

BROKER-DEALER

FINRA's NAC Strengthens Sanction Guidelines Related to Fraud and Suitability

On May 12, the Financial Industry Regulatory Authority announced that the National Adjudicatory Council (NAC) revised its Sanction Guidelines to call for tougher sanctions against those who commit fraud or make unsuitable recommendations to customers.

In cases involving fraud, misrepresentations or material omissions of fact, the revised guidelines call for FINRA adjudicators to strongly consider barring an individual respondent for intentional or reckless fraud and expelling a firm for cases involving fraud where aggravating factors predominate the firm's misconduct. The revised guidelines also advise adjudicators to suspend an individual for 31 days to two years for negligent misrepresentations or material omissions of fact.

For individuals who violate FINRA's suitability rule, FINRA Rule 2111, the suspension has increased from one year to two years and, where aggravating factors predominate over mitigating ones, adjudicators are advised to strongly consider barring the individual respondent. When the unsuitable recommendations involve a firm, the revised guidelines suggest that adjudicators consider suspending a firm with respect to a limited set of activities for up to 90 days, and urge adjudicators to strongly consider expulsion of the firm in egregious cases.

Click [here](#) for Regulatory Notice 15-15.

CFTC

CFTC Revises Interpretation on Forward Contracts with Embedded Volumetric Optionality

In 2012, the Commodity Futures Trading Commission issued an interpretation that identifies the circumstances in which an agreement, contract or transaction would fall within the forward contract exclusions from the "swap" and "future delivery" definitions in the Commodity Exchange Act, notwithstanding that it allows for variations in the delivery amount (i.e., contains "embedded volumetric optionality").

On May 12, the CFTC revised its previously issued interpretation to clarify that the embedded volumetric optionality must be primarily intended, at the time that the parties enter into the agreement, contract or transaction, to address physical factors or regulatory requirements that reasonably influence demand for, or supply of, a nonfinancial commodity. The CFTC has construed the phrase "physical factors" to include facts or circumstances that could reasonably influence the relevant nonfinancial commodity's supply or demand, including environmental factors, operational considerations and broader social forces such as changes in demographics or geopolitics.

In addition, the CFTC has construed the phrase "regulatory requirements" to include (1) formal or informal guidance received from a public utility commission or other similar governing body to obtain or provide the lowest price and (2) electric demand response agreements.

The CFTC's interpretation is available [here](#). The CFTC's accompanying fact sheet is available [here](#).

CFTC Requests Public Comment on Nodal Clear's DCO Application

The Commodity Futures Trading Commission has requested public comment on an application by Nodal Clear, LLC for registration as a derivatives clearing organization. Comments on the application may be submitted by June 8 through the CFTC's online comments portal, which is available [here](#). The application documents and any filed comments are available [here](#).

NFA Reminds Members to Update Contact Information

National Futures Association (NFA) has issued a notice reminding members to keep current the information contained in NFA's Online Registration System, including contact information for the member firm and individuals listed as the firm's contacts. Members have an annual obligation to certify that the information is complete and accurate. The NFA notice also reminds members that they should review and update the information on a continual basis.

NFA Notice I-15-14 is available [here](#).

CME Group Combines Block Trade Advisory Notices

CME Group has issued a market regulation advisory notice related to block trades that combines and supersedes similar advisory notices issued by (1) the Chicago Mercantile Exchange and the Chicago Board of Trade and (2) the New York Mercantile Exchange and COMEX. The combined market regulation advisory notice, which will be effective on May 29, is available [here](#).

DIGITAL ASSETS AND VIRTUAL CURRENCIES

See "Department of Justice Settles Virtual Currency Enforcement Action" in the Litigation section.

LITIGATION

District Court Dismisses Data Breach Class Action Against eBay

The US District Court for the Eastern District of Louisiana recently dismissed a data breach class action against eBay Inc. for lack of standing because the named plaintiff did not allege an actual injury, only the possibility of future injury.

eBay is an e-commerce website with more than 120 million active users worldwide. On May 21, 2014, eBay notified its users that its files containing personal user information were accessed by unknown hackers in February and March 2014. The plaintiff, Collin Green, filed a consumer privacy class action against eBay on behalf of all users whose personal information had been accessed because of the data breach.

Drawing on a recent Supreme Court decision, *Clapper v. Amnesty International USA*, the district court dismissed the action, holding that the plaintiff lacked standing to sue because he had not suffered an injury-in-fact. Instead, the plaintiff was relying on a speculative possibility of future problems arising from the breach. The district court held that in cases where the complaint alleges personal information was accessed, but actual identity theft was not alleged, the plaintiff lacks standing because the feared theft is not certainly impending. The district court also noted that an increased risk of identity theft was insufficient to grant standing.

Green v. eBay Inc., Civil Action No. 14-1688 (E.D. La. May 4, 2015)

Department of Justice Settles Virtual Currency Enforcement Action

The US Attorney's Office in the Northern District of California recently settled an enforcement action against Ripple Labs Inc., a Delaware corporation providing virtual currency exchange services. According to the settlement agreement, Ripple Labs was not registered with the Financial Crimes Enforcement Network (FinCEN)

as a money services business (MSB) pursuant to the Bank Secrecy Act of 1970 while engaged in currency trading, and lacked required anti-money laundering controls.

