Katten

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BROKER-DEALER

FINRA Proposes Rule Change to Temporarily Amend Certain Timing, Method of Service and Other Procedural Requirements in FINRA Rules

On May 8, the Financial Industry Regulatory Authority (FINRA) filed with the Securities and Exchange Commission proposed amendments to various FINRA Rules to provide FINRA with temporary relief from certain timing, method of service and other procedural requirements during the period in which FINRA's operations are impacted by the COVID-19 outbreak in order to protect the health and safety of its employees. Such amendments, among other things, allow FINRA to serve certain documents electronically and provide extensions to FINRA staff, respondents and other parties in connection with certain adjudicatory and review processes.

The proposed rule change is available here.

DERIVATIVES

See "CFTC Staff Issues Advisory Addressing Current Market Conditions" and "NFA to Host Webinar on Regulatory Oversight in a Virtual Environment" in the CFTC section.

ISDA Launches Benchmark Reform Information Source

The International Swaps and Derivatives Association, Inc. (ISDA) has launched a new webpage containing information about interest rate benchmark reform and the transition away from the use of interbank offered rates (IBORs, including LIBOR) as floating rates in swap transactions. The page and subsequent materials are available to everyone, not just ISDA members.

The page has seven sections:

1. Background
2. Benchmark Fallbacks/Consultations
3. Bloomberg: Fallback Spread Vendor
4. Other Related ISDA Benchmark Initiatives
5. Relevant Research/Reading Material
6. Press Releases/Latest News/Speeches/Presentations
7. Market Education Calls/Webinars/Conferences

The ISDA webpage on benchmark reform is available here.

CFTC

CFTC Staff Issues Advisory Addressing Current Market Conditions

The Commodity Futures Trading Commission Divisions of Market Oversight (DMO), Swap Dealer and Intermediary Oversight (DSIO), and Clearing and Risk (DCR) (together, the Divisions) issued CFTC Letter 20-17 to remind Designated Contract Markets (DCMs), Futures Commission Merchants (FCMs) and Derivatives Clearing Organizations (DCOs) of their obligations to prepare for extreme market volatility, low liquidity and possibly negative pricing for certain contracts. The Divisions issued the advisory in light of unusually high volatility and negative pricing experienced in the May 2020 West Texas Intermediate (WTI), Light Sweet Crude Oil Futures contract on April 20 (the penultimate day of trading and expiration of the contract), although the guidance also applies to trading in other commodities.

To prevent market disruption, DCMs are required to have the capacity to prevent manipulation, price distortion and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures. DCMs are also required to adopt position limits or position accountability levels for speculators for each contract on the board of trade. Additionally, DCMs are required to maintain rules that provide for the exercise of emergency authority under appropriate circumstances, such as the authority to liquidate or transfer open positions, suspend or restrict trading, and impose special margin requirements.

FCMs are encouraged to assess the effectiveness of their risk management programs, including the risk management requirements under CFTC Rules 1.11 and 1.73, and to make any revisions that are necessary to help ensure that risks are appropriately addressed and customer funds are properly safeguarded. Further, FCMs should consider reminding their customers that, as provided in the risk disclosure statement required under CFTC Rule 1.55, they may incur losses beyond the amounts deposited with the FCM and that this may occur in the event of negative contract prices.

Finally, DCOs are required to test for the adequacy of their initial margin requirements on a daily basis. DCOs also should prepare for the potential that certain contracts may experience significant price volatility, including negative pricing.

A more comprehensive summary of the obligations of DCMs, FCMs and DCOs is available in a recent Katten advisory, available here. CFTC Letter 20-17 is available here.

NFA Issues Warning Regarding Phishing Emails

On May 13, National Futures Association (NFA) issued a Notice to Members addressing the recent increase in fraudulent phishing emails, including emails purporting to be from financial institutions or their employees. These urgent emails often include an infected attachment or link, a request for confidential information, or a link to a fraudulent website. With any email, NFA cautions members to verify the sender before responding and to ensure the validity of links or attachments before clicking on them.

Although NFA is not aware of any NFA-related phishing attempts, NFA confirmed that all legitimate NFA emails will come from an address ending in @nfa.futures.org or @nfa-swaps-proficiency-requirements.moonami.com in the case of NFA's Swaps Proficiency Requirements.

The NFA notice is available here.

NFA to Host Webinar on Regulatory Oversight in a Virtual Environment

To address the latest COVID-19 developments and the impact on the derivatives industry, National Futures Association (NFA) is hosting a webinar focused on NFA's current operations, regulatory approach and relief issued. The webinar is scheduled for May 27, 2020 at 9:30 a.m. CT.

The webinar is free, but registration is required. The webinar's registration page is available here.

UK DEVELOPMENTS

London Weekly Fireside Chat

Katten is continuing our weekly, 15-minute fireside chat series featuring London partners Carolyn Jackson, Nathaniel Lalone and Neil Robson. Next week's discussion will focus on the UK's brand-new insolvency rules, which will be of particular interest to investment firms and proprietary traders. Please join us on Tuesday, May 19 at 1:00 p.m. Eastern / 6:00 p.m. London time.

