

SEC/CORPORATE

SEC Staff Announces Changes to Rule 14a-8 No-Action Request Process

On September 6, the staff of the Division of Corporation Finance (the Staff) of the Securities and Exchange Commission announced changes (the Announcement) concerning its procedures for administering Rule 14a-8 under the Securities Exchange Act of 1934. Specifically, starting with the 2019-2020 proxy season, in response to no-action requests by companies seeking to exclude shareholder proposals from their proxy materials pursuant to Rule 14a-8, the Staff may provide an oral statement of its view, rather than issuing the statement in writing. The Staff clarified that its response to such a request may be that it agrees, disagrees or declines to state a view with respect to the company's basis for excluding the shareholder proposal, and, when the Staff declines to state its view with respect to a particular no-action request under Rule 14a-8, the interested party or parties should not interpret that as indicating the proposal must be included in the company's proxy materials. As a reminder, the granting of no-action relief by the Staff confirms that the Staff will not recommend that the SEC bring an enforcement action against the requester based on the facts and representations described in the request, but, as noted in the Announcement, regardless of the Staff's position, parties may still bring a suit in court to have the issue adjudicated on the merits. Additionally, the Staff will still issue written response letters when "doing so would provide value, such as more broadly applicable guidance about complying with Rule 14a-8." The Announcement also reiterated prior guidance that, when a company request for no-action relief is being made under paragraphs (i)(5) (Relevance) or (i)(7) (Management functions) of Rule 14a-8, it is helpful to the Staff for the company to provide its board of directors' analysis.

The full text of the Announcement is available [here](#).

BROKER-DEALER

SEC Proposes Transparency and Financial Accountability Amendments to CAT NMS Plan

On September 9, the Securities and Exchange Commission voted to propose amendments to the national market system plan (CAT NMS Plan) governing the Consolidated Audit Trail (CAT).

The proposed amendments would require self-regulatory organizations that are participants in the CAT NMS Plan, such as FINRA and the national securities exchanges (SROs), to file and publish a complete implementation plan for the CAT and quarterly progress reports. Each of the required documents must be approved by the Operating Committee established by the CAT NMS Plan and submitted to the chief executive officer, president or equivalently situated senior officer of each participating self-regulatory organization. In addition, the proposed amendments would include financial accountability provisions that establish target deadlines for four implementation milestones and reduce the amount of fee recovery available to the participating self-regulatory organizations if those target deadlines are missed.

The public comment period will remain open for 45 days following publication of the proposed release in the Federal Register.

In a public statement released in conjunction with the proposed amendments, SEC Chairman Jay Clayton acknowledged that the SROs have not met the CAT NMS Plan deadlines for implementation of the CAT,

explained that the proposed amendments are designed to facilitate implementation progress and assured that the protection of sensitive personal information submitted to the CAT would be a priority of the SEC and the SROs.

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

A copy of SEC Chairman Jay Clayton's statement on the proposed amendments is available [here](#).

The proposed amendments are available [here](#).

SEC Releases Small Entity Compliance Guide for Regulation Best Interest and Form CRS

On September 9, the Securities and Exchange Commission (SEC) released two small entity compliance guides to assist broker-dealers and investment advisers in complying with the recently adopted Regulation Best Interest (Reg BI) and Form CRS.

On June 5, the SEC adopted (1) Reg BI and (2) Form CRS and related rules under both the Investment Advisers Act of 1940 and the Securities Exchange Act of 1934 (Exchange Act). Reg BI establishes a new standard of conduct under the Exchange Act for broker-dealers and natural persons who are associated persons of a broker-dealer when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer. Form CRS and its related rules require registered investment advisers and registered broker-dealers to deliver to retail investors a brief customer or client relationship summary that provides information about the firm, including costs, conflicts of interest and disciplinary history. Firms must file their relationship summaries with the SEC.

The guides summarize and explain Reg BI and Form CRS and also inform small entities of the SEC's Division of Investment Management and Division of Trading and Markets availability to assist with questions regarding Reg BI, Form CRS or relating to the package of rules and interpretations adopted in connection therewith.

A copy of the guide for Reg BI is available [here](#).

A copy of the guide for Form CRS is available [here](#).

FINRA Issues Call for Candidates in Upcoming Small Firm Advisory Committee Election

On September 4, the Financial Industry Regulatory Authority (FINRA) issued a notice informing small FINRA member firms of the upcoming Small Firm Advisory Committee (SFAC) election. One seat on the SFAC representing the New York region is open for election.

The SFAC provides guidance to FINRA staff, particularly regarding the potential impact of proposed regulatory initiatives on FINRA's small firm members. Any senior member of a small firm whose primary place of business and whose firm has its main office in the New York region is eligible to have his or her name placed on the ballot. Senior members of firms include owners, chief executive officers, presidents, chief compliance officers, chief operating officers, the firm's financial and operations principal or individuals of comparable status.

Interested individuals must complete the required SFAC candidate profile form and submit it through their firm's executive representative to FINRA's corporate secretary by Friday, October 4.

A copy of FINRA's notice is available [here](#).