Ripple Labs is a virtual currency exchange service dealing in XRP, the second-largest cryptocurrency by market capitalization after Bitcoin. Between at least March and April 2013, Ripple Labs sold XRP in its exchange. During the time of the sales, Ripple Labs was not registered with FinCEN. In March 2013, FinCEN's released guidance clarifying the applicability of registration requirements to certain participants in the virtual currency arena. Ripple Labs also lacked an adequate anti-money laundering program, and did not have a compliance officer to assure compliance with the Bank Secrecy Act.

The settlement agreement reached by Ripple Labs and the US Department of Justice (DOJ) called for a \$450,000 forfeiture to the DOJ, as well as a civil money penalty of \$700,000 to FinCEN. Ripple Labs agreed to cooperate with any DOJ or regulatory request for information. In addition, Ripple Labs agreed to operate its XRP exchange as an MSB registered with FinCEN and to maintain all necessary registrations. Ripple Labs also agreed to implement and maintain an effective anti-money laundering program, complete with a compliance officer and training program. Finally, Ripple Labs agreed to conduct a review of prior transactions for evidence of illegal activity, as well as monitor transactions in the future to avoid potential money laundering or illegal transfer activity.

[U.S. Department of Justice Settlement Agreement](#) (May 5, 2015)

BANKING

Revised Interagency Examination Procedures for Consumer Compliance

As of May 1, the Task Force on Consumer Compliance of the Federal Financial Institutions Examination Council developed interagency examination procedures for:

- Truth in Lending Act (TILA), implemented by Regulation Z; and
- Real Estate Settlement Procedures Act (RESPA), implemented by Regulation X.

These procedures reflect Consumer Financial Protection Bureau amendments to Regulations Z and X published in the *Federal Register* in December 2013 and February 2015. Most of the changes to the procedures relate to the integrated mortgage disclosure requirements under TILA and RESPA, commonly referred to as the TRID requirements, which go into effect August 1 for all national banks and federal savings associations that offer consumer credit products covered by TILA and RESPA.

The Office of the Comptroller of the Currency is in the process of incorporating these revised interagency procedures into the "Truth in Lending Act" and "Real Estate Settlement Procedures Act" booklets of the *Comptroller's Handbook*, which will supplant the interagency procedures once the updates are completed.

For more information, click [here](#).

For more information, contact:

FINANCIAL SERVICES

Janet M. Angstadt	+1.312.902.5494	janet.angstadt@kattenlaw.com
Henry Bregstein	+1.212.940.6615	henry.bregstein@kattenlaw.com
Kimberly L. Broder	+1.212.940.6342	kimberly.broder@kattenlaw.com
Wendy E. Cohen	+1.212.940.3846	wendy.cohen@kattenlaw.com
Guy C. Dempsey Jr.	+1.212.940.8593	guy.dempsey@kattenlaw.com
Kevin M. Foley	+1.312.902.5372	kevin.foley@kattenlaw.com
Jack P. Governale	+1.212.940.8525	jack.governale@kattenlaw.com
Arthur W. Hahn	+1.312.902.5241	arthur.hahn@kattenlaw.com
Christian B. Hennion	+1.312.902.5521	christian.hennion@kattenlaw.com
Carolyn H. Jackson	+44.20.7776.7625	carolyn.jackson@kattenlaw.co.uk
Kathleen H. Moriarty	+1.212.940.6304	kathleen.moriarty@kattenlaw.com
Ross Pazzol	+1.312.902.5554	ross.pazzol@kattenlaw.com
Kenneth M. Rosenzweig	+1.312.902.5381	kenneth.rosenzweig@kattenlaw.com
Fred M. Santo	+1.212.940.8720	fred.santo@kattenlaw.com
Christopher T. Shannon	+1.312.902.5322	chris.shannon@kattenlaw.com
Peter J. Shea	+1.212.940.6447	peter.shea@kattenlaw.com
James Van De Graaff	+1.312.902.5227	james.vandegraaff@kattenlaw.com
Robert Weiss	+1.212.940.8584	robert.weiss@kattenlaw.com
Lance A. Zinman	+1.312.902.5212	lance.zinman@kattenlaw.com
Krassimira Zourkova	+1.312.902.5334	krassimira.zourkova@kattenlaw.com

LITIGATION

Michael M. Rosensaft	+1.212.940.6631	michael.rosensaft@kattenlaw.com
-----------------------------	-----------------	---------------------------------

BANKING

Jeff Werthan	+1.202.625.3569	jeff.werthan@kattenlaw.com
---------------------	-----------------	----------------------------

.....
* [Click here](#) to access the *Corporate and 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.
©2015 Katten Muchin Rosenman LLP. All rights reserved.

Katten

Katten Muchin Rosenman LLP www.kattenlaw.com

AUSTIN | CENTURY CITY | CHARLOTTE | CHICAGO | HOUSTON | IRVING | LONDON | LOS ANGELES | NEW YORK | ORANGE COUNTY | SAN FRANCISCO BAY AREA | SHANGHAI | WASHINGTON, DC

Katten Muchin Rosenman LLP is an Illinois limited liability partnership including professional corporations that has elected to be governed by the Illinois Uniform Partnership Act (1997).

London: Katten Muchin Rosenman UK LLP.