

SEC/CORPORATE

House Passes Disclosure Modification and “4(a)(1)(1/2)” Bills

On October 6, the US House of Representatives passed the Disclosure Modification and Simplification Act of 2015 (H.R. 1525), which, if enacted, would require the Securities and Exchange Commission to (1) revise Regulation S-K (which governs disclosure requirements for registration statements and periodic reports, among other things) to eliminate duplicative, outdated or unnecessary disclosure requirements and to otherwise reduce the burdens imposed on emerging growth companies, accelerated filers, smaller reporting companies and other smaller issuers; (2) study additional ways of modernizing and simplifying disclosure requirements; and (3) permit registrants to submit a summary page on Form 10-K (with appropriate cross references to applicable material within the 10-K).

On the same date, the House also passed the Reforming Access for Investments in Startup Enterprises Act of 2015 (RAISE Act (H.R. 1839)). The RAISE Act, if enacted, would amend the Securities Act of 1933 to codify the so-called “4(a)(1)(1/2)” exemption from registration under the Securities Act. The 4(a)(1)(1/2) exemption, while not formally recognized by SEC rules or regulations, is often relied upon in connection with the private resale of securities. The RAISE Act would formally exempt from registration requirements under the Securities Act the resale of restricted securities by certain sellers (generally, those other than the issuer, an underwriter acting on behalf of the issuer or a dealer) where each purchaser is an accredited investor, neither the seller nor anyone acting on its behalf engages in general solicitation and other conditions are satisfied.

To view the full text of the Disclosure Modification and Simplification Act of 2015, click [here](#).

To view the full text of the RAISE Act of 2015, click [here](#).

BROKER-DEALER

SEC Approves FINRA Equity and Debt Research Rules

The Securities and Exchange Commission has approved two Financial Industry Regulatory Authority rules that apply to equity and debt research. FINRA Rule 2241 adopts, with modifications, NASD Rule 2711 as a FINRA rule and amends NASD Rule 1050 and Incorporated NYSE Rule 344 (collectively, Equity Rule). FINRA Rule 2242 (Debt Rule, and together with the Equity Rule, the Rules) is a new rule that incorporates many of the provisions of the Equity Rule.

The Rules impose a new overarching requirement to adopt and maintain written policies and procedures that identify and effectively manage conflicts of interest stemming from research reports, public appearances by research analysts, and the interaction between research analysts and persons outside the research department. The Rules require policies and procedures, and also specify certain prohibitions and restrictions, with respect to the following topics:

- prepublication review or approval of research reports;
- parties permitted to influence research coverage decisions;
- supervision of research analysts;

- determination of the research department's budget;
- compensation;
- personal trading activities of research analysts;
- promises of favorable research;
- solicitation and marketing by research analysts;
- information barriers;
- retaliation against research analysts; and
- interaction between research analysts and other personnel.

The Rules retain, with some modifications, pre-existing provisions around the content and disclosures of research reports and disclosures associated with public appearances. In addition, the Equity Rule reduces quiet periods associated with initial public offerings and secondary offerings and eliminates the quiet period associated with a lock-up agreement.

The Equity Rule provides relief from certain requirements for members with limited investment banking activity and for personnel who only produce research reports on an occasional basis. The Debt Rule provides certain relief for members with limited investment banking or principal trading activity, and for debt research distributed solely to eligible institutional investors.

Most of the provisions in the Equity Rule become effective December 24. Certain provisions, including those related to quiet periods and the relief for personnel who produce research reports on an occasional basis became effective September 25. The text of the Equity Rule can be found [here](#).

The Debt Rule becomes effective February 22, 2016. The text of the Debt Rule can be found [here](#).

DERIVATIVES

See “ESMA Adds Index CDS to EMIR Mandatory Clearing Obligations” in the EU Developments section.

CFTC

CFTC’s Market Risk Advisory Committee To Meet on November 2

The Commodity Futures Trading Commission’s Market Risk Advisory Committee will hold a public meeting on November 2 from 10:00 a.m. to 1:30 p.m. The Committee will discuss a subcommittee’s recommendations on the effectiveness of central counterparties’ default plans in addressing market conditions resulting from the default of a significant clearing member.

Members of the public may submit written statements in connection with the meeting by November 16. More information is available [here](#).

