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BROKER-DEALER

FINRA Proposes to Ease Restrictions on Initial Equity Public Offerings and New Issues

The Financial Industry Regulatory Authority (FINRA) is proposing to amend its Rule 5130 and Rule 5131 to ease certain restrictions on initial equity public offerings and new issue allocations and distributions.

FINRA Rules 5130 and 5131 are designed to protect the integrity of the public offering process by, among other things, generally prohibiting FINRA members from selling a new issue to an account in which a "restricted person" has a beneficial interest in order to ensure that industry insiders, including members and their associated persons, do not take advantage of their insider position to purchase new issues for their own benefit at the expense of public customers. FINRA has proposed amending the Rules to remove certain impediments to capital formation deemed unnecessary to protect investors to address the impact of the rules on family offices, sovereign entities, foreign employee retirement benefits plans, foreign investment companies and executive officers and directors of charitable organizations.

If adopted, the proposal would amend Rule 5130 to exempt foreign employee retirement benefits plans, exclude sovereign entities that own broker-dealers from the categories of restricted persons, and broaden the scope of "family investment vehicle" under the rule.

In addition, the proposal would amend Rules 5130 and 5131 to exclude from the definition of "new issue" offerings that are conducted pursuant to Regulation S under the Securities Act of 1933 and other offerings outside of the United States and its territories. The proposal also would amend Rule 5131 to exclude unaffiliated charitable organizations from the definition of "covered non-public company."

The proposal also would make certain additional minor amendments to Rules 5130 and 5131 to make the rules more consistent.

FINRA's proposal is available here.

FINRA Proposes TRACE Reporting Obligations for U.S. Dollar-Denominated Foreign Sovereign Debt

The Financial Industry Regulatory Authority (FINRA) is proposing to expand TRACE reporting requirements to include transactions in U.S. dollar-denominated foreign sovereign debt securities. Under the proposal, this transaction information would be reported for regulatory purposes and would not be publicly disseminated.

Comments on the proposal must be submitted to FINRA by September 24, 2019.

More information is available here.

CFTC

CFTC's Division of Market Oversight Extends No-Action Relief from Position Aggregation Requirements

On August 1, 2019, the Commodity Futures Trading Commission's (CFTC) Division of Market Oversight (DMO) issued a letter extending prior no-action relief, which suspended the need for certain persons otherwise required to aggregate positions to proactively file formal written notice for position limits purposes. The prior relief, CFTC No Action Letter 17-37, was set to expire on August 12, 2019. The extension, which is CFTC No Action Letter 19-19, will continue to provide market participants with relief from certain other position aggregation requirements in CFTC Regulation 150.4, including:

- Revising the definitional conditions for eligible entities, independent account controllers and commodity trading advisors; and
- Limiting aggregation requirements for the "substantially identical trading strategies" rule to circumstances where positions in more than one account or pool are held in order to willingly attempt to circumvent applicable position limits.

The extension maintains the requirement that, upon request by the CFTC or a designated contract market (DCM), persons qualifying for the relief will have to file a formal written notice with the CFTC or DCM, as requested, within five business days.

Staff noted that the extension will provide the CFTC and DMO with additional time to consider long-term solutions that might require a notice and comment rulemaking in the future.

The CFTC's No-Action Letter 19-19 is available here.

UK DEVELOPMENTS

UK FCA Issues Final Guidance on Cryptoassets

On July 31, 2019, the UK's Financial Conduct Authority (FCA) published its finalized guidance on cryptoassets in a Policy Statement (PS19/22) with the stated aim of providing better protection to market participants.

The finalized guidance follows a consultation from January to April 2019 as part of the broader "UK Cryptoasset Taskforce" and includes a revised assessment of the cryptoasset markets and associated distributed ledger technology (DLT) within the FCA's regulatory perimeter — setting out details on where different types of cryptoassets might fall.

It also includes recommended requirements that custodian wallet providers, exchanges and trading platforms should consider when conducting activities, as well as an updated taxonomy creating an e-money token category that can fall within the scope of the E-Money Regulations with guidance from the FCA as to where tokens are likely to be:

- specified investments under the Regulated Activities Order (effectively a type of regulated security);
- e-money under the E-Money Regulations;
- captured under the Payment Services Regulations; or
- are otherwise outside the scope of regulation

The FCA states in PS 19/22 that from the FCA's perspective, the guidance provides a basis upon which it can proactively engage with cryptoasset firms to determine whether or not they are carrying on regulated activities in/into the UK — and consequently whether such firms need to be licensed by the FCA to do so. The FCA expects market participants to take the guidance into consideration. If a firm acts in line with the guidance, the FCA will treat them as having complied with the relevant rule or requirement.

PS 19/22 is available here.

New Issue of FCA Newsletter on Market Conduct: Control Over Inside Information

On August 1, 2019, the UK Financial Conduct Authority (FCA) published a new issue of its newsletter on market conduct and transaction reporting issues (Market Watch 60).

In Market Watch 60, as well as some commentary on money laundering risks in capital markets, the FCA focuses on its concerns and findings about control of access to inside information (being information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more UK- or EU-listed issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivatives).

The FCA's commentary in Market Watch 60 follows the conviction of a former compliance officer in the London branch of a major investment bank, who had been found guilty of five counts of insider dealing as well as of unlawful disclosure of inside information.

The FCA commented that it has recently highlighted the importance of firms being able to identify conduct risks to ensure they have effective market abuse controls in place, and that when investigating suspected insider dealing, it is crucial to establish who had access to inside information at particular points in time — and the legal requirement for firms in possession of inside information to maintain 'insider lists.'

The FCA states that it views a firm's inability to respond to a regulatory request with accurate records of who had access to inside information as an indication of underlying weaknesses in systems, procedures and policies. Firms that cannot respond appropriately to FCA requests may be subject to further regulatory scrutiny.

The Market Watch 60 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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UK DEVELOPMENTS

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