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Corporate & Financial Weekly Digest

May 7, 2021 | Volume XVI, Issue 18

BROKER-DEALER

FINRA Seeks Comment Regarding Diversity and Inclusion Initiatives

The Financial Industry Regulatory Authority (FINRA) is seeking comment on rules, operations and administrative processes that may create unintended disparate impacts on those within the industries that FINRA regulates. FINRA recognizes that several broker-dealer industry participants have developed initiatives and programs to foster greater diversity, inclusion and equal opportunity in the industry, and FINRA has been engaging with its advisory committees, industry associations and other industry members to explore how it can further facilitate those goals within the broker-dealer industry.

Specifically, in support of these initiatives, FINRA has, among other initiatives, (1) established an internal Racial Justice Task Force, whose efforts include identifying opportunities to encourage greater diversity and inclusion within the broker-dealer industry, (2) created diversity-focused programming at the FINRA Annual Conference, (3) developed the Securities Industry Essentials Exam to expand who is eligible to take a qualification examination to allow for more flexibility within the broker-dealer industry, and (4) proposed to implement continuing education programs for broker-dealer industry professionals.

FINRA seeks comment on any aspects of its rules, operations and administrative processes that may create unintended barriers to greater diversity and inclusion in the broker-dealer industry. The comment period expires on June 28.

FINRA's notice.

FINRA Seeks Comment on Proposed Amendments to Margin Rule Requirements

The Financial Industry Regulatory Authority (FINRA) is requesting comment on proposed amendments to Rule 4210 (Margin Requirements) that seek to clarify current interpretations related to extended settlement transactions. Rule 4210 generally requires firms to collect margin when they extend credit to their customers, and extensions of credit covered by the rule include transactions in which member firms permit customers to make partial or delayed payment on securities purchases (or partial or delayed delivery of securities sold). FINRA examinations have revealed some uncertainty in firms' understanding about what constitutes delayed payment or delivery for purposes of the margin rules. Therefore, FINRA has proposed to refine the definition of "extended settlement transaction" to resolve any uncertainty related to these rules.

In addition, FINRA has proposed to add a new paragraph (f)(3)(C) to Rule 4210 requiring all extended settlement transactions (or net positions resulting from extended settlement transactions) to be margined as though they were in margin accounts, with a few limited exceptions, including, but not limited to, covered agency transactions and certain refunding transactions.

FINRA requests comment on all aspects of the proposal. Specifically, FINRA requests comment concerning (1) whether there are other ways in which FINRA applies Rule 4210 to extended settlement transactions, including impacts to the member firm operations and processes it uses, that should be modified, (2) whether Rule 4210 should also expressly address extended settlement transactions by broker-dealers for customers in nonsecurities, and (3) whether there are any material economic impacts, including costs and benefits to investors and firms, particularly smaller firms, that are associated specifically with the proposal.

The comment period expires on May 14.

FINRA's notice.

CFTC

CFTC Issues Order of Registration to Mercado Mexicano de Derivados, S.A. de C.V. to Permit Trading by Direct Access From United States

On May 5, the Commodity Futures Trading Commission (CFTC) announced that it had issued an Order of Registration to Mercado Mexicano de Derivados, S.A. de C.V. (MexDer), a Foreign Board of Trade (FBOT) and subsidiary of the Mexican Stock Exchange located in Mexico City, Mexico.

Under the order, MexDer's members and other US participants will be permitted to enter orders directly into MexDer's trade matching system. MexDer satisfied CFTC requirements for FBOT registration by demonstrating that:

- It possesses the attributes of an established, organized exchange; and
- It is subject to comprehensive oversight by its home country regulator whose supervision is comparable to that which the CFTC applies in its oversight of designated contract markets.

Currently, there are 23 FBOTs registered with the CFTC, inclusive of MexDer's registration.

CFTC Order of Registration.

CFTC Issues No-Action Response Letter Providing Relief to DCO From Complying With Specified Part 39 Regulatory Requirements

On May 3, the Division of Clearing and Risk (DCR) of the Commodity Futures Trading Commission (CFTC) published Staff Letter No. 21-13 (Staff Letter), providing CX Clearinghouse, L.P. (CX) with no-action relief from specified Part 39 regulations applicable to derivatives clearing organizations (DCO).