FINANCIAL MARKETS

See "FCA Provides Updated Information on SM&CR Implementation" in the UK Developments section.

See "German Government Publishes Proposed Law for Proprietary Trading Firms" in the EU Developments section.

CFTC

CFTC's Global Markets Advisory Committee to Meet on September 24

The Commodity Futures Trading Commission's (CFTC) Global Markets Advisory Committee (GMAC) will hold a public meeting on Tuesday, September 24, at the CFTC's Washington, DC headquarters. GMAC's agenda for the meeting includes presentations on developments regarding the following topics:

- Implementation of margin requirements for non-centrally cleared derivatives.
- European Market Infrastructure Regulation (EMIR) 2.2, including responses to the consultation by the European Securities and Markets Authority (ESMA) regarding various aspects of EMIR 2.2 affecting third-country central counterparties.

For further information on the meeting location, time and conference call information, please click [here](#).

UK DEVELOPMENTS

FCA Provides Updated Information on SM&CR Implementation

On September 11, the UK Financial Conduct Authority (FCA) published updated information on its website for FCA-regulated firms in connection with the extension of the senior managers and certification regime (SM&CR) to such firms on December 9.

With less than three months to go until the implementation date, the FCA's updated webpage now includes checklists for FCA-regulated firms — in particular, the updated webpage includes the additional information that firms will need to collate and file with the FCA on Form K, which is the form that firms must submit to the FCA to notify the regulator regarding which approved persons should be converted to a senior management function (SMF) and who are not already FCA approved persons in a senior function (as such persons will automatically transition across to their new corresponding SMFs). The information is in the "Enhanced Firms" section. The form can be found in FCA Connect, under the "Approved Persons" tab.

FCA-regulated firms should note that Form K must be submitted to the FCA via FCA Connect by 11:59 p.m. (London time) on November 24. All SMFs for each firm will appear on the financial services register on December 9.

It is recommended that at some point on December 9, all FCA-regulated firms should check the register to ensure that the register shows the correct SMFs and to quickly amend any errors (via FCA Connect) thereafter.

The updated webpage is available [here](#).

EU DEVELOPMENTS

German Government Publishes Proposed Law for Proprietary Trading Firms

On September 5, the German Federal Government published a proposal relating to a draft law implementing Regulation (EU) 2019/834 (EMIR REFIT), which also clarifies the licensing requirements for non-EU firms (which would include UK firms after Brexit) that conduct cross-border proprietary trading with German counterparties or on German trading venues.

The proposal provides for an "Own Account Exemption", which will be available to non-EU firms trading on own account in Germany in financial instruments other than commodity derivatives, emission allowances or derivatives thereof. In order to benefit from such exemption, relevant firms must not be market makers have direct electronic access to a German trading venue, apply a high frequency algorithmic trading technique (when dealing on German trading venues) or deal on own account when executing client orders.

The exemption therefore formalizes the so-called “inter-dealer” exemption, whereby transactions in financial instruments with counterparties or persons in Germany do not trigger licensing requirements as long as both parties are trading on own account without executing client orders.

It also provides potential relief for post-Brexit UK and other non-EU firms that trade for own account, while acting as members or participants of German exchanges (e.g. Eurex), as long as the other requirements of the Own Account Exemption are still met.

The Own Account Exemption will be available for a firm in a given jurisdiction until the European Securities and Markets Authority (ESMA) issues an equivalence decision in respect of such jurisdiction and records the firm in its related third country firm register pursuant to Articles 46 to 48 of the Markets in Financial Instruments Regulation.

The proposed law is expected to become effective in early 2020. It is also expected that, should the UK leave the EU without a deal before the proposal becomes effective, the German regulator, BaFin, would apply the draft law in anticipation of its effectiveness.

The proposal (in German) 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:

SEC/CORPORATE

Mark J. Reyes	+1.312.902.5612	mark.reyes@katten.com
Mark D. Wood	+1.312.902.5493	mark.wood@katten.com
Alyse A. Sagalchik	+1.312.902.5426	alyse.sagalchik@katten.com

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
Arthur W. Hahn	+1.312.902.5241	arthur.hahn@katten.com
Christian B. Hennion	+1.312.902.5521	christian.hennion@katten.com
Carolyn H. Jackson	+44.20.7776.7625	mailto: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
Neil Robson	+44.20.7776.7666	neil.robson@katten.co.uk
Nathaniel Lalone	+44.20.7776.7629	nathaniel.lalone@katten.co.uk

* Click [here](#) to access the *Corporate & Financial Weekly Digest* archive.

Attorney advertising. Published as a source of information only. The material contained herein is not to be construed as legal advice or opinion.

©2019 Katten Muchin Rosenman LLP. All rights reserved.

Katten katten.com

AUSTIN | CENTURY CITY | CHARLOTTE | CHICAGO | DALLAS | HOUSTON | LONDON | LOS ANGELES | NEW YORK | ORANGE COUNTY | SAN FRANCISCO BAY AREA | SHANGHAI | WASHINGTON, DC

Katten refers to Katten Muchin Rosenman LLP and the affiliated partnership as explained at [katten.com/disclaimer](#).