

BROKER-DEALER

FINRA Updates Guidance Regarding COVID-19 Developments

In recent weeks, the Financial Industry Regulatory Authority (FINRA) has offered various forms of relief and published information in response to the latest COVID-19 developments. Most recently, FINRA:

- updated the [FAQs Related to Regulatory Relief Due to the Coronavirus Pandemic](#) to address supervising virtual meetings with clients and forwarding firm mail;
- deferred all in-person arbitration and mediation proceedings scheduled through July 3, 2020, and agreed to waive postponement fees when parties stipulate to adjourn in-person hearing dates scheduled from July 6 through September 4, 2020 (see [Coronavirus Impact on Arbitration and OHO Hearings](#));
- extended all exam enrollment windows that are currently expired or will expire through May 2020, given that Prometric testing centers will be closed through April 30, 2020 (see [Coronavirus Impact on FINRA-Administered Exams & Continuing Education](#));
- updated the [Compliance Vendor Directory](#) to identify vendors offering free and discounted cybersecurity services for firms with remote workplace arrangements; and
- updated the [State "Shelter-in-Place" and "Stay-at-Home" Orders](#) page.

More information is available on FINRA's landing page for [COVID-19](#).

SEC Provides for Phased CAT Broker-Dealer Reporting Timelines

On April 20, the Securities and Exchange Commission issued two orders relating to the implementation of the Consolidated Audit Trail (CAT) to address the impact of COVID-19. In the first order, the SEC allowed broker-dealers to establish a phased CAT reporting timeline, subject to certain conditions. In its second order, the SEC permitted certain introducing brokers to follow the small broker-dealer reporting timeline.

The reporting milestones now applicable to broker-dealers include the following:

- June 22, 2020: Initial equities reporting for large broker-dealers and small broker-dealers that currently report to FINRA's Order Audit Trail System (OATS);
- July 20, 2020: Initial options reporting for large broker-dealers;
- Dec. 13, 2021: Full equities and options reporting for large and small broker-dealers; and
- July 11, 2022: Full customer and account reporting for large and small broker-dealers.

More information regarding the phased CAT reporting timelines is available [here](#).

CFTC

NFA Published Amendments to Its Advertising Rules

National Futures Association (NFA) has provided limited relief to commodity trading advisors (CTAs) who are also registered investment advisers from compliance with certain portions of NFA Rule 2-29 "Communications with the

Public and Promotional Material” and a related Interpretive Notice. Generally, CTAs presenting past performance in promotional materials are required to include performance net of all commissions, fees and expenses. With this relief, CTAs who are also registered as investment advisers with the Securities and Exchange Commission may present past performance to eligible contract participants (ECPs) on a gross basis in non-public one-on-one presentations, if the CTA:

- provides the ECP with a written disclosure that the performance results are presented on a gross basis and do not reflect the deduction of fees and expenses, which will reduce the client’s returns; and
- offers to provide the ECP client with the performance results net of any fees and expenses agreed upon by the CTA and the ECP client at or prior to exercising discretion over the client’s account.

The relief took effect on April 22.

The NFA’s submission to the CFTC regarding the amendments is available [here](#).

CFTC Grants Relief to Address Net Capital Treatment of PPP Monies and FINRA Annual Assessments

On April 22, the Commodity Futures Trading Commission (CFTC) published a no-action letter providing guidance for futures commission merchants (FCMs) and introducing brokers (IBs) in connection with calculating the FCM’s or IB’s net capital under CFTC Regulation 1.17. Pursuant to the no-action letter, the CFTC will not bring an enforcement action against an FCM or IB who, subject to certain requirements, adds back to the FCM’s or IB’s capital the portion of any monies received, but is not required to return, pursuant to the Paycheck Protection Program (PPP). Likewise, an FCM or IB that also is a “small firm” member of the Financial Industry Regulatory Authority (FINRA) will be permitted to add back to the FCM’s or IB’s capital any accrued and unpaid FINRA annual assessment fees that are permitted to be deferred in accordance with FINRA’s guidance.

The CFTC’s no-action letter is available [here](#).

FINRA’s annual assessment guidance is available on its COVID-19 frequently asked questions webpage, available [here](#).

CFTC Announces “Project Streetlamp” Competition

The Commodity Futures Trading Commission (CFTC) announced a competition, called “Project Streetlamp,” which challenges participants to use artificial intelligence or other tools to identify unregistered foreign entities potentially engaging in illegal activity subject to the CFTC’s jurisdiction and automatically add such entities to the CFTC’s Registration Deficient (RED) List. The competition is ongoing and is being administered by LabCFTC. Submissions are due no later than September 4, 2020.

For more information, see the [Project Streetlamp page on Challenge.gov](#).

