

## BROKER-DEALER

### **FINRA Reminds Members of Obligations Related to OTC Securities Quoted by a Filed Form 211**

On September 24, the Financial Industry Regulatory Authority (FINRA) issued a Regulatory Notice (Notice) reminding firms of their applicable obligations when publishing a quote in an OTC security, in addition to filing a Form 211. Securities Exchange Act of 1934 (SEA) Rule 15c2-11 prevents a broker-dealer from initiating quotations in an OTC security unless such broker-dealer has reviewed and verified that certain information about the issuer is accurate and from a reliable source. FINRA Rule 6432 requires a firm to file a Form 211 with FINRA to show compliance with SEA Rule 15c2-11.

The FINRA Notice highlights that filing the Form 211 is not a replacement for members in satisfying their obligations under other applicable rules and regulations. Namely, the Notice states that firms must be mindful of the requirements under Section 5 of the Securities Act of 1933, which generally prohibits the offer or sale of securities without an effective registration statement, unless an exemption applies. Also, the Notice mentions that before a firm initiates or resumes quotations in an OTC security, the firm should check whether the securities have been the subject of a suspension or revocation.

The full Notice is available [here](#).

## DERIVATIVES

See “ESMA Updates Q&As Relating to EMIR and MiFIR” in the EU Developments section.

## CFTC

### **FinCEN Issues Advisory on FATF-Identified Jurisdictions With AML/CFT Deficiencies**

The Financial Crimes Enforcement Network (FinCEN) issued an advisory to announce that the Financial Action Task Force (FATF) updated its list of jurisdictions with strategic anti-money laundering and combatting the financing of terrorism (AML/CFT) deficiencies. In the advisory, FATF has removed Iraq and Vanuatu from the list and added Pakistan to the list.

The advisory also includes FATF’s public statements on the Democratic People’s Republic of Korea and Iran.

The FinCEN advisory is available [here](#).

### **NFA and FIA Launch Training Course on Safeguarding Customer Funds**

National Futures Association (NFA), Futures Industry Association (FIA) and other industry professionals have collaborated to launch an FIA training course on safeguarding customer funds. The course, which is designed to assist futures commission merchants in meeting their training requirements under Commodity Futures Trading

Commission Rule 1.11, covers the basics of segregation, residual interest, investment of customer funds and recordkeeping, reporting and notification requirements.

More information on the training course is available [here](#).

The FIA training course is available [here](#).

## UK DEVELOPMENTS

### **FCA and PRA Published Dear CEO Letters on Transition From LIBOR to Risk-Free Rates**

On September 19, the UK Financial Conduct Authority (FCA) and UK Prudential Regulation Authority (PRA) published Dear CEO letters that they jointly sent to the chief executive officers (CEOs) of major banks and insurance companies regulated in the United Kingdom, regarding their preparations for the transition from the London Interbank Offered Rate (LIBOR) to alternative risk-free rates (RFRs).

The letters seek assurance that firms' senior managers and boards understand the risks associated with the transition from LIBOR to RFRs and are taking appropriate action now to facilitate the transition before the end of 2021.

The FCA and PRA request that, by December 14, firms must provide them with a board-approved summary of their assessment of key risks relating to the discontinuation of LIBOR, together with details of planned actions to mitigate those risks. Each firm also must identify the senior managers who will oversee the provisions of the firm's response to the FCA and PRA's letter and the implementation of the firm's transition plans.

In their letter to banking firm CEOs, the FCA and PRA explain that, in addition to participating in market-wide initiatives, they expect the largest banks to undertake a comprehensive risk assessment of the potential prudential and conduct impacts associated with transition in a range of different scenarios, including the discontinuation of LIBOR. The assessment is expected to be proportionate to the extent of firms' usage of LIBOR and LIBOR-referencing instruments, and include a quantification of LIBOR exposures.

The FCA and PRA will review firms' responses and consider appropriate next steps. Firms' responses also will supplement monitoring by the Bank of England's Financial Policy Committee of the risks associated with the discontinuation and transition of LIBOR.

The PRA also explains on a related webpage that firms not in receipt of a direct email from their PRA supervision team linking to the letters are not within the scope of the request to respond to the letter. However, all firms that currently rely on LIBOR are asked to read and reflect on the letter. The continued participation of market participants to develop new market structures, new technologies, standards and solutions to address the various transition challenges, will be an essential part of the success of the collective effort being undertaken.

The letter to banking firm CEOs is available [here](#).

### **Issue 56 of the FCA's *Market Watch* Newsletter Covers Market Surveillance and PFOF**

On September 24, the UK Financial Conduct Authority (FCA) published Issue 56 of *Market Watch*, its newsletter on market conduct and transaction reporting issues.

Issue 56 contains articles that provide a useful reminder in relation to obligations in relation to market abuse surveillance and payment for order flow (PFOF).

1. Market abuse surveillance:
  - a. The FCA reminds firms that relying on peer standards, such as popular "out of the box" alert settings and average peer output volumes, will not necessarily satisfy the requirements of the Market Abuse Regulation (MAR). Firms risk failing to comply with MAR if they assume that because a certain alert calibration is appropriate for their peers, then it must be appropriate for them.