EU DEVELOPMENTS

European Commission Launches Capital Markets Union Action Plan

On September 30, the European Commission (EC) launched the Capital Markets Union (CMU) [Action Plan](#) as the initial blueprint to help build a single market for capital within the European Union. The intention of the CMU is to help support more cross-border risk sharing, create deeper and more liquid markets, and diversify the sources of funding available. As part of the CMU implementation, the EC will seek to remove barriers that currently inhibit cross-border investments in the European Union so as to facilitate companies and infrastructure projects raising the finance they need, regardless of location in the European Union. The EC also will promote the use of alternative sources of finance (complementary to bank financing)—which are seen as playing a bigger role in the European Union in providing financing, especially with respect to small and medium enterprises (SMEs) and start-up businesses—while also mitigating the impact of further issues in the banking sector on companies and their access to finance.

The Action Plan is based on the findings from a number of earlier consultations conducted by the EC that focused on creating a CMU by defining the measures needed to unlock investment in the European Union and create a single market for capital (including amendments to the EU Prospectus Directive and Securitisation), which had received broad support from stakeholders.

The CMU is a medium-term project. The Action Plan, however, sets out a number of initial goals, including:

- increase the range of funding choices for businesses (including start-ups) and SMEs during the various phases of business growth;
- reduce the barriers for EU companies to enter and raise capital on the capital markets;
- implement an appropriate regulatory framework to support long-term infrastructure financing;
- harness finance to deliver environmental sustainability;
- increase the range of investments available for both retail and institutional investors;
- reduce barriers for bank lending by leveraging bank capacity to support the wider economy; and
- facilitate cross-border investing and develop uniform capital markets in all EU member states.

While the Action Plan is focused on those matters set out above, the EC will continue to work to identify the main inefficiencies and barriers to deepen capital markets' integration within the European Union and develop proposals as to how to best overcome them (while retaining a strong focus on investor protection and market supervision).

In seeking to implement the initial goals of the CMU Action Plan based on its findings from a public consultation on this topic carried out earlier this year, the EC also published a proposal laying down common rules on securitization so as to create a European framework for simple, transparent and standardized securitization (the proposal can be found [here](#)). The EC also published new legislation amending Solvency II to promote infrastructure investment by the insurance industry by removing unjustifiable prudential obstacles through the creation of a distinct infrastructure asset class, which requires insurers to hold less capital against investments that fall within such class (the legislation can be found [here](#)).

As the next stage of its CMU implementation, the EC also is undertaking two further public consultations on access to European venture capital funds/European social entrepreneurship funds (the consultation can be found [here](#)) and the creation of a pan-European covered bonds market (the consultation can be found [here](#)). Responses to both of these consultations must be received by January 6, 2016.

The EC intends to report on an annual basis the progress of CMU and also is proposing to prepare a comprehensive stock-take in 2017 as a basis for deciding any additional measures that may be required.

ESMA Adds Index CDS to EMIR Mandatory Clearing Obligations

On October 2, the European Securities and Markets Authority (ESMA) finalized and issued a draft regulatory standard (RTS) for the mandatory clearing of certain credit default swaps (CDS) as required under the European Market Infrastructure Regulation (EMIR). The draft RTS follows the first RTS on interest rate derivatives developed by ESMA and adopted by the European Commission (EC) on August 6 and, therefore, has the same provisions regarding the categorization of counterparties.

The classes of CDS that will be subject to the EMIR mandatory clearing requirement are those that settle in euro and are untranching Index CDS with a five-year tenor on Series 17 onwards referencing either iTraxx Europe Main or iTraxx Europe Crossover (Covered CDS).

The draft RTS provide for a phased-in implementation schedule from the date at which the draft RTS for CDS becomes effective to encourage an orderly process of application for the four different categories of market participants as follows:

- **Category 1** – clearing members of a recognized or authorized CCP of at least one of the classes of Covered CDS – nine months after the draft RTS becomes effective, which can be no earlier than August 2016;
- **Category 2** – financial counterparties (FCs) (as defined under EMIR) and alternative investment funds (AIFs) (as defined under the Alternative Investment Fund Managers Directive) that are non-financial

counterparties (NFCs), which belong to a group whose aggregate month-end average of outstanding gross notional amount of non-centrally cleared derivatives is above the €8 billion threshold – 15 months after the draft RTS becomes effective, which can be no earlier than February 2017;

- **Category 3** – FCs and AIFs whose aggregate month-end average of outstanding gross notional amount of non-centrally cleared derivatives is below the €8 billion threshold – 21 months after the RTS becomes effective, which can be no earlier than August 2017; and
- **Category 4** – all remaining NFCs – three years after the draft RTS becomes effective, which can be no earlier than to be February 2019.

The draft RTS has been sent by ESMA to the EC, which has three months to endorse it, and will become effective on the 20th day following its publication in the *Official Journal of the European Union*.

The ESMA draft RTS for CDS can be found [here](#).

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EU DEVELOPMENTS

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