

## BROKER-DEALER

### **SEC Proposes to Require Proposed NMS Plan Fee Amendments to Follow Public Notice, Comment and Approval Procedure**

On October 1, the Securities and Exchange Commission proposed an amendment to Regulation NMS that would rescind a rule exception that allows a national market system plan (NMS Plan) amendment to be effective upon filing if it establishes or changes a fee or other charge (Proposal). Under the Proposal, changes to such a fee or other charge would follow the standard procedure for NMS plan amendments. As a result, investors and other market participants could not be charged a new or altered fee or other charge until a corresponding amendment was published, made available for public comment and received SEC approval. The Proposed is intended to help ensure that NMS Plan fees meet statutory requirements under the Securities Exchange Act of 1934 before going into effect.

There will be a 60-day comment period for the Proposal following its publication in the Federal Register.

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

### **FINRA Provides Member Firms with New Reg BI and Form CRS Resources**

On October 8, the Financial Industry Regulatory Authority (FINRA) announced the availability of new resources to assist member forms to comply with the Securities Exchange Commission's Regulation Best Interest (Reg BI) and Form CRS by the June 30, 2020 compliance deadline. Reg BI establishes a "best interest" standard of conduct for broker-dealers and associated persons when making recommendations to a retail customer in connection with a securities transaction or investment strategy involving securities. In addition to the Reg BI requirements, the SEC also adopted a new rule to require broker-dealers and investment advisers to provide retail investors with a brief relationship summary known as the Form CRS.

Among other resources, FINRA is providing a Reg BI and Form CRS Checklist to help member firms assess and implement necessary changes to their policies, procedures and compliance programs. This checklist outlines (1) the major requirements of the rules, and (2) key differences between FINRA rules and Reg BI and Form CRS. In addition to providing the aforementioned, FINRA will be hosting a series of upcoming events intended to further discussions related to Reg BI.

A description of the resources and upcoming events is available [here](#).

## FINANCIAL MARKETS

See "FCA Publishes 'Brexit Special' Market Watch" in the UK Developments section.

## DERIVATIVES

See "Proposed IRS Regulations on Modifications of Debt Instruments and Swaps to Replace LIBOR" in the Banking section.

## CFTC

### **CFTC to Hold Open Commission Meeting on October 16**

On October 9, the Chairman of the Commodity Futures Trading Commission (CFTC) announced that the CFTC will hold an open meeting on Wednesday, October 16 to consider the following topics:

- proposed rule: amendment to regulation 23.161 — compliance schedule extension regarding margin requirements; and
- proposed rule: amendments to the margin rules for uncleared swaps — regulations 23.151 and 23.157.

The meeting will be held at the CFTC's headquarters in Washington DC and will be open to the public. Members of the public may also watch a live webcast or listen to the meeting via conference call.

More information regarding the open meeting is available [here](#).

### **NFA Announces Effective Date for Supervision of Branch Offices and Guaranteed IBs**

On October 8, the National Futures Association (NFA) issued Notice I-19-19 announcing the effective date of the updated Interpretive Notice Compliance Rule 2-9: Supervision of Branch Offices and Guaranteed IBs, which establishes minimum requirements that member firms should implement to supervise their branch offices and guaranteed introducing brokers' (IB) compliance with certain regulatory requirements. The updated Interpretive Notice is effective January 1, 2020, although NFA members may act in reliance on the guidance immediately.

The update reflects advances in electronic trading, communications and other technologies, providing members with increased flexibility while continuing to subject branch offices and guaranteed IBs to robust supervision and regulatory requirements. The updated Interpretive Notice was discussed in greater detail in the May 24 edition of [Corporate & Financial Weekly Digest](#).

Notice I-19-19 is available [here](#).

## BANKING

### **Proposed IRS Regulations on Modifications of Debt Instruments and Swaps to Replace LIBOR**

On October 9, the Internal Revenue Service (IRS) proposed regulations to eliminate tax issues that might otherwise arise due to the modification of instruments and transactions as a result of discontinuation of interbank offered rates (IBORs) used in debt instruments and non-debt contracts (such as derivatives). Under current rules, material alteration of the terms of instruments and contracts can result in tax events, including the realization of gain or loss for income tax purposes.

The proposal will allow parties to amend documents to replace an IBOR with a "qualified rate," to add a back-up qualified rate (for use if an IBOR is discontinued or deteriorates to the point that it is not useful) or to change a back-up rate to a qualified rate, with associated modifications to the instrument without causing a taxable reissuance of the debt obligation or a deemed disposition or termination of a swap. The proposal will allow the foregoing, so long as the fair market value of the instrument/transaction after the modification is substantially equivalent to the fair market value of the instrument/transaction before the alteration. Subject to certain conditions, a taxpayer may rely on the proposed rules prior to their final adoption.

The comment period ends on November 25.

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

## UK DEVELOPMENTS

### FCA Publishes "Brexit Special" Market Watch

On October 7, the Financial Conduct Authority (FCA) published a "Brexit Special" of its monthly *Market Watch* newsletter, in which it summarized some recent developments and publications in connection with the regulated sector's preparedness for the forthcoming departure of the UK from the EU on November 1.

In the newsletter, the FCA noted that Andrew Bailey, FCA CEO, gave a speech in September at Bloomberg London on the Brexit "state of play". Mr. Bailey outlined recent developments and the outstanding issues, such as the desire for an equivalence agreement for the Share Trading Obligation (STO). (For more information, please see the June 14 edition of [Corporate & Financial Weekly Digest](#)).

The FCA explained that transaction reporting rules under the Markets in Financial Instruments Regulation (MiFIR) will not be subject to the temporary transitional power. (For more information, please see the September 27 edition of [Corporate & Financial Weekly Digest](#)). Therefore, firms, trading venues and approved reporting mechanisms will need to take "reasonable steps to comply with the changes to their regulatory obligations". Firms who cannot comply on the day that the UK leaves the EU will need to back-report missing, incomplete or inaccurate transaction reports as soon as possible thereafter.

The FCA provided an updated statement on the operation of the Markets in Financial Instruments Directive (MiFID) transparency regime following Brexit. The FCA published a statement on this topic in March 2019 (please see the March 8 edition of [Corporate & Financial Weekly Digest](#)), and the main purpose of this update was to change dates to reflect the extension of the departure date from March to October 2019.

The FCA's MiFID transparency regime update also reflects a statement made on October 7 from the European Securities and Markets Authority (ESMA). In addition to other updates, ESMA described how reference data submitted by UK trading venues and systematic internalisers will be phased out of EU calculations. ESMA will "freeze" the quarterly calculations until Q1 2020, during which time the EU will re-determine the relevant competent authority (RCA) for all financial instruments that remain available for trading in the EU, for which the FCA is currently the RCA.

Finally, the FCA announced that industry testing for the FCA Financial Instruments Transparency Systems (FITRS) would start on October 10 and noted that it continues to update the Brexit material available on its website.

The Market Watch newsletter is available [here](#).

Andrew Bailey's speech is available [here](#).

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

ESMA's statement 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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