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DUE TO THE THANKSGIVING HOLIDAY, *CORPORATE & FINANCIAL WEEKLY DIGEST* WILL NOT BE PUBLISHED ON NOVEMBER 23. THE NEXT ISSUE WILL BE DISTRIBUTED ON NOVEMBER 30.

BROKER-DEALER

SEC Approves New Supplement to Options Disclosure Document

On November 9, the Securities and Exchange Commission approved a new supplement (Supplement) to the Characteristics & Risks of Standardized Options, also known as the options disclosure document (ODD), published by the Options Clearing Corporation (OCC). The ODD provides general disclosures regarding the characteristics and risks of exchange traded options. Generally, broker-dealers must provide a customer with a copy of the ODD before accepting options orders from that customer.

Among other changes, the Supplement amends the ODD by (1) including additional disclosures regarding implied volatility index options to accommodate the listing of certain options (e.g., options listed on the Nations VolDex Index and the SPIKES Index); (2) designating the OCC, rather than an adjustment panel of the Securities Committee, as responsible for making adjustments to certain terms of options contracts in the event certain events occur (e.g., certain dividend distributions); and (3) changing the regular exercise settlement date for physical delivery stock options from the third business day following exercise (T+3) to the second business day following exercise (T+2).

The Supplement is intended to be read in conjunction with the ODD and amends and restates the April 2015 supplement to the ODD in its entirety.

The SEC order approving the Supplement is available here.

The Supplement is available here.

SEC Amends Rules to Increase Order Handling Disclosure

On November 2, the Securities and Exchange Commission adopted amendments to Rule 606 of Regulation NMS in order to require broker-dealers to provide certain individualized disclosures to customers with respect to the firm's handling and execution of orders. This disclosure would only be required upon the request of a customer in connection with certain orders that grant discretion to the firm with respect to the price and time of execution.

The SEC also adopted amendments to the order routing disclosures that broker-dealers are required to make public on a quarterly basis. The amendments increase certain targeted disclosure requirements.

More information is available here.

DIGITAL ASSETS AND VIRTUAL CURRENCIES

See "European Commission Publishes Statement on Regulating Cryptoassets and ICOs" in the EU Developments section.

FSB Publishes Final Version of Cyber Lexicon

On November 12, the Financial Stability Board (FSB) published the final version of its cyber lexicon and an accompanying press release.

The FSB's cyber lexicon is a set of approximately 50 core terms related to cybersecurity and cyber resilience in the financial sector, but is not intended to be a comprehensive lexicon of all cybersecurity and cyber resilience-related terms. Its purpose is to support the work of the FSB, regulators and financial markets participants in the following areas by:

1. establishing a cross-sector understanding of relevant terminology relating to cybersecurity and cyber resilience;
2. aiding in the efforts to assess and monitor the financial stability of cyber-risk scenarios;
3. enhancing information shared;
4. assisting efforts of the FSB and/or standard-setting bodies to provide guidance on cybersecurity and cyber resilience, including identifying effective practices.

The cyber lexicon will be used to support work on a recently announced FSB project to develop effective practices relating to financial institutions' responses to and recovery from cyber incidents. A progress report on the project will be published by mid-2019.

The FSB will deliver the cyber lexicon at the upcoming G20 Leaders' Summit in Buenos Aires on November 30 and December 1.

The FSB's cyber lexicon is available here.

The FSB's press release is available here.

BREXIT/UK DEVELOPMENTS

UK and EU Publish Draft Brexit Withdrawal Agreement

On November 14, a technical agreement was reached between the negotiators of the UK and the EU in relation to the terms of the withdrawal of the UK from the EU (the Withdrawal Agreement). Published alongside the Withdrawal Agreement was a non-binding Political Declaration, providing an overview of the intended future relationship between the UK and EU.

Withdrawal Agreement

The draft Withdrawal Agreement itself spans 585 pages and focuses on the transition period of Brexit, following March 29, 2019 (Exit Day) and ending December 31 2020, with an option for the transition period to be extended once more, up to an as yet unspecified, to be agreed, future date. The transition period is designed to allow for governments, businesses and citizens on both sides to prepare for the final withdrawal of the UK and allow time for the negotiation of the future relationship between the two.

