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BROKER-DEALER

FINRA Publishes Regulatory Notice Regarding 2018 GASB Accounting Support Fee

On April 17, the Financial Industry Regulatory Authority issued Regulatory Notice 18-12, which announces that FINRA will collect a total of $8,346,300 to fund the annual budget of the Governmental Accounting Standards Board (GASB) by collecting $2,086,575 from member firms each calendar quarter beginning in April 2018.

The GASB Accounting Support Fee is collected quarterly from member firms that report trades to the Municipal Securities Rulemaking Board (MSRB). Each member firm's fee assessment is based on that firm's part of the total par value of municipal securities transactions reported by all FINRA member firms to the MSRB in the previous quarter. As some firms choose to pass the GASB Accounting Support Fee onto customers engaged in municipal securities transactions, FINRA will continue to provide firms with an estimated fee rate per $1,000 par value. FINRA has estimated that the 2018 GASB Annual Support Fee will be between $0.0024 and $0.0030 per $1,000 par value. Member firms choosing to pass along this fee must ensure that such fees are properly disclosed.

The regulatory notice is available here.

SEC Proposes Best Interest Standard for Broker-Dealers

On April 18, the Securities and Exchange Commission proposed a new rule under the Securities Exchange Act of 1934, creating a standard of conduct for registered broker-dealers who make recommendations of securities transactions or investment strategies involving securities to a retail customer. The best interest standard requires broker-dealers to act in the best interest of the retail customer at the time a recommendation is made, without placing the interests of the broker-dealer ahead of the interest of the retail customer. Specifically, the best interest standard would require broker-dealers to satisfy the following obligations:

- disclose to retail customers, in writing, the principal facts about the relationship, including material conflicts of interest related to the recommendation;
- exercise reasonable diligence, care, skill and prudence in making the recommendation;
- establish, maintain and enforce policies and procedures designed to identify and at a minimum disclose, or eliminate, material conflicts of interest connected to recommendations; and
- establish, maintain and enforce policies and procedures designed to identify and disclose and mitigate, or eliminate, material conflicts of interest resulting from financial incentives related to recommendations.

Comments on the proposal should be submitted within 90 days of publication in the *Federal Register*. The proposed rule is available here.

DERIVATIVES

See "CFTC's Division of Swap Dealer and Intermediary Oversight Extends Exemptive Relief From CFTC Regulations 4.7 and 4.2 Requirement to Prepare Financial Statements in Accordance With US GAAP" in the CFTC section.

CFTC

CFTC's Division of Swap Dealer and Intermediary Oversight Extends Exemptive Relief From CFTC Regulations 4.7 and 4.2 Requirement to Prepare Financial Statements in Accordance With US GAAP

On March 30, the Commodity Futures Trading Commission's Division of Swap Dealer and Intermediary Oversight (DSIO) issued Letter 18-09, which granted exemptive relief to a commodity pool operator (CPO) of a foreign "Master Fund" and a US "Feeder Fund." CFTC rules generally require that the financial statements a CPO is required to provide US pool participants, both in periodic reports and the annual report, must be prepared in accordance with US generally accepted accounting principles (US GAAP). However, where the pool is organized under the laws of a foreign jurisdiction, CFTC Rule 4.22(d)(2)(i) authorizes a CPO to compute and present financial statements in accordance with applicable accounting standards in that jurisdiction, including International Financial Reporting Standards (IFRS), subject to the conditions set out in the Rule. One such condition is that, where the accounting principles, standards or practices of the other jurisdiction require consolidated financial statements for the pool, such as a feeder fund consolidating with its master fund, all applicable disclosures required by US GAAP for the feeder fund must be presented with the reporting pool's consolidated financial statements.

The CPO requested relief to allow it to calculate and present the financial statements for a US-organized feeder fund in accordance with IFRS, noting that requiring the CPO to use US GAAP: (1) would be inconsistent with the understanding of the US Feeder Fund's participants, who currently receive periodic account statements and annual financial statements presented in accordance with IFRS; and (2) would require the CPO to incur additional expense in having the financial statements recalculated and certified in accordance with US GAAP in addition to the original IFRS preparation.

DSIO granted the requested relief subject to the conditions that the CPO: (1) prepared the financial statements in accordance with IFRS, and (2) reconciled the statements to US GAAP, where the IFRS preparation would present a material difference from such statement's preparation in accordance with US GAAP.

CFTC Letter No. 18-09 is available here.

EU DEVELOPMENTS

EBA Publishes Report Regarding ITS on Reporting for Resolution Plans Under the EU BRRD

On April 17, the European Banking Authority (EBA) published its draft implementing technical standards (ITS) on reporting for resolution plans under the EU Bank Recovery and Resolution Directive (BRRD).

