

CFTC

CFTC Suspends Need of Formal Notice for Position Disaggregation Relief

On August 10, the Commodity Futures Trading Commission (the CFTC) issued no-action relief, eliminating the need for certain persons otherwise required to aggregate positions with certain other persons for CFTC position limit purposes to pro-actively file with the CFTC, beginning August 14, formal written notices supporting disaggregation of positions with such other persons relying on the CFTC's owned-entity exemption, independent account controller exemption and certain other exemptions from aggregation available under CFTC Rule 150.4(b)(1). Upon request by the CFTC or a designated contract market (DCM), however, such persons will have to file such a formal written notice with the CFTC or DCM, as requested, within five business days. However, this is an after-the-fact obligation, not a pro-active obligation. This relief will be in effect through at least August 12, 2019.

There is other helpful relief provided in the no-action relief, including a revision of definitional conditions for purposes of complying with the aggregation requirements for eligible entities, independent account controllers and commodity trading advisors, and that a notice filing, when requested, needs to include information only related to the account or person expressly identified by the CFTC or DCM in the request. Information related to other persons need not be included.

The CFTC's No-Action letter is available [here](#).

INVESTMENT COMPANIES AND INVESTMENT ADVISERS

SEC Issues Risk Alert on Observations From Cybersecurity Examinations

On August 7, the Securities and Exchange Commission's Office of Compliance Inspections and Examinations (OCIE) issued a Risk Alert summarizing observations of its second round of cybersecurity focused examinations (Cybersecurity 2 Initiative) to assess financial services firms' practices and legal and compliance issues related to cybersecurity preparedness. The Cybersecurity 2 Initiative is built upon OCIE's prior round of cybersecurity examinations of broker-dealers and investment advisers, which was initiated in 2014 (Cybersecurity 1 Initiative). In the Cybersecurity 2 Initiative, the OCIE staff examined 75 firms, including broker-dealers, investment advisers and registered investment companies, between September 2015 and June 2016 focusing on the firms' written cybersecurity policies and procedures, as well as testing the implementation of those policies and procedures. In addition, the staff reviewed the following areas: (1) governance and risk assessment; (2) access rights and controls; (3) data loss prevention; (4) vendor management; (5) training; and (6) incident response.

While the staff reported a general improvement in cybersecurity preparedness since the Cybersecurity 1 Initiative, the staff also noted areas where compliance and oversight could be improved. The Risk Alert indicates that all broker-dealers and funds, and nearly all advisers maintained written cybersecurity policies and procedures, but that a majority of those policies and procedures appeared to have deficiencies. Examples of these deficiencies include: (1) policies and procedures not being reasonably tailored to the firm; (2) firms not adhering to or enforcing their policies and procedures; and (3) policies and procedures not reflecting firms' actual practices. In addition, the staff found Regulation S-P-related issues among firms that did not appear to adequately conduct system

maintenance to protect customer records and information. The Risk Alert also sets forth elements that the OCIE staff considers indicative of robust policies and procedures, which may be helpful to firms in assessing and improving their current policies and procedures.

The Risk Alert is available [here](#).

SEC Staff Issues Information Update for Advisers Filing Certain Form ADV Amendments

The staff of the Securities and Exchange Commission's Division of Investment Management (Staff) has issued an Information Update regarding the SEC's recently adopted amendments to Form ADV, which will go into effect on October 1. After this date, any adviser filing an initial Form ADV or an amendment to an existing Form ADV must provide responses to the revised form. The Staff has received questions involving situations in which an adviser must file an other-than-annual amendment to Form ADV in the time between October 1 and the adviser's next annual amendment. In particular, advisers questioned how to respond to new or amended questions in Item 5 and the related Schedule D sections, which require information as of the end of the adviser's fiscal year, if the adviser did not maintain such information as of the end its last fiscal year. In the Information Update, the Staff determined not to recommend enforcement action if, during the period from October 1 through the adviser's next annual amendment, the adviser responds "0" as a placeholder for new or amended questions in Item 5 or the related Schedule D sections for which the adviser does not have enough data to respond. Additionally, the Staff provided that in these circumstances advisers should include an entry in the Miscellaneous section of Schedule D, noting that a placeholder value was entered.

The Information Update is available [here](#).

UK DEVELOPMENTS

Cybersecurity: UK Government Consults on Implementing Network and Information Security Directive

On August 8, the UK's Department for Digital, Culture, Media & Sport (DCMS) published a consultation paper (CP) on implementing the EU's Network and Information Security Directive (NIS Directive) (also known as the Cybersecurity Directive).

The DCMS explains that the NIS Directive will compel essential service operators to make sure they are taking the necessary action to protect their IT systems. In particular, operators will be required to develop a strategy and policies to understand and manage their risk, to implement security measures to prevent attacks or system failures, to report incidents as soon as they happen, and to have systems in place to ensure they can recover quickly after any event.

The CMS states that, in line with Article 1(7) of the NIS Directive, the banking and financial market infrastructures (FMIs) within the Directive's scope will be exempt from aspects of the NIS Directive "where provisions at least equivalent to those specified in the [NIS] Directive will already exist by the time the [NIS] Directive comes into force." It goes on to state that firms and FMIs within scope must continue to comply with the requirements and standards set by the Bank of England and the Financial Conduct Authority (FCA). (For more information on the FCA's cyber resilience initiative, please see the June 23 [Corporate Financial Weekly Digest](#)).

As a result, as part of the consultation process, the DCMS is not carrying out the identification process for operators of essential services in the banking and FMI sectors, and competent authorities for these sectors are not being formally identified under the Directive.

The CP is available [here](#).

FCA Updates Commodity Derivatives Website With Q&A

On August 8, the UK Financial Conduct Authority (FCA) updated a section of its website relating to the treatment of commodity derivatives under the revised Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR) by adding a question and answer document (Q&A). The Q&A contains 34 questions and answers relating to the following topics:

- ancillary activities notification;
- position limits;
- position limit exemption applications; and
- reporting.

The FCA's disclaimer to the Q&A states that while it is published as a working draft, and may be subject to further amendment going forward, it reflects the content of the FCA's recently published Policy Statement 17/14 on the implementation of MiFID II (for further information see the July 7 [Corporate Financial Weekly Digest](#)).

The website and Q&A are available [here](#) and [here](#), respectively.

EU DEVELOPMENTS

ESMA Updates MiFID II and MiFIR Transaction Reporting Guidelines

On August 8, European Securities and Markets Authority (ESMA) published an updated version of its guidelines (Guidelines) on transaction reporting, order recordkeeping and clock synchronisation under the revised Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR), which were originally published in October 2016 (for further information see the October 14, 2016 [Corporate Financial Weekly Digest](#)).

ESMA states that the changes made to the Guidelines correct some unintended factual mistakes, typos and inconsistencies. ESMA advises that none of the corrections aim to alter the substance or policy provisions of the Guidelines.

The Guidelines are being translated into the official EU languages. When this process is completed, national EU regulators will be required to notify ESMA whether they comply or intend to comply with the Guidelines (giving reasons for non-compliance, if relevant) within two months of publication of the official EU language versions of the Guidelines on ESMA's website. ESMA states that the amendments to the Guidelines do not have an impact on the timeline for completion of the "comply and explain" procedure.

The Guidelines are available [here](#).

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

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
Fred M. Santo	+1.212.940.8720	fred.santo@kattenlaw.com
Christopher T. Shannon	+1.312.902.5322	chris.shannon@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 DEVELOPMENTS

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.
©2017 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.