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SEC/CORPORATE

SEC Chair Addresses Advisory Committee on Small and Emerging Companies

On February 25, Securities and Exchange Commission Chair Mary Jo White addressed members of the SEC's Advisory Committee on Small and Emerging Companies (Committee) at the opening of the Committee's most recent meeting. As previously disclosed in the [Corporate & Financial Weekly Digest edition of February 19](#), the Committee met to examine the capital formation landscape for small and emerging companies. In giving her remarks, Chair White provided the Committee with an update on the staff of the SEC's (Staff's) activities on this front, including updates to: (1) Regulation A+ and crowdfunding rules; (2) proposed changes to Rule 147 and Rule 504 of Regulation D; (3) the definition of "accredited investor;" (4) simplified disclosure for smaller issuers, including "smaller reporting companies;" and (5) recently adopted Section 4(a)(7) under the Securities Act of 1933 (a new resale exemption in many respects similar to the so-called "4(a)(1 ½)" exemption).

Chair White specifically noted that issuers have publicly filed more than 60 offering statements pursuant to Regulation A+ since its effective date in June 2015. Chair White further noted that a number of funding portals have registered with the SEC to serve as intermediaries in anticipation of the new crowdfunding rules becoming effective on May 16.

The text of Chair White's remarks to the Committee can be read [here](#).

BROKER-DEALER

Enhanced Price Disclosures for Certain Retail Customers Approved by FINRA

The Financial Industry Regulatory Authority's Board of Governors has approved a proposal that would require member firms to disclose to retail investors the "mark-up" or "mark-down" from the prevailing market price for transactions in certain fixed-income securities. Where a firm buys or sells a corporate or agency fixed-income security from a retail investor and subsequently buys or sells the same security as principal for another party on the same day, the disclosure would be required on the retail investor's customer confirmation. The confirmation also would have to contain a display or hyperlink to trade-price data of that security in FINRA's Trade Reporting Compliance Engine (TRACE). FINRA Chairman and CEO Richard Ketchum noted that the proposal, which is subject to Securities and Exchange Commission approval, seeks to "assist customers in monitoring costs, promote transparency into firms' pricing practices and help investor confidence in the market." The proposal does not apply to transactions in fixed-price new issues.

FINRA's press release can be found [here](#).

DERIVATIVES

See “NFA Issues Notice Regarding Cybersecurity Self-Examination Questionnaire” in the CFTC section and “European Commission Adopts Delegated Regulation To Require Mandatory Clearing of Certain Credit Default Swaps” in the EU Developments section.

CFTC

NFA Issues Notice Regarding Cybersecurity Self-Examination Questionnaire

On February 29, National Futures Association (NFA) issued Interpretive Notice I-16-10, which notifies member firms about the addition of a cybersecurity section to NFA’s Self-Examination Questionnaire. This section is designed to help assist member firms in complying with NFA’s Interpretive Notice to NFA Compliance Rules 2-9, 2-36 and 2-49 entitled *Information Systems Security Programs* (Notice). The Notice, which became effective March 1, outlines cybersecurity and information systems security program (ISSP) requirements. For a more complete discussion of the Notice, see the [Corporate & Financial Weekly Digest edition of September 4, 2015](#).

NFA expects member firms to complete the cybersecurity section as appropriate based on the size and complexity of its operations, the make-up of its customers and counterparties, and the extent of its interconnectedness. Swap dealers and major swap participant members are not required to complete the Self-Examination Questionnaire, but may use the cybersecurity section as a resource.

To further assist firms, NFA has also published answers to frequently asked questions (FAQs) about the Notice and the ISSP implementation requirements.

NFA Notice I-16-10 is available [here](#).

The Self-Examination Questionnaire is available [here](#).

The FAQs are available [here](#).

UK DEVELOPMENTS

Complaints Commissioner Publishes Decision Urging the FCA To Consider Requirements for Firms To Disclose Unregulated Activities

On February 2, the Office of the Complaints Commissioner published a decision urging the Financial Conduct Authority (FCA) to review rules for regulated entities in the context of its consumer protection objectives.

The original complaint made to the Complaints Commissioner raised concerns regarding the fact that FCA-authorized firms are not required to disclose to their clients those activities that are not regulated by the FCA. The Complaints Commissioner agreed with the complainant’s concerns that it is important for consumers to understand which activities firms conduct that are unregulated, so as to further be aware that no recourse for compensation through the Financial Ombudsman Service and the Financial Services Compensation Scheme is available should something go wrong in relation to those activities. Given that in these circumstances the only recourse available is pursuing a potentially costly court action, the Complaints Commissioner felt it necessary to raise the issue for the FCA’s consideration.

