

SEC/CORPORATE

President-Elect Trump Nominates Clayton as SEC Chair

On January 4, President-elect Donald Trump announced his nomination of Jay Clayton to serve as chair of the Securities and Exchange Commission, subject to confirmation by the Senate. A partner at Sullivan & Cromwell, Mr. Clayton's practice involves public and private mergers and acquisitions transactions, capital markets offerings and public and private investments. If confirmed, Mr. Clayton would succeed outgoing chair, Mary Jo White.

ISS Releases Changes to Equity Plan Score Card for 2017

Proxy advisory firm Institutional Shareholder Services (ISS) recently made changes to its US Equity Plan Score Card (EPSC), the ISS tool to evaluate equity plans, which will go into effect for meetings of shareholders held on or after February 1. The following is a brief summary of the changes to the EPSC methodology.

ISS made changes that affect the EPSC overall, including the introduction of an additional qualitative review where a prior plan is being amended or restated. ISS will evaluate whether the proposed changes on an aggregate basis are a detriment to shareholders. If determined to be detrimental, ISS may recommend against a plan that may otherwise have passed the EPSC criteria. Additionally, ISS has changed the EPSC to allow companies to be moved from the Special Cases models (for recent IPOs, spinoffs and bankruptcy emergent companies that do not disclose at least three years of grant data) into the model tied to the company's index, if the company has been public for 33 to 36 months and has provided three years of burn rate data.

ISS also made two changes to its EPSC Plan Features Pillar. Under a new factor, full points will be earned if an equity plan expressly prohibits for all award types the payment of dividends before the vesting of the underlying award (although accrual of dividends payable upon vesting is acceptable). No points will be earned if this prohibition is absent or incomplete. A company's general practice, not enumerated in the plan document, of not paying dividends until vesting will not suffice. In addition, an equity plan must specify a minimum vesting period of one year for all award types under the plan in order to receive full points for this factor, and no points will be earned if a plan allows for individual award agreements that reduce or eliminate the one-year vesting requirement.

Additionally, ISS made changes to the Grant Practices Pillar, including an increased emphasis on the granting of performance-based awards through reweighting CEO vesting and CEO equity pay mix factors, as well as a slight modification to the valuation methodology for full value awards. The modification will now value the number of time-based full value awards reported in the Grants of Plan-Based Awards table by using the closing stock price on the date of the grant.

A complete description of the EPSC changes for 2017 is available [here](#).

BROKER-DEALER

FINRA Publishes 2017 Regulatory and Examination Priorities Letter

On January 4, the Financial Industry Regulatory Authority published its Annual Regulatory and Examinations Letter (Priorities Letter), which outlines the key areas on which FINRA intends to focus during its 2017 exam

period. The areas of emphasis set forth in the Priorities Letter are based on observations from FINRA's regulatory programs and additional input from investor advocates, member firms and other regulators.

The Priorities Letter noted that FINRA will continue focusing on issues related to compliance, supervision and risk management. In particular, key areas of emphasis for 2017 include, but are not limited to, the following: (1) high-risk and recidivist brokers; (2) sales practices (e.g., the excessive and short-term trading of long-term products and the outside business activities and private securities transactions of registered representatives); (3) financial risks (e.g., liquidity risk and financial risk management); (4) operational risks (e.g., cybersecurity and supervisory controls testing); and (5) market integrity (e.g., manipulation and trading examinations).

The Priorities Letter further noted that FINRA will initiate in 2017 electronic, off-site reviews to supplement traditional on-site examinations of member firms. Such reviews will entail targeted and limited information requests that will then be analyzed off-site. FINRA will only conduct such off-site reviews on a select group of member firms that are not currently scheduled to be subject to an on-site exam in 2017.

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

DERIVATIVES

See "CFTC Staff Issues Time-Limited No-Action Relief for Derivatives Clearing Organizations and Other Reporting Entities From Certain Obligations on Cleared Swap Reporting" and "CFTC Staff Issues Time-Limited No-Action Relief for Entities Submitting Swaps for Clearing With Derivatives Clearing Organizations Acting Under Exemptive Orders or No-Action Relief" in the CFTC section and "ESMA Publishes New Q&As on Commodity Derivatives Under MiFID II" in the EU Developments section.

