

## BROKER-DEALER

### **FINRA Publishes Notice to Members Encouraging Continued Disclosure of Digital Assets Activities**

On July 18, the Financial Industry Regulatory Authority (FINRA) published Regulatory Notice 19-24 (Notice), which encourages member firms to continue notifying their Regulatory Coordinators about their digital assets activities. The Notice extends the requested notification period originally set forth in Regulatory Notice 18-20 from July 31, 2019 to July 31, 2020. (For additional information regarding the amendment, please refer to the [July 13, 2018 edition of \*Corporate & Financial Weekly Digest\*](#).) Member firms are encouraged to promptly notify their Regulatory Coordinators if its associated persons or affiliates currently engage in, or intend to engage in, any activities related to digital assets. Covered activities include, but are not limited to, purchases, sales and executions of digital assets transactions and the acceptance of cryptocurrencies from customers. FINRA is not requesting this information from firms that have already submitted a continuing membership application addressing their digital asset-related activities or have otherwise provided the covered information, unless a change has occurred.

The Notice is available [here](#).

### **FINRA Announces Final Results of Mutual Fund Waiver Initiative**

On July 17, the Financial Industry Regulatory Authority (FINRA) announced settlement arrangements with 56 member firms that failed to (i) waive mutual fund sales charges for eligible accounts and (ii) reasonably supervise the sale of mutual funds offering sales charge waivers. As part of the settlement, the member firms agreed to pay \$89 million in restitution to nearly 110,000 charitable and retirement accounts that were eligible for, but did not receive, the sales charge waivers.

The announcement is available [here](#).

### **FINRA Publishes Guidance on Public Offering Review Process and Private Placement Filings**

On July 16, the Financial Industry Regulatory Authority (FINRA) published separate guidance related to the public offering review process (Public Offering Guidance) and private placement filings (Private Placement Guidance). FINRA rules impose a number of obligations on member firms participating in the distribution of shares in a public offering. The Public Offering Guidance outlines, among other items, the use of FINRA's Public Offering System, the handling of potential conflicts of interest related to a public offering and the types of public offering reviews available from FINRA's Corporate Financing Department. Similarly, the Private Placement Guidance summarizes FINRA rules related to private placements, including the corresponding filing requirements, and provides guidance with respect to compliance with the rules. Both sets of guidance also include an outline of FINRA's review process and provide links to additional resources.

The Public Offering Guidance is available [here](#).

The Private Placement Guidance is available [here](#).

## **FINRA Proposes Rule Change Relating to Exemptions from Order Audit Trail System Recording and Reporting Requirements**

On July 12, the Financial Industry Regulatory Authority (FINRA) filed with the Securities and Exchange Commission a proposed rule change (Rule Change) to amend FINRA Rule 7470, which provides certain member firms with an exemption from certain order recording and data transmission requirements. The Rule Change extends for three years FINRA's ability to exempt certain member firms from the recording and reporting requirements of the Order Audit Trail System Rules for manual orders received by such members. The Rule Change is intended to extend the exemption period such that it more closely syncs with the December 2021 deadline for all broker-dealers that are FINRA members or members of a national securities exchange to report order information to the Consolidated Audit Trail.

Pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934, as amended, and Rule 19b-4 thereunder, the Rule Change was effective upon filing.

The text of the Rule Change is available [here](#).

## **FINANCIAL MARKETS**

See *"New EU Prospectus Regulation: Updated ESMA Questions and Answers"* in *UK and EU Developments sections*.

## **DIGITAL ASSETS AND VIRTUAL CURRENCIES**

See *"FINRA Publishes Notice to Members Encouraging Continued Disclosure of Digital Assets Activities"* in *Broker-Dealer section*.

## **UK DEVELOPMENTS**

See *"New EU Prospectus Regulation: Updated ESMA Questions and Answers"* in *EU Developments section*.

See *"ESMA Consults on Compliance Function for UK and EU Investment Firms"* in *EU Developments section*.

## **EU DEVELOPMENTS**

### **New EU Prospectus Regulation: Updated ESMA Questions and Answers**

Further to our various updates on the implementation of the Prospectus Regulation (the Regulation) in the UK and the European Union (EU) (which applies across the UK and the European Union from July 21, 2019), on July 12, 2019 the European Securities and Markets Authority (ESMA) published its guidance on the Regulation in the form of significantly revised and updated questions and answers (Q&As).

