

BROKER-DEALER

CBOE Proposes Amendments to Rule 6.49A Concerning Off-Floor Position Transfers Including RWA Transfers

CBOE Exchange, Inc. (CBOE) recently filed a proposal to amend its Rule 6.49A to amend provisions related to permissible off-floor position transfers. Generally, CBOE Rule 6.49A(a) specifies limited circumstances in which CBOE Trading Permit Holders (TPHs) may transfer their positions off the floor. CBOE proposes to add four events where an off-floor transfer would be permitted to occur. Specifically, under the proposed amendments, in addition to the off-floor transfers addressed in the current version of the rule, an off-floor transfer would be permissible if the transfer:

1. is an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction, provided that the original trade documentation confirms the error;
2. is a transfer of positions from one account to another account where there is no change in ownership involved (i.e., the accounts are for the same individual, partnership, joint stock company, corporation, limited liability company, trust or unincorporated organization, or governmental entity or agency), provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;
3. is a consolidation of accounts where no change in ownership is involved; and
4. is a transfer of positions through operation of law from death, bankruptcy, or otherwise.

CBOE also proposes to amend the Rule to permit off-floor transfers of existing positions in options listed on CBOE of a TPH or a non-TPH if the transfer established a net reduction of risk-weighted assets attributable to those options positions (an "RWA Transfer").

Under the proposal, a TPH and its Clearing Trading Permit Holder would be required to submit to CBOE written notice prior to effecting an off-floor transfer other than such transfers made in connection with correcting a bona fide error and RWA transfers. Other than with respect to RWA transfers, when effecting an off-floor transfer under the proposed amendments, no position may net against another position or result in preferential margin or haircut treatment, and off-floor transfers may be used only to facilitate non-routine, non-recurring movements of positions.

The rule filing is available [here](#).

DERIVATIVES

See "CFTC Proposes Amendments to Reduce Regulatory Obligations on Certain Non-US Clearing Organizations" and "CFTC Extends Public Comment Period for Proposed Amendment to Swap Data Reporting Regulations" in the CFTC section.

Delay of Final Implementation of Swap Initial Margin Rules

On July 23, the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) published a revised framework for mandatory initial margin applicable to swaps that are not cleared with a central clearing party. The key revision was the insertion of an additional year into the implementation schedule for the margin rules. The schedule now has six annual phases instead of five, so full implementation of the rules will not occur until September 2021 instead of September 2020. The phase-in threshold was scheduled to drop to EURO 8 billion for 2020, thus bringing numerous new entities into scope for mandatory initial margin for swaps. The threshold for 2020 is now EURO 50 billion, with the EURO 8 billion threshold not applying until 2021.

As was the case with the original margin framework, this new schedule will only become effective after it has been adopted by the relevant G20 regulators for their respective jurisdictions. Accordingly, the Commodity Futures Trading Commission and the US prudential regulators will have to enact changes to their respective margin rules for uncleared swaps to implement the delay for US persons. The US versions of the revised rules will have US dollar thresholds.

The BCBS-IOSCO press release is available [here](#).

A table showing the new compliance schedule is available [here](#).

CFTC

CFTC Proposes Amendments to Reduce Regulatory Obligations on Certain Non-US Clearing Organizations

The Commodity Futures Trading Commission has published for comment two proposals intended to reduce the regulatory obligations that certain non-US clearing organizations would otherwise be subject. In accordance with section 5b(a) of the Commodity Exchange Act (CEA), it is unlawful for any clearing organization to clear swaps on behalf of US persons unless that clearing organization is registered with the CFTC as a derivatives clearing organization (DCO). However, CEA section 5b(h) authorizes the CFTC to exempt from registration any non-US clearing organization that is “subject to comparable, comprehensive supervision and regulation” by its home country regulator. In the exercise of this latter authority, the CFTC has proposed to permit those non-US clearing organizations that the CFTC determines do not pose a substantial risk to the US financial system to elect either 1) registration as a DCO with alternative compliance obligations; or 2) an exemption from registration altogether.

A non-US clearing organization would be deemed to pose a substantial risk to the US financial system if: 1) the clearing organization holds 20 percent or more of the required initial margin of US clearing members for swaps across all registered and exempt DCOs; and 2) 20 percent or more of the initial margin requirements for swaps at that clearing organization is attributable to US clearing members.

Registration with alternative compliance. A clearing organization that elects registration with alternative compliance would be registered with the CFTC as a DCO and would be required to demonstrate that it complies with the core principles set out in CEA section 5b(c). However, the clearing organization could rely primarily on its home regulatory regime rather than having to demonstrate compliance with Part 39 of the CFTC’s rules. Importantly, a non-US clearing organization electing alternative compliance would be required to comply fully with the CFTC’s customer funds protection requirements, including the requirement that all US customer swaps be cleared through a CFTC-registered futures commission merchant (FCM).

