

BROKER-DEALER

SEC Issues Guidance on Substituted Compliance Applications by Non-US Security-Based Swap Dealers and Major Security-Based Swap Participants

On November 25, the Securities and Exchange Commission's Division of Trading and Markets issued guidance intended to facilitate certain substituted compliance applications submitted by non-US security-based swap dealers and/or major security-based swap participants (Guidance).

The Guidance is intended to help persons submitting applications in accordance with Rule 3a71-6 under the Securities Exchange Act of 1934 by posing relevant questions regarding the relevant foreign requirements in comparison with the SEC's requirements and describing the relevant SEC requirements in detail.

The SEC provided information on five categories of requirements that will be applicable to security-based swap dealers and/or major security-based swap participants. These categories relate to 1) risk controls (including risk controls related to capital, margin, risk management systems and trade acknowledgment and verification); 2) recordkeeping and reporting requirements (including requirements related to record creation, record maintenance, and reporting/notice); 3) internal supervision and compliance requirements (including requirements related to supervision, conflicts of interest, and chief compliance officers); 4) counterparty protections (including protections related to fair and balanced communications, the disclosure of certain risks, characteristics, incentives and conflicts, daily mark disclosure, "know your counterparty," recommendation suitability, and the disclosure of clearing rights); and 5) any other relevant requirements (including requirements related to the eligible contract participant verification process and special entities and political contributions).

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

FINANCIAL MARKETS

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CFTC

CFTC Approves Final and Proposed Rules on Rulemaking, Capital Requirements for Swap Participants and Inter-Affiliate Swaps

At the US Commodity Futures Trading Commission open meeting on December 10, the CFTC approved one final and two proposed rules as follows:

- The CFTC unanimously approved a final rule to amend its Part 13 Rules regarding rulemaking. Because the Administrative Procedure Act governs the CFTC's rulemaking process, this amendment eliminates the procedures for the formulation, amendment or repeal of CFTC rules or regulations. As a result, Part 13, as amended, will be comprised solely of the procedure for filing petitions for rulemakings.
- In a 3-2 vote, the CFTC reopened the comment period for the proposed capital and financial reporting rules for swap dealers and major swap participants, providing for a 75-day comment period after the proposed rule is published in the Federal Register. For a more complete discussion of the proposed capital and financial reporting rules, see the [December 9, 2016 edition of *Corporate & Financial Weekly Digest*](#).
- The CFTC unanimously approved a proposed rule that would reinstate the expired alternative compliance frameworks for the inter-affiliate swaps clearing exemption, with minor revisions. This proposal would codify the relief provided by the Division of Clearing and Risk no-action letters and make the two alternative compliance frameworks permanently available to affiliated entities. There is a 60-day comment period following publication of the proposed rule in the Federal Register.

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

Additional information on these rulemakings, including statements of the Chairman and Commissioners, is available [here](#).

CFTC to Hold an Open Commission Meeting on December 18

The Commodity Futures Trading Commission will hold an open meeting on December 18 at 9:00 a.m. EST to consider the following topics:

- Final Rule: Amendments to Derivatives Clearing Organization General Provisions and Core Principles.
- Proposed Rule: Prohibition on Post-Trade Name Give-Up on Swap Execution Facilities.
- Proposed Rule: Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants.
- Request for Comment on Designated Foreign Sovereign Debt as Collateral and Acceptable Currencies for Collateral and Settlement.

The meeting will take place at the CFTC headquarters in Washington DC, and a live webcast will be offered. More information is available [here](#).

UK DEVELOPMENTS

FCA Publishes SM&CR Materials

On December 9, the Senior Managers and Certification Regime (SM&CR) was extended to around 47,000 UK-based financial services firms. SM&CR already applied to banks and insurers, so now SM&CR applies to every FCA-regulated firm (with the exception of benchmark administrators and appointed representatives). For more information, please see the [December 6](#) edition of the *Corporate & Financial Weekly Digest*.

While December 9 was the deadline for submitting applications for senior management functions to the FCA, the deadline to train staff on the application of the Conduct Rules and to issue certificates for Certified Staff is not until December 9, 2020. In its press release, the FCA encouraged firms to "start preparing now" in order to meet this deadline.

Also on December 9, the FCA published materials relating to the extended SM&CR, including a template "Statement of Responsibilities" and various forms for updating the FCA on, for example, internal transfers of senior managers or disciplinary actions.

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

EU DEVELOPMENTS

EBA Publishes Action Plan on Sustainable Finance

On December 6, the European Banking Authority (EBA) published its action plan on "Sustainable Finance" (the Action Plan), available [here](#).

In March 2018, the European Commission (EC) published its action plan on "Financing Sustainable Growth", which is available [here](#), in which it requested follow-up work from the three European Supervisory Authorities (ESAs). The EBA is the last ESA to meet the EC's request: the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) published their technical advisory papers on May 3, which are available [here](#) and [here](#) respectively. For more information on the ESMA advisory paper, please see the [May 10](#) edition of the *Corporate & Financial Weekly Digest*.

