Katten

Corporate & Financial Weekly Digest

February 14, 2020 | Volume XV, Issue 6

BROKER-DEALER

FINRA Issues Investor Alert Regarding Required Minimum Distributions

The Financial Industry Regulatory Authority (FINRA) issued an Investor Alert regarding a new law raising the age for required minimum distributions (RMDs). A RMD is the amount an individual must take out of their traditional retirement savings plan to avoid tax penalties, once such an individual has reached the mandatory age for making withdrawals. The Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 raises the mandatory age an individual must begin taking RMDs from 70 ½ years old to 72, unless such individual turned 70 ½ years old in 2019.

The Investor Alert is available here.

FINRA Requests Comments on Proposed Amendments to CAB Rules

On January 14, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 20-03 announcing that it had concluded its retrospective review of Rule 5250 (Payments for Market Making), which generally prohibits members from receiving payments for market making. Based on the review, FINRA has elected to maintain the rule without change.

Regulatory Notice 20-03 is available here.

CFTC

CFTC to Hold an Open Commission Meeting on February 20

The Commodity Futures Trading Commission will hold an open meeting on February 20 at 9:30 a.m. (ET) to consider the following topics:

- Proposed Rule: Amendments to the Real-Time Public Reporting Requirements (Part 43)
- Proposed Rule: Amendments to the Swap Data Recordkeeping and Reporting Requirements (Part 45)
- Reopening of Comment Period: Certain Swap Data Repository and Data Reporting Requirements (Part 49 Verification)

The meeting is open to the public and will take place at the CFTC headquarters in Washington, DC. A live webcast of the meeting will also be offered. More information is available here.

NFA Provides Information to Assist Members in Meeting Their Regulatory Obligations

On February 10, the National Futures Association (NFA) issued a series of Notices to Members containing an overview of the educational resources available to Members in different registration categories to assist them in meeting their regulatory obligations, identifying common deficiencies noted during NFA examinations and providing links to other Notices regarding recent amendments to NFA Rules and Interpretive Notices applicable to certain Members.

The Notice regarding commodity pool operators and commodity trading advisors is available here.

The Notice regarding swap-dealers is available here.

The Notice regarding futures commission merchants, forex dealer members and introducing brokers is available here.

DIGITAL ASSETS AND VIRTUAL CURRENCIES

IOSCO Reports on Crypto-Asset Trading Platforms

On February 12, the International Organization of Securities Commissions (IOSCO) published its final report on "Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms (CTPs)" (the Final Report). The Final Report follows a consultation paper IOSCO published in May 2019 (for more information, please see the June 14, 2019 edition of *Corporate & Financial Weekly Digest*).

In the Final Report, IOSCO defines a CTP as a "facility or system that brings together multiple buyers and sellers of crypto-assets for the purpose of completing transactions, or trades."

Since IOSCO members are national securities regulators, the purpose of the Final Report is to provide these regulators with a toolkit to use when assessing and regulating CTPs. The Final Report is split into seven areas of focus, and, at the end of each area, IOSCO provides a list of questions to ask or elements to assess. The seven areas are:

- Access to CTPs (focusing on access criteria and participant on-boarding)
- Safeguarding Participants' Assets (such as custody models and wallets for crypto-assets)
- Conflicts of Interest (and the impact of conflicts on investor protection and market efficiency)
- Operations of CTPs (specifically, whether operational information is available to the public)
- Market Integrity (such as trade monitoring to detect and prevent fraud)
- Price Discovery (including pre- and post-trade transparency); and
- Technology (focusing on systems resilience).

In the Final Report, IOSCO identifies certain IOSCO Principles, which apply to CTPs,. For example, IOSCO Principle 33 states, "The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight." IOSCO also uses the report to highlight the importance of cross-border information sharing and of "efficient and reliable clearing and settlement."

The Final Report is available here.

UK DEVELOPMENTS

See “IOSCO Reports on Crypto-Asset Trading Platforms” in the Digital Assets and Virtual Currencies section.

FCA Decommissions EMIR Web Portal

On February 6, the UK's Financial Conduct Authority (FCA) updated its webpage, which informs firms how to submit notifications required by the European Market Infrastructure Regulation (EMIR). This is in response to EMIR Refit, which became effective on January 1. For more information, please see the June 14 edition of the *Corporate & Financial Weekly Digest*.

In particular, on the updated webpage, the FCA advises firms that the "EMIR web portal" will be decommissioned on March 31 and, thereafter, that all EMIR notifications will need to be submitted using the FCA's web-portal “FCA Connect,” except for applications for intragroup exemptions from bilateral margining, which must be submitted by email.

The “FCA Connect” system will already be familiar to most FCA-authorized firms, who will have a Connect account for their other FCA submissions. For firms who do not already have a Connect account, the FCA has provided instructions on how to open an account. This will be particularly relevant to non-financial counterparties.

The updated webpage is available here.

EU DEVELOPMENTS

See “IOSCO Reports on Crypto-Asset Trading Platforms” in the Digital Assets and Virtual Currencies section.

ESMA Proposes MiFIR Amendments Following EMIR Refit

On February 7, the European Securities and Markets Authority (ESMA) published a final report (the Final Report) regarding proposed amendments to the Markets in Financial Instruments Regulation (MiFIR). This is in response to the changes introduced by the amended European Market Infrastructure Regulation (EMIR Refit), which became effective on January 1. For more information, please see the June 14 edition of *Corporate & Financial Weekly Digest*).

The Final Report addresses amendments to the clearing obligation made under EMIR Refit, which have had an impact on the application of the derivatives trading obligation under MiFIR. In particular, EMIR Refit introduced an exemption to the clearing obligation for small financial counterparties and modified the mechanism for determining the obligations of non-financial counterparties, who are above the clearing threshold.

In the Final Report, ESMA notes that these changes have created a "misalignment between the scope of counterparties subject to" EMIR Refit and MiFIR. The proposed amendments, therefore, are to realign the requirements.

ESMA notes that the Final Report was not due to be submitted to the European Commission (EC) until May 18. However, there was some confusion over the scope of a statement ESMA released in July 2019 concerning this issue, and, by publishing the Final Report, ESMA has stated that it hopes this clarifies the issue. In addition, this earlier submission could allow the EC to bring the proposed amendments to MiFIR into law sooner than December 18, as is currently scheduled.

The Final Report is available here.

European Commission Urges Member States to Transpose 5MLD

On February 12, the European Commission (EC) sent letters of formal notice to eight member states, who have failed to implement the European Union's (EU) fifth Money Laundering Directive (5MLD). This is part of the EC's February 2020 infringements package, a monthly list of member states who are failing to comply with their obligations under EU law across a wide variety of sectors and policy areas.

All member states had to implement 5MLD by January 10. For more information, please see the January 10 edition of *Corporate & Financial Weekly Digest*. The UK, despite no longer being an EU member state, implemented 5MLD in December 2019.

The countries who, according to the EC, have not implemented 5MLD are:

- Cyprus
- Hungary
- the Netherlands
- Portugal
- Romania
- Slovakia
- Slovenia; and
- Spain.

If these member states have not implemented 5MLD or otherwise provided the EC with a "satisfactory response" within two months, the EC may send them a "reasoned opinion." If the member states do not respond to the reasoned opinion within two months, then the EC may refer them to the EU Court of Justice.

The February 2020 infringements package 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 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
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	+1.212.94.8765	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

DIGITAL ASSETS AND VIRTUAL CURRENCIES

Christina Grigorian	+1.202.625.3541	christina.grigorian@katten.com
Michael M. Rosensaft	+1.212.940.6634	michael.rosensaft@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
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.