As proposed, a non-US clearing organization would be eligible to elect the alternative compliance if: 1) the CFTC determines that the clearing organization’s compliance with its home country regulatory regime would satisfy the DCO Core Principles; 2) the clearing organization is in good regulatory standing in its home country; 3) the CFTC determines that the clearing organization does not pose substantial risk to the US financial system; and 4) a memorandum of understanding (MOU) or similar arrangement satisfactory to the CFTC is in effect between the CFTC and the clearing organization’s home country regulator.

Comments on the registration with alternative compliance proposed amendments must be received by September 17.

The *Federal Register* release is available [here](#).

Exemption from registration. Separately, the CFTC has proposed to authorize non-US clearing organizations that do not pose a substantial risk to the US financial system to claim an exemption from registration as a DCO. Similar to the registration with alternative compliance proposal, an exemption from registration would only be available if: 1) the CFTC determines that the clearing organization is subject to comparable, comprehensive supervision and regulation that includes a regulatory structure consistent with the Principles for Financial Market Infrastructures (PFMI); 2) the clearing organization observes PFMI in all material respects; and 3) the clearing organization is in good regulatory standing in its home country.

Importantly, and in contrast to the alternative compliance proposal, an exempt clearing organization would be prohibited from offering US customer funds protection. To the contrary, an FCM may not be involved in the clearing of swaps for a US customer on an exempt clearing organization, either directly or indirectly; only a direct clearing member of the exempt clearing organization may deal with a US customer. The CFTC has taken this position because the treatment of customer funds in the event of an insolvency of the FCM in these circumstances would be uncertain.

Comments on the proposed amendments regarding exempt clearing organizations must be received by September 23.

The *Federal Register* release is available [here](#).

CFTC Extends Public Comment Period for Proposed Amendment to Swap Data Reporting Regulations

On July 22, the Commodity Futures Trading Commission announced that it is extending the comment period for the proposal to improve data quality and streamline regulations for swap data reporting until October 28.

The proposed amendments would update requirements for correcting swap data errors and omissions and for swap data repositories to verify swap data with reporting counterparties. The proposed amendments also update and clarify certain swap data repositories operational and governance requirements.

The original comment period for the proposed rulemaking was set to expire on July 29.

Notice of the extension is available in the *Federal Register*, [here](#).

CFTC Clarifies That the Customer Identification Program and Beneficial Ownership Rules are Not Applicable to Certain Introduction Brokers

On July 22, the Commodity Futures Trading Commission, in conjunction with the Financial Crimes Enforcement Network (FinCEN), issued interpretative guidance to introducing brokers in commodities (IBs) that do not introduce customers to a futures commission merchant (FCM) that carries their customers' accounts.

The interpretative guidance clarifies that an IB that does not introduce customers to an FCM is not required to implement the customer identification program (31 CFR Section 1026.220) or beneficial owner (31 CFR Section 1010.230) rules.

CFTC Letter No. 19-18 is available [here](#).

UK DEVELOPMENTS

European Commission Publishes Assessment of EU AML and CTF

On July 24, the European Commission (EC) published a suite of documents assessing the current anti-money laundering (AML) and counter-terrorist financing (CTF) framework in operation in the European Union (EU).

Although each document is addressed to the European Parliament and the Council of the EU, the EC states that it believes that these documents will support the EU and national authorities to better address money laundering and terrorist financing risks. It notes that some improvements can be made quickly at an operational level, and the

EC will continue to support EU member states in this, while also reflecting on how to address the remaining structural challenges.

Notably, the EC also states that the documents will serve as a basis for future policy choices and legislative developments in the EU on how to further strengthen the EU AML and CTF framework.

The documents include:

- communication towards better implementation of the EU's AML and CTF framework—with commentary on the divergences in approach between different EU countries and a proposal to replace the EU Money Laundering Directives with a maximum harmonization Regulation, to ensure all EU countries have exactly the same rules;
- supranational risk assessment of money laundering and terrorist financing risks affecting the EU;
- report assessing recent alleged money laundering cases involving EU banks (including Danske Bank and Deutsche Bank);
- report assessing EU member states' financial intelligence units co-operation framework (and the lack of cooperation in practice, with a recommendation for the establishment of a new coordination and support mechanism);
- report on the interconnection of national central bank account registries and data retrieval systems; and related Q&As.

The documents are available online at:

- [European Commission: Communication: Towards better implementation of the EU's anti-money laundering and countering the financing of terrorism framework \(July 24, 2019\).](#)
- [European Commission: Report: On the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities \(July 24, 2019\).](#)
- [European Commission: Report: On the assessment of recent alleged money laundering cases involving EU credit institutions \(July 24, 2019\).](#)
- [European Commission: Report: Assessing the framework for cooperation between Financial Intelligence Units \(July 24, 2019\).](#)
- [European Commission: Report: On the interconnection of national centralised automated mechanisms \(central registries or central electronic data retrieval systems\) of the Member States on bank accounts \(July 24, 2019\).](#)
- [European Commission: Fact sheet: Commission assesses risks and implementation shortcomings in fight against money laundering and terrorist financing: Questions and Answers \(July 24, 2019\).](#)

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UK DEVELOPMENTS

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