CFTC

CFTC Staff Issues Time-Limited No-Action Relief for Derivatives Clearing Organizations and Other Reporting Entities From Certain Obligations on Cleared Swap Reporting

On December 19, 2016, the Division of Market Oversight (Division) of the Commodity Futures Trading Commission provided time-limited no-action relief from the swap data recordkeeping and reporting requirements for cleared swaps (cleared swaps rule) to which derivatives clearing organizations (DCOs) and reporting entities would otherwise have been subject on December 27, 2016. Subject to certain conditions, DCOs are now relieved from obligations to report original swap terminations under the cleared swaps rule. This relief will expire on the earlier of 12:01 a.m. on June 27, 2017, or the date that all DCOs that will be reporting original swap termination messages to a swap data repository (SDR) have successfully tested the termination message reporting systems.

Further, the Division will not recommend an enforcement action against any entity reporting a swap for failure to report the new primary economic terms (PET) data fields the cleared swaps rule added subject to certain conditions. The registered reporting entities must back-report these fields after relief expires on the earlier of 12:01 a.m. on March 27, 2017, or the date the applicable SDR updates its data standards and accepts the new PET data fields.

Staff Letter 16-86 is available [here](#).

CFTC Staff Issues Time-Limited No-Action Relief for Entities Submitting Swaps for Clearing With Derivatives Clearing Organizations Acting Under Exemptive Orders or No-Action Relief

On December 19, 2016, the Division of Market Oversight (Division) of the Commodity Futures Trading Commission announced time-limited no-action relief for entities submitting swaps for clearing by derivatives clearing organizations (DCOs) relying on a CFTC exemption order or no-action relief (Relief DCOs). Entities submitting such swaps for clearing are now relieved of the obligation to terminate the original "alpha" swap and the obligation to report any swaps between the Relief DCO counterparties and the Relief DCO. This relief expires on the earlier of (1) January 31, 2018; (2) the effective date of any CFTC regulation altering the reporting obligations of any entities with respect to the reporting of such swaps; (3) the revocation or expiration of any

exemptive order issued to that Relief DCO; or (4) the revocation or expiration of any no-action letter issued to that Relief DCO.

Counterparties also are relieved from reporting certain primary economic terms data fields for swaps intended to be cleared by a Relief DCO. This relief will expire on the earlier of (1) January 31, 2018; (2) the effective date of any CFTC regulation altering or amending the “clearing indicator” or “clearing venue” primary economic terms data fields in Part 45, or the “Cleared or Uncleared” data field in Part 43; (3) the revocation or expiration of any exemptive order issued to that Relief DCO; or (4) the revocation or expiration of any no-action letter issued to that Relief DCO.

Staff Letter 16-85 is available [here](#).

NFA Updates the Forex Regulatory Guide

On December 23, 2016, National Futures Association released an updated version of *Forex Transactions: A Regulatory Guide*.

NFA revised the “Security Deposits” section of the regulatory guide to add references to recent notices to members regarding minimum security deposits requirements. More information about the revised minimum security deposits is available in the [November 11, 2016 edition](#) and [December 2, 2016 edition](#) of *Corporate & Financial Weekly Digest*.

NFA also incorporated technical amendments to the guide to conform to the definitions in Section 1a of the Commodity Exchange Act.

The updated regulatory guide is available [here](#).

BANKING

Federal Regulators Issue FAQs on New Credit Losses Accounting Standard

On June 16, 2016, the Financial Accounting Standards Board issued Accounting Standards Update (ASU) No. 2016-13, Topic 326, *Financial Instruments – Credit Losses*, which implemented the current expected credit losses methodology (CECL) for estimating allowances for credit losses. This new accounting standard applies to all banks, savings associations, credit unions and financial institution holding companies, regardless of size, that are required to file regulatory reports that conform to US generally accepted accounting principles (GAAP).

