Katten
Katten Muchin Rosenman LLP

CORPORATE & FINANCIAL
WEEKLY DIGEST

August 12, 2016 Volume XI, Issue 31

BROKER-DEALER

FINRA Issues Notice Regarding SEC's Approval of New NMS Stock Recording and Reporting Requirements Rule

On August 8, the Financial Industry Regulatory Authority issued Regulatory Notice 16-28, which discusses the Securities and Exchange Commission's approval of new FINRA Rule 4554 (Alternative Trading Systems – Recording and Reporting Requirements of Order and Execution Information for NMS Stocks). Once adopted, Rule 4554 would require alternative trading systems (ATSs) to report additional ATS-specific data elements in their Order Audit Trail System (OATS) reports for orders in National Market System (NMS) securities.

FINRA Rule 4554 would establish four additional categories of reporting requirements for ATSs: (1) data that must be reported at the time of order receipt; (2) data that must be reported at the time of order execution; (3) data that displays subscriber orders; and (4) data specific to ATSs that are registered as Alternative Display Facility Trading Centers. In addition, ATSs would be required to report specific information related to received orders, the execution of orders to OATS and orders displayed outside ATS reports.

Under the new rule, ATSs also would be required to provide to FINRA all new order types 20 days before they become effective. Any changes in such order types also would need to be provided to FINRA 20 days before their effective date.

FINRA Rule 4554 would become effective on November 7. To ensure that FINRA can map order identifiers to specific order types prior to the effective date, all ATSs must provide FINRA with a list of their current order types no later than October 19.

Regulatory Notice 16-28 is available here.

FINRA Requests Comments on Proposed Gift, Gratuities and Non-Cash Compensation Rule Amendments

On August 8, the Financial Industry Regulatory Authority issued Regulatory Notice 16-29, which solicits comments to proposed amendments to FINRA's gifts, gratuities and non-cash compensation rules (FINRA Rule 3220 (Influencing or Rewarding Employees of Others), proposed FINRA Rule 3221 (Restrictions on Non-Cash Compensation), and proposed FINRA Rule 3222 (Business Entertainment)).

To better align the investor protection objectives of the rules with their economic impact, FINRA is considering, among other things, the following changes: (1) consolidating the rules under a single series in the FINRA rulebook; (2) increasing gift limits from $100 to $175 per person per year; (3) including a *de minimis* threshold below which member firms would not be required to keep records of gifts received or given; (4) amending the non-cash compensation rules to broadly cover all securities products; and (5) incorporating existing guidance and interpretive letters into the rules. FINRA also is proposing a revised approach to internal sales contests that offer non-cash compensation. In addition to these proposed amendments, FINRA also is proposing to incorporate into the rules a principles-based standard that would require member firms to adopt written policies and supervisory procedures with respect to their business entertainment activities.

The comment period is open until September 23.

Regulatory Notice 16-29 is available here.

FINRA Issues Notice Reminding Member Firms of "Time of Execution" Reporting Obligations

On August 10, the Financial Industry Regulatory Authority issued Regulatory Notice 16-30, which reminds member firms of their obligations to accurately enter a transaction's "time of execution" on Trade Reporting and Compliance Engine (TRACE) reports. FINRA Rule 6730(c) (Transaction Information to Be Reported) requires "parties to a transaction" involving TRACE-eligible securities to report the transaction's "time of execution". The "time of execution" is generally deemed to occur when the parties to the transaction agree to all of the material terms needed to calculate the dollar price and quantity of the transaction.

The notice clarified that the "time of execution" is not necessarily the time when an electronic notification of the transaction is sent to a counterparty. Rather, it is the time when there has been a sufficient "meeting of the minds" regarding the material terms of the transaction, such as price and quantity. The notice also outlined the proper way to determine the "time of execution" for transactions occurring after TRACE system hours or on a non-business day and for transactions involving new issues and TRACE-eligible securities that are trading "when issued" on a yield basis.

Regulatory Notice 16-30 is available here.

DERIVATIVES

See "CFTC Extends Relief for Non-US Swap Dealers From Transaction-Level Requirements" "CFTC Announces Enhancements to Protect Customer Funds" and "CFTC Proposes to Amend the Timing for Filing Chief Compliance Officer Annual Reports by Certain Registrants" in the CFTC section, and "European Commission Publishes Addendum to Draft RTS on Margin Requirements for Uncleared OTC Derivatives Under EMIR" in the EU Developments section.

