

## BROKER-DEALER

### **Proposed Rule Change Relating To Revisions To the Definition of Non-public Arbitrator**

On July 11, the Financial Industry Regulatory Authority filed a proposed rule amendment to change the definition of a non-public arbitrator under the Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes (collectively, the Codes), to a person who is otherwise qualified to serve as an arbitrator, and is disqualified from service as a public arbitrator under the Codes.

FINRA classifies arbitrators as either non-public or public. Generally, non-public arbitrators are those who have or had some affiliation with the financial industry. Based upon 2015 rule amendments, certain otherwise qualified arbitrator applicants did not meet the criteria for either public or non-public status, resulting in FINRA rejecting such applicants. The new rule amendment is designed to allow FINRA to appoint individuals to the roster of non-public arbitrators if they meet FINRA's general arbitrator qualification criteria, but cannot be qualified as public arbitrators.

For more information, click [here](#).

### **SEC's Recent Order Approving FINRA Rule Change Relating To Qualification and Registration Requirements**

On July 7, the Securities and Exchange Commission issued an order adopting the Financial Industry Regulatory Authority's proposed rule amending the qualification and registration requirements for associated persons. The new rule restructures the current qualification examinations, creates a general knowledge examination called Securities Industry Essentials (SIE) and specialized knowledge examinations, and revises the continuing education requirements. The new rule also consolidates certain National Association of Securities Dealers rules and New York Stock Exchange rules into the FINRA Rulebook.

In particular, the new rule requires first-time registrants to take the SIE exam prior to taking a representative qualification examination specific to their job function at a FINRA member firm. In addition, the new rule expands the scope of individuals who may permissively register and allows individuals flexibility to retain their registration status, even after working at a non-FINRA member financial services affiliate for an extended period.

For more information, click [here](#).

## DERIVATIVES

*See "CFTC Announces Review of Swaps Reporting Regulations" in the CFTC section.*

## CFTC

### **CFTC Announces Review of Swaps Reporting Regulations**

On July 10, the Commodity Futures Trading Commission's Division of Market Oversight (Division) issued Staff Letter 17-33 (Staff Letter), which announced the launch of a comprehensive review of swap data reporting requirements. The review will focus on existing regulations with the goal of (1) ensuring the CFTC receives accurate, complete and high-quality data regarding swap transactions, (2) streamlining data reporting, (3) reducing the number of messages that must be reported, and (4) right-sizing the number of data elements reported to meet the CFTC's prior use cases for swap data. In addition to the Staff Letter, the Division also released the *Roadmap to Achieve High Quality Swaps Data (Roadmap)*, which outlines the Division's plan for improving swap data reporting. Upon the completion of its review, the CFTC expects to adopt final rules and have full industry implementation by the end of 2019.

To solicit industry feedback regarding the plan outlined in the *Roadmap*, the CFTC has opened a 40-day comment period, which will end on August 21.

Staff Letter 17-33 is available [here](#).

The *Roadmap to Achieve High Quality Swaps Data* is available [here](#).

## BREXIT/EU DEVELOPMENTS

### **ESMA Publishes Opinions To Support Supervisory Convergence Post-Brexit**

On July 13, the European Securities and Markets Authority (ESMA) published three opinions (Opinions) to support supervisory convergence (i.e., a consistent approach to authorization, supervision and enforcement) in the European Union in light of the potential relocation of entities from the United Kingdom to the remaining 27 member states of the EU (EU27) following Brexit.

Each of the Opinions address regulatory and supervisory arbitrage risks in relation to different sectors, namely:

- the relocation of investment firms subject to the original revised Markets in Financial Instruments Directive (Investment Firm Opinion);
- the relocation of Undertakings for Collective Investment in Transferable Securities (UCITS) management companies subject to the UCITS IV Directive and alternative investment fund managers subject to the alternative investment fund managers directive (Investment Management Opinion); and
- the relocation of trading venues (regulated markets, multilateral trading facilities and organized trading facilities) from countries outside of the EU27, relocating to within the EU27 (Secondary Markets Opinion).

Steven Maijor, chair of ESMA, stated that the Opinions set out the standards to be observed by national authorities of the EU27 when considering relocation requests. He went on to state that the Opinions themselves do not apply new or different standards or requirements, but apply existing legislative and supervisory practices to the specific case of the United Kingdom leaving the European Union.

While Brexit negotiations are ongoing, the Opinions assume that the United Kingdom will become a "third country" after its withdrawal from the European Union, but are without prejudice to any specific arrangements that may be agreed between the EU27 and the United Kingdom, and to any future ESMA opinions or other convergence tools.

The Investment Firm Opinion, Investment Management Opinion and Secondary Markets Opinion are available [here](#), [here](#) and [here](#) respectively.

## **ESMA Invites European Commission To Strengthen EU Third-country Equivalence Regime For Key Market Players In Light of Brexit**

On July 10, the European Securities and Markets Authority (ESMA) published a letter (dated July 7) (Letter) from Steven Maijoor, ESMA chair, to Valdis Dombrovskis, European Commission (EC) vice president, on the regulatory regimes for non-EU countries (known as “third countries”) where they are within ESMA's area of authority.

