

## BROKER-DEALER

### **Proposed FINRA Rule Change To Clarify the Operation of the Regulation NMS Plan To Address Extraordinary Market Volatility**

The Financial Industry Regulatory Authority is filing a proposed rule change (Proposal) with the Securities and Exchange Commission to clarify the operation of the Regulation NMS Plan to Address Extraordinary Volatility (Plan) following a “Trading Pause” or “Regulatory Halt” (as such terms are defined in the Plan) in a security subject to the Plan (Security).

The Proposal seeks to address the brief time between the resumption of trading following a Trading Pause or Regulatory Halt and when the upper and lower price range of a Security (“Price Bands”) is received from the single plan processor responsible for the consolidation of information regarding the Security (Processor) by requiring members to take measures to ensure that bands are in place (either by waiting for the receipt of the Price Bands from the Processor or calculating an interim upper price band and lower price band and ensuring that trades occur within those bands). Members may not rely on interim bands beyond the short period of time (generally up to three milliseconds) between the resumption of trading and the receipt of Price Bands by market participants.

More information about the Proposal is available [here](#).

## CFTC

### **CFTC Proposes To Amend Exemption From Registration for Certain Foreign Persons**

On July 27, the Commodity Futures Trading Commission announced proposed rules to amend current exemptions from CFTC registration for futures commission merchants (FCMs), introducing brokers (IBs), commodity trading advisers (CTAs) and commodity pool operators (CPOs) in connection with commodity interest transactions solely on behalf of persons outside the United States or certain international financial institutions (IFIs). The proposed rules will codify past no-action relief.

Under current rules, FCMs, IBs, CTAs and CPOs are eligible for an exemption from registration where the entity is located outside the United States, acts only on behalf of persons located outside the United States, and submits commodity interest transactions for clearing through a registered FCM. The proposed rules will remove the clearing requirement and allow a foreign entity to be eligible for a registration exemption if, in connection with commodity interest transactions, the entity acts only on behalf of persons outside the United States or on behalf of an IFI. The proposed rules contain a list of organizations that are considered to be IFIs.

The proposed rules are subject to a 30-day comment period from the date of their publication in the *Federal Register* and is available [here](#).

## **CFTC Enters Into Information Sharing MOU With Four Additional Canadian Provinces**

On July 28, the Commodity Futures Trading Commission and four Canadian provinces or territories signed counterparts to a memorandum of understanding (MOU) designed to promote the cooperation and exchange of information with regard to entities operating on a cross-border basis between the United States and Canada. The Government of the Northwest Territories, the Nunavut Department of Justice, the Prince Edward Island Government and the Yukon Government joined the MOU, which was originally executed in 2014 by the CFTC, the Alberta Securities Commission, the British Columbia Securities Commission, the Ontario Securities Commission, and the Québec Autorité des marchés financiers. The Financial and Consumer Services Commission (New Brunswick), the Financial and Consumer Affairs Authority of Saskatchewan, and the Nova Scotia Securities Commission also are signatories to the MOU. The MOU allows information sharing with respect to regulated markets, organized trading platforms, central counterparties, trade repositories, intermediaries, dealers and other market participants that are, or have applied to be, authorized or otherwise overseen by one of the signatories to the MOU.

The CFTC's press release is available [here](#).

## **UK DEVELOPMENTS**

### **UK Treasury Committee Calls for a New UK Enforcement Body**

On July 26, the UK Treasury Committee published a review of reports (Report) into the failure of the UK banking group Halifax Bank of Scotland (HBOS). Notably, the Report includes a review of the enforcement functions of the UK Financial Services Authority (which was subsequently divided into the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA)) at the relevant time of HBOS' collapse, and the Report concludes that a strong case exists to move those functions to a separate new enforcement body (as previously proposed in 2013 by the Parliamentary Commission on Banking Standards).

The Report notes the "conflicting objectives" and tension between the FCA's supervisory and enforcement functions and that it is unsatisfactory for the FCA to retain enforcement functions over banks while having very limited prudential supervisory powers. It makes clear that the Treasury Committee is of the view that a separate enforcement body should sit equidistant between the FCA and the PRA. The Report suggests that a separate enforcement body would boost perceptions of independence and bring clarity to the objectives of all three regulators. It further confirms that the Treasury Committee will seek to appoint an independent reviewer to reassess the case for a separate enforcement body.

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

## **EU DEVELOPMENTS**

### **EU Cybersecurity Directive published in the *Official Journal of the EU***

On July 19, the final text of an EU directive concerning measures for a high common level of security of network and information systems within the European Union (EU) (referred to as the Cybersecurity Directive) was published in the *Official Journal of the EU*.

As noted in our previous *Corporate & Financial Weekly Digest* edition of [May 20, 2016](#), the Cybersecurity Directive establishes an EU-wide framework for operators of essential services (including banks and market infrastructure providers) and digital services providers (including online marketplaces, online search engines and cloud computing). Entities covered by the Cybersecurity Directive will be required, at a minimum, to implement organizational measures to prevent, minimize and manage threats to their security networks and information systems. Under the Cybersecurity Directive, EU member states will also be required to: 1) establish a national cybersecurity strategy; 2) designate a single point of contact for tasks related to cybersecurity; and 3) identify the operators of essential services established in their jurisdictions by November 9, 2018, among other obligations.

EU member states have until May 9, 2018 to transpose the Cybersecurity Directive into their national laws (with those laws to be applied from May 10, 2018). As a consequence, the jurisdictional scope of the Cybersecurity

Directive with respect to operators of essential services (including non-EU entities) is not yet confirmed and will depend on the national measures implemented by each EU member state.

It is noteworthy that non-EU service providers with clients in the European Union will be required by the Cybersecurity Directive to designate a representative in the EU and will be deemed to be under the jurisdiction of the EU member state in which the representative is established.

The Cybersecurity Directive goes into effect on August 8, 2016 (20 days following its publication in the *Official Journal of the EU*).

The Cybersecurity Directive is available [here](#).

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

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