Katten

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BROKER-DEALER

FINRA Releases Targeted Examination Letter for No Commission Brokers

On February 20, the Financial Industry Regulatory Authority (FINRA) released a targeted examination letter requesting that certain member firms provide information related to their decision not to charge commissions for customer transactions and its impact on firms' order routing practices and decisions. The letter requests details regarding the type of securities in which a firm effects customer transaction without a commission, the factors a firm considers in deciding whether or not to charge a commission, and other aspects of a firm's business.

FINRA uses targeted examination letters to gather information on emerging issues and uses such information to formulate a regulatory response.

The targeted examination letter is available here.

FINRA Reminds Member Firms of Their Supervision Responsibilities of UTMA and UGMA Accounts

On February 27, the Financial Industry Regulatory Authority (FINRA) released Regulatory Notice 20-07, reminding member firms of their supervisory responsibilities with respect to supervise Uniform Transfers to Minors Act and Uniform Gifts to Minors Act accounts (collectively, UTMA/UGMA Accounts). UTMA/UGMA Accounts are custodial accounts that allow a donor to transfer funds, securities and other assets to minors without the need for a trust. FINRA advised member firms to implement procedures to address termination of the custodianship upon the minor reaching the age of majority and to verify whether the custodian has authority thereafter (typically, the custodian's authority ends upon the minor reaching majority). Failure to have reasonably designed procedures in place that take into account the termination of custodianship and resulting change in authority may result in a mishandling of the UTMA/UGMA Account.

Regulatory Notice 20-07 is available here.

Commissioner Peirce Dissents from SEC's Rejection of Bitcoin-Based ETF

On February 26, Commissioner Hester Peirce of the Securities and Exchange Commission filed a dissent to the SEC's decision to reject a proposed rule change from NYSE Arca that would have allowed it to list shares of an exchange-traded fund backed by bitcoin and US Treasury bills. In her dissent, Commissioner Peirce argued that the SEC "applies a unique, heightened standard" to filings related to digital assets that departs from the plain language of the Securities Exchange Act of 1934. Based on past SEC decisions, Commissioner Peirce expressed a concern that the SEC "is unwilling to approve the listing of any product that would provide access to the market for bitcoin and that no filing will meet the ever-shifting standards that this Commission insists on applying to bitcoin-related products."

The SEC order disapproving the proposed NYSE Arca rule change is available here. Commissioner Peirce's dissent is available here.

DERIVATIVES

See "CFTC Approves Revisions to Swap Data Reporting, Dissemination and Public Reporting Requirements for Market Participants" in the CFTC section, "FCA Changes Short Selling Reporting Process" in the UK Developments section and "ECB Speech on Central Clearing" in the EU Developments section.

CFTC

CFTC Approves Revisions to Swap Data Reporting, Dissemination and Public Reporting Requirements for Market Participants

On February 20, the Commodity Futures Trading Commission (CFTC) unanimously approved two proposed rules to revise its regulations relating to swap data reporting, dissemination and public reporting requirements for market participants.

First, the CFTC approved proposed amendments to Part 43 of its regulations, which establish real-time public reporting and dissemination requirements for swap data repositories (SDRs), derivatives clearing organizations (DCOs), swap execution facilities (SEFs), designated contract markets (DCMs), swap dealers (SDs), major swap participants (MSPs) and swap counterparties that are neither SDs nor MSPs. The proposed revisions, among other things, would revise the definition of "block trade" and the block swap categories; update the block thresholds and cap sizes; and adjust the permitted delay for the public dissemination of block transactions. The proposed amendment is available here.

Second, the CFTC amended Parts 45, 46 and 49 of the CFTC's regulations, which set out swap data recordkeeping and reporting requirements for SDRs, DCOs, SEFs, DCMs, SDs, MSPs and swap counterparties that are neither SDs nor MSPs. The proposed revisions would streamline the requirements for reporting new swaps, define and adopt swap data elements that harmonize with international technical guidance, and reduce reporting burdens for reporting counterparties that are not SDs or MSPs. The proposed amendment is available here.

Comments on the proposed amendments must be filed with the CFTC by May 20.

Separately, the CFTC unanimously approved the reopening of the comment period for the proposed rule "Certain Swap Data Repository and Data Reporting Requirements" that was published in the *Federal Register* on May 13, 2019. The proposed rule would amend Part 49 of the CFTC's regulations pertaining to SDRs, reporting counterparties and other market participants to update requirements for SDRs to verify swap data with reporting counterparties, update requirements to correct swap data errors and omissions and update and clarify certain SDR operational and governance requirements. The proposed amendment is available here.

Comments must be filed with the CFTC by May 20.

The CFTC's press release is available here.

UK DEVELOPMENTS

FCA Changes Short Selling Reporting Process

On February 24, the UK's Financial Conduct Authority (FCA) announced a change to the process firms should use to report short positions in UK-listed financial instruments under the Short Selling Regulation 2012 (SSR). The change was announced on an updated webpage, available here.

Previously, firms could report short positions to the FCA by submitting a notification form via email. Now, firms have to submit that notification through an online portal called ESS, and therefore must have an ESS account prior to filing any SSR reports.

Each notification form will need to be accompanied by an authorization letter. This letter, prepared on the firm's letter head, should state which individuals have permission to submit notifications on behalf of the firm, and should be signed by an individual who has the authority to give that permission.

The thresholds for short selling reporting have not changed. For equities admitted to trading on a UK or EU trading venue, a private disclosure to the regulator must be made when the net short position reaches 0.2 percent of the issued share capital of the company, and for each incremental 0.1 percent change thereafter.

A public disclosure (which is published on the FCA's website) must be made when the net short position reaches 0.5 percent and for every 0.1 percent increment thereafter. Certain shares are exempt if the principal trading venue is located in a third country, as listed here.

The thresholds for net short positions in sovereign debt and positions in uncovered sovereign credit default swaps vary depending on the issuer, and are set out in a spreadsheet maintained by the European Securities and Markets Authority (ESMA) here. The SSR does not apply to corporate debt.

EU DEVELOPMENTS

ECB Speech on Central Clearing

On February 26, Fabio Panetta, Executive Board Member at the European Central Bank (ECB), gave a speech on cross-border co-operation within the central counterparty (CCP) community. The speech was given at the Second Joint Bundesbank/ECB/Federal Reserve Bank of Chicago Conference on CCP Risk Management.

In his speech, Mr. Panetta noted that the introduction of mandatory central clearing for over-the-counter (OTC) derivatives has led to a huge growth in central clearing in those markets. He also noted the introduction of the new supervisory framework for CCPs in the revised European Market Infrastructure Regulation (EMIR 2.2). (For more information please see the November 15 edition of *Corporate & Financial Weekly Digest*).

Mr. Panetta concluded his speech, "We can make significant progress if we take advantage of synergies of expertise and adopt a systemic approach, rather than focusing on defending individual interests."

The speech 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

John Ahern	+44.20.7770.5253	john.ahern@katten.co.uk
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

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