

BROKER-DEALER

FINRA Releases an Updated Security Futures Risk Disclosure Statement

On August 14, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 20-28 that included an updated Security Futures Risk Disclosure Statement (the “2020 Statement”). The uniform Security Futures Risk Disclosure Statement (the “Statement”) was jointly developed by FINRA, the National Futures Association (NFA) and several other self-regulatory organizations. The Statement is composed of nine sections and discusses the characteristics and risks of standardized security futures contracts traded on regulated US exchanges.

The 2020 Statement updates: (1) the introductory section of the Statement to reflect that exchanges may now list security futures on certain debt securities; (2) Section 2.7 of the Statement to reflect a shift to the S&P 500 as the benchmark against which to assess serious market volatility and a decrease in the threshold percentage declines that trigger a trading halt to 7, 13 and 20 percent; and (3) Section 8.2 of the Statement to reflect the current terms of CFTC Regulation 41.25 and Rule 17.02(b)(2) that increase the default position limits, modify the criteria for setting a higher position limit and position accountability level, and adjust the time during which position limits must be in effect and the time by which firms must submit Form 102 to the CFTC and the exchange on which the reportable position exists.

FINRA also issued a supplement (the “2020 Supplement”) that reflects the disclosure updates described above. The implementation date of the 2020 Statement and 2020 Supplement is September 14. Firms may elect to use the 2020 Statement and 2020 Supplement prior to the implementation date.

The 2020 Statement and 2020 Supplement are available [here](#). The Notice is available [here](#).

FINRA Requests Comment on the Practice of Pennyng in the Corporate Bond Market

On August 17, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 20-29 to request comment on the practice of internalizing customer trades in the corporate bond market after obtaining auction responses, commonly known as “pennyng.” The Securities and Exchange Commission’s Fixed Income Market Structure Advisory Committee (FIMSAC) defined “pennyng” as a practice where a dealer initiates a bid or offer-wanted auction process on behalf of a customer, reviews the auction responses, and then executes the customer order itself at a price that either matches or slightly improves the best-priced auction response. FIMSAC stated that pennyng may appear to benefit a customer but may harm overall auction competitiveness over time.

FINRA reviewed corporate bond auctions conducted by retail firms on electronic trading platforms and found that firms internalized executions at varying rates after initiating auctions, and that these internalized executions offered varying amounts of price improvement. Consistent with a recommendation from FIMSAC and a similar request for comment published by the Municipal Securities Rulemaking Board, FINRA is soliciting comment on when such executions reflect a practice of pennyng, how pennyng impacts market quality and whether further regulatory action would be appropriate.

FINRA encourages all interested parties to comment on the proposal. Comments must be received by October 16. The Notice is available [here](#).

DERIVATIVES

See “*CFTC Approves Amendments to Margin Requirements for SDs and MSPs*” in the *CFTC* section.

CFTC

CFTC Approves Amendments to Margin Requirements for SDs and MSPs

On August 14, the Commodity Futures Trading Commission announced that it has approved two proposals to amend margin requirements for swap dealers (SDs) and major swap participants (MSPs).

The first proposal would revise the method for determining if certain entities are subject to initial margin requirements and the timing for compliance with the initial margin requirements after the end of the phased compliance schedule. This proposal would create better alignment with the Basel Committee on Banking Supervision and the International Organization of Securities Commissions’ margin requirements for non-cleared derivatives.

The second proposal would permit the application of separate minimum transfer amounts for initial and variation margin, as well as a minimum transfer amount of up to \$50,000 for separately managed accounts.

The CFTC press release is available [here](#).

Amendments to Risk Disclosure Statements for Security Futures Contracts Become Effective

On August 17, the National Futures Association (NFA) notified its members that amendments to NFA Compliance Rule 2-30(b) regarding risk disclosure statements for security futures contracts became effective on August 14. The amendment to NFA Compliance Rule 2-30(b) updates and replaces the prior risk disclosure statement and creates a 2020 supplement. The updated security futures risk disclosure statement reflects recent amendments to CFTC Regulation 41.25, which governs position limits and position accountability for security futures contracts.

NFA members and associates will need to provide either the updated statement or the 2020 supplement to all customers that have been approved to trade security futures contracts no later than the time a security futures contract transaction confirmation is delivered to the customer. NFA members and associates will also need to provide the updated statement to all applicable new customers.

NFA Notice I-20-30 is available [here](#).

The updated risk disclosure statement is available [here](#).

The 2020 supplement is available [here](#).

