

BROKER-DEALER

SEC Chair Gives Speech on Equity Market Structure

On September 14, Securities and Exchange Commission Chair Mary Jo White gave a speech titled “Equity Market Structure in 2016 and for the Future” at the annual Security Traders Association Market Structure Conference in Washington, DC. Among the highlights from the speech, Chair White stated that:

- the proposal to amend SEC Rule 15b9-1 to require all registered dealers to join the Financial Industry Regulatory Authority (FINRA) would be finalized in the “near future” and the next step is to clarify the “dealer/trader” distinction;
- the SEC, FINRA and the exchanges are assessing the special characteristics of exchange traded products to determine if changes are needed to limit up/limit down;
- the staff is developing a new rule designed to enhance recordkeeping and related requirements that also addresses the confidentiality of proprietary trading information;
- the staff will make a recommendation to the SEC concerning a potential pilot to lower caps on access fees;
- before settling on a proposal for an anti-disruptive trading rule, the Chair has asked the staff to publish its work on disruptive trading practices for public consideration and comments; and
- Reg SCI participants should work to (1) improve processes for making changes to systems to account for human errors; and (2) diversify electrical, telecommunications and other infrastructure support as well as the geographic location for systems.

For more details, the full text of the speech is available [here](#).

DERIVATIVES

See “CFTC Chairman Proposes Extension of Phase-In De Minimis Amount Termination Date” and “CFTC Staff Issues No-Action Letter Relating to Yieldbroker PTY Limited’s Relief From SEF Registration Requirements” in the CFTC section and “European Supervisory Authorities Respond to European Commission Amendments to Risk Mitigation Techniques for Uncleared Derivatives” in the EU Developments section.

CFTC

CFTC Chairman Proposes Extension of Phase-In *De Minimis* Amount Termination Date

Under Title VII of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank), dealers who execute a notional amount of swaps that exceeds a *de minimis* threshold must register with the Commodity Futures Trading Commission. That threshold is currently \$8 billion as a phase-in matter, but in accordance with CFTC Regulation 1.3(ggg)(4)(ii)(A), it is scheduled to drop from \$8 billion to \$3 billion on December 31, 2017 unless the CFTC acts to change that outcome. The CFTC has published two reports discussing issues relating to reduction of the *de minimis* threshold, but neither report contains a specific recommendation as to what the *de minimis* amount should be.

In a speech delivered on September 15, CFTC Chairman Timothy Massad signaled that the CFTC needs more time to consider the issues raised in the reports, stating, “The *de minimis* threshold was set in 2012 by the CFTC and the SEC jointly. At that time, the agencies had limited data on the market. They set the threshold at \$3 billion in notional amount of swap dealing activity over the course of a year, but with a phase-in period, during which the threshold is \$8 billion. Unless the Commission takes action, at the end of 2017 the threshold will automatically drop from \$8 billion to \$3 billion. This means that firms must start tracking their activity as of January 1, 2017 to determine whether they must register.

Today, I am announcing that I will recommend to my fellow commissioners a one-year extension of the date on which the swap dealer *de minimis* threshold is scheduled to drop. This will be proposed through a Commission order. Adopting this order will give us more time to consider this critical issue. Given its importance, a delay is the sensible and responsible thing to do—and doing it now will provide much-needed certainty to market participants.”

The text of Massad’s speech is available [here](#).

NFA Proposes Amendments to CPO and CTA Quarterly Reporting Requirements

On September 6, the National Futures Association (NFA) filed with the Commodity Futures Trading Commission for approval an amendment to NFA Compliance Rule 2-46 (CPO and CTA Quarterly Reporting Requirements) and a proposed NFA Interpretive Notice *NFA Compliance Rule 2-46: Reporting Financial Information on NFA Forms PQR and PR*. NFA Compliance Rule 2-46 requires member commodity pool operators (CPOs) and commodity trading advisors (CTAs)(with reporting requirements under CFTC Regulation 4.27) to file NFA Forms PQR and PR, respectively, on a quarterly basis. Such forms collect general identifying information regarding member CPOs/CTAs in addition to specific information on the pools operated by such CPOs and the assets directed by such CTAs.

