Katten

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BROKER-DEALER

FINRA Warns Investors of Potential Stock Fraud in Wake of Hurricane Dorian

The Financial Industry Regulatory Authority (FINRA) recently released an investor alert cautioning investors of potential stock fraud in the wake of Hurricane Dorian. FINRA noted that financial fraud and potential investment scams regularly follow a natural disaster. Such scams can take the form of unsolicited phone calls, emails and texts about investments related to the natural disaster. FINRA's investor alert highlights certain unsolicited communications about investments that exploit the latest natural disaster of which investors should be mindful, including price targets or predictions of exponential growth, pressure to invest immediately and mention of contracts or affiliations with federal government agencies or well-known companies.

To avoid potential scams, FINRA advises investors to (1) investigate the relevant investment professionals before investing, (2) find the source of the message, (3) find out where the potential stock trades, and (4) read the company's SEC filings.

A full copy of the investor alert is available here.

FINANCIAL MARKETS

See "FCA Announces Changes to AIFMs' Submission of Notification and Material Change Under NPR" in the UK Developments section.

See "House of Commons Library Publishes Briefing on Retained EU Law" in the UK Developments section.

DERIVATIVES

ISDA Publishes Narrowly Tailored Credit Event (NTCE) Protocol

On August 27, the International Swaps and Derivatives Association (ISDA) published a new protocol to give swap market participants an easy way to amend existing credit derivative documentation to incorporate changes that have been made to the ISDA Credit Derivatives Definitions and address the market concern about companies creating credit events for the benefit of particular credit derivative parties. The salient point of the ISDA 2019 NTCE Protocol is the incorporation of the 2019 NTCE Supplement to the 2014 ISDA Credit Definitions into existing swap agreements. The implementation date of amendments agreed via the Protocol is scheduled to be January 13, 2020, in order to coordinate with the adoption of the same changes by central clearing parties that clear credit derivatives. A party that only has cleared credit default swaps does not need to adhere to the Protocol.

The Protocol will be available for adherence on the ISDA Protocol webpage starting September 16.

The text of the ISDA 2019 NTCE Protocol is available here.

The 2019 NTCE Supplement to the 2014 ISDA Credit definitions is available here.

CFTC

CFTC Announces Agenda for Market Risk Advisory Committee Meeting

Commodity Futures Trading Commission Commissioner Rostin Behnam announced the agenda for the Market Risk Advisory Committee (MRAC) meeting to be held by teleconference on September 9 beginning at 3:00 pm (ET). The MRAC will receive a status report from the Interest Rate Benchmark Reform Subcommittee and vote on its recommendation regarding plain-English disclosure materials. In addition, the MRAC will also consider:

- Clearinghouse proposals for transitioning price alignment interest and discounting for USD OTC cleared swaps to the Secured Overnight Financing Rate
- Clearing treatment for physically settled swaptions that may not be discounted using the Secured Overnight Financing Rate.

More information, including public listening information, is available here.

NFA Amends CPO and CTA Performance Reporting and Disclosure Requirements

The National Futures Association (NFA) has filed amendments to NFA Compliance Rule 2-34 and two interpretive notices relating to performance reporting and disclosures by commodity pool operators (CPOs) and commodity trading advisors (CTAs).

More specifically, the amendments provide that, as part of a break-even analysis, a CPO must use a conservative estimate of interest income to offset expenses. In addition, a CPO must base its break-even analysis on both the minimum initial investment amount and the minimum total subscription amount in order to provide investors with the most conservative break-even point.

Separately, the amendments provide that if a CTA manages an account in which the client maintains an amount that exceeds the amount the client has directed the CTA to use as a basis for trading decisions, then the CTA must either receive from or provide to the client a written confirmation that contains a description of the trading program and the nominal size of the client's account. Additionally, the amendments require the required written confirmation (which includes an explanation of how cash additions, cash withdrawals and net performance will affect the nominal account size) to be provided or received from all clients, including qualified eligible participants.

The amendments include other minor clarifications.

Absent additional review by the Commodity Futures Trading Commission, the NFA may establish an effective date for the amendments as early as 10 days after receipt of the submission by the CFTC.

The amendments submission is available here.

NFA Adopts Clarifying Changes to Rules and Interpretive Notices

The National Futures Association (NFA) has filed amendments to its rules and interpretive notices. The purpose of the amendments are primarily (1) to clarify the applicability of various requirements to futures commission merchants, introducing brokers, commodity pool operators and commodity trading advisors (and, in some instances, forex dealers), (2) to expand the scope of certain rules to include all commodity interest activities (not just futures-related activities), (3) to better reflect current technology and business practices, and (4) to implement consistent requirements for the use of hypothetical performance in promotional materials directed exclusively to qualified eligible persons.

Absent additional review by the Commodity Futures Trading Commission, the NFA may establish an effective date for the amendments as early as 10 days after receipt of the submission by the CFTC.

The amendments submission is available here.

UK DEVELOPMENTS

FCA Announces Changes to AIFM Submission of Notification and Material Change Under NPPR

On September 3, the UK Financial Conduct Authority (FCA) updated its webpage on the national private placement regime (NPPR) to announce changes to submission of notification and material change by alternative investment fund managers (AIFMs) under the Alternative Investment Fund Managers Directive (AIFMD). The NPPR allows AIFMs to market AIFs that cannot otherwise be marketed in the EEA under the AIFMD domestic marketing or passporting regimes.

The FCA explains that, on September 9, it will introduce changes to the submission of notifications by AIFMs marketing alternative investment funds (AIFs) under regulations 57, 58 and 59 of the UK Alternative Investment Fund Managers Regulations 2013.

Details of the changes will be published on the webpage, but, in broad terms, they include:

- AIFMs marketing funds under regulations 58, 59 and, for UK AIFMs only, regulation 57, will return to submitting notifications via the FCA's Connect platform.
- Full scope EEA AIFMs marketing AIFs under regulation 57 will be required to submit notifications using new forms.

The updated webpage is available here.

House of Commons Library Publishes Briefing on Retained EU Law

On July 30, the House of Commons Library published a briefing paper on the status of retained EU law after Brexit.

The briefing provides a useful consolidated summary of how the European Union (Withdrawal) Act 2018 will repeal the European Communities Act 1972 while also transposing existing EU law into domestic law.

The briefing 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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