Under the BRRD, EU Member States must ensure that resolution authorities have the power to require investment firms and credit institutions to cooperate as much as necessary in preparing resolution plans and to provide resolution authorities with all information necessary to implement, not just prepare, resolution plans.

As currently drafted, the new framework will be operational for the collection of information, from firms subject to the BRRD, with the reference date of December 31, 2018. Information under the new framework is expected to be submitted in the first year by May 31, 2019 at the latest. Thereafter, the remittance date will be April 20 of each year.

The EBA identifies three objectives for the new ITS:

- clarifying the scope of the reporting requirements—for certain entities whose failure would have limited impact on financial stability, resolution authorities may waive or reduce the requirement and, for others, require additional data;
- specifying minimum procedural and technical reporting requirements to help improve data quality and allow for automated collection, quality control and exchange; and
- updating the resolution templates to account for experience since the introduction of the original ITS on information for resolution plans in 2014/2015.

The EBA's report, which contains the draft ITS, is available here.

Annexes I (Templates) and II (Instructions) of the draft ITS are available separately here and here, respectively.

The EBA's press release regarding the draft ITS, as well as amendments to the ITS on supervisory reporting, is available here.

ECON Publishes Proposed Amendments to Prudential Supervision of Investment Firms Directive

On April 13, the European Parliament's Committee on Economic and Monetary Affairs (ECON) published a draft report, featuring the European Parliament legislative resolution with ECON's amendments to a proposal regarding the prudential supervision of EU investment firms. This amends the Capital Requirements Directive IV and the revised Markets in Financial Instruments Directive (MiFID II) (collectively, the Proposal).

The Proposal is part of the wider "Investment Firms Package," that includes a directive on prudential supervision of investment firms and a regulation on prudential requirements, designed to ensure the EU's prudential regime for banks extends to the largest and most systemic investment firms whose scale and activities render them bank-like, termed "class 1 investment firms." Class 2 and class 3 firms would be recognized as non-systemic and subject to less onerous prudential supervision.

In the report's explanatory statement, the Rapporteur, Markus Ferber MEP, briefly summarizes the Investment Firms Package and its objectives, before stating his own position on the Proposal. The Rapporteur supports the following changes with respect to:

- own funds requirements—allowing class 3 firms to use instruments, other than those listed in the Capital Requirements Regulation, to fulfil the own funds requirements;
- movements between class 2 and class 3—facilitating this process and clarifying, as well as allowing sufficient time to adapt to the distinction between the classes;
- capital and liquidity requirements and so-called "K-Factors"—clarifying the definition of certain activities so that the covered risks match the actual risks being taken, and changes to simplify the calculation of K-Factors (being the metrics for categorizing the class of investments firms);
- reporting, governance and remuneration—simplification so as not to overburden non-systemic firms; and
- third-country regime and equivalence—ensuring that EU banks are not disadvantaged relative to third-country investment firms authorized through equivalence decisions.

For ECON's draft report, dated April 11, and the Proposal, click here.

Further background to the Investment Firms Package is contained in the European Commission's fact sheet, published in December 2017, available here.

European Parliament Adopts Fifth Money Laundering Directive

On April 19, the European Parliament (EP) published a press release announcing its adoption of a proposal for a fifth Anti-Money Laundering Directive (MLD5). The introduction of MLD5 forms part of the European Commission's action plan to counter terrorist financing and money laundering, published in February 2016 (further details are available in the *Corporate & Financial Weekly Digest* edition of February 12, 2016).

Notable changes under MLD5 include granting enhanced powers for direct access to information held in centralized bank account registries to designated EU Member States' authorities and other relevant bodies, and increased transparency requirements in relation to:

- corporate and other legal entities—establishing "a clear rule of public access" to beneficial ownership information; and
- trusts—requiring firms that operate in the European Union to maintain beneficial ownership registers accessible to those who can demonstrate a legitimate interest.

Other changes MLD5 introduces are:

- prevention of risks associated with the use of virtual currencies for terrorist financing and limiting the use of pre-paid cards;
- improving the safeguards for financial transactions to and from high-risk third countries; and
- ensuring centralized national bank and payment account registers or central data retrieval systems in all Member States.

MLD5 will go into effect 20 days after its publication in the *Official Journal of the European Union*. EU Member States will then have 18 months to transpose MLD5 into national law.

The EP's press release concerning MLD5 is available here.

Currently the adopted MLD5 text is still being processed for publication in English; however, the proposal—which includes an explanatory memorandum—is available in English here.

For further details of the existing EU fourth Money Laundering Directive and its implementation in the United Kingdom, see the *Corporate & Financial Weekly Digest* edition of June 30, 2017.

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

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EU DEVELOPMENTS

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