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SEC/CORPORATE

NASDAQ Launches Marketplace for Private Companies

On March 5, NASDAQ announced the launch of its new capital marketplace for private companies, NASDAQ Private Market. Qualifying companies will be able to use NASDAQ Private Market's platform to raise capital and control secondary transactions, similar to secondary market platforms offered by other companies. To qualify as a member company, a private company must meet minimum standards for reporting and disclosure and must: (1) have received at least $30 million in funding in the last two years and have an enterprise value of at least $50 million; (2) have had each of total assets and annual revenue of at least $50 million in the latest fiscal year, or in two of the last three fiscal years; (3) have an annual net income of at least $750,000 in the latest fiscal year, or in two of the last three fiscal years; (4) have $5 million in shareholders' equity and two years of operating history; *or* (5) be backed by a recognized financial investor or investors with a "track record of successful venture investments."

To view NASDAQ's press release, click here.

To access the NASDAQ Private Market website, click here.

SEC Proposes Rules to Enhance Oversight of Clearing Agencies

On March 12, the Securities and Exchange Commission voted to propose new rules that would enhance the oversight of registered clearing agencies that: (1) have been designated as systemically important by the Financial Stability Oversight Council and for which the SEC is the supervisory agency pursuant to the Clearing Supervision Act; (2) provide central counterparty services for security-based swaps or are involved in activities the SEC determines to have a more complex risk profile, where in either case the Commodity Futures Trading Commission is not the supervisory agency for such clearing agency (as defined in Section 803(8) of the Clearing Supervision Act); or (3) are otherwise determined to be covered clearing agencies by the SEC (Covered Clearing Agencies). These proposed rules would establish more robust requirements for Covered Clearing Agencies and would apply the existing rules for all other registered clearing agencies. Entities operating pursuant to an exemption from registration will not be subject to the proposed rules.

Under the proposed rules, Covered Clearing Agencies would be required to establish, implement, maintain and enforce policies and procedures covering many of the topics currently required by the SEC's existing oversight program, including settlement, central securities depositories and settlement systems, default management, operational risk management and transparency, and communication efficiency. In addition to the aforementioned topics, the proposed rules would require Covered Clearing Agencies to address the following new topics in such policies and procedures: (1) governance and comprehensive risk management (including establishing qualifications of members of board of directors or senior management); (2) financial risk management (including liquidity risk, credit risk, margin and collateral); and (3) general business risk management (including a requirement to hold liquid net assets funded by equity equal to at least six months of current operating expenses).

The proposed rules would permit the SEC to make the determination of whether a clearing agency falls within the scope of a Covered Clearing Agency. Upon such determination, the SEC would publish a notice of such preliminary determination and provide the public with at least 30 days to comment prior to any final determination.

The public will have 60 days to comment on the proposed rules beginning from the date the proposed rules are published in the Federal Register.

The proposed rule is available here.

BROKER DEALER

FINRA Proposes to Amend Rules 2210 and 2214

The Financial Industry Regulatory Authority filed proposed rule changes with the Securities and Exchange Commission to amend FINRA Rules 2210 and 2214. Rule 2210, which governs broker-dealers' communications with the public, generally provides the standards and guidelines for the content, approval and recordkeeping relative to broker-dealers' communications with the public and the filing thereof with FINRA. FINRA's proposed change to Rule 2210 seeks to exclude from the communications filing requirements any research reports produced by a broker-dealer that concern only securities listed on a national securities exchange (other than research reports that must be filed pursuant to Section 24(b) of the Investment Company Act of 1940). FINRA's proposed rule change also would clarify that free writing prospectuses that are exempt from having to be filed with the SEC are not subject to Rule 2210's filing or content standards. FINRA also is proposing to correct an incorrect rule cross-reference in Rule 2214, which provides requirements with respect to the use of investment analysis tools.

The proposed rule changes can be found here.