During the transition period, the draft Withdrawal Agreement provides that EU law will continue to apply in the UK, unless stated otherwise. As UK-EU financial services are not specifically addressed, EU law will continue to apply during the transition period, allowing both EU and UK firms to, for example, continue to use passporting rights into and out of the UK. Financial services will then be subject to bespoke UK- and EU-specific legislative solutions at the end of the transition period or, in the event of a no-deal Brexit, following Exit Day.

Political Declaration

Some of the highlights from the Political Declaration include:

- a free trade area and deep co-operation on goods, with zero tariffs and quotas;

- commitments by both parties to preserve financial stability, market integrity, investor protection and fair competition, while respecting the parties' regulatory and decision-making autonomy, and their ability to take equivalence decisions in their own interest;
- both sides working to complete equivalence assessments as soon as possible after the UK's withdrawal, with the aim of completing equivalence assessments by June 2020; and
- the completion of an adequacy assessment by the EU in relation to the UK's regime for personal data and the adoption of related decisions by the end of 2020.

Next Steps

Withdrawal Agreement approval requires political approval by the EU 27 Member States (scheduled to take place at an emergency EU summit on November 25), a vote in the UK House of Commons (expected to take place in early December) and votes by the European Parliament and European Council.

If the Withdrawal Agreement fails to pass any of the above steps before Exit Day, no-deal Brexit contingency plans are currently being put into place (for examples of some of the efforts taking place to plan for a no-deal Brexit, see the August 24 and November 9 editions of *Corporate & Financial Weekly Digest*).

The Withdrawal Agreement is available here.

The Political Declaration is available here.

EU DEVELOPMENTS

ESMA Updates Q&As Relating to the Market Abuse Regulation

On November 12, the European Securities and Markets Authority (ESMA) published version 13 of its questions and answers document (Q&As) on the Market Abuse Regulation (MAR).

The Q&As now include a new question, 7.10, relating to the scope of the trading restrictions for persons discharging managerial responsibilities (PDMRs) during a closed period under MAR. ESMA clarifies that the prohibition in MAR does not encompass transactions of the issuer relating to its own financial instruments, even if the PDMRs themselves are making the decision or putting a previous decision into practice. When a PDMR acting in its capacity as a director or employee of the issuer, such actions are not PDMR transactions for a third-party account, but are instead transactions of the issuer itself, therefore the prohibition does not apply.

The Q&As, however, point out that any transaction carried out by the issuer during a closed period should be considered carefully, as the issuer remains subject to the prohibition under MAR of insider trading. Therefore, if the issuer is in possession of inside information relating to its own financial instruments, the issuer will be prevented from trading on them unless it had established, implemented and maintained the internal amendments and procedures identified in MAR.

Version 13 of ESMA's Q&As on MAR is available here.

European Commission Publishes Statement on Regulating Cryptoassets and ICOs

On November 13, the European Commission (EC) published a statement by Vice-President Valdis Dombrovskis on the regulation of cryptoassets and initial coin offerings (ICOs), which he presented at the European Parliament Plenary debate in Strasbourg.

Key takeaways include:

1. the EC considers that cryptoassets cannot be separated from the underlying blockchain technology as blockchains are chains of cryptoasset transactions. Pursuing the opportunities of blockchain implies that the EC takes an interest in cryptoassets, but also addresses risks they may present;
2. the EC subscribes to the Financial Stability Board's (FSB's) assessment that cryptoassets do not currently pose a financial stability risk, but this may change if the market grows quickly;
3. the market remains volatile and presents significant risks to investor protection and market integrity. Warnings to investors may therefore be insufficient. "Rules of the road" are necessary to protect investors and increase market integrity, but also to provide legal clarity and certainty for a legitimate cryptoasset ecosystem;
4. the EC has already expanded the scope of EU anti-money laundering legislation to cryptoasset exchanges and wallet providers through the Fifth Money Laundering Directive (see the February 12, 2018 edition of *Corporate & Financial Weekly Digest*).

The key question for financial regulators is whether cryptoassets are financial instruments and, therefore, covered by financial regulation. There also is the question of whether financial regulation is suitable and addresses the risks of cryptoassets, while supporting and enabling the opportunities they bring to the market. Whether the current EU financial regulatory framework applies to cryptoassets will depend on the specific characteristics of each cryptoasset. Where there are cryptoassets that do not meet the definition of a financial instrument under EU or national law, the EC will assess a possible way forward.