BREXIT/UK DEVELOPMENTS

LIBOR, Brexit and Cryptoassets: Summer Takeaways From Katten’s CFWD Podcasts

Katten’s London affiliate office launched its weekly fireside chat on May 5 and each week has covered a wide range of interesting UK and EU financial services regulatory topics. We have received some fantastic feedback from clients on the podcast sessions and now present three key trends that firms should continue to consider in Q3 and Q4 of 2020:

1. LIBOR — the Financial Conduct Authority’s (FCA) Expectation
2. Brexit — the End of the Transition Period is Near
3. Cryptoassets — Regulation and FCA Registration

[Read “LIBOR, Brexit and Cryptoassets: Summer Takeaways From Katten’s CFWD Podcasts” in its entirety.](#)

SM&CR: Disciplinary Action and Conduct Rules Reporting for Staff at FCA-Regulated Firms

On August 13, the UK's Financial Conduct Authority (FCA) published a new webpage on conduct rules reporting for FCA solo-regulated firms under the Senior Managers and Certification Regime (SM&CR).

The annual reporting obligation under the SM&CR, using the FCA's Form REP0008 (filed online using the FCA's Gabriel portal), requires FCA solo-regulated firms to inform the FCA if disciplinary action has been taken against individuals who are not Senior Managers (i.e., not just certified staff) for breaches of the FCA Conduct Rules.

When filing REP008 via Gabriel, firms should include the information set out below:

1. the individual who has committed the breach;
2. the conduct rules that have been breached; and
3. the disciplinary action taken, which includes issuing a formal written warning, suspension or dismissal of a person, or reduction or recovery of remuneration.

All firms will have to file their REP008 annually, even if there have been no Conduct Rule breaches resulting in disciplinary action (such firms would file a 'nil return'). Firms that fail to submit REP008 by the reporting deadline will be charged a late return fee of £250.

The webpage is available [here](#).

BREXIT/EU DEVELOPMENTS

ESMA Publishes Letter to the European Commission on the AIFMD Review

On August 19, the European Securities and Markets Authority (ESMA) published a letter it sent to the European Commission on its proposed areas of recommendation for the upcoming review of the Alternative Investment Fund Managers Directive (AIFMD).

Since AIFMD's implementation in 2011 and as a result of the COVID-19 pandemic, ESMA and EU financial regulators have identified areas of improvement to AIFMD. The review provides an opportunity for their recommendations to be enacted.

The key changes proposed by ESMA in the letter include:

1. harmonizing the AIFMD and the Undertakings for the Collective Investment in Transferable Securities (UCITS) regimes (including improving Annex IV reporting and aligning UCITS regulatory reporting with it);
2. increasing digitalized communication;
3. making additional liquidity management tools available to all AIFMs in all EU member states;
4. amending leverage calculation methodologies;
5. extending AIFMD supervision to sub-threshold alternative investment fund managers ((AIFMs), known as 'small AIFMs'); and
6. recommending significant changes in AIFMD reporting regime and data use (including requiring all AIFMs and the funds that they manage to have their own Legal Entity Identifier (LEI, ISO 17442), and incorporating environmental, social and governance (ESG) metrics into mandatory reporting).

The letter is available [here](#).

EBA Publishes Statement on the European Commission's AML and CTF Action Plan

On August 19, the European Banking Authority (EBA) published its response to the European Commission's action plan on preventing anti-money laundering (AML) and counter-terrorist financing (CTF) (the Response).

The EBA's key recommendations set out in the Response are:

- harmonization of the EU's legal framework to tackle the potential gaps created by diverse member state approaches when adopting EU AML and CTF law into national law — by issuing a new pan-European Regulation, which would replace and repeal the various EU AML Directives (the EU's 5th Money Laundering Directive went into effect on January 10);
- collaboration between AML and CTF financial regulators and an EU AML and CTF supervisor to expand the knowledge and experience of the financial regulators to promote consistent outcomes throughout the EU; and
- leverage the EU's existing AML and CTF framework in addition to the EBA's policy, data and information technology alongside its EU and international supervisory cooperation networks.

The European Commission originally published its action plan on May 7. While the new Regulation would take effect long after the UK has formally left the EU, it is anticipated that the UK will also implement similar changes into UK law post-Brexit, as historically the UK has been tough on AML and the UK Government's rhetoric on economic crime is such that it is expected that the UK will continue this approach.

The Response 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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FINANCIAL MARKETS AND FUNDS

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

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