CFTC

CME Group Exchanges Adopt Revised Rules Regarding Transfer Trades and Concurrent Long and Short Positions

On March 10, a self-certified rule change related to transfer trades and concurrent long and short positions submitted by the Chicago Mercantile Exchange, Chicago Board of Trade, New York Mercantile Exchange and Commodity Exchange (Exchanges) became effective. Under the amended transfer trade rule: (1) the president or chief compliance officer of the clearing house may permit a transfer to correct an error outside of the three-day window permitted under existing rules; (2) the chief regulatory officer may approve a transfer to facilitate a restructuring or consolidation of a fund or commodity pool; and (3) the president of the clearing house may permit a transfer of cleared-only products under certain specified circumstances. The revised rule regarding concurrent long and short positions: (1) eliminates the restrictions on netting down contracts that are not subject to a spot-month position limit; (2) increases to two percent of reported open interest the amount of concurrent long and short positions in physically delivered futures contracts that can be netted to correct an error; and (3) prohibits the reestablishment of positions that have been netted down.

The rule submission is available here.

Joint Audit Committee Adopts Template Acknowledgment Letters

On March 12, the Joint Audit Committee issued a regulatory alert and revised templates for segregated, secured and cleared swap customer acknowledgment letters. The revised template letters will help futures commission merchants (FCMs) and depositories achieve compliance with new requirements arising from the enhanced customer protection rules recently adopted by the Commodity Futures Trading Commission. FCMs and depositories are required by CFTC regulations to use the new template acknowledgment letters for all accounts opened on or after January 13, 2014 and, for all accounts that were opened prior to January 13, 2014, must execute new letters that conform to the template by July 12, 2014. FCMs and depositories must file a copy of all

executed acknowledgment letters with the CFTC and the FCM's designated self-regulatory organization within three business days after the account is opened.

The regulatory alert indicated that the templates will be posted on the Joint Audit Committee's website, which is available here.

CFTC Announces Available-to-Trade Determinations

In December 2013, Bloomberg LLC (BSEF) submitted a self-certified determination that certain interest rate and credit default swaps are made available to trade (MAT) for purposes of the Commodity Exchange Act (CEA) and Commodity Futures Trading Commission regulations. The CFTC's Division of Market Oversight has announced that BSEF's MAT determinations are deemed certified. BSEF's MAT determination only involves contracts that were previously made available to trade, meaning that the swaps covered by the current determination will remain subject to the trade execution requirement in CEA Section 2(h)(8) even if another swap execution facility (SEF) withdraws its MAT certification.

Counterparties must execute swaps that are subject to the MAT determinations on or pursuant to the rules of a SEF or designated contract market. A swap subject to the MAT determinations cannot be executed over the counter unless one or both of the parties invokes a valid exemption from clearing for the swap, which also operates as an exemption from the trade execution requirement. MAT swaps executed on or pursuant to the rules of an SEF are "required transactions," and therefore must be executed through either the SEF's order book or request-for-quote system unless the swap qualifies as a block trade.

BSEF's MAT filing is available here.

The CFTC's press release is available here.

A listing of all swaps made available to trade is available here.

CFTC to Host Roundtable on Commodity Pool Operator Risk Management Practices

Commodity Futures Trading Commission staff will host a public roundtable on March 18 to discuss risk management practices by commodity pool operators, including: (1) risk management procedures in the operation of various types of commodity pools; and (2) risk management controls relating to investment risk, operational risk, and compliance or regulatory risk.

More information is available here.

DIGITAL ASSETS AND VIRTUAL CURRENCIES

New York Department of Financial Services Issues Public Order to Invite Virtual Currency Exchange Proposals

On March 11, the New York Department of Financial Services (the DFS) issued a public order stating that it will begin considering proposals and applications to establish virtual currency exchanges located in New York. DFS Superintendent Benjamin M. Lawsky stated, "The recent problems at Mt. Gox and other firms further demonstrate the urgent need for stronger oversight of virtual currency exchanges, including robust standards for consumer protection, cyber security, and anti-money laundering compliance."