On December 19, 2016, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration and the Office of the Comptroller of the Currency jointly issued frequently asked questions (FAQs) to assist institutions and examiners in implementing this new accounting methodology. These regulators also plan to periodically publish additional FAQs and/or update the existing FAQs.

The FAQs focus on the application of the updated CECL methodology and related supervisory expectations. The FAQs also reiterate that for Securities and Exchange Commission–registered Public Business Entities (as defined in GAAP), the new standard is effective in 2020, while for all other financial institutions the new standard is effective in 2021.

The following list highlights key points from the FAQs:

- CECL applies to all financial assets carried at amortized cost, including loans held for investment and held-to-maturity debt securities, and certain off-balance-sheet credit exposures such as loan commitments and standby letters of credit. Although CECL does not apply to available-for-sale debt securities, the new accounting standard modifies the existing accounting for impairment on such securities.
- The FAQs address such topics as changes the new accounting standard makes to existing US GAAP, the standard's effective dates, the application of the standard upon initial adoption, acceptable allowance estimation methods under CECL, and portfolio segmentation for credit loss estimation on a collective basis.

- The FAQs reiterate that CECL is scalable to institutions of all sizes; community institutions are not expected to need to adopt complex modeling techniques to implement the new accounting standard; and institutions are not required to engage third-party service providers to assist management in estimating credit loss allowances under CECL.
- Institutions are encouraged to plan and prepare for the transition to and implementation of the new accounting standard, including its potential impact on regulatory capital. The FAQs provide examples of initial implementation activities. The agencies expect institutions to make good faith efforts to implement the new accounting standard in a sound and reasonable manner.

The federal regulatory agencies stated that they will continue to work together to ensure consistent and timely communications, training, and supervisory guidance.

The FAQs are available [here](#).

FFIEC Streamlines Call Reports for Small Institutions

The Federal Financial Institutions Examination Council (FFIEC) published a *Federal Register* notice on December 30, 2016, finalizing the reporting requirements for a new and streamlined call report (Call Report) for small financial institutions. Institutions with less than \$1 billion in assets and with only domestic offices will be eligible to file this new streamlined report.

The new Consolidated Reports of Condition and Income for Eligible Small Institutions (FFIEC 051) is a streamlined version of the existing Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041). The FFIEC created the new streamlined FFIEC 051 by removing items or reducing the reporting frequency of certain items from the existing FFIEC 041. These changes reduced the size of the Call Report from 85 to 61 pages and reduced the reporting frequency for approximately 100 data items.

Approximately 5,200 of the 6,000 reporting institutions will be eligible to file the streamlined FFIEC 051. These eligible small institutions may begin using the streamlined call report on March 31.

In addition, as part of the statutorily mandated review of the existing Call Reports, the FFIEC will continue to review FFIEC 051, FFIEC 041 and the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031) to determine if any further revisions are necessary to reduce the burden on reporting institutions. Any further revisions to FFIEC 051, FFIEC 041 or FFIEC 031 have an anticipated implementation date of March 31, 2018.

The *Federal Register* notice is available [here](#).

UK/BREXIT DEVELOPMENTS

Brexit Update: The EU Endorses Procedures for Negotiations With the UK

On December 15, 2016, the European Council (Council) published a statement (Statement) following an informal meeting of the heads of state and government of the 27 EU member states excluding the United Kingdom (EU 27), as well as the presidents of the Council and the European Commission (Commission).

In the Statement, the EU 27 and the presidents of the Council and the Commission expressed their readiness to start negotiations with the United Kingdom as soon as it has submitted its intention to withdraw under Article 50 of the Treaty on European Union. They reiterated that any agreement with the United Kingdom would have to be based on a balance of rights and obligations, and that access to the EU Single Market (which UK Prime Minister Theresa May has stated to be her objective) would require “acceptance of all four freedoms”—meaning that EU workers should continue to have unfettered access to and the right to live and work in the United Kingdom.

