Katten

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BROKER-DEALER

SEC Announces Formation of Cross-Divisional COVID-19 Market Monitoring Group

On April 24, the Securities and Exchange Commission (SEC) announced the formation of an internal, cross-division COVID-19 Market Monitoring Group (COVID-19 Group). The COVID-19 Group will be a temporary, senior-level group that will assist various divisions and offices within the SEC with (1) developing staff actions and analysis related to COVID-19's effect on markets, issuers and investors (including Main Street investors), and (2) responding to requests for information, analysis and assistance from other regulators and public sector partners.

The COVID-19 Group will also assist and support the COVID-19-related efforts of other federal financial agencies and bodies, including, but not limited to, the President's Working Group on Financial Markets (PWG), the Financial Stability Oversight Council (FSOC) and the Financial Stability Board (FSB).

A copy of the announcement is available here.

FINRA Updates Guidance Regarding COVID-19 Developments

In recent weeks, the Financial Industry Regulatory Authority (FINRA) has offered various forms of relief and published information in response to the latest COVID-19 developments. Most recently, FINRA:

- updated the FAQs Related to Regulatory Relief Due to the Coronavirus Pandemic to address (1) the payment of Gross Income Assessments by funding portal members, and (2) compliance issues related to fixed income mark-up disclosure requirements; and
- provided an update on the remote proctoring of FINRA-administered exams, which will allow candidates to use their personal or firm-provided camera-equipped computer to take qualifications examinations. FINRA currently is conducting a trial of the online testing service.

More information is available on FINRA's landing page for COVID-19.

SEC's Division of Trading and Markets Publishes FAQs Regarding Broker-Dealer Financial Responsibility Rules in Response to COVID-19

On April 22, the Securities and Exchange Commission's (SEC) Division of Trading and Markets (Division) published answers to two Frequently Asked Questions concerning the COVID-19 pandemic, as it relates to the broker-dealer financial responsibility rules.

First, the Division addressed whether broker-dealers will have additional time to transmit customer checks under paragraph (k)(2) of Rule 15c3-3 of the Securities Exchange Act of 1934, as amended (Exchange Act). In recognition that broker-dealers operating under the exemptions in paragraph (k)(2) of Rule 15c3-3 may be unable to access their premises due to the COVID-19 pandemic, and therefore may be delayed in forwarding customer checks during April, May or June, SEC staff will not recommend enforcement action during those months, if broker-dealers facing these challenges take additional time to transmit customer checks. This relief is subject to several conditions being satisfied, including, but not limited to, the affected broker-dealer transmitting customer checks as promptly as is practicable under the current circumstances and taking reasonable steps to notify customers of alternative ways to fund their respective accounts (e.g., sending checks directly to the clearing broker-dealer or funding the account online).

Second, the Division addressed whether broker-dealers will have additional time to conduct the quarterly securities count of physical certificates required by Rule 17a-13 of the Exchange Act. In recognition that some broker-dealers during April, May or June will be delayed in conducting quarterly securities counts as they relate to physical certificates due to the inability of their personnel to gain access to premises, the SEC staff will not recommend enforcement action against a broker-dealer, if such broker-dealer does not count physical securities in a quarterly securities count during said months. This relief is subject to several conditions being satisfied, including, but not limited to, the affected broker-dealer notifying the SEC's Office of Compliance Inspections and Examinations and its Financial Industry Regulatory Authority Risk Monitoring Analyst of the nature of the problem it will have conducting a physical count and providing an estimate of the number and value of physical certificates that cannot be counted.

With respect to both items described above, the SEC staff plans to work with broker-dealers to evaluate whether additional measures may be appropriate in the event the COVID-19 pandemic continues into June.

The FAQs are available here.

CFTC

CFTC and NFA Issue Temporary No-Action Relief for Principal or Associated Person Listings/Registrations

On April 24, at the request of the National Futures Association (NFA), the staff of the Commodity Futures Trading Commission (CFTC) issued a no-action letter providing regulatory relief to principals of registrants and applicants for associated person (AP) registration with respect to submission of fingerprint cards. This relief extends through the earlier of (1) July 23 or (2) a public announcement by NFA indicating that it has resumed processing fingerprints. The relief is subject to certain conditions. In particular, the firm listing the principal or sponsoring the AP must certify to NFA that the firm has completed a background check of the affected individual and that no matters that constitute a disqualification under Sections 8a(2) or 8a(3) of the Commodity Exchange Act were found. In addition, the firm must maintain records documenting the completion and results of the background check. Finally, any affected individuals must submit required fingerprints to NFA within 30 days of NFA's announcement that it has resumed processing them.

