

SEC/CORPORATE

SEC Announces Rule Proposal to Modernize, Simplify and Increase the Accessibility of Required Disclosure

On October 11, the Securities and Exchange Commission issued a press release announcing that it voted to propose amendments to modernize and simplify disclosure requirements in Regulation S-K, and related rules and forms, by updating, streamlining or otherwise improving the SEC's disclosure framework "in a manner that reduces the costs and burdens on registrants while continuing to provide all material information to investors." The proposed amendments are based on recommendations made in the staff of the SEC's Report on Modernization and Simplification of Regulation S-K, as required by the Fixing America's Surface Transportation Act (FAST Act). In the press release, SEC Chairman Jay Clayton noted that "an effective disclosure regime provides investors with the information necessary to make informed investment choices without imposing unnecessary burdens of time and money on issuers, and today's action embodies that goal." As highlighted in the fact sheet included in the press release, the proposed amendments would, among other things:

- revise SEC rules and forms to update, streamline or otherwise improve the SEC's disclosure framework to eliminate the risk factor examples listed in the disclosure requirement and revise the description of property requirement to emphasize the materiality threshold;
- eliminate certain requirements for undertakings in registration statements as a result of recent rule developments;
- simplify both disclosure and the disclosure process, including by (a) revising requirements for the filing of exhibits and the related process for requesting confidential treatment and (b) changing Management's Discussion and Analysis to allow for flexibility in the discussion of historical periods; and
- improve access to information through required data tagging for items on the cover page of certain filings and the use of hyperlinks for information that is incorporated by reference and available on the Electronic and Data Gathering, Analysis and Retrieval system.

The SEC posted the proposing release on October 11, and we plan to cover the proposed amendments in greater detail in the next issue of the *Corporate & Financial Weekly Digest*.

The press release and fact sheet are available [here](#).

BROKER-DEALER

SEC Approves FINRA Registration, Qualification and Continuing Education Rules

The Securities and Exchange Commission has approved the Financial Industry Regulatory Authority rules that (1) consolidate the National Association of Securities Dealers (NASD) and Incorporated New York Stock Exchange registration rules, as well as existing FINRA rules; (2) restructure the representative-level qualification examination requirements; and (3) amend continuing education requirements. The rules will become effective October 1, 2018.

While the new registration rules are similar to the NASD and Incorporated NYSE rules that they replace, there are a few substantive differences. For example, the new registration rules expand the ability for member firms to submit permissive registrations to FINRA such that any associated person of a member firm (including individuals working solely in clerical or ministerial capacities) may be permissibly registered. Individuals that are permissibly registered will be subject to all FINRA rules to the extent relevant to their activities. The new registration rules also establish a new program to waive requalification requirements for individuals who terminate their registrations as representatives or principals to go to work for a foreign or domestic financial services industry affiliate of a member firm (subject to certain conditions).

Furthermore, the new rules also require all member firms (including those currently exempt from the requirement of having a financial and operations principal or an introducing broker-dealer financial and operations principal) to designate a principal financial officer and a principal operations officer. Finally the new registration rules create three new principal registration categories (chief compliance officer, investment banking principal and private securities offerings principal) and eliminates several others (order processing assistant representative, UK securities representative, Canada securities representative, options representative, corporate securities representative, government securities representative and foreign associate).

FINRA has restructured representative-level examination requirements such that all applicants will be required to take both a general knowledge examination (called the Securities Industry Essentials or "SIE" exam) and a tailored, specialized knowledge examination related to their particular registered role. The restructuring seeks to eliminate duplicative testing.

FINRA's Regulatory Notice can be found [here](#).

EU DEVELOPMENTS

ESMA Updates MiFID II Q&A on Commodity Derivatives

On October 4, the European Securities and Markets Authority (ESMA) updated a question and answer document (Q&A) relating to commodity derivatives under the revised Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR).

The updated Q&A contains new questions and answers relating to the following topics:

- position management controls operated by trading venues; and
- the ancillary activity exemption, specifically relating to how the capital employed test should be calculated and how various underlyings falling under the C(10) category of financial instruments should be treated for the purposes of ancillary activity calculations.

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

ESMA Highlights Importance of LEI for MiFID II Compliance

On October 9, the European Securities and Markets Authority (ESMA) published a briefing (Briefing) on the importance of the legal entity identifier (LEI) in enabling firms to comply with their obligations under the revised Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR), beginning January 3, 2018.

The LEI is a 20-digit, alpha-numeric code that enables clear and unique identification of legal entities participating in financial transactions. LEIs, like other identifiers, are needed by firms to fulfil their reporting obligations. In order to obtain an LEI, entities should contact an LEI issuer. The list of LEI issuers is available on the Global LEI Foundation (GLEIF) [website](#).

The LEI plays an important role in the new harmonized data-reporting regime under MiFID II, in particular under Articles 26 and 27 of MiFIR, and it is crucial to ensure the quality and consistency of the data reported to EU supervisors. ESMA states that it is also key to improving market surveillance and transparency, and generates

important benefits for businesses in terms of costs reduction, improved risk management and increased operational efficiencies.

The Briefing is available [here](#).

ESMA Updates UCITS and AIFMD Q&As

On October 5, the European Securities and Markets Authority (ESMA) updated two question and answer documents: one relating to the Undertakings for the Collective Investment in Transferable Securities Directive (UCITS) and the other relating to the Alternative Investment Fund Managers Directive (AIFMD).

The updated UCITS Q&A contains one new question and answer on periodic reporting under Article 13 of the Regulation, which relates to the reporting and transparency of securities financing transactions (SFTR) for UCITS and alternative investment funds (AIFs) for investors using securities financing transactions (SFTs) and total return swaps.

The updated AIFMD Q&A contains new questions and answers relating to the following topics:

- the application of remuneration disclosure requirements to staff of the delegate of an alternative investment fund manager (AIFM) to whom portfolio management or risk management activities have been delegated;
- the manner of disclosure of AIFM delegates' staff remuneration in annual reports; and
- periodic reporting (under Article 13 of the SFTR) for UCITS and AIFs to investors on the use of SFTs and total return swaps.

The UCITS Q&A and AIFMD Q&A are available [here](#) and [here](#).

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