In an annex to the Statement, the Council set forth endorsed procedural arrangements for the negotiations with the United Kingdom, including:

1. The Council will adopt guidelines that will define the framework for negotiations.

2. The General Affairs Council will authorize the negotiations, and to deal with the subsequent steps in the process. The Council will also then adopt negotiating directives on substance.
3. The Council will be invited to nominate the Commission as the EU negotiator—for which the Commission's nomination of Michel Barnier as chief negotiator is noted as being “welcome.”
4. A dedicated working party with a permanent chair will be established and will follow the established guidelines and negotiating directives, with such working party providing guidance to the EU negotiator.
5. UK representatives on the Council will not be permitted to participate in any discussions or in the decisions concerning the UK departure from the European Union.
6. Representatives of the EU 27 shall be invited to such meetings.
7. The EU negotiator will be invited to keep the European Parliament closely and regularly informed throughout the negotiation. The Council president will be prepared to inform and exchange views with the European Parliament before and after each meeting.

The Statement is available [here](#).

EU DEVELOPMENTS

ESMA Publishes Updated AIFMD Q&A

On December 16, 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers paper (Q&A) on the Alternative Investment Fund Managers Directive (AIFMD). The Q&A update amends a question in the existing Q&A on reporting obligations for non-EU alternative investment fund managers (AIFMs) under Article 42 of the AIFMD. Article 42 sets out conditions for non-EU AIFMs to market alternative investment funds (AIFs) in EU member states, including a requirement for those AIFMs to report their activities to each relevant EU member state (among other things). The updated Q&A clarifies that: (1) when reporting information under Article 42, non-EU AIFMs should only take into account those AIFs that are actually marketed in the particular EU Member State; (2) if EU member state regulators request additional information for the effective monitoring of systemic risk under Article 24(5) of the AIFMD, AIFMs should also report information on non-EU master AIFs not marketed in the European Union that have either EU feeder AIFs or non-EU feeder AIFs marketed in the European Union; and (3) non-EU AIFMs should similarly report information on EU master AIFs not marketed in the European Union.

The UK Financial Conduct Authority proposed similar changes to the FCA Handbook rules on reporting requirements for AIFMs in its quarterly consultation paper published in July 2016 (for more information, see the edition of *Corporate & Financial Weekly Digest* from July 22, 2016 [here](#)).

The updated Q&A can be found [here](#).

ESMA Publishes New Q&As on Commodity Derivatives Under MiFID II

On December 19, 2016, the European Securities and Markets Authority (ESMA) published new questions and answers (Q&A) on commodity derivatives topics under the revised Markets in Financial Instruments Directive (MiFID II). The Q&A provides guidance on a number of areas relating to position limits and ancillary activities under MiFID II, including clarification that:

- position limits are applicable at all times, even for commodity derivatives traded outside normal trading hours of a trading venue;
- positions with different maturities for other months' limits must be netted;
- non-EU entities may apply for an exemption from position limits in the same manner as an EU entity, and in accordance with draft regulatory technical standards (RTS) on the methodology for calculation of position limits (also referred to as RTS 21);
- position limits apply to net positions regardless of whether the net position is long or short;
- position limits apply at the individual person level and net positions held at the clearing level must be disaggregated; and
- the MiFID II exemption from authorization in Article 2(1)(j) is only available where the main business of a financial group is not the provision of investment services. Therefore, all legal entities dealing in commodity derivatives within a financial group that does not qualify must be individually authorized as investment firms under MiFID II.

ESMA has also published questions and answers covering transparency topics under MiFID II (see the edition of *Corporate & Financial Weekly Digest* from November 11, 2016 [here](#) for more information).

The Q&A 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:

SEC/CORPORATE

Farzad F. Damania	+1.212.940.3838	farzad.damania@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
Gary DeWaal	+1.212.940.6558	gary.dewaal@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

BANKING

Jeff Werthan	+1.202.625.3569	jeff.werthan@kattenlaw.com
---------------------	-----------------	----------------------------

UK/EU/BREXIT DEVELOPMENTS

Neil Robson	+44.20.7776.7666	neil.robson@kattenlaw.co.uk
Nathaniel Lalone	+44.20.7776.7629	nathaniel.lalone@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.
©2017 Katten Muchin Rosenman LLP. All rights reserved.



Katten Muchin Rosenman 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.