

## BROKER-DEALER

### **FINRA Requests Comment on Proposed Amendments to FINRA Rule 4521 and New Supplemental Liquidity Schedule**

On January 8, the Financial Industry Regulatory Authority (FINRA) requested comment on proposed amendments to FINRA Rule 4521. Currently, Rule 4521(c) requires each carrying or clearing firm to notify FINRA after tentative net capital has declined 20 percent or more from the amount reported on the most recent Financial and Operational Combined Uniform Single (FOCUS) Report or notification filed with FINRA. The proposed amendments would also require certain firms (i.e., carrying or clearing firms with \$25 million or more in total credits as determined by the customer reserve formula computation, and each firm whose aggregate amount outstanding under repurchase agreements, securities loan contracts and bank loans is equal to or greater than \$1 billion) to notify FINRA within 48 hours after the occurrence of various events that signal an adverse change in liquidity risk. Such events include certain losses of access to secured funding, counterparty increases in collateral haircuts and early terminations of outstanding repurchase contracts.

Together with the proposed amendments, FINRA also sought comment on a proposed new supplemental liquidity schedule to be filed, together with a FOCUS Report, by certain firms with the largest customer and counterparty exposures in order to provide more detailed information about such firms' liquidity profile. Among other things, this schedule would seek disclosure of certain repurchase agreements, financing terms, collateral types, large counterparties, credit facilities, total available collateral and margin loans.

FINRA is seeking comment on all aspects of the proposed amendments and new schedule, including the impact on market participants. Comments can be submitted by emailing [pubcom@finra.org](mailto:pubcom@finra.org) or mailing FINRA's Office of the Corporate Secretary. Comments must be received by March 8, 2018.

FINRA Regulatory Notice 18-02 is available [here](#).

## DERIVATIVES

*See "ESAs Publish Final Report Aiming to Align Variation Margin Rules for FX Forwards With Supervisory Guidance in Other Key Jurisdictions" in the EU Developments section.*

## CFTC

### **NFA Issues Notice of Additional Questions for CPOs on the Annual Pool Financial Statement**

On January 18, the National Futures Association (NFA) issued a Notice to inform commodity pool operators that two additional questions concerning virtual currency activities have been added to the cover page of the annual pool financial statement. The changes are effective for financial statements as of October 31, 2017 or later.

NFA's Notice I-18-03 is available [here](#).

## UK DEVELOPMENTS

### **FCA Transaction Reporting Instrument Reference Data Errors and Omissions Form Now Available**

On January 11, the UK Financial Conduct Authority (FCA) updated its webpage on instrument reference data to make available a new instrument reference data errors and omissions form for trading venues or systematic internalizers (SIs) to complete if their instrument reference data is incomplete or inaccurate.

Delegated Regulation (EU) 2017/585, supplements the Markets in Financial Instruments Regulation (MiFIR) in relation to data standards and formats for financial instrument reference data, and technical measures in relation to arrangements to be made by the European Securities and Markets Authority (ESMA) and competent authorities. Under the Delegated Regulation, where a trading venue or SI detects that submitted instrument reference data is incomplete or inaccurate, it must promptly notify its competent authority.

In the new form, the FCA advises trading venues and SIs to submit the new form by email to the FCA's Markets Reporting Team as soon as possible. The FCA also reminds firms that the ESMA's question and answer documents (Q&As) on Markets in Financial Instruments Directive (MiFID) data reporting set out expectations on reporting instrument reference data.

The new form should help the FCA ensure that it is provided with the necessary information for the purposes of handling errors or omissions in instrument reference data.

The FCA's webpage is available [here](#).

The FCA's new form is available [here](#).

The Delegated Regulation is available [here](#).

ESMA's Q&As on MiFIR Data Reporting are available [here](#).

## EU DEVELOPMENTS

### **ESAs Publish Final Report Aiming to Align Variation Margin Rules for FX Forwards With Supervisory Guidance in Other Key Jurisdictions**

On December 18, 2017, the European Supervisory Authorities (ESAs) published a final report aiming to align the treatment of variation margin for physically settled foreign exchange forward transactions (FX Forwards) with supervisory guidance applicable in other key jurisdictions.

The amended draft variation margin regulatory technical standards on risk mitigation techniques for over-the-counter (OTC) derivatives not cleared by a central counterparty (Draft RTS) limit the requirement to collect variation margin for FX Forwards to only transactions concluded between "institutions," defined by the ESAs as credit institutions and investment firms, or with an equivalent entity located in a third country that would meet the definition of "institution" if located in the European Union (EU). The ESAs are of the view that, for institution-to-non-institution transactions, the competent authorities should apply the EU's variation margin rules (VM Rules) in a risk-based and proportionate manner until the amended Draft RTS go into effect, which would be some time after January 3 (scheduled date).

As previously noted in the [Corporate & Financial Weekly Digest](#) edition of December 1, 2017, FX Forwards were scheduled on the scheduled date to become subject to the variation margin requirements set out in Commission Delegated Regulation (EU) 2016/2251 of October 4, 2016 (EU Margin Regulation) that apply generally to OTC derivatives.

On November 24, 2017, the ESAs cast the scope of FX Forwards variation margin obligations into some doubt when they announced an urgent review of whether the Draft RTS should apply to all counterparties entering into FX Forwards from the scheduled date. The ESAs intended to propose amendments to the Draft RTS to harmonize

the EU's VM Rules under the European Market Infrastructure Regulation (EMIR) for FX Forwards with equivalent rules in other jurisdictions. The ESAs stated a review was necessary because, although the VM Rules form part of a globally agreed framework, some jurisdictions have a lower scope of application and generally exempt all end-user counterparties from FX Forward variation margin requirements.

The ESAs' final report, containing the amended Draft RTS, suggested that the implementation of the new VM Rules "should not tilt towards further exemption, especially as most parts of the framework have been successfully implemented." However, the ESAs also acknowledged that "the regulatory framework implemented in non-EU jurisdictions may put EU counterparties at a disadvantage," especially if there are EU institutions trading with non-EU counterparties.

The ESAs have therefore proposed in their final report an amendment under Article 31a of the amended draft RTS, to the effect that EU counterparties should not be disadvantaged by the lack of implementation of the VM Rules in other key jurisdictions.

The ESAs' final report containing the amended Draft RTS is available [here](#).

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

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

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