Three of the new Q&As relate to:

- Grandfathering/ Implementation of the Regulation: ESMA has opined that it is possible to continue an offer of securities in the EU after the end of the validity of a base prospectus approved under the current Prospectus Directive rules. However, the person responsible for the base prospectus should prepare a new set of final terms, which should comply with the relevant provisions of the Regulation and should be made available to the public and filed with the relevant EU regulator.
- Supplements: ESMA has opined that:
  - financial intermediaries (persons who are allowed to distribute securities issued by other entities) must also comply with the Regulation when distributing securities that they issue themselves.
  - all the relevant disclosure obligations apply for supplements issued by financial intermediaries on the day that the supplement is published.

The other 22 new Q&As, originally published in relation to the Prospectus Directive but now updated in relation to the Regulation, relate to public offers, incorporation by reference, determining the Home Member State, financial information, information in supplements, quality of translations of passported prospectuses, responsibility for a prospectus, final terms/base prospectus, as well as derivatives, indices, underlyings, related disclosures and requirements for the inclusion of "extra" information in individual summaries.

ESMA has also announced that it has decided not to transpose 28 Q&As published in relation to the Prospectus Directive in relation to the Regulation — although they will remain valid guidance on prospectuses that were prepared under the Prospectus Directive rules until July 21, 2020, after which they will be deleted.

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

For previous *CFWD* updates on the Regulation, please see:

<https://www.corporatefinancialweeklydigest.com/2018/07/articles/eu-developments/eu-prospectus-regulation-esma-consults-on-minimum-information-content-for-exemption-and-guidelines-on-risk-factors-and-publishes-final-report-on-rtf/>

<https://www.corporatefinancialweeklydigest.com/2018/07/articles/eu-developments/uk-regulations-published-amending-fsma-to-implement-eu-prospectus-regulation/>

<https://www.corporatefinancialweeklydigest.com/2018/04/articles/eu-developments/esma-publishes-final-report-technical-advice-under-the-prospectus-regulation/>

<https://www.corporatefinancialweeklydigest.com/2019/02/articles/eu-developments/esma-publishes-list-of-thresholds-below-which-an-eu-prospectus-is-not-required/>

## **ESMA Consults on Compliance Function for UK and EU Investment Firms**

On July 15, 2019, the European Securities and Markets Authority (ESMA) published a consultation paper (the Paper) setting out draft guidelines on aspects of UK and EU investment firms' compliance functions under MiFID II (the Draft Guidelines).

ESMA describes the compliance function as "a crucial function within firms, responsible for identifying, assessing, monitoring and reporting on the firm's compliance risk."

The Draft Guidelines, which are set forth in Annex III to the Paper, are intended to enhance clarity and foster convergence in the implementation of certain aspects of the new MiFID II compliance function requirements, replacing and building on ESMA's 2012 guidelines, broadening the scope to cover changes to the compliance function introduced by MiFID II (as of January 3, 2018) and broadening the results of supervisory activities conducted by EU and UK regulators on the application of such expanded compliance functions, including:

- specific responsibilities in relation to MiFID II's product governance requirements.
- the compliance function operating as the complaints management function of the firm.
- the compliance function advising the management body of the firm on the firm's remuneration policy.

One of the Draft Guidelines would recommend that, taking into account the nature, scale and complexity of the business of an investment firm and the nature and range of investment services and activities undertaken in the course of that business, even though a firm may have compliance staff working on other control units at the same level, it should consider establishing and maintaining a core team within compliance whose sole area of responsibility is MiFID II compliance.

Another Draft Guideline would require that the compliance officer should demonstrate high professional ethical standards and personal integrity. ESMA states that "given the importance and nature of the role of the compliance function, [...] the compliance officer should be irreproachable in terms of ethics and personal integrity." (This is essentially the standard against which all UK compliance officers will be measured under FCA rules.)

ESMA suggests in the Paper that its content will be of most interest to MiFID II investment firms — as well as EU banks, Undertakings for the Collective Investment in Transferable Securities (UCITS) management companies and Alternative Investment Fund Managers (AIFMs).

The deadline for comments on the Draft Guidelines is October 15, 2019. ESMA intends to publish the final guidelines in the second quarter of 2020.

The Paper is available [here](#).

The 2012 Guidelines are available [here](#).

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

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\* Click [here](#) to access the *Corporate & Financial Weekly Digest* archive.

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