Add to Calendar

The recording from the May 12 chat is available here.

BOE, FCA and PRA Update on LIBOR

On May 13, the UK's Financial Conduct Authority (FCA) and the UK's Prudential Regulation Authority (PRA) announced that they will resume full supervisory engagement with dual regulated firms on their London Interbank Offered Rate (LIBOR) transition progress from June 1, 2020 (the Announcement). Such engagement will include data reporting at the end of Q2 in light of the PRA and FCA suspended transition data reporting at the end of Q1 for dual regulated firms and the Banks of England's (BoE) Financial Stability Report on May 7, 2020 regarding the impact of COVID-19 pandemic.

On May 7, the BoE published a market notice on its risk management approach to collateral referencing LIBOR for use in the Sterling Monetary Framework (the Market Notice). In the Market Notice, the BoE discussed the application of a haircut add-on to LIBOR-linked collateral and changes to the eligibility of LIBOR-linked collateral.

The Announcement is available here.

The Market Notice is available here.

EU DEVELOPMENTS

AML: European Commission Adopts a New Delegated Regulation in Relation to the Fourth Money Laundering Directive

On May 7, the European Commission (the Commission) adopted a new Delegated Regulation to amend the list of high-risk third countries with strategic anti-money laundering (AML) and counter-terrorist financing (CTF) deficiencies under the Fourth Money Laundering Directive (the Delegated Regulation).

The Delegated Regulation will:

1. add third countries that have been identified as having strategic AML and CTF deficiencies to the high-risk list, being: the Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia, Myanmar/Burma, Nicaragua, Panama and Zimbabwe; and
2. remove third countries that no longer present strategic AML and CTF deficiencies from the high-risk list, being: Bosnia-Herzegovina, Ethiopia, Guyana, Lao People's Democratic Republic, Sri Lanka and Tunisia.

The Delegated Regulation requires adoption by the EU Council and EU Parliament before it goes into effect following publication in the *Official Journal of the EU*.

The Delegated Regulation is available here.

The Commission's accompanying press release to the Delegated Regulation is available here.

ICMA Publishes a Report on Definitions for Sustainable Finance

On May 11, the International Capital Market Association's (ICMA) Sustainable Finance Committee published a report setting out its proposed high-level definitions for the most frequently used terminology in the sustainable finance sector (the Report).

The ICMA aims to ensure that all participants and stakeholders use common and transparent vocabulary when discussing sustainable finance. The Report defines key terms, such as climate finance, impact finance, green finance and social finance.

For more information on initiatives around the classification of sustainable finance, please see the Taxonomy Regulation article in the January 10 edition of *Corporate & Financial Weekly Digest*, and the article on the House of Commons EU Scrutiny Committee's letter to HM Treasury regarding the application of the taxonomy regime in the UK in the May 8 edition of *Corporate & Financial Weekly Digest*.

The Report is available here.

For additional coverage on financial and regulatory news, visit *Bridging the Week*, authored by Katten's Gary DeWaal.

For more information, contact:

FINANCIAL SERVICES

Henry Bregstein	+1.212.940.6615	henry.bregstein@katten.com
Wendy E. Cohen	+1.212.940.3846	wendy.cohen@katten.com
Guy C. Dempsey Jr.	+1.212.940.8593	guy.dempsey@katten.com
Gary DeWaal	+1.212.940.6558	gary.dewaal@katten.com
Kevin M. Foley	+1.312.902.5372	kevin.foley@katten.com
Mark D. Goldstein	+1.212.940.8507	mark.goldstein@katten.com
Jack P. Governale	+1.212.940.8525	jack.governale@katten.com
Christian B. Hennion	+1.312.902.5521	christian.hennion@katten.com
Carolyn H. Jackson	+44.20.7776.7625	carolyn.jackson@katten.co.uk
Susan Light	+1.212.940.8599	susan.light@katten.com
Richard D. Marshall	+1.212.94.8765	richard.marshall@katten.com
Fred M. Santo	+1.212.940.8720	fred.santo@katten.com
Christopher T. Shannon	+1.312.902.5322	chris.shannon@katten.com
Robert Weiss	+1.212.940.8584	robert.weiss@katten.com
Lance A. Zinman	+1.312.902.5212	lance.zinman@katten.com
Krassimira Zourkova	+1.312.902.5334	krassimira.zourkova@katten.com

UK/EU DEVELOPMENTS

Carolyn H. Jackson	+44.20.7776.7625	carolyn.jackson@katten.co.uk
Nathaniel Lalone	+44.20.7776.7629	nathaniel.lalone@katten.co.uk
Neil Robson	+44.20.7776.7666	neil.robson@katten.co.uk

* Click here to access the *Corporate & Financial Weekly Digest* archive.