

Due to the Christmas and New Year's holidays, *Corporate & Financial Weekly Digest* will not be published on December 25 and January 1. The next issue will be distributed on January 8, 2021.

BROKER-DEALER

SEC Adopts Clearing Agency Rule to Limit Potential for Overlapping or Duplicative Regulation

On December 16, the Securities and Exchange Commission announced that it adopted a rule to limit the potential for overlapping or duplicative regulation within its security-based swap regulatory regime. Specifically, the rule exempts certain activities of security-based swap execution facilities (SEFs) and security-based swap dealers from triggering the requirement also to register as a clearing agency. The adopted rule is in line with similar exemptions for broker-dealers and national securities exchanges.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 created new regulatory categories of entities for the security-based swap market. The adopted rule helps ensure that those entities are treated similarly to national securities exchanges and broker-dealers. Both the exemptions from and exclusions to the definition of clearing agency are designed to ensure that the entities are subject to appropriate regulation.

The adopted rule will become effective 60 days after publication in the *Federal Register*.

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

SEC Adopts Final Rules for the Disclosure of Payments by Resource Extraction Issuers

On December 16, the Securities and Exchange Commission voted to adopt final rules that will require resource extraction issuers that are required to file reports under Section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") to disclose payments made to the US federal government or foreign governments for the commercial development of oil, natural gas or minerals.

The rules implement Section 13(q) of the Exchange Act, which was added by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The rules are intended to (1) increase the transparency of payments to governments for the purpose of the commercial development of their oil, natural gas and minerals; and (2) comply with the Congressional Review Act.

The adopted rules require a domestic or foreign reporting issuer to disclose payments made by the issuer or a subsidiary or entity controlled by the issuer to the US federal government or a foreign government if the issuer engages in the commercial development of oil, natural gas or minerals.

The final rules will be effective 60 days following publication in the *Federal Register*.

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

DERIVATIVES

See “SEC Adopts Clearing Agency Rule to Limit Potential for Overlapping or Duplicative Regulation” and “SEC Adopts Final Rules for the Disclosure of Payments by Resource Extraction Issuers” in the Broker-Dealer section and “CFTC Extends Temporary No-Action Relief From Trade Execution Requirement for Certain Affiliated Counterparties” in the CFTC section.

CFTC

LabCFTC Releases Digital Assets Primer

On December 17, the Commodity Futures Trading Commission’s innovation office, LabCFTC, released a Digital Assets Primer, which provides the public with updated information about emerging concepts in digital assets. The Digital Assets Primer is intended to build on LabCFTC’s 2017 Primer on Virtual Currencies, which focused on virtual currencies, such as bitcoin. Topics covered by the Digital Assets Primer include: (1) smart contracts; (2) digitized representations of value or ownership; (3) the governance of digital assets; and (4) the appropriate role of regulatory authorities, including the CFTC.

The Digital Assets Primer is available [here](#).

The 2017 Primer on Virtual Currencies is available [here](#).

CFTC Extends Temporary No-Action Relief From Trade Execution Requirement for Certain Affiliated Counterparties

On December 17, the Commodity Futures Trading Commission’s Division of Market Oversight issued CFTC Letter No. 20-45, which extends relief from the trade execution requirement for certain inter-affiliate transactions provided under CFTC Letter No. 17-67 (available [here](#)) and prior staff letters. CFTC Letter No. 17-67 provides relief from the trade execution requirement under CFTC Regulation 50.52(a) with regard to swaps that are entered into by eligible affiliate counterparties and cleared, regardless of the affiliates’ ability to claim the inter-affiliate clearing exemption under CFTC Regulation 50.52(b). The no-action relief was set to expire on December 31.

On December 7, the CFTC approved a final rule that established two exemptions from the trade execution requirement (Final Rule). Importantly, the Final Rule codifies the no-action relief provided under CFTC Letter No. 17-67. Upon the effective date of the Final Rule, further no-action relief will be unnecessary. However, the Final Rule will not become effective until 30 days after publication in the *Federal Register*, the date of which is currently uncertain. CFTC Letter No. 20-45 extends the current no-action relief until the effective date of the Final Rule.

CFTC Letter No. 20-45 is available [here](#).

BREXIT/UK DEVELOPMENTS

UK Regulatory Capital/Prudential Rules: FCA Publishes First Consultation on Implementation of IFPR

On December 14, the UK’s Financial Conduct Authority (FCA) published its first consultation paper on the implementation of the Investment Firms Prudential Regime (IFPR) (CP20/24) with its proposal for the UK’s new regulatory capital/ prudential rules following the end of the Brexit transition period (the Consultation Paper).

The FCA intends to create a new Prudential sourcebook for Markets in Financial Instruments Directive (MiFID) Investment Firms (MIFIDPRU).

