

BROKER-DEALER

FINRA Proposes Rule Change Regarding ATS Reporting of Transactions to TRACE

The Financial Industry Regulatory Authority recently filed a proposed rule change with the Securities and Exchange Commission to amend FINRA Rule 6730 regarding transaction reporting. Currently under Rule 6730, US Treasury Securities transactions executed on an alternative trading system (ATS) must be reported to the Transaction Reporting and Compliance Engine (TRACE) by the ATS itself and by the counterparties to the trade, but only if the counterparties are FINRA members. The identities of counterparties that are non-FINRA members are not reported under the current iteration of the Rule.

The proposed amendment would require certain ATSs to identify non-FINRA member subscribers associated with their TRACE trade reports in US Treasury Securities. In particular, the amended rule will apply to any ATS that executed transactions in US Treasury Securities of \$10 billion or more in monthly par value with non-FINRA member subscribers for any two months in the preceding calendar quarter. Each covered ATS would be required to provide FINRA with a list of its non-FINRA member subscribers, each of which would then be assigned a unique market participant identifier by FINRA for reporting purposes.

The purpose of the proposed amendment is to enhance and improve the completeness of the information on transactions in US Treasury Securities available to regulators.

If the SEC approves the proposed amendment, FINRA, no later than 60 days after such approval, will announce the effective date of the proposed amendment in a regulatory notice. The effective date will be no later than 180 days following the publication of the regulatory notice.

The text of the proposed rule change is available [here](#).

DERIVATIVES

See “CFTC Votes on a Final Rule and Two Proposed Rule Amendments” and “CFTC Proposes To Maintain Swap Dealer Registration De Minimis Exception at \$8 Billion” in the CFTC section.

CFTC

CFTC Votes on a Final Rule and Two Proposed Rule Amendments

On June 4, the Commodity Futures Trading Commission voted to approve a final rule to amend various portions of Part 49 of CFTC Regulations relating to swap data repository indemnification and related matters. The CFTC also voted to approve two rule proposals, including (1) proposed amendments relating to Volcker Rule restrictions on proprietary trading and private fund relationships and (2) proposed amendments to the swap dealer registration *de minimis* exception.

The final amendments to Part 49 of CFTC Regulations are available [here](#).

The proposed amendments relating to the Volcker Rule, which were addressed in the June 1 edition of [Corporate and Financial Weekly Digest](#) are available [here](#).

The proposed amendments relating to the swap dealer registration *de minimis* exception, which are further described in this issue of [Corporate and Financial Weekly Digest](#), are available [here](#).

CFTC Proposes To Maintain Swap Dealer Registration *De Minimis* Exception at \$8 Billion

The Commodity Futures Trading Commission is proposing various amendments to the *de minimis* exception from registration as a swap dealer. The *de minimis* exception provides that a person is not deemed to be a swap dealer unless its swap dealing activities exceed an aggregate gross notional amount of \$8 billion measured over any 12-month period. However, the \$8 billion amount is currently scheduled to decrease to \$3 billion when the extended registration rule phase-in period ends on December 31, 2019. If the CFTC's proposed amendments are adopted, the *de minimis* threshold will remain permanently at \$8 billion.

The CFTC is also proposing to amend some other aspects of the rules for counting swaps against the *de minimis* threshold. The most significant of these amendments would expand the current exemptions from counting (1) swaps between an insured depository institution and a customer relating to a loan to the customer; and (2) swaps that hedge financial or physical positions. In addition, the proposal would grant to the CFTC's Division of Swap Dealer and Intermediary Oversight the authority to determine the methodology to be used in calculating the notional amount for any group, category, type or class of swaps.

The CFTC also is seeking comment on various related proposals, including whether to add a minimum counterparty count or transaction count threshold, whether to except from consideration exchange-traded or cleared swaps, and whether to except from consideration non-deliverable forward transactions.

The CFTC's proposal is available [here](#).

EU/BREXIT DEVELOPMENTS

FIA Publishes Report on Clearing Members' Brexit Implementation Plans

On June 5, the Futures Industry Association (FIA) published a report summarizing the responses to its latest survey and setting out its recommendations to United Kingdom (UK) and European Union (EU) policymakers. The survey concerns Brexit implementation plans for the client clearing businesses of FIA members.

According to the FIA's report, the clearing members identified business continuity as the priority, with retention of access to clients and market infrastructure being key. While the UK Prudential Regulation Authority has indicated that the United Kingdom is unlikely to prohibit UK firms from membership of central counterparties (CCPs) based in the remaining EU member states after Brexit (EU27), the absence of reciprocal confirmation from the European Commission has caused some concern.

The FIA recommends the following:

1. The European Commission confirms whether, and from when, UK firms may be permitted to benefit from the third-country passport;
2. The European Commission confirms whether, and from when, UK CCPs will be capable of recognition under the European Market Infrastructure Regulation;
3. The European Commission confirms that UK CCPs will retain their qualifying central counterparty status under the EU Capital Requirements Regulation;
4. The European Commission confirms whether EU27 CCPs will be able to continue to service UK clearing members and clients;
5. The United Kingdom and EU27 each confirm whether the United Kingdom will continue to participate in the EU Emissions Trading Scheme during the Brexit transition period and whether it will adopt a domestic version of the scheme thereafter; and

6. The United Kingdom confirms whether and when it will implement a domestic version of the EU's Regulation on Wholesale Energy Market Integrity and Transparency regulation.

The FIA's report is available [here](#).

The FIA's accompanying press release is available [here](#).

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

For more information, contact:

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

EU/BREXIT DEVELOPMENTS

Carolyn H. Jackson	+44.20.7776.7625	carolyn.jackson@kattenlaw.co.uk
Neil Robson	+44.20.7776.7666	neil.robson@kattenlaw.co.uk
Nathaniel Lalone	+44.20.7776.7629	nathaniel.lalone@kattenlaw.co.uk

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