

DERIVATIVES

SEC Reopens Comment Period for Unfinished Security-Based Swap Rules

On October 11, the Securities and Exchange Commission demonstrated renewed interest in completing the regulatory regime for security-based swaps (SBS) by re-opening the comment periods for a number of SBS rules that were previously proposed but never adopted. Specifically, the SEC is requesting further comment on the following proposals:

1. 2012 capital and margin requirements for security-based swap dealers (SBSDs) that do not have a prudential regulator;
2. 2012 margin segregation requirements for SBSBs;
3. 2012 proposal to raise minimum net capital requirements and establish liquidity requirements for broker-dealers permitted to use internal models when computing net capital;
4. 2013 rules for the cross-border treatment of security-based swap capital, margin and segregation requirements; and
5. 2014 additional nonbank SBSB capital requirement.

The approval of the extended comment periods was accompanied by some cautionary remarks from Commissioner Kara Stein, "In effect, there are some big changes here, some that we are all seeing for the first time. The nature and extent of the proposed rule text changes appear to me to be more akin to a "re-proposal" than simply the reopening of a comment period." In fact, the release contains nearly 100 specific questions and requests for comments. Despite this volume of material, the re-opened comment period is only 30 days from the date of publication of the release in the *Federal Register*, which has not yet occurred.

A fact sheet concerning the SEC proposal is available [here](#).

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

BREXIT/UK DEVELOPMENTS

FCA Consults on Changes to DEPP and EG in Its Handbook to Reflect EU Securitization Regulation Implementation

On October 12, the UK Financial Conduct Authority (FCA) published a consultation paper (October Consultation Paper) setting out its proposals to amend the Decision Procedure and Penalties (DEPP) manual and Enforcement Guide (EG) of the *FCA Handbook*. The FCA explains that the amendments are needed because of the changes introduced by the statutory instrument (SI), which will be given to the UK Parliament by HM Treasury, implementing the EU Securitization Regulation (SR) that goes into effect on January 1, 2019.

The October Consultation Paper should be read alongside the FCA's consultation paper that it published on August 1 (August Consultation Paper), which sets out other changes that will be needed to the *FCA Handbook* to implement the SR.

Proposed amendments by the FCA in the October Consultation Paper include the following:

1. changing the decision-making procedure in DEPP for applications for the temporary withdrawal of and the cancellation of authorization of entities wishing to act as third-party verifiers (TPVs);
2. extending the FCA's existing policy and procedure in the exercise of its disciplinary and investigatory powers to cover firms already authorized by the FCA and the UK Prudential Regulation Authority (PRA), when those firms are acting as sponsors, originators, original lenders or securitization special purpose entity (SSPEs) in a securitization or other persons subject to the SR;
3. exercising investigatory and disciplinary powers over TPVs and originators, sponsors, original lenders, SSPEs and other persons subject to the EU SR that are not authorized by the FCA or the PRA, and that fail to adhere to certain obligations set out in the SI;
4. imposing a temporary disciplinary prohibition preventing an individual from holding an office or position involving responsibility for taking decisions about the management of an originator, sponsor or SSPE if the individual has contravened a requirement; and
5. imposing a temporary ban on simple, transparent and standardized notifications.

The FCA's proposals are based on the expectation that the SI will give the FCA supervisory, disciplinary and investigatory powers over persons subject to the SR. If the SI differs from this understanding, then the FCA may need to change its approach.

The deadline for comments on the proposals in the October Consultation Paper is November 2.

The October Consultation Paper is available [here](#).

The August Consultation Paper is available [here](#).

FCA Publishes Discussion Paper and PRA Consults on Climate Change and Green Finance

On October 15, the UK Financial Conduct Authority (FCA) published a discussion paper (Discussion Paper) on climate change and green finance. On the same day, the UK Prudential Regulation Authority (PRA) published a consultation paper (Consultation Paper) on a draft supervisory statement (Draft Supervisory Statement) on enhancing the approach of banks and insurers to managing the financial risks from climate change.

In its Discussion Paper, the FCA sets out:

1. how the different impacts of climate change could impact the FCA's long and short-term objectives;
2. some of the opportunities and risks the transition to a low-carbon economy presents to the United Kingdom's financial services markets; and
3. specific actions the FCA will take in the near-term to ensure that markets function well and deliver good outcomes for consumers, such as enabling competition and market growth for green finance.

In its Draft Supervisory Statement, the PRA sets out its proposed expectations regarding how firms:

1. embed their consideration of the financial risks from climate change in their governance arrangements;
2. incorporate the financial risks from climate change into their existing risk management practice;
3. use (long-term) scenario analysis to inform strategy setting, risk assessment and identification; and
4. develop an approach to disclose the financial risks from climate change.

The FCA and PRA issued press releases welcoming each other's respective Discussion Paper and Consultation Paper. They also noted that they are establishing a climate financial risk forum to coordinate action, share best practices, help the financial sector manage the financial risks from climate change and support innovation for financial products and services in green finance. The forum will involve industry representatives, technical experts and other stakeholders. Membership is expected to be finalized by the end of November, having a first meeting in early 2019.

The deadline for responses to the Consultation Paper is January 15, 2019 and the deadline for responses to the Discussion Paper is January 31, 2019.

The FCA's Discussion Paper is available [here](#) and the PRA's Consultation Paper is available [here](#).

The FCA's and PRA's press releases are available [here](#) and [here](#), respectively.

UK Government Publishes Guidance on Trading Energy After a No-Deal Brexit

On October 12, the UK Department for Business, Energy and Industrial Strategy (BEIS) published two guidance notes relating to trading in energy should the UK leave the EU without agreement (No-Deal Brexit). One guidance note focuses on gas and the other relates to electricity.

The guidance notes are part of a series of technical notices that aim to provide information to UK businesses and citizens on how to prepare for a No-Deal Brexit. This describes the situation in which the UK and the EU fail to conclude a draft withdrawal agreement by the time of the UK's exit from the EU on March 29, 2019, and would mean that there would be no implementation period—currently intended to run from March 30, 2019 to December 31, 2020.

Of interest to market participants, each of the guidance notes state that:

- UK market participants will need to register under the Regulation on Energy Market Integrity and Transparency (REMIT) with an EU regulatory authority for the purposes of market monitoring to avoid a disruption to cross-border trade and trade within EU wholesale energy markets;
- where their preparations identify significant concerns, market participants should engage with their regulatory authority; and
- market participants also should check the status of contracts and licenses that may be affected by the UK's departure from the EU.

The guidance note relating to gas trading is available [here](#).

The guidance note relating to electricity trading is available [here](#).

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