

CORPORATE & FINANCIAL

WEEKLY DIGEST

August 26, 2016

Volume XI, Issue 33

SEC/CORPORATE

SEC Seeks Public Comment on Disclosure Requirements of Subpart 400 of Regulation S-K

On August 25, the Securities and Exchange Commission announced that it is seeking public comment on the issues that the staff should consider in connection with its review of disclosure requirements under Subpart 400 of Regulation S-K.

As noted in the [December 11, 2015 edition of the Corporate & Financial Weekly Digest](#), the Fixing America's Surface Transportation Act (FAST Act) requires, among other things, that the SEC conduct a study to determine how best to modernize and simplify the disclosure requirements contained in Regulation S-K in a manner that reduces the costs and burdens on issuers while still providing all material information. Responses received to the request for comment will inform the SEC in connection with its preparation of the study required by the FAST Act.

Among other things, Subpart 400 of Regulation S-K requires disclosure regarding an issuer's directors and officers, executive compensation, security ownership of certain beneficial owners and management, related party transactions and corporate governance.

The public comment period will remain open for 60 days following the publication of the comment request in the *Federal Register*.

The SEC's announcement is available [here](#).

DERIVATIVES

See "CFTC Issues No-Action Letter Regarding Use of Security-Based Swaps in Initial Margin Calculations for Uncleared Swaps" and "CFTC Grants SEF Registration Status to Seed SEF LLC" in the CFTC section, and "CPMI and IOSCO Publish Second Consultation on Harmonization of Unique Product Identifiers" in the UK Developments section.

CFTC

CFTC Issues No-Action Letter Regarding Use of Security-Based Swaps in Initial Margin Calculations for Uncleared Swaps

On August 23, the Commodity Futures Trading Commission's Division of Swap Dealer and Intermediary Oversight and Division of Clearing and Risk (the Divisions) issued a response to the International Swaps and Derivatives Association (ISDA), which had requested the CFTC to clarify whether a covered swap entity (CSE) is permitted to include security-based swaps within the same product set as swaps for the purpose of calculating initial margin for uncleared swaps.

Based on ISDA's position that including security-based swaps in such margin calculations is both appropriate for risk management purposes and consistent with the rules of the Prudential Regulators (PRs), the Divisions granted no-action relief to CSEs that collect and post margin on a portfolio basis for swaps and security-based swaps. Such relief is subject to certain conditions, including, but not limited to: (1) swaps and security-based swaps must

be subject to the same eligible master netting agreement and netting portfolio thereunder; (2) the applicable swaps and security-based swaps must be in the same broad risk category; and (3) all security-based swaps in a netting set must be continuously and consistently included in margin calculations. Such relief is limited to enforcement actions under the Commodity Exchange Act and will not affect the applicability or requirements under the rules of the PRs, the Securities and Exchange Commission and the Financial Industry Regulatory Authority.

NFA Issues Notice Regarding the Designation of Executive Representatives for Electronic Voting Purposes

On August 24, the National Futures Association (NFA) issued Notice I-16-18, advising member firms they will need to designate an executive representative in connection with NFA's upcoming electronic voting system. Beginning with the 2017 election of NFA's Board of Directors, NFA will replace paper ballots with a new electronic voting system. The designated executive representative for each member firm will be the only person allowed to take the following actions: (1) submit a petition to nominate a director candidate; (2) cast a vote in a contested director election; and (3) vote for or against amendments to NFA's Articles of Organization. All notices concerning director elections, article amendments and director nominations will be sent only to a member firm's executive representative. Member firms can designate their executive representative by completing the new "Executive Representative Contact" form available on the electronic filings portion of NFA's website.

The Executive Representative Contact form is available [here](#) (login required).

Notice I-16-18 is available [here](#).

CFTC Grants SEF Registration Status to Seed SEF LLC

On August 23, the Commodity Futures Trading Commission issued an Order of Registration granting Seed SEF LLC (Seed) full registration status as a Swap Execution Facility (SEF). Upon reviewing Seed's application, the CFTC determined that Seed is in compliance with the Commodity Exchange Act (CEA) and CFTC regulations applicable to SEFs. As a registered SEF, Seed will be required to comply with the CEA and CFTC regulations applicable to SEFs, as amended from time to time, and all representations and warranties made as part of their SEF application. Including Seed, there are currently 23 SEFs fully registered with the CFTC.

The Order of Registration is available [here](#).

