does not require "extended suffering." A good faith requirement "does not mandate that parties struggle until they have destroyed their relationship entirely and jeopardized their business."

The Chancery Court granted the petition and agreed to appoint a trustee to oversee the liquidation and/or distribution of the joint venture's assets.

In the Matter of Bermor Inc., C.A. 8401-VCL (Del. Ch. Feb. 9, 2015)

Georgia Complaint Challenges Constitutionality of SEC Administrative Proceedings

A complaint filed in the Northern District of Georgia on February 19 alleges that the Securities and Exchange Commission brings claims in administrative courts that are unconstitutional. The plaintiffs in the case, Gray Financial Group Inc. and its founder and co-CEO, claim that SEC administrative proceedings violate Article II of the United States Constitution because its judges are separated from presidential supervision and removal by more than one layer of "tenure" protection.

The case arose from an SEC investigation into whether Gray Financial violated federal securities laws by offering to Georgia residents a fund-of-funds product that purportedly did not comply with a Georgia state statute. The SEC issued a Wells Notice and then advised Gray Financial that it intended to pursue its claims in an administrative proceeding rather than in federal court. Gray Financial then sought injunctive relief and a declaratory judgment in federal court.

According to the complaint, an SEC Administrative Law Judge may only be removed for "good cause," which must be established by the Merit Systems Protection Board (MSPB). SEC commissioners, who exercise the power of removal, may themselves only be removed from office by the President for "inefficiency, neglect of duty, or malfeasance in office." The MSPB members who effectuate the removal decision can only be removed from office under a similar good cause standard.

Gray Financial alleges that this "attenuated removal scheme" violates Article II, as interpreted by the Supreme Court, because it interferes with the President's obligation to ensure the faithful execution of the laws. The SEC has not yet responded to the complaint.

Gray Financial Group, Inc. v. S.E.C., C.A. No: 1:15-cv-0492-CAP (N.D. Ga. Feb. 19, 2015)

EU DEVELOPMENTS

ESMA and JFSA Conclude a Memorandum of Understanding Regarding CCPs

On January 24, the European Securities and Markets Authority (ESMA) and the Financial Services Agency of Japan (JFSA) finalized a Memorandum of Cooperation (MOC) regarding central counterparties (CCPs). Under Article 25(2)(c) of the European Market Infrastructure Regulation (EMIR), the establishment of an MOC is a precondition for ESMA to recognize CCPs established in Japan that have applied for recognition under EMIR to provide clearing services to clearing members or trading venues established in the European Union. The European Commission previously made a determination, pursuant to Article 25(6) of EMIR, that the legal and supervisory arrangements of Japan for CCPs are equivalent to the requirements for CCPs under EMIR. The MOC is effective as of February 18.

In its statement regarding the MOC, ESMA noted that it was working closely with other third-country regulators on similar cooperation arrangements.

The MOC can be found here.

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