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BROKER-DEALER

FINRA Amends Arbitration Codes to Increase Arbitrator Chairperson Fees and Certain Arbitration Fees

On February 12, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 21-04 (Notice), in connection with an amendment to FINRA's Codes of Arbitration Procedure for Customer and Industry Disputes, regarding certain fees paid to arbitration chairpersons. FINRA Rules 12214 and 13214 were amended to increase the hearing-day chairperson fee from $125 to $250 to better compensate the chairperson for the additional training and responsibilities required of the position. Additionally, the amendments establish a new chairperson fee for an additional $125 for each prehearing conference that the chairperson leads, even if an arbitration case closes without a hearing.

To fund the increase in payments to chairpersons, the amendments also make minimal increases to certain arbitration fees. The following FINRA Rules were amended:

- FINRA Rules 12901 and 13901 — increased the member surcharge for claim amounts larger than $250,000 and claims for non-monetary or unspecified damages;
- FINRA Rules 12900 and 13900 — increased the filing fees for customers, associated persons, members or other non-members who file claims of more than $500,000, and claims for non-monetary or unspecified damages;
- FINRA Rules 12903 and 13903 — increased the member process fees for claim amounts larger than $250,000, and for claims for non-monetary or unspecified damages; and
- FINRA Rules 12902 and 13902 — increased hearing session fees for claims of more than $500,000 and for claims for non-monetary or unspecified damages, and would be small. The amendments do not apply to hearings with one arbitrator, so that the forum remains accessible and affordable to customer claimants with small claims.

The amendments are effective for arbitration cases filed on or after April 19.

FINRA Regulatory Notice 21-04

New Rate for Fees Paid Under Section 31 of the Exchange Act

On February 16, the Financial Industry Regulatory Authority (FINRA) issued an Information Notice (Notice) regarding a new fee rate applicable to specified securities transactions on the exchanges and in the over-the-counter markets. Such fee rate will decrease from its current rate of $22.10 per million dollars in transactions to a new rate of $5.10 per million dollars in transactions.

Section 31 of the Securities Exchange Act of 1934 (Exchange Act) requires the Securities and Exchange Commission to annually adjust the fee rates applicable under Section 31 thereof, and, in some circumstances, to make a midyear adjustment, after consultation with the Congressional Budget Office and the Office of Management and Budget. FINRA obtains its Section 31 fees from member firms, in accordance with Section 3 of Schedule A to FINRA's By-Laws, which specify that the amount assessed on firms will be determined periodically in accordance with Section 31 of the Exchange Act. On January 15, the SEC announced that effective February

25, the Section 31 fee rate applicable to specified securities transactions on the exchanges and in the over-the-counter markets will be reduced. The reduction in the fee rate is due primarily to the substantially higher dollar amount of covered sales in recent months, a trend that began in March of 2020 due to record market volume during the COVID-19 pandemic, which has resulted in the SEC already assessing a substantial proportion of its target collection amount for fiscal year 2021.

FINRA Information Notice

DERIVATIVES

See "MiFID II "Quick Fix" Adopted in Response to COVID-19" and "European Commission Publishes Delegated Regulations Under EMIR on Risk Mitigation and Clearing Obligation" in the EU Developments section.

EU DEVELOPMENTS

MiFID II "Quick Fix" Adopted in Response to COVID-19

On February 15, the Council of the European Union (the Council) published a press release announcing the adoption of a "quick fix" amendment to the revised Markets in Financial Instruments Directive (MiFID II) in response to the economic impact caused by the COVID-19 pandemic (the Amendment).

The key changes to MiFID II in the Amendment include:

- simplifying information requirements;
- phasing out paper-based investment information;
- amending the "ancillary activity exemption" to include a qualitative test in addition to the existing quantitative tests for firms trading in commodity derivatives; and
- adapting the position limit regime for commodity derivatives to include additional exemptions as well as to support the development of new commodity markets.

The Amendment will be published in the *Official Journal of the European Union* before the end of February and will go into effect the day after its publication. EU Member States are required to implement the Amendment into national law within nine months of its publication.

Council Press Release

MiFID II Draft Amendment

European Commission Publishes Delegated Regulations Under EMIR on Risk Mitigation and Clearing Obligation

On February 17, the European Commission (the Commission) published two Delegated Regulations amending the European Market Infrastructure Regulation (EMIR) Margin Regulatory Technical Standards (RTS) and the Clearing Obligation RTS (the Delegated Regulations).

The key amendments proposed by the Commission in the Margin RTS include:

- extending all non-centrally cleared over-the-counter derivatives which are single-stock equity options or index options to January 24, 2024; and
- restricting the requirement to post or collect variation margins for physically settled foreign exchange forward contracts and physically settled foreign exchange swap contracts where one of the counterparties is not considered an institution under the Capital Requirements Regulation 2013 or would not qualify as an institution where it established in the EU.

The key amendments proposed by the Commission for both Delegated Regulations include:

- extending the UK's central counterparty equivalence and the intragroup derogation to June 30, 2022; and
- deferring the requirement to exchange of collateral until February 18, 2022 for counterparties who wish to novate their contract by replacing the UK counterparty with a Member State counterparty.

The Delegated Regulations will go into effect on February 18, which is the day after its publication in the *Official Journal of the European Union*.

Delegated Regulations 2021/236

Delegated Regulations 2021/237

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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