

SEC/CORPORATE

SEC Approves NYSE Amendments Regarding Notice Related to Dividends and Stock Distributions

On August 14, the Securities and Exchange Commission approved a rule change which will now require New York Stock Exchange (NYSE)-listed companies to provide notice to the NYSE at least 10 minutes prior to any public announcement regarding dividends or stock distributions, whether or not such notice would be made after NYSE trading hours. The prior rule (under Sec. 202.06 of the NYSE Manual) limited the 10-minute prior notice requirement to public announcements made between 7:00 a.m.–4:00 p.m. ET. The prior notice requirement enables the NYSE to determine whether to temporarily halt trading as a result of impending dividends or distributions. In support of the rule change, the NYSE previously stated “if the [NYSE] is provided dividend information prior to its public availability, [NYSE] staff will be able to address any issues that may arise in relation to any announcement of a dividend or stock distribution.”

Text of the rule change approval is available [here](#).

SEC Increases Registration Statement Filing Fees for Fiscal Year 2018

On August 24, the Securities and Exchange Commission announced that, effective October 1, the fees that public companies and other issuers pay to register their securities with the SEC will increase from \$115.90 per million dollars of securities registered to \$124.50 per million dollars of securities, an increase of approximately seven percent. This increase in the SEC registration statement filing fee follows an increase in the filing fee from fiscal year 2016 to fiscal year 2017 of approximately 15 percent. This fee rate adjustment applies to the filing fee under Section 6(b) of the Securities Act of 1933 applicable to the registration of securities, the filing fee under Section 13(e) of the Securities Exchange Act of 1934 (Exchange Act) applicable to the repurchase of securities, and the filing fee under Section 14(g) of the Exchange Act applicable to proxy solicitations and statements in corporate control transactions.

The SEC’s fee rate advisory is available [here](#).

The SEC’s order setting the registration fees is available [here](#).

SEC Expands Nonpublic Review of Draft Registration Statements

As previously reported in the July 7 edition of the [Corporate and Financial Weekly Digest](#), the Division of Corporation Finance (the Division) of the Securities and Exchange Commission announced that, on July 10, the Division began to permit all issuers to confidentially submit to the Division, for nonpublic review, draft registration statements in connection with initial public offerings (IPOs) and in certain other cases. The nonpublic review process is available for Securities Act registration statements prior to and within one year, following an issuer’s initial public offering date. On August 17, the Division issued updated guidance to clarify that an issuer’s initial public offering date for this purpose will be determined pursuant to Section 101(c) of the JOBS Act, which defines “initial public offering date” as the “date of the first sale of common equity securities of an issuer pursuant to an effective registration statement under the Securities Act of 1933.”

The Division also indicated that an issuer that has a registration statement on file may switch to the nonpublic review process with respect to future pre-effective amendments to such registration statement as long as the issuer is otherwise eligible to participate in the nonpublic review process, and agrees to publicly file its amended registration statements and draft amendments during the specified timeframes. The supplemental guidance also included an email address (CFDraftPolicy@sec.gov) to which issuers may submit their eligibility questions.

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

The Division also issued new and updated Compliance and Disclosure Interpretations regarding the omission of financial information from draft registration statements for emerging growth companies and non-emerging growth companies, which will be described in the next issue of the *Corporate and Financial Weekly Digest*.

BROKER-DEALER

FINRA Proposes Rule Change to Subject Capital Acquisition Brokers to Pay-to-Play Rules

On August 17, the Financial Industry Regulatory Authority (FINRA) proposed rule amendments to apply its established “pay-to-play” rules to capital acquisition brokers (CABs) that engage in distribution to, or solicitation of, government entities on behalf of investment advisers for compensation.

CABs are FINRA members that are engaged in a limited range of broker-dealer activities, such as advising firms on capital raising and corporate restructuring or acting as a private placement agent to institutional investors (subject to certain conditions). CABs elect to be treated as such and are subject to a separate set of streamlined FINRA rules. A Katten advisory discussing CABs and the rules applicable to CABs is available [here](#).

Securities and Exchange Commission rules prohibit an investment adviser and its covered associates from providing or agreeing to provide, directly or indirectly, payment to any person to solicit a government entity for investment advisory services on behalf of the investment adviser, unless the person is a “regulated person.” The SEC defines a “regulated person” to include a FINRA member firm subject to a FINRA pay-to-play rule. Currently, the FINRA pay-to-play rules are not explicitly applicable to CABs.

FINRA now proposes a rule amendment that would make clear that CABs are subject to FINRA’s pay-to-play rules and, therefore, constitute “regulated persons.” If the SEC approves FINRA’s proposal, an investment adviser and its covered associates could make payments to a CAB to solicit a government entity for investment advisory services. Certain pay-to-play recordkeeping requirements would also apply to CABs.

More information is available in the FINRA [rule proposal](#).

EU DEVELOPMENTS

ESMA Publishes Final Report on Transfer of Data Between Trade Repositories Under EMIR

On August 24, the European Securities and Markets Authority (ESMA) published a final report (Report) setting out guidelines (Guidelines) on the transfer of data between trade repositories (TRs) under the European Market Infrastructure Regulation (EMIR).

The Guidelines apply to TRs registered or recognised by ESMA and aim to provide TRs with additional clarification on how to ensure compliance at all times with EMIR requirements.

The Guidelines apply beginning October 16. ESMA will carry out an annual assessment of TRs’ compliance with the Guidelines.

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

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

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UK DEVELOPMENTS

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