

## CFTC

### **CFTC Designates Small Exchange, Inc. as a Designated Contract Market**

On March 10, the Commodity Futures Trading Commission (CFTC) announced that it had issued an Order of Designation approving the application of the Small Exchange, Inc. (Small Exchange) for designation as a contract market (DCM). As required under Section 5 of the Commodity Exchange Act (CEA) and CFTC Regulation 38.3(a), the CFTC issued the order after finding that the Small Exchange had demonstrated its ability to comply with the provisions of the CEA and CFTC Regulations applicable to DCMs.

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

A full copy of the Order of Designation is available [here](#).

### **CFTC's Energy and Environmental Markets Advisory Committee to Meet on March 24**

The Commodity Futures Trading Commission's (CFTC) Energy and Environmental Markets Advisory Committee (EEMAC) announced that it will hold a public meeting at 9:30 a.m. on March 24 at the CFTC's headquarters in Washington, DC. At the meeting, the EEMAC will consider the CFTC's proposed rule regarding the establishment of position limits for derivatives contracts that provide for physical delivery. Specifically, the EEMAC will examine the proposed position limits for spot months, single month, and all-months-combined and the proposed bona fide hedging exemptions from such position limits and related procedures. The CFTC's Market Intelligence Branch will also make a presentation on recent developments in the energy derivatives marketplace.

The meeting is open to the public on a first-come, first-served basis, as well as via conference call. More information is available [here](#).

For more information on the CFTC's proposed rule regarding Position Limits for Derivatives, please see the [January 31, 2020 edition](#) of *Corporate & Financial Weekly Digest*.

### **NFA Proposes Technical Amendments to Interpretive Notices Regarding Use of Promotional Material and Forex Transactions**

On March 5, the National Futures Association (NFA) submitted proposed technical amendments to two Interpretive Notices to the Commodity Futures Trading Commission (CFTC). With respect to Interpretive Notice 9025-Compliance Rule 2-29: Use of Promotional Material Containing Hypothetical Performance Results, the proposed technical amendment reinstates inadvertently deleted language that requires that the disclosure of material assumptions include information on the initial investment amount and reinvestment or distribution of profits. Additionally, the proposed technical amendment to Interpretive Notice 9053-Forex Transactions corrects a formatting issue.

Absent additional review by the CFTC, the NFA may establish an effective date for the amendments as early as 10 days after receipt of the submission by the CFTC.

A copy of the proposed technical amendments is available [here](#).

## **NFA Proposes Amendments to Compliance Rule 2-29 and Related Interpretive Notice**

On March 5, the National Futures Association (NFA) submitted to the Commodity Futures Trading Commission (CFTC) proposed amendments to Compliance Rule 2-29 and Interpretive Notice 9003 regarding communications with the public and promotional material. The proposed amendments reflect NFA's determination that commodity trading advisor (CTA) Members, who are registered investment advisers with the Securities and Exchange Commission, can present past performance data to eligible contract participants (ECPs) on a gross basis in non-public, one-on-one presentations; provided that the CTA Member discloses to the ECP that the performance results are presented on a gross basis, do not reflect the deduction of fees and expenses, and offers to provide the client with the performance results net of any fees and expenses prior to exercising discretion over the client's account.

Absent notification of additional review by the CFTC, the NFA may establish an effective date for the amendments as early as 10 days after receipt of the submission by the CFTC.

A copy of the proposed amendments is available [here](#).

## **CFTC Postpones Agriculture Conference and Relocates the March 31 Open Meeting to Washington**

On March 11, the Commodity Futures Trading Commission (CFTC) announced changes to previously scheduled public events due to the impact of the coronavirus. The following events have been adjusted:

- The Agricultural Commodity Futures Conference scheduled for April 1-2 in Overland Park, Kansas, has been postponed;
- The CFTC open meeting scheduled for March 31 will be relocated from the Federal Reserve Bank of Kansas City to CFTC headquarters in Washington, D.C.; and
- LabCFTC office hours scheduled for April 1 in New York City have been postponed.

