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SEC/CORPORATE

SEC Adopts Amendment to Form 10-K Permitting the Summary of Business and Financial Information

On June 1, the Securities and Exchange Commission adopted an interim final rule (Rule), as mandated by the Fixing America's Surface Transportation Act (FAST Act), that amends Form 10-K to permit, but not require, issuers to provide a summary of business and financial information contained in the annual report pursuant to new Item 16. Rather than establishing rules regarding the length or content of the summary, the Rule (which became effective on June 9) is principles-based and grants each issuer flexibility in preparing a summary, so long as the information is presented fairly and accurately.

In its adopting release, the SEC acknowledged that although the "current rules do not prohibit a registrant from including voluntary information, such as a summary," new Item 16 "will expressly allow a registrant, at its option, to include a summary in the Form 10-K." The Rule requires that all summaries include a hyperlink to the related and more detailed disclosure for each topic covered in the summary. In general, a summary may only include information that is included in the Form 10-K (or in exhibits that are part of the same filing) at the time of filing. An issuer may not include information incorporated by reference from a forthcoming filing (e.g., management, executive compensation and other Part III information that is incorporated by reference from a proxy statement to be subsequently filed). The Rule does not, however, require the issuer to subsequently amend the Form 10-K to include a summary of such information, upon the filing of the document containing the information previously incorporated by reference in the Form 10-K.

The SEC is soliciting comment on the Rule, and the public comment period will remain open for 30 days.

See the complete text of the Rule [here](#).

BROKER-DEALER

SEC Adopts Trade Acknowledgement and Verification Rules for Security-Based Swaps

On June 8, the Securities and Exchange Commission announced the adoption of the Securities Exchange Act of 1934 (Exchange Act) Rules 15Fi-1 and 15Fi-2, which establish new trade acknowledgement and verification requirements for security-based swap (SBS) entities entering into SBS transactions.

Under the new rules, SBS entities must provide trade counterparties with an electronic trade acknowledgement containing all of a given transaction's terms no later than the first business day following the trade execution date. In addition, SBS entities also will be required to promptly verify or dispute any terms contained in the trade acknowledgement with the counterparty. To supplement the verification requirement, SBS entities will be required to maintain written policies and procedures reasonably designed to verify the terms outlined in such trade acknowledgements.

Due to the role of certain market infrastructures in the SBS market, the final rule exempts certain transactions processed through a registered clearing agency, SBS execution facility or national securities exchange from the

new requirements. SBS entities that are broker-dealers also will be exempt from Exchange Act Rule 10b-10 by satisfying these requirements.

The final rules will be effective 60 days after publication in the *Federal Register*. Once the final rules become effective, non-US SBS entities may be able to satisfy the rules by complying with comparable foreign requirements.

A copy of the final rule is available [here](#).

FINRA Releases Notice Regarding the SEC's Approval of Algorithmic Trading Developer Registration Requirements

On June 6, the Financial Industry Regulatory Authority released Regulatory Notice 16-21, which announced the Securities and Exchange Commission's approval of an amendment to NASD Rule 1032(f). Under amended NASD Rule 1032(f), each associated person primarily responsible for the design, development or significant modification of an algorithmic trading strategy, or the day-to-day supervision or direction of such activities, will be required to pass the Series 57 examination and register with FINRA as a "Securities Trader." (For a discussion of the proposed amendment to NASD Rule 1032(f), see the [February 18 Client Advisory](#)). The new registration requirements will become effective on January 30, 2017.

Regulatory Notice 16-21 is available [here](#).

DERIVATIVES

See *"SEC Adopts Trade Acknowledgement and Verification Rules for Security-Based Swaps" in the Broker-Dealer section* and *"CFTC Proposes Additional Interest Rate Swaps For Clearing Requirement" in the CFTC section*.

CFTC

CFTC Proposes Additional Interest Rate Swaps For Clearing Requirement

The Commodity Futures Trading Commission is proposing to add certain interest rate swaps in nine new currencies to the list of interest rate swaps and related products that are currently subject to mandatory clearing—so these additional swaps also will be subject to mandatory Swap Execution Facility (SEF) or Designated Contract Market (DCM) trading once they have been made available to trade. The nine new currencies are the Australian dollar (AUD), Canadian dollar (CAD), Hong Kong dollar (HKD), Mexican peso (MXN), Norwegian krone (NOK), Polish zloty (PLN), Singapore dollar (SGD), Swedish krona (SEK) and Swiss franc (CHF). The CFTC also is proposing to amend its original clearing determination to raise the maturity limit for clearing overnight index swaps from two to three years.

This rule is being proposed as a result of submissions from derivatives clearing organizations that offer the relevant swaps. In accordance with CFTC Regulation 39.5, there only will be a 30-day comment period for this proposal after it is published in the *Federal Register*. The CFTC believes that all these categories of swaps have been or soon will be subject to mandatory clearing in other jurisdictions.

