

BROKER-DEALER

FINRA Announces Updates to Interpretations of Margin Rule Regarding Control and Restricted Securities and Consolidation of Accounts

On July 2, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 20-22 (the Notice) announcing updates to its interpretations regarding (1) FINRA Rule 4210(e)(8), which specifies margin requirements for control and restricted securities, and (2) FINRA Rule 4210(f)(5), which specifies conditions for the consolidation of two or more accounts carried for the same customer.

With respect to FINRA Rule 4210(e)(8), the revised interpretation clarifies the exemption for securities that are “then saleable” pursuant to the terms and conditions of Securities Act Rule 144(b)(1) or Rule 145(d)(2) from the margin requirements generally applicable to control and restricted securities subject to Securities Act Rule 144 or 145(c).

FINRA Rule 4210(f)(5) allows member firms to consolidate two or more accounts carried for a customer if the customer has consented that the money and securities in each account may be used to carry or pay any deficit in all such accounts. The revised interpretation clarifies that though Regulation T only permits firms to maintain multiple margin accounts for a single customer under three specific circumstances, firms may maintain multiple sub-accounts of a customer’s margin account as provided in the interpretations.

The Notice and revised interpretations are available [here](#).

FINRA Provides Guidance on Retail Communications Concerning Private Placements

On July 1, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 20-21 (the Notice) providing guidance on compliance with FINRA Rule 2210 Communications with the Public when creating, reviewing, approving, distributing or using retail communications concerning private placement offerings. Among other things, the Notice reminds members that private placement retail communications of the member firm are subject to FINRA Rule 2210 regarding advertising, which requires a balanced presentation of risks and investment benefits.

The Notice is available [here](#).

FINRA Updates Members on Regulatory Coordination Concerning CAT Reporting Compliance

On June 29, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 20-20, updating members on regulatory coordination efforts concerning compliance with Consolidated Audit Trail (CAT) reporting rules. Specifically, FINRA and the national securities exchanges, as CAT NMS Plan Participants, have entered into a Rule 17d-2 Plan and corresponding Regulatory Services Agreements to coordinate regulation of the CAT compliance rules through FINRA. Additionally, FINRA and the exchanges have also developed a coordinated approach to enforce the CAT compliance rules under the Participants’ respective Minor Rule Violation Plans.

The Notice is available [here](#).

SEC Raises Filing Threshold of Rule 17h Reporting Requirements for Broker-Dealers

On June 29, the Securities and Exchange Commission issued an order raising the filing threshold for broker-dealers' Form 17-H filings made pursuant to the Securities Exchange Act of 1934 Rules 17h-1T and Rule 17h-2T. The updated threshold will exempt broker-dealers that (1) do not hold funds or securities for, or owe money or securities to, customers and do not carry customer accounts, or (2) are exempt from Rule 15c3-3 pursuant to paragraph (k)(2) of that rule and that maintain total assets of less than \$1 billion and capital, including debt subordinated in accordance with appendix D of Rule 15c3-1 under the Securities Exchange Act of 1934 of less than \$50 million.

The press release is available [here](#).

The SEC Order is available [here](#).

SEC Adopts Amendments to Exemptive Applications Procedures

On July 6, the Securities and Exchange Commission announced that it had approved rule amendments to establish an expedited review procedure for exemptive and other applications under the Investment Company Act of 1940 that are substantially identical to recent precedent, as well as a new informal internal procedure for applications that would not qualify for the new expedited process. Additionally, the SEC is amending rule 0-5 under the Investment Company Act of 1940 to deem an application outside of expedited review withdrawn when the applicant does not respond in writing to comments within 120 days.

The press release is available [here](#). The Final Rule is available [here](#).

DERIVATIVES

See *"ARRC Publishes Additional LIBOR Replacement Materials"* in the Banking section.

CFTC

CFTC Announces Technology Advisory Committee Meeting

On June 29, the Commodity Futures Trading Commission's (CFTC) Technology Advisory Committee (TAC) announced that it will hold a public meeting on July 16. At this meeting, the TAC will hear presentations from the TAC subcommittees on Automated and Modern Trading Markets, Distributed Ledger Technology and Market Infrastructure, Virtual Currencies and Cybersecurity.

The meeting will be held via conference call in accordance with CFTC's implementation of social distancing due to COVID-19. More information is available [here](#).

CFTC Announces Market Risk Advisory Committee Meeting

On July 6, the Commodity Futures Trading Commission's (CFTC) Market Risk Advisory Committee (MRAC) announced that it will hold a public meeting on July 21. At this meeting, the MRAC will (1) discuss market activity in the early part of 2020, immediately following the onset of the COVID-19 pandemic in the United States, and (2) receive status updates from the Climate-Related Market Risk, CCP Risk and Governance, Market Structure and Interest Rate Benchmark Reform subcommittees.