As part of its action plan, the EC made changes to the regulations from which the ESAs get their powers and, as such, the EBA is required to:

- **EBA Regulation:** Develop a monitoring system to assess material Environmental, Social and Governance (ESG) risks; develop common methodologies for assessing the effect of economic scenarios on an institution's financial position; and
- **Capital Requirements Regulation (CRR 2) and Capital Requirements Directive (CRD 5):** Assess the potential inclusion of ESG risks in the Supervisory Review and Evaluation Process (SREP); develop a technical standard for the disclosure of ESG risks; and assess the potential inclusion of ESG risks as a Pillar 1 capital requirement.

The EC has proposed (but is yet to publish) amendments to the Investment Firms Regulation (IRF) and the Investment Firms Directive (IFD). The EC has also proposed a new regulation aimed at integrating ESG considerations into the investment and advisory process.

To this end, the EBA's Action Plan sets out the timelines and milestones for delivering this work. The EBA has grouped the work into four stages:

1. **Strategy and Risk Management:** First discussion paper to be published in Q2/Q3 2020; final report to be published before June 28, 2021;
2. **Key Metrics and Disclosure:** EBA to submit technical standards to the EC by June 2020; ESG technical standards to apply from June 2022;
3. **Stress Testing and Scenario Analysis:** A climate change stress test may be trialled with a sample of banks in H2 2020; and
4. **Prudential Treatment:** First discussion paper to be published from 2022-2024; final report to be published before June 2025.

The three ESAs are also tasked with gathering evidence on the short-term pressures on corporations from capital markets, which could impact the preparation for long-term risks such as climate change. The EBA intends to publish the outcome of this work before the end of 2019.

ECOFIN Outlines Next Steps for Crypto and Climate Action

On December 5, Valdis Dombrovskis made a speech at the conclusion of the first Economic and Financial Affairs Council (ECOFIN) meeting of the new European Commission (EC). Mr. Dombrovskis is the European Commissioner for "an Economy that Works for People", and is one of the three newly-appointed Executive Vice Presidents of the EC.

ECOFIN is the EU council responsible for economic policy, tax and financial services regulation. It is also the council responsible for the EU's annual budget, the legal and practical aspects of the Euro (€), the coordination of member states' economic policies, and the EU's positions for international meetings, such as the G20.

In the speech, Mr. Dombrovskis outlined six areas of focus for ECOFIN:

1. **Climate Action:** The Green Financing Strategy, which Mr. Dombrovskis was asked to develop by the new EC President Ursula von der Leyen, is to be published in 2020. ECOFIN is also working with the European Parliament towards a taxonomy for defining sustainable economic activities;
2. **Money Laundering and Terrorist Financing:** ECOFIN would like the European Council to explore a way of ensuring more robust and effective cooperation between the relevant authorities and bodies and the potential for conferring supervisory powers in this area to an EU body;
3. **Stablecoins:** ECOFIN and the EC adopted a joint statement on the need for a common European framework and noted that no global stablecoin arrangement should begin operation in the EU until the legal, regulatory and oversight challenges and risks have been adequately identified and addressed. ECOFIN intends to launch a public consultation on stablecoins before the end of 2019;
4. **Digital Operational Resilience:** ECOFIN will also launch a public consultation in this area for example, in relation to cyberattacks;
5. **Capital Markets Union (CMU):** Mr. Dombrovskis stated that they want to take the CMU to the "next level", and that they have set up a High-Level Forum to look at new ideas for improving access to finance and ensuring that savers put their investments to productive use; and
6. **Energy Taxation:** Again on the topic of climate action, Mr. Dombrovskis noted the need to move forward with the new energy taxation framework and highlighted the requirements to broaden the existing tax base and preserve competitiveness.

The speech is available [here](#) and a summary of the main results of the ECOFIN meeting is available [here](#).

EU and Switzerland Link Emissions Trading Schemes

On December 9, the European Union (EU) and Switzerland announced the finalization of the "Agreement between the European Union and the Swiss Confederation on the Linking of their Greenhouse Gas Emissions Trading Systems" (the Linking Agreement).

The Linking Agreement was signed in November 2017 and was an agreement in principle to link the Emissions Trading Systems (ETs) of the two countries. The Linking Agreement was subject to a number of requirements in Annexes I and II to ensure that the two schemes were compatible. These requirements were finalised in a meeting on December 5.

The outcome of this Linking Agreement is that from January 1, 2020 allowances from both systems can be used for compliance to compensate for emissions occurring in either system. It is the first such agreement, but in its press release the EU explains that it see "significant benefits to linking carbon markets" and that "with linked carbon markets we can bring carbon prices in different countries closer together".

The press release is [here](#) and FAQs are available [here](#) and [here](#).

EMIR 2.2 Published in Official Journal

On December 12, amendments to the European Market Infrastructure Regulations (EMIR), known as "EMIR 2.2", were published in the *Official Journal of the European Union*, which is available [here](#). This means that, as expected, the provisions of EMIR 2.2 will become effective on January 1, 2020. EMIR 2.2 is different from EMIR REFIT, which became effective on June 17.

The main change introduced by EMIR 2.2 is the introduction of two tiers to categorize third-country central counterparties (TC-CCPs). This and other changes introduced by EMIR 2.2 were explored in more detail in the [November 15](#) edition of the *Corporate & Financial Weekly Digest*.

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

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UK/EU DEVELOPMENTS

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