In the letter, Mr. Maijoor refers to the EC's recent suggested improvements in the way the European Union deals with third countries in the financial services sector. Areas of improvement include access to information, and the timely identification of changes in third-country legal and regulatory frameworks, practices, infrastructures and supervisory approaches. ESMA agrees with the EC that these areas should be strengthened to avoid uneven playing fields and regulatory arbitrage, and to ensure financial stability and investor protection in the European Union.

ESMA refers to the EC's proposal for amending the European Market Infrastructure Regulation (EMIR) (for further information, please see the *Corporate & Financial Weekly Digest* editions of [May 5](#) and [June 16](#)), specifically in relation to the requirements for the recognition of third-country central counterparties (CCPs). ESMA believes that enhancing the implementation and monitoring of the equivalence decisions on third-country regimes (by giving the EC the ability to set specific conditions, and ESMA carrying out regular monitoring of the relevant third-country regulatory and supervisory framework), as suggested in the EC's proposal, represents a significant improvement.

The Letter goes on to state that, in light of the UK's withdrawal from the EU and the entities with a potential impact on EU financial stability and investor protection remaining in what will become a “third-country,” ESMA invites the EC to consider whether similar proposals to those for CCPs should be considered for other market infrastructures and key market players. ESMA believes that this should include third-country regimes for credit rating agencies, trade repositories and benchmarks, and possibly also for trading venues and data providers.

The Letter can be found [here](#).

## **UK Government Publishes Repeal Bill**

On July 13, the UK government published the European Union (Withdrawal) Bill (Bill). Introduction of the Bill follows the white paper published earlier in the year (for further information, please see the *Corporate & Financial Weekly Digest* edition of [March 31](#)), in which the Bill was known as the Great Repeal Bill.

The Bill would perform four main functions, if it passed as an Act of Parliament:

- it would repeal the European Communities Act 1972 (the “conduit pipe” through which EU law becomes UK domestic law) on the day the United Kingdom leaves the European Union;
- it would convert EU law as it stands at the moment of exit into domestic law before the United Kingdom leaves the European Union;
- it would create powers to make secondary legislation, including temporary powers to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU and to implement a withdrawal agreement; and
- it would maintain the current scope of devolved decision making powers in areas currently governed by EU law.

The Bill aims to ensure that, as a general rule, the same rules and laws will apply on the day after the UK leaves the EU as the day before. Directly applicable law, such as EU regulations, will be converted into domestic law, and pre-exit case law of the Court of Justice of the European Union will be given the same binding, or precedent, status in UK courts as decisions of the Supreme Court.

Members of Parliament will consider and debate the Bill when they return from summer recess, although no specific date has been announced.

The Bill is available [here](#).

## ESMA Updates AIFMD and UCITS Q&As

On July 11, the European Securities and Markets Authority (ESMA) updated two question and answer documents (Q&A). The first related to the Alternative Investment Fund Managers Directive (AIFMD) and the second to the Undertakings for the Collective Investment in Transferable Securities Directive (UCITS).

The updated AIFMD Q&A contains new questions and answers relating to reporting requirements for:

- loans purchased on the secondary market;
- conversion of the total value of assets under management; and
- currency of the net asset value.

The updated UCITS Q&A includes two new questions and answers on:

- issuer concentration; and
- group links, independence and cooling-off periods.

The AIFMD Q&A and UCITS Q&A are available [here](#) and [here](#).

## ESMA Consults on Guidelines on MiFID II Suitability Requirements

On July 13, the European Securities and Markets Authority (ESMA) published a consultation paper (CP) on aspects of the suitability requirements under the revised Markets in Financial Instruments Directive (MiFID II).

While suitability requirements (designed to enhance investor protection through assessment of the clients' knowledge, experience, financial situation and investment objectives) currently apply in the EU (under the predecessor to MiFID II), obligations will be strengthened under MiFID II by including requirements such as:

- firms performing a suitability assessment to assess, taking into account costs and complexity, whether equivalent products can meet client's needs;
- the requirement for firms to analyze the costs and benefits of switching from one investment to another; and
- the requirement for firms to provide clients with a suitability report prior to the conclusion of the recommended transaction.

ESMA previously provided guidelines in 2012 (2012 Guidelines) on the current pre-MiFID II regime (available [here](#))

The CP includes proposals on the draft guidelines, which confirm and broaden the existing guidelines, issued in 2012, in order to:

- consider recent technological developments of the advisory market, including the increasing use of robo-advice, i.e., automated or semi-automated systems for the provision of investment advice or portfolio management;
- give relevance to the results of supervisory activities conducted by national competent authorities on the suitability requirements;
- incorporate some insights of studies in the area of behavioural finance; and
- provide additional details on some aspects that were already covered under the 2012 Guidelines.

The CP consultation closes on October 13. ESMA will consider the feedback it receives to the consultation in Q4 2017/Q1 2018 and expects to publish a final report in Q1/Q2 2018.

The CP is available [here](#).

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BREXIT/EU DEVELOPMENTS

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\* Click [here](#) to access the *Corporate & Financial Weekly Digest* archive.

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