The key proposals addressed in the Consultation Paper by the FCA include:

- replacing the current categorization of FCA investment firms (e.g., BIPRU, IFPRU and exempt-CAD) with just two categories of firms: (A) 'small and non-interconnected' (SNI) investment firms; and (B) non-SNIs. SNIs are firms that are not permitted to deal as principal or hold client money or assets, and typically include smaller asset managers and advisers. SNI firms will benefit from a proportionate implementation of the IFPR in key areas such as calculating capital requirements, reporting, disclosure and remuneration requirements. The non-SNI category comprises all other FCA investment firms;
- applying prudential consolidation to investment firm groups excluding firms that have been granted permission by the FCA to use the group capital test;
- amending the definition of own funds to solely include common equity tier 1 capital, additional tier 1 capital and tier 2 capital;
- introducing a permanent minimum requirement that FCA investment firms should not fall below based on their activities, increasing the initial capital a firm requires to be authorized as an FCA investment firm and implementing a new approach to calculate capital requirements based on quantitative indicators;
- launching new monitoring requirements for general concentration risk that will apply to all FCA investment firms; and
- revising the data collecting approach to support the IFPR and removing reporting requirements that the FCA considers are no longer necessary.

The FCA intends to publish two more consultation papers in the second quarter and the third quarter of 2021, one concerning IFPR issues and the other addressing final points and any gaps identified through the consultation process

The FCA will not publish final rules until the Financial Services Bill 2019-21 has passed through Parliament.

The deadline for comments on the Consultation Paper is February 5, 2021.

The Consultation Paper is available [here](#).

HM Treasury Call For Evidence on UK Overseas Framework and Overseas Persons Exclusion Post-Brexit

On December 15, the UK's HM Treasury published a call for evidence on the UK framework for financial services firms based overseas that are seeking to conduct activities in the UK.

The purpose of the call for evidence is to obtain information about how the existing UK rules work in practice. HM Treasury intends to use this information to develop the UK's regulatory framework following the end of the Brexit transition period.

The key requests for feedback in the call for evidence by the HM Treasury include:

- the overseas persons exclusion;
- investment services equivalence under Title VIII of the Markets in Financial Instruments Regulation (MiFIR);
- recognized overseas investment exchanges; and
- the Financial Promotion Order in general, and specifically in relation to the distribution of certain overseas long-term insurance products in the UK.

HM Treasury aims to improve consistency, as some activities overlap in the framework.

The deadline for comments on the call for evidence is March 11, 2021.

The call for evidence is available [here](#).

HM Treasury Changes Notification Threshold Under UK Short Selling Regulation

On December 15, the UK's HM Treasury announced its intention to enact a statutory instrument under the UK's retained version of the Short Selling Regulation (SSR), amending the initial notification threshold for the reporting of certain net short positions to the Financial Conduct Authority (FCA) (the Guidance).

The new amended threshold of 0.1 percent net short (instead of 0.2 percent) specifically relates to issued share capital of a company that has shares admitted to trading on a UK trading venue. The change will take effect from February 1, 2021.

The FCA updated its [webpage](#) on the notification and disclosure of net short positions to reflect the upcoming change. The webpage explains that the notification threshold for issued share capital of a company that has shares admitted to trading on a UK trading venue will remain 0.2 percent from the end of the transition period (December 31) until the enactment of the statutory instrument on February 1, 2021.

The Guidance is available [here](#).

EU DEVELOPMENTS

ESMA Renews 0.1 Percent Reporting Requirement Decision for Net Short Position Holders

On December 16, the European Securities and Markets Authority (ESMA) renewed its decision to temporarily require the holders of net short positions in shares traded on an EU regulated market to inform the relevant national competent authority (NCA) if the position reaches, exceeds or falls below 0.1 percent of the issued share capital. The measure applies starting December 19 for a period of three months (the Decision).

ESMA previously renewed the Decision on September 18, intending to support NCAs tackling the threats caused by COVID-19 and preserving market integrity and financial stability (see the [September 18, 2020 Edition of Corporate & Financial Weekly Digest](#)).

The Decision will expire on March 19, 2021.

The Decision 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:

FINANCIAL MARKETS AND FUNDS

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
Christian B. Hennion	+1.312.902.5521	christian.hennion@katten.com
Carolyn H. Jackson	+44.20.7776.7625	carolyn.jackson@katten.co.uk
Susan Light	+1.212.940.8599	susan.light@katten.com
Richard D. Marshall	+1.212.940.8765	richard.marshall@katten.com
Paul McCurdy	+1.212.940.6676	paul.mccurdy@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
Allison C. Yacker	+1.212.940.6328	allison.yacker@katten.com
Lance A. Zinman	+1.312.902.5212	lance.zinman@katten.com
Krassimira Zourkova	+1.312.902.5334	krassimira.zourkova@katten.com

BREXIT/UK/EU DEVELOPMENTS

Carolyn H. Jackson	+44.20.7776.7625	carolyn.jackson@katten.co.uk
Nathaniel Lalone	+44.20.7776.7629	nathaniel.lalone@katten.co.uk
Neil Robson	+44.20.7776.7666	neil.robson@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.

©2020 Katten Muchin Rosenman LLP. All rights reserved.

Katten katten.com

CENTURY CITY | CHARLOTTE | CHICAGO | DALLAS | LONDON | LOS ANGELES | NEW YORK | ORANGE COUNTY | SHANGHAI | WASHINGTON, DC

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