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BROKER-DEALER

FINRA Adopts Amendments on Resumption of Trading

The Financial Industry Regulatory Authority has adopted amendments to clarify the operation of the Regulation NMS Plan to Address Extraordinary Volatility following a trading pause or regulatory halt. FINRA rules prohibit the execution of transactions in national market system (NMS) securities during a trading pause.

FINRA has amended its rules to clarify that, following a trading pause or regulatory halt, a member firm may resume off-exchange trading in an NMS security if trading has commenced on the primary listing exchange (or on another exchange following a 10-minute pause) and either (1) the member firm has received the price bands from the processor; or (2) the member firm has calculated an upper price band and lower price band consistent with the methodology set forth in FINRA rules, and the member firm verifies that the transaction is within the ranges provided for in FINRA rules.

FINRA Notice 16-26 is available [here](#).

DERIVATIVES

See “FCA Publishes Second Consultation on MiFID II Implementation” in the UK/Brexit Developments section.

UK/BREXIT DEVELOPMENTS

FCA Publishes Second Consultation on MiFID II Implementation

On July 29, the UK Financial Conduct Authority (FCA) published a consultation paper (Consultation) on the UK implementation of the amended and restated Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR). The Consultation sets out the FCA's proposed changes to the FCA Handbook to implement MiFID II and MiFIR provisions and covers the following topics:

- **Commodity Derivatives and Positions.** The FCA has proposed to add a new section to the FCA Handbook covering MiFID II obligations in relation to position limits, position management and position reporting. The FCA plans to insert this new section into the existing Market Conduct sourcebook.
- **Supervision.** The FCA has proposed changes in relation to breach notifications, transitional provisions for transaction reporting with the repeal of the MiFID implementing regulation, and changes in relation to passporting notifications and forms (among others). The proposed changes highlight that all transaction reporting obligations (including requirements to notify and remedy breaches discovered after January 2018) remain in place until satisfied.
- **Prudential Standards.** The FCA has proposed to update current prudential classifications in the FCA Handbook to account for investment firms operating organized trading facilities (a new type of trading venue introduced by MiFID II). The FCA also has proposed to remove references to “locals” from Chapter 3 of the Interim Prudential sourcebook for Investment Businesses (IPRU - INV), to reflect that the locals exemption

contained in Article 2.1(l) of the existing Markets in Financial Instruments Directive (MiFID) has been deleted from MiFID II.

- **Senior Management Arrangements, Systems and Controls.** The FCA has proposed changes to transpose MiFID II provisions covering management bodies, conflicts of interest and organizational requirements. The FCA also has noted how these changes will impact common platform firms, firms under the optional exemption in Article 3 of MiFID (Article 3 Firms) and also UK branches of non-EU firms.
- **Remuneration Requirements for Sales Staff.** The FCA has proposed to insert a new section into the Systems and Controls sourcebook (SYSC) and to apply MiFID II remuneration requirements for sales staff to common platform firms, Article 3 Firms, and to UK branches of non-EU firms (with respect to activities from a UK establishment).
- **Whistleblowing.** The FCA proposes to insert a new whistleblowing chapter into the SYSC, to set out UK-specific, MiFID II and other EU whistleblowing requirements (including those under the Market Abuse Regulation, Capital Requirements Directive IV and Units in Collective Investment Undertakings V) all in one place.

Consequential changes to the FCA's Client Assets sourcebook, complaint handling rules and the Fees Manual also are covered by the Consultation.

The Consultation follows an initial consultation paper published by the FCA in December 2015. The FCA plans to publish a third consultation paper covering changes to the Conduct of Business Sourcebook, product governance and the FCA Perimeter Guidance Manual later in 2016.

The FCA notes in the Consultation that it expects to publish a consolidated policy statement on all MiFID II implementation changes at the beginning of 2017.

For further information on the FCA's initial consultation on the implementation of MiFID II published in December 2015, see the *Corporate & Financial Weekly Digest* edition of [December 18, 2015](#).

Responses to the Consultation must be submitted to the FCA by October 28.

A copy of the Consultation can be found [here](#) and the FCA's accompanying press release can be found [here](#).

EU DEVELOPMENTS

AFME Publishes Model Clauses for Contractual Recognition of Bail-In Under the EU BRRD

On August 1, the Association for Financial Markets in Europe (AFME) published model clauses (Model Clauses) in relation to contractual "bail-in" requirements contained in the EU Bank Recovery and Resolution Directive (BRRD). The BRRD requires certain parties to include "bail-in" clauses in contracts that create eligible liabilities and are governed by laws outside of the European Union.

The bail-in clauses effectively require creditors to: (1) recognize that the liability under the contract may be subject to write-down and conversion powers; and (2) agree to be bound by any reduction of the principal or outstanding amount due, or any conversion or cancellation instigated by an EU resolution authority, which is designated under the BRRD by each EU member state and may be a national central bank, competent ministry or other public administrative authority.

In response to the BRRD, AFME developed the Model Clauses to assist industry compliance. The Model Clauses cover entities organized in the United Kingdom, France, Italy, Belgium and Germany, respectively.

AFME's Model Clauses can be found [here](#) and the accompanying press release can be found [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/BREXIT DEVELOPMENTS

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