

## CFTC

### **CFTC Announces Upcoming Agricultural Advisory Committee Meeting**

The CFTC's Agricultural Advisory Committee will hold a public meeting on September 22 to address speculative positions limits for agricultural commodities and other agricultural market issues. Interested members of the public may submit written comments in connection with the meeting prior to September 10. The meeting will be webcast live on the CFTC's website, and an audio feed also will be available.

More information on the meeting is available [here](#).

### **NFA Announces Effective Date of Enhanced Retail Forex Requirements**

On September 1, the National Futures Association (NFA) issued a notice to its members announcing the effective date of new requirements for forex dealer members (FDM). As reported in the August 28 edition of the [Corporate and Financial Weekly Digest](#), the CFTC approved amendments to NFA's rules and an accompanying interpretative notice governing FDMs on August 27. The new requirements take effect January 4, 2016.

NFA Notice I-15-21 is available [here](#).

### **NFA Proposes Interpretive Notice on Information Systems Security Programs**

On August 28, the National Futures Association (NFA) proposed the adoption of an interpretive notice that requires every NFA member firm to establish and enforce an information systems security program (ISSP). The proposed interpretive notice is designed to be consistent with prior guidance issued by other financial regulators. Under the proposed interpretive notice, each NFA member firm would be required to:

- adopt and enforce a written ISSP reasonably designed to provide safeguards to protect against security threats or hazards to its technology systems;
- assess and prioritize the risks associated with the use of its information technology systems;
- document and describe in its ISSPs the safeguards deployed in light of the identified and prioritized threats and vulnerabilities;
- create an incident response plan to manage, analyze and mitigate detected security events or incidents;
- monitor and regularly review the effectiveness of its ISSPs and make adjustments as appropriate;
- educate and train appropriate personnel on information security;
- address risks posed by third-party service providers; and
- maintain all records relating to the adoption and implementation of its ISSP.

The proposed interpretive notice also requires each NFA member's ISSP to be reviewed in writing by an executive-level official. If applicable, the NFA member's senior management should periodically provide sufficient information about the ISSP to the its board of directors or similar governing body to enable that body to monitor the member's information security efforts.

NFA's proposed interpretive notice is subject to review and approval by the CFTC before an effective date will be announced.

The proposed interpretive notice is available [here](#).

## EU DEVELOPMENTS

### ESMA Consults on Remaining MiFID II Draft ITS

On August 31, the European Securities and Markets Authority (ESMA) published a consultation paper (the "CP") on the final remaining draft implementing technical standards (ITS) under the Markets in Financial Instruments Directive (MiFID) II and the Markets in Financial Instruments Regulation. In the CP, ESMA is consulting on:

**1. The suspension and removal of financial instruments from trading on a trading venue.** MiFID II empowers a market operator to suspend or remove from trading financial instruments that no longer comply with the rules of an EU-regulated market, unless such a step would be likely to cause significant damage to investors' interests or the orderly functioning of the market. The national EU regulator in the country where the suspension or removal originated has to decide whether one of the three reasons to extend the suspension process (suspected market abuse, a takeover bid or the non-disclosure of inside information about the issuer or financial instrument in breach of the EU Market Abuse Regulation) to other regulated markets, multilateral trading facilities, organized trading facilities or systematic internalisers in its jurisdiction, applies. If the regulator concludes that none of the three reasons apply, the regulator is not required to expand the suspension or removal, and to communicate its decision to ESMA and the competent authorities of the other EU member states.

**2. The notification and provision of information for DRSPs.** MiFID II mandates that the ITS should cover the notification and provision of information by a data reporting services provider (DRSP) applicant when applying to be authorized, and in relation to subsequent changes to its management body. In drafting the ITS, ESMA has given consideration to the already drafted ITS relating to applications to become authorized as an investment firm. In ESMA's view, there are strong similarities between the procedure for applying to be authorized, the information to be provided and the notifications that must be made under the two provisions. ESMA has, therefore, sought to align the two sets of draft ITS to the greatest extent possible.

**3. The weekly aggregated position reports for commodity derivatives, emission allowances and derivatives thereof.** To achieve transparency and support the monitoring of new position limits prescribed by MiFID II, daily and weekly reports are required. For the daily position reports, members and participants of trading venues will be required to report to the trading venue a complete breakdown of their positions in commodity derivatives, emission allowances and derivatives of emission allowances, as well as those of their clients, their clients' clients and so on down to the end user. For the weekly position reports, trading venues will have to publish a report of the aggregate positions in commodity derivatives, emission allowances and derivatives of emission allowances on that trading venue.

ESMA's consultation closes on October 31, and it is anticipated that ESMA will send the final report to the European Commission by January 3, 2016—giving a full year before the ITS come into effect with the rest of MiFID II on January 3, 2017.

The CP is supplementary to ESMA's June 2015 final report on draft ITS and draft regulatory technical standards (RTS) relating to authorization, passporting, registration of third country firms and cooperation between EU regulators. The European Commission's position on the final rules (both ITS and RTS) are anticipated during the next four to six weeks.

The CP is available [here](#).

The form to reply to the Consultation is available [here](#).

ESMA's press release on the CP is available [here](#).

## EMIR: ESCB Reports on CCPs Access to Central Bank Liquidity Facilities

On August 25, the European System of Central Banks (ESCB), in cooperation with the European Commission (EC), provided its contribution to the EC in connection with the EC's obligation to provide an assessment of the need for any measure to facilitate the access of central counterparties (CCP) to central bank liquidity facilities as required under Article 85(a)(1) of Regulation (EU) No. 648/2012 on over-the-counter (OTC) derivatives, CCPs and trade repositories (EMIR).

The ESCB notes that at present, EMIR does not specify any requirements or conditions regarding the provision of central bank liquidity facilities to CCPs, and that currently it is up to each individual central bank to determine which facilities, if any, are offered to CCPs. The report cautions that it believes that members of the ESCB must retain the right to provide access to central bank facilities at their own discretion. In addition, any specific credit facility measures in EMIR must respect the principle of independence of central banks as set forth in Article 130 of the Treaty on the Functioning of the European Union (TFEU) and Article 7 of the Statute of the ESCB or otherwise under national provisions.

The report concludes that the ESCB supports maintaining the current legal framework, and believes that the existing framework provides CCPs with adequate access to central bank facilities.

The ESCB's report can be found [here](#).

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