CFTC

CFTC Extends Relief for Non-US Swap Dealers From Transaction-Level Requirements

On August 4, the Division of Swap Dealer and Intermediary Oversight, Division of Clearing and Risk and Division of Market Oversight of the Commodity Futures Trading Commission extended no-action relief (Relief) from certain transaction-level requirements previously granted to certain non-US swap dealers (SDs). Transaction-level requirements include: (1) required clearing and swap processing; (2) mandatory trade execution; (3) swap trading relationship documentation; (4) portfolio reconciliation and compression; (5) real-time public reporting; (6) trade confirmation; (7) daily trading records; and (8) external business conduct standards.

Pursuant to the Relief, non-US SDs that use personnel or agents located in the United States to arrange, negotiate or execute swaps with non-US persons that are not SDs, are exempt from the transaction-level requirements for such swaps. In the case of a swap with another non-US SD, the relief from transaction-level requirements is qualified such that the SD relying on the Relief would be required to comply with the multilateral portfolio compression and swap trading relationship requirements under CFTC Regulations 23.503 and 23.504, respectively.

The Relief expires the earlier of: (1) September 30, 2017, or (2) the effective date of any CFTC action addressing certain compliance issues implicated by transaction-level requirements.

CFTC Letter No. 16-64 is available here.

CFTC Announces Enhancements to Protect Customer Funds

On August 8, the Commodity Futures Trading Commission announced three separate measures designed to enhance the protection of customer funds.

The CFTC approved an order to exempt Federal Reserve Banks that maintain customer accounts for registered derivatives clearing organizations (DCOs) that have been designated by the Financial Stability Oversight Council as systemically important Financial Market Utilities (Designated FMUs) from liability under the Commodity Exchange Act (CEA). (Only three CFTC-registered DCOs are Designated FMUs: the Chicago Mercantile Exchange, Inc., ICE Clear Credit LLC and the Options Clearing Corporation.) This exemption facilitates the use of Federal Reserve Banks by Designated FMUs in order to reduce settlement risk and strengthen settlement processes, while limiting the risk presented by such Designated FMUs to the Federal Reserve Banks. To avail itself of the exemption, a Federal Reserve Bank must ensure that customer funds are not commingled with the money, securities or property in the account of any other person, including the proprietary account of the Designated FMU. The order also exempts the Federal Reserve Banks from private rights of action that could otherwise be brought under the CEA.

Separately, the CFTC's Division of Clearing and Risk (DCR) and the Division of Swap Dealer and Intermediary Oversight (DSIO) issued interpretative and no-action guidance regarding the use of money market funds (MMFs) by DCOs and futures commission merchants (FCMs).

As explained in greater detail in DCR's interpretive guidance, Letter No. 16-69, the Securities and Exchange Commission has adopted amendments to Rule 2a-7 under the Investment Company Act of 1940 (Rule 2a-7) to strengthen MMFs. The amendments will take effect on October 14. Among other provisions, the amendments require each MMF that is a "Prime Fund," i.e., an MMF that is not a "government MMF," as defined in Rule 2a-7, to reserve the right, upon the occurrence of certain events potentially affecting the ability of the MMF to redeem shares promptly, to suspend redemptions for up to 10 days and impose liquidity fees of up to 2 percent of the value of the shares requested to be redeemed (collectively, Redemption Restrictions). Government MMFs may, but are not required to, adopt similar Redemption Restrictions.

The DCR's interpretative guidance sets forth the staff's view that, as a result of modified Rule 2a-7, Prime Funds and government MMFs that elect to adopt Redemption Restrictions pose more than minimal liquidity risks and it would be inconsistent with relevant provisions of Part 39 of the CFTC's regulations to permit a DCO to accept or hold initial margin in such MMFs, or to invest funds belonging to its clearing members, or clearing members' customers, or the DCO in such MMFs. However, government MMFs that do not elect to adopt Redemption Restrictions would continue to be viewed as acceptable margin collateral and investments for DCOs.