- b. Firms also are reminded that the list of indicators for fictitious devices, false or misleading signals and price securing in MAR is not exhaustive. Firms treating them as exhaustive may therefore fail to identify the risk of other types of market manipulation, which are still within the broader scope of MAR.
  - c. The FCA believes that suspicious transactions and order report (STOR) submissions are lower than they should be in some areas, for example in fixed income products. Firms are, therefore, reminded that they should consider trading activity in correlated products to achieve effective surveillance. The FCA also reminds firms that when conducting STOR supervisory visits, they focus primarily on the firm's own compliance with the STOR regime, rather than employees' compliance with their individual regulatory obligations.
2. PFOF:
- a. Firms are reminded that the FCA will take action against firms who characterize their relationship with liquidity providers in a way that does not reflect economic reality and, in fact, appear to be PFOF arrangements.
  - b. The FCA also will continue to examine brokers' order routing to overseas entities for any evidence of circumventing behavior that breaches the FCA's rules, such as when relevant orders are handled at any stage by a UK broker but are subject to two-sided charging contrary the FCA's rules on PFOF.
  - c. Firms also should analyze the capacity in which they and different counterparties involved act, rather than look to their or different counterparties' respective general business models.

Issue 56 of the FCA's *Market Watch* is available [here](#).

## EU DEVELOPMENTS

### ESMA Updates Q&As Relating to EMIR and MiFIR

On September 26, the European Securities and Markets Authority (ESMA) published updates to two of its sets of question and answer documents (Q&As): (1) Q&As relating to the implementation of the European Market Infrastructure Regulation (EMIR); and (2) those relating to data reporting under the Markets in Financial Instruments Regulation (MiFIR).

The updated EMIR Q&A includes a clarification relating to access models at European Union central counterparties (CCPs)—specifically models aimed at facilitating buy-side or small participant access to CCPs and allowing better capital treatment for clearing members. A new item also was added to the trade repositories section of the Q&A explaining how a reporting counterparty should report a foreign exchange (FX) swap under EMIR.

The MiFIR data reporting Q&A document includes new items relating to FX swaps reporting and interest rate swaps reporting. It also clarifies how trading venues and systematic internalizers should populate certain reporting fields, and makes an amendment to an existing item relating to the total issued nominal amount reporting field.

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

The updated MiFIR data reporting Q&A is available [here](#).

### ECON Votes to Adopt Draft Reports on Revised EU Prudential Framework for Investment Firms

On September 24, the European Parliament published a press release announcing that its Committee on Economic and Monetary Affairs (ECON) voted to adopt its draft reports on the European Commission's proposals for a regulation on the prudential supervision of investment firms (Investment Firms Regulation (IFR)), and a directive on the prudential supervision of investment firms (Investment Firms Directive (IFD)).

Among other things, ECON's draft reports suggest amendments to the IFR and IFD proposals relating to:

- enabling competent authorities to subject an investment firm below a certain asset threshold to the bank capital requirement rules when its activities are carried out at such a scale that their failure may pose a systemic risk;
- extending the period during which asset thresholds must be exceeded before moving to the higher, more burdensome prudential category;
- increasing the number of investments that are subject to the lowest requirements; and
- tightening the equivalence rules for third-country investment companies. Specifically, third-country companies, that either deal on own account or underwrite investments, will not be able to carry out such activities in the European Union or European Economic Area under an equivalence decision—meaning that a physical presence in the European Union or European Economic Area would be required for such activities once the new rules take effect.

ECON published its draft reports on the IFR and the IFD in April 2018 (for further details, see the April 20, 2018 edition of [Corporate & Financial Weekly Digest](#)).

The next step will be for the European Parliament to consider in plenary the motion for a resolution of the European Parliament, as set out in the draft reports.

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

### **ESMA Announces Details of Two New Data Completeness Indicators for Trading Venues**

On September 27, the European Securities and Markets Authority (ESMA) published a press release announcing two new data completeness indicators for trading venues relating to the delivery of double volume cap (DVC) and bond liquidity data.

DVC and bond liquidity data are required from trading venues for transparency purposes pursuant to the revised Markets in Financial Instruments Directive. ESMA is introducing the measures due to the timeliness of such data remaining “unsatisfactory” and due to “significant” data completeness issues.

The two new indicators are:

- the completeness ratio, which provides information on the completeness of a particular trading venue’s data, irrespective of the performance of other trading venues. The completeness ratio is calculated as the number of records received from a trading venue divided by the total number of records expected from that venue over the relevant period; and
- the completeness shortfall, which gives an indication of a trading venue’s performance in terms of completeness compared to other trading venues. It reflects the percentage of missing data for which a particular trading venue is responsible across the entirety of the data set.

ESMA will publish the completeness ratio and completeness shortfall for the first time on October 8 for DVC data, and by November 1 for bond liquidity data.

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

### **ECON Publishes Draft Reports on Legislative Proposals for Cross-Border Distribution of Collective Investment Funds**

On September 21, the European Parliament’s Economic and Monetary Affairs Committee (ECON) published the following draft reports, both dated September 18:

1. a draft report on the proposal for a directive on the cross-border distribution of collective investment funds; and
2. a draft report on the proposal for a regulation on facilitating cross-border distribution of collective investment funds.

Both draft reports contain a European Parliament legislative resolution, the text of which sets out suggested amendments to the proposed legislation, alongside an explanatory statement by the rapporteur, Mr. Wolf Klinz.

In each report, the rapporteur comments that he essentially supports the European Commission's legislative proposals. The proposals, among other things, contain amendments to the UCITS IV Directive and the Alternative Investment Fund Managers Directive.

However, Mr. Klinz has identified some areas for action, including procedures for meeting marketing requirements by national authorities, transparency on fees set by national authorities, and the possibility of cross-border "pre-marketing" of alternative investment funds that have not been established.

The draft report on the proposed directive is available [here](#).

The draft report on the proposed regulation 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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\* Click [here](#) to access the *Corporate & Financial Weekly Digest* archive.

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