The CFTC states in the proposal that the effective date for final clearing rules for these products will *not* be subject to a phase-in period. The CFTC is instead asking for comment on two alternate ways of implementing this additional clearing. The first alternative is that all the additional types of swaps will become subject to clearing 60 days after a final rule is published. The second alternative is to tie the implementation of clearing for each category of swap to the implementation of an analogous clearing requirement in any non-US jurisdiction. Under this alternative, US clearing will become effective for a product on the earlier of (1) 60 days after clearing for the same product is adopted by a foreign regulator; or (2) the date two years after a final CFTC rule is published.

The proposed rule is available [here](#).

FINRA Announces Modifications to IARD Accounting System

The Financial Industry Regulatory Authority, which administers the Investment Adviser Registration Depository (IARD) system, recently announced that the “accounting” tab in the IARD system will be retired on June 17. Thereafter, users will be required to access firm accounting information through FINRA’s E-Bill system, and per FINRA’s notice regarding the E-Bill system, current IARD users should have been given access to E-Bill. Beginning on June 17, users will need access to E-Bill to view, among other things, their Flex-Funding Account information, account status and Renewal Account information. In addition, IARD accounting notifications also will be retired on June 17. In order to continue receiving e-mail notifications regarding the firm’s Flex-Funding Account, users must subscribe to receive alerts through the E-Bill system.

For more information on E-Bill, including how to request access, please click [here](#).

CFTC Public Meeting on June 27

The Commodity Futures Trading Commission’s Market Risk Advisory Committee (MRAC) will hold a public meeting on June 27 at the CFTC’s Washington, DC, headquarters from 10:00 a.m. to 1:30 p.m. (ET). At the meeting, the MRAC will discuss: (1) the Central Counterparties (CCP) Risk Management Subcommittee’s draft recommendations on how CCPs can better coordinate their efforts in preparing for the default of a significant clearing member, and (2) the role of the Federal Deposit Insurance Corporation (FDIC) and CFTC in the resolution of both banks and CCPs.

The meeting is open to the public. In addition, members of the public may listen to the meeting via conference call.

Information about the meeting and conference call numbers are available [here](#).

EU DEVELOPMENTS

European Commission Publishes Consultation Document on the Cross-Border Distribution of Funds

On June 2, the European Commission (EC) published a consultation document (Consultation) on barriers to cross-border distribution of investment funds in the European Union. The Consultation aims to build on issues identified in responses received to the EC’s call for evidence on the European Union’s regulatory framework for financial services (Call for Evidence), and forms part of the EC’s ongoing work towards the Capital Markets Union (CMU).

The Consultation sets out various questions aimed at asset managers, distributors, consumer representatives and investors and seeks feedback and evidence on:

- marketing restrictions (including if and where EU member states impose stricter requirements than the Undertakings for Collective Investment in Transferable Securities (UCITS) directive);
- distribution costs and regulatory fees;
- administrative arrangements (for funds marketed and distributed to retail investors);
- distribution networks (such as hindrances to online platforms for distribution);
- notification processes; and
- tax issues.

The Consultation also notes interesting statistics from the EC, including that approximately 80 percent of UCITS funds are marketed on a cross-border basis. Also, since the introduction of the Alternative Investment Fund (AIF) Managers Directive in 2013, which provides passport arrangements for non-UCITS funds, 40 percent of EU-domiciled alternative investment funds with EU managers are marketed cross border, and in total, 57 percent of UCITS and AIFs that are domiciled in the EU are marketed cross border.

For further information in relation to the CMU, and the EC’s Call for Evidence, see the *Corporate & Financial Weekly Digest* [editions](#) of [April 29](#) and [October 16, 2015](#).

The Consultation is open for comment and responses must be submitted to the EC by October 2.

A copy of the Consultation can be found [here](#).

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

European Commission Adopts MiFID II Delegated Regulations

On June 8, the European Commission adopted two delegated acts to supplement the amended and restated Markets in Financial Instruments Directive (MiFID II). The delegated acts take the form of a directly applicable regulation (together, Delegated Regulations)—meaning that they will be binding laws in each of the 28 EU member states without any need for local law implementation or, significantly, any interpretation. They cover: (1) data to be published by execution venues on the quality of execution of transactions (Data Delegated Regulation), and (2) information to be published by investment firms on the identity of execution venues and on the quality of execution (Information Delegated Regulation).

Under MiFID II, trading venues and systematic internalizers are required to publish data on the quality of execution of financial instruments subject to the trading obligation at least annually. Execution venues also are under the same obligation for financial instruments not subject to the trading obligation. The Data Delegated Regulation further specifies the information to be published in relation to price, costs and likelihood of execution, and requires execution venues to publish that information within three months following the end of each quarter (among other things). MiFID II also requires investment firms to publish the top five execution venues by trading volumes for each class of financial instrument annually, and the Information Delegated Regulation further specifies the content and format for these reports.

As mentioned in previous updates, the European Council and European Parliament will consider the Delegated Regulations and, once formally approved, the Delegated Regulations will go into effect 20 days following their publication in the *Official Journal of the European Union*.

For more information, see the *Corporate & Financial Weekly Digest* editions of [May 27](#), [May 20](#), [April 29](#) and [April 15](#).

The Data Delegated Regulation is available [here](#), and its accompanying annex [here](#).

The Information Delegated Regulation [here](#), and its accompanying annexes [here](#).

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

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EU DEVELOPMENTS

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