Under the proposed amendment and Interpretive Notice, member CPOs/CTAs would be required to disclose information relating to two additional ratios on the Form PQR and PR, respectively: (1) the Current Assets/Current Liabilities Ratio, which provides a measure of a firm’s liquidity; and (2) the Total Revenue/Total Expenses Ratio, which measures a firm’s operating margin. If adopted, NFA intends to use the new ratios to collect information about the financial condition of member CPOs/CTAs and identify firms that could be facing financial difficulties.

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

CFTC Staff Issues No-Action Letter Relating to Yieldbroker PTY Limited’s Relief From SEF Registration Requirements

On September 14, the Commodity Futures Trading Commission’s Divisions of Market Oversight and Swap and Intermediary Oversight issued Staff Letter 16-72, which announced that Yieldbroker PTY Limited (Yieldbroker), a multilateral swaps trading facility licensed and regulated in Australia, has qualified for the long-term, no-action relief provided under Staff Letter 15-29. Staff Letter 15-29 provides qualifying swaps trading platforms that are licensed and regulated in Australia with long-term, no-action relief from swap execution facility (SEF) registration requirements. (For a more complete discussion of Staff Letter 15-29, see the [May 22, 2015 edition of Corporate & Financial Weekly Digest](#).) Yieldbroker will be the first foreign-regulated, multilateral SEF that permits direct access to US persons to qualify for SEF registration relief.

Pursuant to the requirements of Staff Letter 15-29, Yieldbroker has certified the following: (1) it is subject to post-trade transparency requirements; (2) it has provisions in place that provide for the requisite level of non-discriminatory access by market participants; (3) it is subject to the appropriate governmental oversight in Australia; and (4) it will be in ongoing compliance with certain reporting and clearing-related requirements set forth in Staff Letter 15-29. Relief under Staff Letter 15-29 will continue until the effective date of any CFTC exempt SEF framework adopted pursuant to Section 5h(g) of the Commodity Exchange Act.

Staff Letter 16-72 is available [here](#).

Staff Letter 15-29 is available [here](#).

NFA Issues Notice Regarding Jurisdictions With AML/CFT Deficiencies

On September 14, the National Futures Association (NFA) published Notice I-16-19, which notified member futures commission merchants (FCMs) and introducing brokers (IBs) of a September 7 advisory published by the Financial Crimes Enforcement Network (FinCEN) regarding updates to the Financial Action Task Force's list of jurisdictions with strategic anti-money laundering and combating the financing of terrorism (AML/CFT) deficiencies. NFA reminded member FCMs and IBs to review the aforementioned advisory and revise, if necessary, their respective AML programs to comply with the new guidance.

Notice I-16-19 is available [here](#).

The FinCEN advisory is available [here](#).

BANKING

Banking Regulators Issue Dodd-Frank Report on Bank Activities and Investments

On September 8, the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) issued a report (Report) that they were required to prepare pursuant to section 620 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank). The primary purpose of the Report is to inform Congress concerning the investment and other activities that a banking entity may engage in under federal and state law, so it provides a useful summary of current regulatory framework for banks. The Report is also required to include recommendations as to (1) whether each activity or investment has or could have a negative effect on the safety and soundness of the banking entity or the US financial system; (2) the appropriateness of the conduct of each activity or type of investment by banking entities; and (3) additional restrictions as may be necessary to address risks to safety and soundness arising from the activities or types of investments.

Among the more noteworthy recommendations in the Report are a recommendation by the Board that Congress should repeal the authority of financial holding companies to engage in merchant banking activities, and a statement by the OCC that it will be soliciting comment on whether the OCC should treat copper as a base metal rather than a precious metal, define “coin and bullion” in a manner that excludes copper cathodes, and conclude that buying and selling copper is generally not part of or incidental to the business of banking.

The text of the Report is available [here](#).