More information is available [here](#).

## **NFA Issues Notice to Members on CFTC Regulatory Reporting Requirements amid Spread of Coronavirus**

On March 12, the National Futures Association (NFA) issued Notice I-20-11, reminding swap dealer (SD) Members of their regulatory obligations, specifically with respect to Commodity Futures Trading Commission (CFTC) Regulation 23.603 regarding business continuity and disaster recovery plans. In accordance with such regulatory obligations, the CFTC expects to be notified if a SD implements a teleworking plan or activates its Business Continuity Plan other than for testing purposes.

Notice I-20-11 is available [here](#).

## **UK DEVELOPMENTS**

### **Environmental, Social and Governance (ESG): TSC Releases Correspondence with UK Regulators**

On March 10, the United Kingdom's Treasury Select Committee (TSC) released letters written to the CEO of the UK's Financial Conduct Authority (FCA) and the Governor of the Bank of England (the Bank) and the responses to those letters. The TSC wrote to the FCA and the Bank in October 2019 and February respectively, and the responses were received in late-February.

The letter to the FCA concerned a voting initiative proposed by the Association of Member Nominated Trustees (AMNT), an industry group established to support pension scheme trustees. The AMNT believes that trustees should be adopting active stewardship policies covering Environmental, Social, and Governance (ESG) matters, and, consequently in May 2019, the AMNT proposed rules that a trustee can follow. These rules are called the Red Line Policy.

For example, in the first year of adopting the Red Line Policy, if the company has failed to introduce and disclose emission reduction targets, the trustee must vote against the re-election of the chair of the Environmental Sustainability Committee, or equivalent.

The TSC also noted that the AMNT submitted a complaint to the FCA in May 2019, alleging that the failure of the fund management industry to allow pensions scheme trustees to operate a stewardship policy governing the ESG of the companies in which they invest via fund managers amounts to a market failure. The TSC noted that this view is supported by "expert witnesses at our evidence session."

In the letter to the FCA, the TSC asked whether the FCA was taking action in relation to this Red Line Policy and other questions relating to the FCA's view of the issue. In his response, FCA CEO, Andrew Bailey, noted the various sustainable finance taskforces and disclosure regimes of which the FCA is a part. He specifically noted feedback statement FS 19/6, which concerns rules to improve climate-related disclosures. He did not mention the AMNT's proposal or complaint.

In the letter to the Bank, the TSC noted various comments in the press made by outgoing Governor Mark Carney and asked several follow-up questions. For example, Mr. Carney commented that climate change could make financial assets "worthless."

In his response, Mr. Carney noted the disclosures proposed by the Task Force on Climate-related Financial Disclosures (TCFD), which was established by the Financial Stability Board in 2015 and which are now supported by over 1,000 organizations. He also described complementary research being undertaken at the Bank.

He concluded that "we are approaching the point when TCFD disclosures need to become mandatory" and noted that such rules could build on the proposals set out in FS 19/6.

The letter to the FCA is available [here](#), and the response is available [here](#).

The letter to the Bank is available [here](#), and the response is available [here](#).

### **Brexit: HMT Consults on Overseas Retail Funds Regime**

On March 11, HM Treasury (HMT), the office of the United Kingdom (UK) government responsible for financial services legislation, published a consultation paper on a regime which would allow overseas retail funds to access the UK (the Consultation).

When the UK was part of the European Union (EU), retail investors could access third country Undertakings for Collective Investments in Transferable Securities (UCITS) funds via a passporting regime. Upon Brexit, the UK government created a temporary marketing permissions regime (TMPR) to allow EU UCITS to market in the UK until the end of the transition period, which is expected to expire at the end of December 31. After the end of the TMPR, funds would have to apply under section 272 of the Financial Services and Markets Act (FSMA) to become recognized.