UK DEVELOPMENTS

IOSCO Publishes Consultation on Good Practice for Termination of Investment Funds

On August 18, the International Organisation of Securities Commissions (IOSCO) published a consultation report (Consultation) on a proposed set of good practices for the termination of open-ended and closed-ended investment funds. IOSCO notes in the Consultation that most national jurisdictions have legislation covering involuntary terminations (such as, when the investment fund becomes insolvent) but not voluntary terminations. IOSCO recognizes the impact terminating an investment fund can have on investors and is proposing the good practices to ensure investment funds' termination procedures take into account investor protection. The recommended good practices cover termination procedure disclosures, decisions to terminate, decisions to merge, and communications to investors during the termination process, with an additional section on specific issues related to commodity, real estate, hedge funds and private equity funds offered for sale to professional investors.

The Consultation closes on October 17, 2016.

A copy of the Consultation is available [here](#), and IOSCO's accompanying press release, [here](#).

CPMI and IOSCO Publish Second Consultation on Harmonization of Unique Product Identifiers

On August 18, the Committee on Payments and Market Infrastructures (CPMI) and the International Organisation of Securities Commissions (IOSCO) published a second consultation report (Consultation) on the harmonization of the unique product identifier (UPI).

In response to the G20 commitments on derivatives, in 2014 the Financial Stability Board engaged the CPMI and IOSCO to develop global guidance on harmonizing data elements of over-the-counter (OTC) derivatives to be reported to trade repositories, including the UPI. The UPI is part of an overall object to facilitate the global aggregation of data held by trade repositories, in order to give authorities improved oversight of the market.

The Consultation follows an initial consultation report published by CPMI and IOSCO in December 2015, which focused on the high-level business specifications and the reference database of UPIs. The latest Consultation published builds on and revises these initial specifications. It also goes further to consult on the format of the UPI code and the content and granularity of the UPI data elements.

The Consultation closes on September 30, 2016.

A copy of the Consultation is available [here](#), and the accompanying press release, [here](#).

EU DEVELOPMENTS

European Commission Adopts Further MiFID II and MiFIR Delegated Regulations

On August 22, the European Commission (Commission) adopted two further delegated regulations (Delegated Regulations) to supplement the amended and restated Markets in Financial Instruments Directive (MiFID II), and the Markets in Financial Instruments Regulation (MiFIR).

The Delegated Regulations adopted by the Commission include the following:

- **Organizational Requirements for Investment Firms Engaging in Algorithmic Trading**
MiFID II mandates that the European Securities and Markets Authority (ESMA) should specify organizational requirements for investment firms engaging in algorithmic trading, providing direct electronic access (DEA) or acting as general clearing members. This Delegated Regulation confirms these organizational requirements, with requirements for such firms to have clear lines of accountability and to ensure a separation of duties between trading desks and support functions (including risk and compliance). It also specifies testing requirements (prior to the deployment of an algorithm and on an ongoing basis), as well as “kill functionality” requirements, and requirements for an automated surveillance system to monitor algorithmic trading activity for signs of market manipulation, in addition to real-time monitoring, among others. DEA providers and firms acting as general clearing members also will be required to perform due diligence on prospective clients, among other obligations.

A copy of the Delegated Regulation is available [here](#) and its annexes, [here](#).

- **Reporting of Transactions to Competent Authorities**
Under MiFIR, investment firms which execute transactions in financial instruments are required to report those transactions to regulators. MiFIR similarly mandates ESMA to specify the data standards, formats and scope of the requirements for transaction reports. This Delegated Regulation further details the fields, contents and format required for transaction reports (in the Annex to the Delegated Regulation), and sets out the meaning of “transaction,” “execution” and “transmission of an order” respectively. Notably, a “transaction” under the finalized Delegated Regulation includes any increase or decrease in the notional amount of a derivative (among others). “Execution” under the Delegated Regulation includes execution on behalf of a client, dealing on one’s own account, making an investment decision in accordance with a discretionary mandate granted by a client and transfers of financial instruments to and from accounts (among others). The Delegated Regulation also confirms that the reporting requirements apply to transactions executed wholly or partly through an investment firm’s branch, and that the requirements apply to authorized EU branches of third-country firms.

A copy of the Delegated Regulation is available [here](#) and its annexes, [here](#).

The European Council and European Parliament will consider the Delegated Regulations and, once formally approved, they 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 [July 22](#), [June 17](#), [June 10](#), [May 27](#), [May 20](#), [April 29](#) and [April 15](#).

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

For more information, contact:

SEC/CORPORATE

David S. Kravitz	+1.212.940.6354	david.kravitz@kattenlaw.com
Mark J. Reyes	+1.312.902.5612	mark.reyes@kattenlaw.com
Mark D. Wood	+1.312.902.5493	mark.wood@kattenlaw.com

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

UK/EU DEVELOPMENTS

David A. Brennand	+44.20.7776.7643	david.brennand@kattenlaw.co.uk
Carolyn H. Jackson	+44.20.7776.7625	carolyn.jackson@kattenlaw.co.uk
Neil Robson	+44.20.7776.7666	neil.robson@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.

Katten

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