The EC and the European Supervisory Authorities (ESAs) are assessing whether cryptoassets and ICOs are covered by existing financial regulation and definitions of financial instrument. The ESAs are expected to present their conclusions by the end of 2018.

The statement is available here.

ESMA Updates Q&As Relating to Transparency and Market Structures

On November 14, the European Securities and Markets Authority (ESMA) published the following updated questions and answers document (Q&As):

1. an updated version of the Q&As on transparency topics under the revised Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR). ESMA has added two points to Q&A 7 and modified Q&A 10 in section 2 of the Q&As (General Q&As on transparency topics), and added a new Q&A 11 to section 7 (the systematic internalizer regime); and
2. an updated version of the Q&As on market structures topics under MiFID II and MiFIR. ESMA has added a new Q&A 29 to section 3 (direct electronic access and algorithmic trading).

The updated Q&As on transparency topics are available here.

The updated Q&As on market structures topics are available here.

ESMA Updates Q&As Relating to Short-Selling Regulation

On November 14, the European Securities and Markets Authority (ESMA) published its updated questions and answers document (Q&As) on the implementation of the Short-Selling Regulation (SSR).

ESMA has added a new Q&A, 4.10, which clarifies that as a result of the revised Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR), Commission Delegated Regulation (EU) 2017/590 should be followed for the reporting of transactions to competent authorities. Previously, identification of the relevant competent authority was made under Commission Implementing Regulation 1287//2006. Consequently, the relevant competent authority for SSR purposes coincides with the national competent authority of the most liquid market in terms of liquidity for transaction reporting purposes, as published by ESMA under the Financial Instrument Reference Data section of its website.

The purpose of the Q&As is to promote common, uniform and supervisory approaches and practices in the application of the SSR.

The updated Q&As on the SSR are available here.

ESMA Publishes Standards and Guidance for Securitization Repositories Under the Securitization Regulation

On November 13, the European Securities and Markets Authority (ESMA) published a number of documents relating to the implementation of the EU Securitization Regulation, supporting the new European framework for securitizations:

- a final report containing draft regulatory and implementing technical standards (RTS and ITS) on securitization repository (SR) requirements, operational standards and access conditions under the Securitization Regulation. The RTS and ITS concern the information and templates to be provided as part of an application by a firm to register as an SR with ESMA;
- a final report containing technical advice to the European Commission on fees for SRs under the Securitization Regulation;
- guidance on ESMA's arrangements for being notified of a securitization's simple, transparent and standardized (STS) status consisting of a set of reporting instructions and an interim STS notification template, pending the development by ESMA of its STS Register in the coming months; and
- a statement aiming to provide additional information to market participants on ESMA's responsibilities under the Securitization Regulation.

ESMA has submitted the RTS, ITS and technical advice to the European Commission for endorsement.

A press release, with links to each of the documents, is available here.

ESMA Publishes Updated Supervisory Briefing on MiFID II Suitability Rules

On November 13, the European Securities and Markets Authority (ESMA) published an updated version of its supervisory briefing on the suitability requirements of the revised Markets in Financial Instruments Directive (MiFID II).

This briefing introduces European supervisors to MiFID II suitability rules, which require investment firms providing investment advice or portfolio management services to provide suitable personal recommendations to their clients or make suitable investment decisions on behalf of their clients. ESMA states that the briefing also is a useful starting point when deciding on areas of supervisory focus. The briefing summarizes the key elements of the rules and explains the associated objectives, outcomes and indicative questions that supervisors could ask a firm when assessing their approach applying MiFID II rules.

This briefing covers topics such as determining situations where the suitability assessment is required, providing information to clients about the purpose of the suitability assessment, obtaining information from clients and suitability reports.

The briefing takes into account ESMA's guidelines on certain aspects of the MiFID II suitability requirements, which were published in May 2018 (for further information, please see the June 1 edition of *Corporate & Financial Weekly Digest*).

The guidelines go into effect on March 7, 2019. As of this date, ESMA's previous 2012 supervisory briefing relating to suitability will be retired.

The briefing 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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BREXIT/UK/EU DEVELOPMENTS

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