The submission of proposals and applications will begin the regulatory process, and applicants will work with the DFS to ensure that their applications include robust protections with respect to consumers, cyber security and anti-money laundering. Approved applications will be subject to the regulatory framework that the DFS expects to put forth by the end of the second quarter of 2014. Among the proposed regulations will be a "BitLicense" for virtual currency firms in New York. The DFS also plans to consider proposals and applications for virtual currency firms other than exchanges in the near future. Superintendent Lawsky stated, "Consumers should understand and

receive appropriate disclosures about the potential risks associated with using virtual currencies or any other financial product, but the fact is that virtual currencies are unlikely to disappear entirely."

The DFS announcement regarding the public order is available here.

The DFS public order is available here.

LITIGATION

SEC Prevails in Lawsuit Involving $50 Million Ponzi Scheme

On March 6, the US District Court for the Eastern District of Michigan ordered the former leaders of an investment group to pay more than $8 million in disgorgement and fines for their role in running a $50 million real estate Ponzi scheme. John Bravata founded Bravata Financial Group and BBC Equities, and Richard Trabulsy served as chief executive officer. Between 2006 and 2009, they received more than $50 million from approximately 440 investors. The Securities and Exchange Commission alleged that defendants engaged in the unauthorized sale of securities to raise the funds, and that the securities were offered as part of a Ponzi scheme in which the companies paid investors "returns" with money from subsequent investors, as opposed to proceeds from the companies' investments. According to the SEC, Bravata and Trabulsy used investors' money to purchase personal luxury goods. In 2009, the SEC brought suit against the companies, Bravata, Trabulsy, Bravata's son and Bravata's wife as "relief defendant," alleging that they unlawfully sold unregistered securities, defrauded investors in violation of the Securities Act of 1933 and Securities Exchange Act of 1934 (Exchange Act), and unlawfully sold securities without registering under the Exchange Act as broker dealers. While the suit was pending, a jury convicted Bravata and his son of various counts of conspiracy and wire fraud stemming from the scheme, and Trabulsy pleaded guilty to the same. Based on the criminal convictions, the court ordered Bravata and his wife to disgorge more than $5.2 million earned from the Ponzi scheme, in addition to more than $1.2 million in interest, and ordered Bravata's son to disgorge $444,384 plus $98,474 in interest. The court also ordered Bravata to pay a $1.8 million penalty and his son to pay a $130,000 penalty.

Securities and Exchange Commission v. Bravata et al., Case No. 09-12950 (E.D. Mich. Mar. 6, 2014).

SEC Brings Lawsuit Against Former Carter's Executive for Insider Trading and Tipping

On March 7, the Securities and Exchange Commission filed a complaint in the US District Court for the Northern District of Georgia against Richard Posey, former vice president of Operations of children's clothing manufacturer Carter's Inc., for insider trading and tipping of insider information. According to the complaint, between January 2006 and October 2009, Posey violated the Securities Act of 1933 and Securities Exchange Act of 1934 (Exchange Act) by illegally trading Carter's stock using material nonpublic information. The SEC alleged that Posey was subject to blackout periods and pre-clearance procedures, and that he attempted to hide the trades by failing to obtain pre-clearance and, at times, liquidating blackout trades before earnings announcements. The SEC also alleged that Posey tipped confidential company information to a friend and former colleague, who traded on the information and tipped others. The complaint alleged that Posey's illegal trading and tipping generated profits and avoided losses totaling $49,778. The SEC is seeking a permanent injunction enjoining Posey from future violations of federal securities laws, disgorgement of illegal gains and losses with prejudgment interest, a permanent officer and director bar under the Exchange Act, and a civil penalty.

Securities and Exchange Commission v. Richard T. Posey, Case No. 1:14-cv-00664 (N.D. Ga. Mar. 7, 2014).

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