In the Consultation, HMT proposed an equivalence regime for overseas retail funds to be able to market to UK retail investors. HMT also proposed a separate regime for money market funds (MMFs) to be able to market to all investors, noting that the process will be different if the fund wants to market to retail or professional investors. These equivalence regimes will function similarly to the existing EU approach to equivalence. Once a jurisdiction is determined to be "equivalent," funds will be able to apply to the UK's Financial Conduct Authority (FCA) for "recognition." Retail funds will need to be "registered," but MMFs for professional clients will only need to "notify" the FCA using the existing National Private Placement Regime. The FCA will also have the ability to impose "additional requirements and obligations" on overseas retail funds.

In making their equivalence determination, HMT will consider whether the overseas jurisdiction is able to offer "equivalent investor protection" for retail investors. HMT will make this determination using evidence from the FCA and will also consider other factors, such as market stability, competition and preventing financial crime. HMT emphasized that this will be an "outcomes-based" regime.

Once recognized, the fund will not be subject to the FCA's usual supervisory regime but will have to pay fees and respond to information requests. The FCA will also be able to revoke or suspend recognition, if necessary. (Any such suspension would mean that the firm would no longer be eligible to be marketed in the UK). HMT are consulting on whether these funds should fall under the scope of the Financial Ombudsman Service (FOS) and the Financial Services and Compensation Schemes (FSCS).

Finally, HMT also proposed amendments to section 272 of FSMA to "make it more efficient" for the funds who will have to use it because they are not eligible for these regimes.

The Consultation is available [here](#) and closes on May 11.

## EU DEVELOPMENTS

### **Environmental, Social and Governance (ESG): EU Publishes Taxonomy Final Report**

On March 9, the European Union (EU) Technical Expert Group on sustainable finance (the TEG) published their final report setting out recommendations to the European Commission (the Commission), including recommendations relating to the overarching design of the EU Taxonomy, guidance on how users of the Taxonomy can develop disclosures and a summary of the economic activities covered by the technical screening criteria (the Final Report).

The Final Report is supplemented by a Technical Annex containing a full list of revised or additional technical screening criteria for economic activities, which can substantially contribute to climate change mitigation or adaptation (the Technical Annex). The Technical Annex also includes methodological statements to support the recommendations set out in the Final Report.

The Commission asked the TEG to prepare the Final Report and Technical Annex to support the development of technical standards as required by the Taxonomy Regulation (for more information, please see the [January 10 edition](#) of *Corporate & Financial Weekly Digest*). Both documents had been published in June 2019 in draft form.

The Final Report is available [here](#), and the Technical Annex is available [here](#).

### **Environmental, Social and Governance (ESG): EU Publishes Green Bond Guide**

On March 9, the European Union (EU) Technical Expert Group on sustainable finance (the TEG) published its Usability Guide for the EU Green Bond Standard (the Guide). This is one aspect of the work mandated to the TEG by the European Commission (the Commission) under the Action Plan on Sustainable Finance and builds on the preliminary report on the EU Green Bond Standard published by the TEG in June 2019.

In the Guide, the TEG explains that the EU Green Bond Standard is a voluntary standard which may be used by issuers who wish to align their bond issues with best practices in the market. It builds on work done by other organizations, such as the Green Bond Principles developed by the International Capital Market Association (ICMA).

The EU Green Bond Standard is also aligned with the Taxonomy Regulation, in that proceeds from EU Green Bonds should finance "Green Projects" as defined in the Taxonomy (for more information, please see the [January 10 edition](#) of *Corporate & Financial Weekly Digest*). Issuers who wish to issue an EU Green Bond will have to develop a "Green Bond Framework" to explain how the issuer's overall strategy meets these environmental objectives.

In addition, two types of reporting will be required by the issuer: Allocation Reporting and Impact Reporting. The Guide encourages issuers to use the reporting templates provided in Annex 3 of the Guide. The Guide also sets out the verification process for EU Green Bonds.

The TEG anticipate that the Commission will hold a public consultation on the EU Green Bond Standard for three months, starting in mid-March.

The Guide 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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