For the same reasons, DSIO has confirmed in its no-action letter, Letter No. 16-68, that, once the amendments to Rule 2a-7 go into effect, FCMs will no longer be permitted to invest customer funds in Prime Funds or government MMFs that elect to adopt Redemption Restrictions, with one exception. DSIO will not recommend that the CFTC take an enforcement action against an FCM that invests its own funds held in segregated accounts in Prime Funds and government MMFs that retain authority to impose Redemption Restrictions, provided that, such investments are limited to the amount of the FCM's own funds that the FCM holds in excess of the FCM's targeted residual interest for such account. Separately, DSIO will not recommend that the CFTC take an enforcement action against an FCM that invests customer funds in a government MMF that has not elected to adopt Redemption Restrictions, without regard to Regulation 1.25 concentration limits, provided that, such government MMF has $5 billion or more in assets.

For a copy of the CFTC's exemptive order, click here.

For a copy of DCR's interpretive guidance, click here.

For a copy of DSIO's no-action letter, click here.

CFTC Proposes to Amend the Timing for Filing Chief Compliance Officer Annual Reports by Certain Registrants

On August 9, the Commodity Futures Trading Commission announced that it is proposing amendments to CFTC Regulation 3.3 to codify and supersede no-action relief previously granted in CFTC Staff Letter No. 15-15, issued March 27, 2015, with respect to the date by which the Chief Compliance Officer (CCO) of each futures commission merchant, swap dealer (SD) and major swap participant (MSP) (each a registrant) must file an annual report (CCO Annual Report) with the CFTC. Regulation 3.3 currently provides that the CCO Annual Report must be filed with the CFTC not more than 60 days after the registrant's fiscal year-end. Consistent with Letter No. 15-

15, the amendments, if adopted, would provide each registrant an additional 30 days to file the CCO Annual Report.

The amendments also seek to address the timing of the filing requirement for comparable annual reports (Comparable Annual Reports). Namely, if the compliance requirements of SDs and MSPs located in certain jurisdictions (Canada, the European Union, Hong Kong, Japan or Switzerland) identify a specific date by which Comparable Annual Reports must be completed, then the CFTC is proposing that Comparable Annual Reports may be furnished to the CFTC electronically up to 15 days after the date on which the Comparable Annual Report must be completed in the relevant jurisdiction.

The CFTC is seeking comments on the proposed amendments. The comment period ends 30 days after the proposal's publication in the *Federal Register*.

For more information about the proposal click here.

EU DEVELOPMENTS

European Commission Publishes Addendum to Draft RTS on Margin Requirements for Uncleared OTC Derivatives Under EMIR

On August 2, the EU Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) published an addendum (Addendum) to draft regulatory technical standards (draft RTS) on margin requirements for uncleared over-the-counter derivatives, made under the European Market Infrastructure Regulation (EMIR). The Addendum clarifies Articles 34 and 36 of the draft RTS (which relate to application timing) and inserts a missing formula into Annex III of the draft RTS. DG FISMA notes in the Addendum that the European Commission (EC) intended for the "first wave of initial margin requirements" to apply one month after the draft RTS goes into effect. DG FISMA, however, felt that this intention was unclear in the draft RTS and that the amendments set out in the Addendum are necessary.

The draft RTS was initially submitted to the EC by the European Supervisory Authorities (ESAs) on March 8 and was subsequently endorsed with amendments by the EC on July 28. The ESAs have six weeks from this date to amend the draft RTS based on the EC's amendments and resubmit the draft RTS to the EC in the form of a formal opinion.

The text of the draft RTS and the Addendum can be found 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

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
Ross Pazzol	+1.312.902.5554	ross.pazzol@kattenlaw.com
Fred M. Santo	+1.212.940.8720	fred.santo@kattenlaw.com
Christopher T. Shannon	+1.312.902.5322	chris.shannon@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

EU DEVELOPMENTS

Carolyn H. Jackson	+44.20.7776.7625	carolyn.jackson@kattenlaw.co.uk

* Click here to access the *Corporate & 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.
©2016 Katten Muchin Rosenman LLP. All rights reserved.

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 refers to Katten Muchin Rosenman LLP and the affiliated partnership as explained at kattenlaw.com/disclaimer.