The meeting will be held via conference call in accordance with CFTC's implementation of social distancing due to COVID-19. More information is available [here](#).

CFTC Announces Finalization of 2020-2024 Strategic Plan

On July 8, the Commodity Futures Trading Commission (CFTC) announced that its 2020-2024 Strategic Plan (Strategic Plan) is now final. The Strategic Plan was unanimously approved by the CFTC in May and was subject to a 30-day comment period that ended in June. The Strategic Plan focuses on the following five strategic goals, each with clearly defined objectives:

- Strengthening the resilience and integrity of the derivatives markets while fostering their vibrancy;
- Regulating the derivatives markets to promote the interests of all Americans;
- Encouraging innovation and enhancing the regulatory experience for market participants at home and abroad;
- Being tough on those who break the rules; and
- Focusing on the CFTC's unique mission and improving the CFTC's operational effectiveness.

The Strategic Plan is available [here](#).

NFA Issues Notice to Members Regarding Compliance Date for Swaps Proficiency Requirement

On July 8, the National Futures Association (NFA) issued Notice I-20-27 to remind member firms that the compliance date for NFA's Swaps Proficiency Requirements (Requirements) is January 31, 2021 (Compliance Date). NFA Members with associated persons (AP) required to satisfy the Requirements must ensure that covered individuals are in compliance by the Compliance Date. Individuals who do not satisfy the Requirements by the Compliance Date will be unable to engage in swaps activities until they have done so.

NFA encourages individuals to complete the Requirements in advance of the Compliance Date to ensure that they (1) remain approved as a swap AP at a futures commission merchant, introducing broker, commodity pool operator, or commodity trading advisor member (intermediary), or (2) may continue acting as an AP at a swap dealer (SD) after that date. After the Compliance Date, any individual seeking to engage in swaps activity will need to satisfy the Requirements prior to being approved as a swap AP at an intermediary or acting as an AP at an SD.

For complete details regarding who must fulfill the Requirements, Notice I-19-09 is available [here](#).

Notice I-20-27 is available [here](#).

BANKING

ARRC Publishes Additional LIBOR Replacement Materials

On June 30, the Alternate Reference Rate Committee (ARRC) that works under the auspices of the Federal Reserve Bank of New York published another document to assist capital markets participants in their transition away from use of LIBOR as a transactional interest rate.

The document is entitled "AARC Recommendations Regarding More Robust Fallback Language for New Originations of LIBOR Syndicated Loans." These recommendations update a set of ARRC-recommended rate fallbacks for syndicated loans that was published in 2019. One key change is that ARRC is now suggesting that all syndicated loans should use the so-called "hardwired" approach for fallbacks because of the practical difficulty in using the alternate "amendment" approach.

The document is available [here](#).

STRUCTURED FINANCE AND SECURITIZATION

See "ARRC Publishes Additional LIBOR Replacement Materials" in the Banking section.

UK DEVELOPMENTS

London Weekly Fireside Chat

Katten hosts a weekly, 15-minute fireside chat podcast series on notable UK and European developments from the prior week's *Corporate and Financial Weekly Digest*. In this week's edition, [Neil Robson](#) addresses the September reopening of the UK's Temporary Permissions Regime registration window for EU/ EEA firms, [Carolyn Jackson](#) tackles the updates to ESMA's Q&As on EMIR, MiFIR Data Reporting and MiFID II and MiFIR Transparency, and [Nathaniel Lalone](#) rounds out the discussion by suggesting that the European authorities should watch their language when writing new rules.

To listen to the podcast recording, click [here](#).

FCA Statement on Extending SM&CR Implementation Periods

On June 30, the UK Financial Conduct Authority (FCA) published a statement on an extension to the Senior Managers & Certification Regime (SM&CR) implementation periods for solo regulated firms (the Statement). In the Statement, the FCA announced that the deadline for solo-regulated firms to undertake the first assessment of the fitness and propriety of their Certified Persons has been delayed from December 9 until March 31, 2021. This will give firms affected by the COVID-19 pandemic time to bring themselves into compliance with the new requirements.

To ensure SM&CR deadlines remain consistent, the FCA is also considering an extension to the deadline for the following requirements from December 9 to March 31, 2021:

- the date the Conduct Rules become effective;
- the deadline for submission of information about Directory Persons to the Register; and
- references in the FCA's rules to the deadline for assessing Certified Persons as fit and proper.