A copy of the Complaints Commissioner’s decision can be found [here](#).

UK Government Publishes Implementing Regulations for UCITS V

On February 25, the UK government published the Undertakings for Collective Investment in Transferable Securities Regulations 2016 (Regulations) along with an explanatory memorandum and transposition table. The Regulations implement provisions in the EU Undertakings for the Collective Investment of Transferable Securities V Directive (UCITS V) in relation to depositaries and sanctions, among other provisions. The Regulations set out

amendments to the Financial Services and Markets Act 2000 (FSMA 2000) and the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (UCITS Regulations), among others.

UCITS funds are regulated by the Financial Conduct Authority (FCA) in the United Kingdom and the transposition table accompanying the Regulations sets out the transposition impact of UCITS V, particularly in relation to existing FCA rules. Notably, the amendments set out in the Regulations allow the FCA to cancel an authorized person's Part 4A permission to carry on regulated activities, where there are serious breaches of FSMA 2000 or the UCITS Regulations. The Regulations also set out amendments relating to the liability of a depositary or management company of the UCITS, where there is a loss of a financial instrument held in custody or where other losses are suffered as a result of the depositary's negligent or intentional failure to uphold its obligations.

The Regulations go into effect on March 18.

For further information on the implementation of UCITS V, see the [Corporate & Financial Weekly Digest edition of February 12](#) and [September 11, 2015](#).

UCITS V can be found [here](#).

The Regulations can be found [here](#).

The explanatory memorandum can be found [here](#) and the transposition table can be found [here](#).

FCA and PRA Confirm That Bonus Cap Will Not Apply to Smaller Firms

On February 29, the Bank of England and Financial Conduct Authority (FCA) published separate press releases in relation to the implementation of the European Union's fourth Capital Requirements Directive (CRD IV). The press releases confirm that the Prudential Regulation Authority (PRA) and FCA have informed the European Banking Authority (EBA) that they will not apply the CRD IV "bonus cap" to smaller firms.

This is considered to be a bold move by the PRA and FCA. The PRA and FCA appear not to agree with the EBA's Guidelines on Sound Remuneration Policies interpreting the CRD IV, which applies the bonus cap to all firms regardless of size and complexity. The PRA and FCA feel that a proportionate, risk-based approach to the CRD IV bonus cap provisions for smaller firms in the United Kingdom is sensible and justifiable under the CRD IV.

The PRA and FCA note that since the introduction of the EU bonus cap, there has been a marked increase in fixed pay as a percentage of total pay. The PRA and FCA argue that this shift undermines a firm's ability to adapt variable remuneration according to its financial health. According to the PRA and FCA, a blanket application of the bonus cap to firms exasperates these concerns and ultimately fails to take account of the varying motivations of risk-taking conduct that the bonus cap and deferral arrangements are aiming to prevent.

For further details on the CRD IV and the EU bonus cap, see the [Corporate & Financial Weekly Digest edition of January 15](#).

The Bank of England's press release can be found [here](#).

The FCA's press release can be found [here](#).

EU DEVELOPMENTS

European Commission Adopts Delegated Regulation To Require Mandatory Clearing of Certain Credit Default Swaps

On March 1, the European Commission (EC) adopted new rules in the form of a delegated regulation (Delegated Regulation) to impose clearing obligations on certain index credit default swaps (CDSs). The contracts captured by the Delegated Regulation include euro-denominated, untranchet, five-year iTraxx Europe Main and iTraxx Europe Crossover index CDS, from version 17 onwards.

Under the European Market Infrastructure Regulation (EMIR), the European Securities and Markets Authority (ESMA) is required to propose classes of over-the-counter derivatives that should be subject to mandatory clearing. Further to this requirement, ESMA adopted draft regulatory technical standards for CDSs and submitted them to the EC on October 1, 2015. The Delegated Regulation will be subject to review by the European Parliament and Council and will go into effect on the 20th day following publication in the *Official Journal of the European Union*.

For further details on the clearing obligations under EMIR, see the [Corporate & Financial Weekly Digest edition of December 4, 2015](#) and [August 7, 2015](#).

A copy of the Delegated Regulation can be found [here](#) and its Annex [here](#).

The EC's accompanying press release can be found [here](#).

For additional coverage on financial and regulatory news, visit [Bridging the Week](#), authored by Katten's [Gary DeWaal](#).

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UK/EU DEVELOPMENTS

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