OCC Releases Bank Supervision Operating Plan for Fiscal Year 2017

On September 14, the Office of the Comptroller of the Currency (OCC) released its bank supervision operating plan for fiscal year (FY) 2017. “Our FY 2017 operating plan helps institutions regulated by the OCC to better understand our supervisory priorities,” said Comptroller of the Currency Thomas J. Curry. “The plan provides the foundation for policy initiatives and for supervisory strategies as applied to individual banks. . . .” Supervisory strategies for FY 2017 will focus on:

- commercial and retail loan underwriting;
- business model sustainability and viability;
- operational resiliency;
- Bank Secrecy Act/anti-money laundering compliance management; and
- change management process in order to address new regulatory requirements.

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

OCC Rule Would Prohibit Bank and Thrift Dealing and Investing in Industrial or Commercial Metals

On September 8, the Office of the Comptroller of the Currency (OCC) proposed a rule to prohibit national banks and federal savings associations (FSAs) from dealing and investing in industrial or commercial metals. The proposal covers metal, including alloy, in a physical form primarily suited to industrial or commercial uses, such as copper cathodes and aluminum T-bars. If finalized in its current form, this proposal would supersede a prior OCC determination permitting national banks to trade copper cathodes.

The proposal “continues to recognize that national banks and FSAs may hold industrial or commercial metal under other authorities that are distinct from dealing and investing, and does not propose to change those other authorities. For example, national banks and FSAs may acquire industrial or commercial metal through foreclosures on loans and then sell the metal to mitigate loan losses.”

The OCC’s announcement on the proposed rule is available [here](#).

FFIEC Publishes Revised Information Security Booklet

On September 9, the Federal Financial Institutions Examination Council (FFIEC) released its revised the “Information Security” booklet of the *FFIEC Information Technology Examination Handbook (IT Handbook)*. The “Information Security” booklet, one of 11 that make up the *IT Handbook*, provides guidance to examiners and addresses factors necessary to assess the level of security risks to a financial institution’s information systems. It also helps examiners evaluate the adequacy of the information security program’s integration into overall risk management. This guidance applies to all national banks and federal savings associations (collectively, banks). Community banks “should maintain effective information security programs commensurate with their operational complexities.” Additionally, the booklet provides an overview of information security operations, including the need for effective threat identification, assessment and monitoring. It also includes effective incident identification, assessment and response.

The “Information Security” booklet is available [here](#).

EU DEVELOPMENTS

European Supervisory Authorities Respond to European Commission Amendments to Risk Mitigation Techniques for Uncleared Derivatives

On September 8, the European Supervisory Authorities (ESAs, consisting of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority) published its opinion on the European Commission’s (Commission) proposed amendments to the final draft regulatory technical standards (RTS) on risk mitigation techniques for uncleared, over-the-counter derivatives (Opinion).

The ESAs initially submitted the RTS to the Commission for approval in March 2016. In July 2016, the Commission published a letter (Letter) confirming its intention to endorse the RTS, provided certain amendments were made. Specifically, the Commission proposed clarifications to the RTS and also proposed to amend the implementation dates for the RTS. Following publication of the Letter, the ESAs had a period of six weeks to amend the RTS and resubmit it to the Commission in the form an opinion. The Opinion represents the ESAs’ response to the Letter, and the ESAs have largely rejected the Commission’s substantive amendments. In particular, the ESAs rejected the Commission’s proposed amendments to: (1) concentration limits on initial margin for pension scheme arrangements; (2) threshold calculations for non-netting jurisdictions; (3) covered bonds; (4) the treatment of bilateral derivative contracts where a counterparty is a central counterparty; (5) transactions with third-country counterparties; and (6) intragroup derivative contracts. The Opinion also sets out the ESAs’ reasoning for rejecting the Commission’s proposals, including the number of unintended consequences of the Commission’s suggested changes. Instead, the Opinion contains a further revised version of the RTS that reflects the ESAs consolidated comments.

For more information, see the *Corporate & Financial Weekly Digest* editions of [August 12](#) and [March 18](#).

The Opinion 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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BANKING

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EU DEVELOPMENTS

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