The FCA notes that firms should continue with their programs of work in these areas and, if they are able to certify staff earlier than March 2021, they should do so.

The FCA will still publish details of certified employees of solo- regulated firms starting from December 9 on the Financial Services Register. Where firms are able to provide this information before March 2021, the FCA encourages them to do so.

The Statement is available [here](#).

HM Treasury and Swiss Government Joint Statement on a Future Mutual Recognition Agreement

On June 30, HM Treasury published a joint statement with the Swiss Federal Department of Finance on deepening co-operation in the financial services sector (the Statement).

The Statement sets out their common intention to conclude a legally binding international agreement on mutual recognition (the Agreement). The objective of the Agreement is to improve the cross-border market for financial services between the UK and Switzerland, with an intended focus on the provision of services to wholesale and sophisticated clients in the fields of insurance, banking, asset management and capital markets.

Consequently, the Agreement is expected to:

- establish outcomes-based mutual recognition, providing rights for the provision of relevant financial services from one jurisdiction into the other, and reducing regulatory frictions for cross-border activity;
- establish structures and appropriate safeguards to underpin these rights, including provisions for regulatory and supervisory cooperation; and
- create a clear, transparent and managed process in the event that recognition is withdrawn in the future or re-established after a withdrawal.

In connection with the Statement, HM Treasury published a speech by the UK Government on June 30, confirming that the UK has completed its equivalence assessment of Swiss stock markets and deemed them to be equivalent (the Speech).

The Statement is available [here](#).

The Speech is available [here](#).

FCA Updates Webpage on the Temporary Permissions Regime

On July 1, the UK Financial Conduct Authority (FCA) updated its webpage on the temporary permissions regime (TPR) for inbound passporting EEA firms and funds (the Webpage).

The FCA states that the TPR will take effect at the end of the Brexit transition period, which expires on December 31. The window for firms and fund managers to notify the FCA of their intention to use the TPR is currently closed. The FCA announced that it will re-open the notifications window for the TPR on September 30 to allow firms and fund managers that have not yet made a notification to do so before the end of the Brexit transition period.

The FCA intends to provide further communication on this topic in September.

The Webpage is available [here](#).

FCA Speech on the UK's Financial Regulatory System Following the Brexit Transition Period

On July 1, the UK Financial Conduct Authority (FCA) published a speech by Nausicaa Delfas, the FCA's Executive Director of International, exploring a 'new era' of financial regulation for the UK (the Speech).

The Speech generally discusses the end of the Brexit transition period and the impact of the COVID-19 pandemic on the financial markets. A summary of the key highlights of the Speech is set out below:

- the 'new era' will be defined by developments brought about by Brexit, the COVID-19 pandemic and technological and societal changes;
- with regards to Brexit, all market participants and regulators need to continue to prepare for a range of scenarios to be prepared for the end of the Brexit transition period;
- in terms of the COVID-19 pandemic, the regulatory agenda is moving from crisis response to supporting economic recovery; and
- non-banks will be critical in enabling recapitalization to promote growth and recovery from the pandemic.

The Speech is available [here](#).

EU DEVELOPMENTS

AML: Delegated Regulation on High-Risk Third Countries under MLD4 Published in the Official Journal of the EU

On June 19, Delegated Regulation (EU) 2020/855 (the Delegated Regulation) was published in the Official Journal of the EU. The Delegated Regulation amends the list of high-risk third countries with strategic anti-money laundering (AML) and counter-terrorist financing (CTF) deficiencies produced under the Fourth Money Laundering Directive (MLD4).

The Delegated Regulation will:

- add the following third countries that have been identified as having strategic AML and CTF deficiencies to the high-risk list: the Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia, Myanmar/Burma, Nicaragua, Panama and Zimbabwe; and
- remove the following third countries that no longer present strategic AML and CTF deficiencies from the high-risk list: Bosnia-Herzegovina, Ethiopia, Guyana, Lao People's Democratic Republic, Sri Lanka and Tunisia.

The Delegated Regulation becomes effective on July 9. However, the article adding third countries to the list applies from October 1, so that firms have time to make the changes required to implement this provision.

The Delegated Regulation is available [here](#).

ESMA Updates Aspects of MiFIR and MiFID II

On July 7, the European Securities and Markets Authority (ESMA) published its updated results of the annual transparency calculations for a limited number of equity and equity-like instruments as required under MiFIR and MiFID II (the Calculations).

On the same day, ESMA also updated the list of trading venues that have a temporary exemption from the open access provisions under MiFIR (the List).