NFA has issued parallel relief with respect to its similar fingerprinting requirements.

The CFTC press release, including a link to the no-action letter, is available here. The corresponding NFA notice is available here.

CFTC Commissioner Brian D. Quintenz Announces End of His Term

On April 28, Commissioner Brian D. Quintenz of the Commodity Futures Trading Commission (CFTC) announced that he will not seek re-nomination for another five-year term as a Commissioner. While his statutory term expires in April, he intends to remain in his role until the earlier of (1) October 31 or (2) confirmation of his successor.

Commissioner Quintenz's public statement is available here.

UK DEVELOPMENTS

London Weekly Fireside Chat

Katten is excited to announce a weekly, 15-minute fireside chat series featuring London partners Carolyn Jackson, Nathaniel Lalone and Neil Robson on notable UK and European developments from the prior week's *Corporate & Financial Weekly Digest*. Please join us for our first instalment Tuesday, May 5, at 1:00 p.m. Eastern / 6:00 p.m. London time.

Add to Outlook

EU DEVELOPMENTS

ISDA Letter to ESMA on Mandatory Delegated Reporting under EMIR Refit

On April 27, five industry trade associations, including the International Swaps and Derivatives Association, the Association for Financial Markets in Europe, the Asia Securities Industry and Financial Markets Association, the Global Financial Markets Association and the Securities Industry and Financial Markets Association published a joint letter (the Letter) to the European Securities and Markets Authority (ESMA) regarding the effective date for the commencement of the mandatory delegated reporting obligation for financial counterparties (FCs) under the EMIR Refit Regulation (EMIR Refit) in light of the COVID-19 pandemic. In particular, the Letter requests ESMA to make a statement to the European Union (EU) financial regulators not to prioritize enforcement authority on any FC unable to comply with the June 18 effective date and generally apply their risk-based supervisory powers in the day-to-day enforcement of this requirement in a proportionate matter until November 21.

EMIR Refit requires FC's to be responsible and legally liable for reporting under EMIR for all non-financial counterparties not subject to the clearing obligation (NFC-s). The Letter notes that due to the COVID-19 pandemic, NFC-s are finding that they are unable to provide the data required by the applicable FC to be able to report, and such FCs have been unable to make the required preparations to support taking on this additional reporting obligation.

The Letter notes that were ESMA to take the suggested approach, it would not preclude market participants that have completed preparations and are ready to report from complying with the EMIR Refit mandatory delegated reporting requirement on June 18.

If an NFC has fulfilled its obligations of providing all relevant data to its FC counterparties before June 18, the NFC- should no longer be responsible for reporting its trades. From June 18 onwards, the FCs should assume legal liability and responsibility for reporting over-the-counter (OTC) derivative trades on behalf of the NFC-, even if the FC is not yet in a position to report the NFC- trades.

Additionally, the Letter outlines the major challenges that market participants are facing as a result of the COVID-19 pandemic, including general challenges (such as working from home and illnesses), client outreach and system and delivery development.

The Letter concludes by noting that transparency to regulators should not be undermined by the regulatory flexibility proposed by the Letter.

The Letter is available here.

EC Adopts a New Set of Measures in Response to the COVID-19 Pandemic

On April 28, the European Commission (the Commission) published an interpretative communication on the application of the accounting and prudential frameworks to facilitate European Union (EU) bank lending, support the EU economy and help mitigate the impact of the COVID-19 pandemic (the Communication).

In the Communication, the Commission encourages EU banks and EU financial regulators to make use of the flexibility available in the EU's accounting and prudential rules to support the EU economy in light of COVID-19. For example, EU banks are encouraged to implement the International Financial Reporting Standard 9 transitional arrangements that should have a beneficial impact on their regulatory capital provisioning.

The Communication highlights the role and responsibility of the banking sector in limiting the economic impact of the COVID-19 pandemic and promoting a rapid recovery.

The Communication 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/EU DEVELOPMENTS

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