As a registered DCO, CX is subject to Regulation 39.15(d), which requires a DCO to have rules requiring the DCO to promptly transfer all or a portion of a customer's portfolio of positions and related funds as necessary from the customer's carrying clearing member to another clearing member, without requiring the close-out and re-booking of the positions prior to the requested transfer, subject to certain conditions. Because CX rules permit its participants to clear positions only for their respective proprietary accounts on a non-intermediated basis, and CX's rules do not permit futures commission merchants (FCM) to clear for customers, DCR determined that the requirements of Regulation 39.15(d) do not apply to CX. DCR added, however, that, if CX adds more than one FCM participant, CX must comply with the requirements under Regulation 39.15(d) as it pertains to those FCM participants.

Separately, because CX utilizes a fully-collateralized clearing model, DCR also granted CX relief from various reporting requirements under Regulation 39.21(c), which generally requires a DCO to make certain information readily available to the general public by posting such information on the DCO's website.

CFTC Letter No. 21-13.

UK DEVELOPMENTS

FCA Publishes Discussion Paper on Strengthening Financial Promotion Rules for High-Risk Investments and Firms Approving Financial Promotions

On April 29, the Financial Conduct Authority (FCA) published a discussion paper (DP21/1) on strengthening its financial promotion rules for high-risk investments and firms approving financial promotions.

The FCA requested views on three areas where change could better protect consumers from harm:

1. Classification of high-risk investments: The FCA's classification of investments determines the level of marketing restrictions applicable to an investment. It is asking whether additional types of investments should be subject to marketing restrictions and what marketing restrictions should apply;
2. Segmentation of high-risk investment market: Despite the FCA’s existing marketing restrictions, it is concerned that too many consumers continue to invest in inappropriate high-risk investments. It plans to strengthen its rules to further segment high-risk investments from the mainstream market and is seeking views on certain aspects of this; and
3. Responsibilities of firms approving financial promotions: The FCA is considering whether there should be more requirements for firms approving financial promotion, under section 21 of the Financial Services and Markets Act 2000, to monitor such a promotion on an ongoing basis to ensure that it remains compliant.

The FCA will also be testing ideas informed by behavioral research to obtain a better insight on their effectiveness and this, along with feedback to DP21/1, will shape the changes the FCA intends to consult on later this year.

DP21/1 follows feedback to the FCA's call for input (CFI) on consumer investments. The FCA will publish a full response to the CFI later in 2021, alongside its next steps on its wider consumer investments strategy and the summary of work completed to tackle harm in the consumer investment market in the financial year 2020/21.

Comments on DP21/1 are open until July 1.

The FCA discussion paper.

LEI ROC Consults on Changes to Technical Guidance on Harmonization of Critical OTC Derivatives Data Elements

On May 5, the Legal Entity Identifier Regulatory Oversight Committee (LEI ROC) published a consultative document on changes to the technical guidance on the harmonization of critical over-the-counter (OTC) derivatives data elements (CDE Technical Guidance).

The LEI ROC’s proposed amendments to the CDE Technical Guidance relate to the implementation of the guidance by jurisdictions. The proposed amendments do not intend to change the substance of data elements in the guidance but are introduced to:

- eliminate factual errors and typos;
- align the format specifications with the ISO 20022 standard; and
- better clarify the content of the elements by avoiding ambiguities.

LEI ROC indicates that this consultative document is part of a two-step process to revise the CDE Technical Guidance. Once it has made amendments to the jurisdictional implementation, it intends to revise the guidance on issues such as the list of allowable values and the list of harmonized data elements.

The deadline for responses is May 26.

The LEI ROC’s consultative document.

HM Treasury Intends to Remove UK MiFIR Open Access Regime for ETDs

On May 5, HM Treasury announced its intentions to remove the UK Markets in Financial Instruments Regulation (UK MiFIR) from the open access regime for exchange traded derivatives (ETDs).

HM Treasury states that the open access regime for ETDs is not suitable in a UK-only context, which was originally created to improve cross-border capital markets throughout the European Union. HM Treasury intends to permanently remove the regime when it is possible.

This decision does not affect the United Kingdom’s continued support for the open access regimes in equity and over-the-counter derivatives markets, which will operate as normal.

The HM Treasury announcement.

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
Daniel J. Davis	+1.202.625.3644	daniel.davis@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

UK 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

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