Finally, ESMA updated its public register with the latest set of double volume cap data and calculations for the period from June 1, 2019 to May 31 as required under MiFID II (the Register).

ESMA's press release in respect of the Calculations is available [here](#).

The List is available [here](#) and accompanying ESMA press release is available [here](#).

The Register is available [here](#) and accompanying ESMA press release is available [here](#).

ESMA Updates Q&As on CSDR, EMIR, MiFID II and MiFIR

On July 8, the European Securities and Markets Authority (ESMA) published updates to a number of Q&As in respect of various European Union (EU) regulations as set out below:

- the Central Securities Depositories Regulation (CSDR) — the Q&A explores the implementation of the settlement discipline regime and clarifies that, for the purpose of initiating a buy-in process, the concept of 'business days' under CSDR refers to the definition given in the rules of the securities settlement systems where the settlement fail occurred (CSDR Q&A);
- the European Markets Infrastructure Regulation (EMIR) — the EMIR Q&A discusses practical questions regarding data reporting issues. For instance, the updated trade repository (TR) Q&A 11(b) clarifies that counterparties should follow their local time and the relevant calendar of their Member State to specify the 'working day' in the context of determining the deadline for reporting under EMIR. This clarification should be applied even if the two counterparties to the same derivative follow different calendars and/or are located in different time zones, meaning that each counterparty should follow its own local calendar and use the local time to determine the deadline for reporting (EMIR Q&A);
- the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR) — the new Q&A provides technical clarifications for the performance of the mandatory systematic internaliser (SI) test. The Q&A specifies how the number of transactions and the nominal amount traded of a derivative shall be allocated when a derivative contract changes over the observation period from one sub-class to another (MiFID II and MiFIR Transparency Q&A); and
- the Market in Financial Instruments Regulation (MiFIR) — the Q&A provides clarifications in relation to the reporting requirements for submission of transaction reports under MiFIR. In particular, the new Q&A provides two reporting scenarios where an investment firm executes a transaction through an execution algorithm provided by another firm (MiFIR Data Reporting Q&A).

The CSDR Q&A is available [here](#).

The EMIR Q&A is available [here](#).

The MiFID II and MiFIR Transparency Q&A is currently unavailable, as we understand that the version circulated in the relevant ESMA press release (available [here](#)) is not the latest version of the Q&A. We will update this link when available.

The MiFIR Data Reporting Q&A is available [here](#).

ESMA Consults on Guidelines for Calculating Positions under SFTR

On July 9, the European Securities and Markets Authority (ESMA) published a consultation (the Consultation) regarding draft guidelines (the Guidelines) on the calculation of positions by trade repositories (TRs) under the Securities Financing Transactions Regulation (SFTR).

The aim of the Guidelines is to ensure consistency of position calculation across TRs with regard to the time of calculations, the scope of the data used in calculations, the data preparation, the recordkeeping of data and the calculation methodologies.

ESMA notes that high-quality position data is necessary for the assessment of systemic risks to financial stability by the relevant authorities. These Guidelines intend to also ensure a consistent methodology is used under EMIR and SFTR, while still reflecting the specificities of reporting securities financing transactions.

The closing date for responses to the Consultation is September 15. ESMA will consider the responses to this consultation with a view to finalizing the proposed Guidelines and publishing a final report in Q4 2020 or Q1 2021.

The Consultation is available [here](#), and the Guidelines are available [here](#).

European Commission Publishes Communication on the Post-Brexit Transition Period

On July 9, the European Commission (the Commission) published a communication to help national authorities, businesses and citizens prepare for the changes that will arise at the end of the Brexit transition period on December 31 (the Communication).

Most importantly, the Commission notes that it is considering the adoption of a time-limited equivalence decision in respect of UK central counterparties (CCPs) that clear derivatives for European Union (EU) clearing members. The adoption of such an equivalence decision will ensure that UK CCPs may continue to provide such services following the expiry of the transition period and thus avoiding a clearing 'cliff edge.'

The Commission notes that such a time limited decision would allow EU-based CCPs to develop further their capacity to clear relevant trades in the short and medium term, whilst also providing EU clearing members with time to implement the necessary steps to reduce their systemic exposure to UK market infrastructures.

In terms of a broad equivalence regime between the EU and UK, the Commission requested that the UK complete questionnaires covering 28 equivalence areas. By the end of June, only four questionnaires had been completed and returned to the Commission. Consequently, the Commission could not conclude its equivalence assessments by the end of June. The Commission will continue the assessments based on further replies that it is currently receiving from the UK.

The Communication 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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FINANCIAL MARKETS AND FUNDS

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