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SEC/CORPORATE

NYSE Withdraws Proposed Rule to Allow Listing Without an IPO

On June 19, the New York Stock Exchange (NYSE) filed a notice withdrawing its proposed rule that would have allowed companies to list on the NYSE without an initial public offering. The proposed rule was previously discussed in the May 5, 2017 edition of the *Corporate & Financial Weekly Digest*. The proposed rule would have amended Footnote (E) of Section 102.01B of the NYSE Listed Company Manual, specifically the provisions related to the qualification of companies listing without a prior registration under the Securities Exchange Act of 1934.

Neither the NYSE nor the Securities Exchange Commission provided an explanation for the withdrawal of the rule proposal, and the SEC did not receive any comments on the proposed rule during the comment period.

The SEC's notice of withdrawal of the proposed rule is available here.

CFTC

CFTC Issues Order of Registration to Dubai Mercantile Exchange

On June 21, the Commodity Futures Trading Commission announced that it issued an Order of Registration to the Dubai Mercantile Exchange (DME), a Foreign Board of Trade located in the Dubai International Financial Centre. The Order of Registration allows the DME to provide direct access to its electronic order entry and trade matching system to its members and other participants located in the United States. The DME previously offered direct access to US participants pursuant to CFTC No-Action Letter 07-06, which was automatically withdrawn upon the issuance of the DME's Order of Registration.

The CFTC has issued 17 Orders of Registration since May 2013, inclusive of the DME's Order of Registration.

The CFTC's press release is available here.

UK DEVELOPMENTS

FCA Publishes Final Report on Asset Management Market Study

On June 28, the Financial Conduct Authority (FCA) published its final report after its asset management market study (Study), which began in November 2015. Alongside the report, the first of a number of related consultation papers was also published. The report and consultation paper follow the FCA's interim report published in November 2016, which had indicated many of the conclusions and proposed remedies of the report (for further information on the interim report, please see the *Corporate & Financial Weekly Digest* edition of December 2, 2016).

Hedge funds and private equity funds (alternative services) were originally largely out of scope for the purposes of the report, which focused primarily on non-alternative funds and segregated accounts (mainstream services).

However, given some of the feedback received by the FCA during the course of the study relating to fees for such alternative services (highlighted in the report as being "particularly opaque"), the FCA has determined to include them in proposals relating to standardized disclosure of costs and charges to institutional investors (see below). To achieve this outcome, the FCA proposes to have an independent person to convene a group of relevant stakeholders to develop templates for the disclosure of costs and charges for both mainstream services and alternative services. While no timeline is given for this process, the FCA highlights that provision of accurate information on costs and charges is also required by the revised Markets in Financial Instruments Directive (MiFID II), which goes into effect for the European Union on January 3, 2018.

In terms of the matters included in the report itself, the FCA had several concerns relating to the asset management sector that it has now decided to target with a package of reform proposals. Such concerns included:

- price competition – weak price competition, particularly in relation to retail active funds, with a high level average profit margin of 36%;
- performance – the lack of clear relationship between charges and the gross performance of retail active funds in the UK;
- clarity of objectives and charges – how asset managers communicate their objectives, including the use of benchmarks and presentation of performance. Investors' awareness and focus on charges is also mixed and often poor, including in relation to more complex structures such as alternative services; and
- investment consulting and other intermediaries – high and stable market shares for the three largest providers, a weak demand side, relatively low switching levels and conflicts of interest.

The report contains a number of proposed remedies that fall into three categories:

- To help provide protection for investors who are less able to find better value for money, the FCA proposes to:
    - strengthen the duty on asset managers to act in the best interests of investors and establish independent scrutiny. The FCA hopes to increase suitability through the use of its Senior Managers and Certification Regime;
    - require asset managers to return risk-free box profits to the fund and disclose box management practices to investors; and
    - make it easier for asset managers to switch investors to cheaper share classes.

- To drive competitive pressure on asset managers, the FCA will:
    - support the disclosure of a single, all-in-fee to investors;
    - support the consistent and standardized disclosure of costs and charges to institutional investors, which will also apply to alternative services, as discussed above;
    - chair a working group to focus on how to make fund objectives more useful and consult on how benchmarks are used and performance reported; and
    - recommend that the Department for Work and Pensions remove barriers to pension scheme consolidation and pooling.

- To help improve the effectiveness of investment intermediaries, the FCA will:
    - seek views on rejecting undertakings in lieu (UIL) of a market investigation reference regarding the institutional advice market to the Competition and Markets Authority (CMA) offered by investment consultancy firms. The firms offered undertakings to strengthen internal processes and address conflicts of interest, among other things, to the FCA in order to avoid an investigation into competitive practices by the CMA. The FCA expects to publish a final decision on whether to make a market investigation reference to the CMA in September 2017;
    - recommend that HM Treasury consider bringing investment consultants into the FCA's regulatory perimeter (i.e., whether such firms should be subject to authorization), depending on the outcome of the above decision; and
    - launch a market study into investment platforms.

Most of these proposals were covered in the interim report and, therefore, should not come as a big surprise. Many changes also are included in incoming or current rules, such as MiFID II and the FCA's Senior Managers Regime. Several of the above solutions are being consulted on in the consultation paper, including strengthening the duty on asset managers to act in the best interest of investors, facilitating switching investors to cheaper share classes and proposing to reject the UILs. Other measures, such as costs and charges disclosures to retail investors and benchmarks and performance reporting, will be consulted on later this year.

In terms of next steps, the FCA has stated that any new rules and guidance will be subject to cost benefit analysis and formal consultation. The closing date for responses to the Consultation Paper is September 28. The FCA expects to publish further consultation papers on most of the remaining solutions before the end of 2017.

The report and consultation paper are available here and here.

New Money Laundering Reporting Regulations Go Into Effect

On June 26, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692) (Regulations) went into effect in the United Kingdom, having been presented to Parliament on June 22. The Regulations represent the implementation of the EU 4th Money Laundering Directive (4MLD). The Regulations replace the UK's Money Laundering Regulations 2007.

The Regulations enhance anti-money laundering requirements for the firms it applies to (known as "relevant persons") in a number of ways, including:

- Risk Assessments: the Regulations require a relevant person to analyze its business's potential exposure to money laundering or terrorist financing. They must then record, in writing, the assessment it has made addressing factors such as its customers, countries of operation, products and services, transactions, delivery channels, and the size and nature of the business. The relevant person must then translate the findings of this process into written policies;
- Level of Due Diligence: the circumstances in which simplified customer due diligence (SDD) is permissible but will become more restricted; there will cease to be "automatic" SDD requirements for any transactions. Instead, a relevant person will need to assess customer, transaction and geographic risk factors in deciding whether SDD is appropriate. The Regulations also contain a list of factors that, if involved in a transaction, will make enhanced due diligence (EDD) compulsory;
- Reliance on Third Parties: relevant persons will still be able to rely on the customer due diligence carried out by a third party if that third party is either subject to the Regulations or an equivalent regime. However, the third party must enter into a written agreement under which it agrees to immediately provide requested copies of all client due diligence documentation in respect of the customer, its beneficial owner or anyone acting on behalf of the customer; and
- Politically Exposed Persons (PEPs): EDD will now apply to local PEPs as well as overseas PEPs.

The Regulations are available here.

For additional coverage on financial and regulatory news, visit *Bridging the Week*, authored by Katten's Gary DeWaal.

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