CFTC Grants Bitnomial Exchange, LLC Status as a Designated Contract Market

The Commodity Futures Trading Commission (CFTC) announced that it has issued an Order of Designation to Bitnomial Exchange, LLC (Bitnomial Exchange), granting it status as a designated contract market (DCM), effective April 20, 2020. Located in Chicago, Bitnomial Exchange is a limited liability company formed under Delaware state law. Bitnomial Exchange must comply with all provisions of the Commodity Exchange Act and all requirements in the CFTC’s regulations applicable to DCMs, as well as all representations and submissions made by Bitnomial Exchange in connection with its application for designation as a contract market.

For more information, please see the CFTC release, available [here](#).

UK DEVELOPMENTS

London Weekly Fireside Chat

Katten is excited to announce a weekly, 15-minute fireside chat series featuring London partners [Carolyn Jackson](#), [Nathaniel Lalone](#) and [Neil Robson](#) on notable UK and European developments from the prior week's *Corporate & Financial Weekly Digest*. Please join us for our first installment Tuesday, May 5, at 1:00 p.m. Eastern / 6:00 p.m. London time.

[Add to Outlook.](#)

FCA Webpage on Extending Submission Deadlines for Regulatory Returns

On April 22, the UK's Financial Conduct Authority (FCA) published a new webpage that sets out temporary measures for firms submitting regulatory returns (the Webpage).

The FCA has extended the submission deadlines for certain regulatory returns listed on the Webpage, which are due up to and including June 30, 2020. A brief summary of the amendments granted by the FCA is set out below:

- a one-month extension for a variety of returns due under chapter 16 of its Supervision manual (SUP 16);
- a two-month extension for the submission of the FIN-A return (annual report and accounts); and
- a two-month extension for annual financial reports (as required under Disclosure Guidance and Transparency Rules), the credit union complaints return (CREDS 9 Annex 1R), the complaints return (DISP Annex 1R) and the claims management companies complaints return (DISP 1 Annex 1AB).

The Webpage also clarifies that, for small or medium-size businesses (i.e., those paying less than £10,000 in fees and levies in 2020-2021), the administrative fee for late returns has been waived until June 30, 2020.

The Webpage is available [here](#).

FCA Webpage on Financial Advisers' Professional Indemnity Insurance

On April 21, the UK's Financial Conduct Authority (FCA) published a new webpage (the Webpage) setting out its position on the impact of the COVID-19 pandemic on professional indemnity insurance (PII) for financial advisers.

The FCA notes that some firms are concerned that the pandemic may affect their ability to renew PII in a timely manner, impacting their operational resilience. As a result, the FCA has liaised with the International Underwriting Association, and understands that PII cover remains available in the market and thus the COVID-19 pandemic has not prevented insurers from undertaking the renewals process.

According to the Webpage, the FCA continues to require firms to have PII policies in place to support their ability to meet liabilities as they fall due and to protect their consumers.

Finally, the Webpage notes that firms should notify the FCA in their usual way if they have concerns that they will be unable to secure appropriate PII cover, including at the point of renewal.

The Webpage is available [here](#).

FCA Webpage on the Extension of the Time Limit for Obtaining Appropriate Qualifications

On April 20, the UK's Financial Conduct Authority (FCA) updated its webpage in response to the COVID-19 pandemic in order to clarify the requirements for employees to obtain appropriate qualifications (the Webpage).

The FCA understands that a number of professional qualification providers are cancelling exams due to the COVID-19 pandemic with no specific arrangements in place to reschedule them.

The FCA still expects firms to ensure that all employees have the skills, knowledge and expertise needed to discharge their responsibilities. However, the FCA confirms that it has no intention of taking action against a firm or accountable individual that is not able to ensure that an employee has attained an appropriate qualification within the required 48 months because the relevant examinations were cancelled or postponed.

The FCA's extension applies to a firm's employees that have a set (registered/booked) examination date(s) which was cancelled or postponed by the examination provider or by the firm. The FCA is providing these employees with an additional 12 months to complete the appropriate qualifications.

The FCA will adopt this approach for six months, until October 31, 2020. This means that firms may apply a time limit of up to 60 months where examinations were cancelled or postponed, up to and including October 31, 2020.

The Webpage is available [here](#).

EU DEVELOPMENTS

ESG: EU Council Adopts Taxonomy Regulation

On April 16, the Council of the EU (the Council) published a press release regarding a unified EU classification system to encourage private investment in sustainable growth and contribute to a climate-neutral economy (the Press Release).

In the Press Release, the Council announced that it adopted the Taxonomy Regulation, which sets out an EU-wide classification system, or "taxonomy," to provide businesses and investors with a common language to identify environmentally sustainable economic activities. For further information on the Taxonomy Regulation, please see the January 10, 2020 edition of [Corporate & Financial Weekly Digest](#).

The Council reiterates that the future framework will be based on six EU environmental objectives:

1. climate change mitigation;
2. climate change adaptation;
3. sustainable use and protection of water and marine resources;
4. transition to a circular economy;
5. pollution prevention and control; and
6. the protection and restoration of biodiversity and ecosystems.

The taxonomy for the first two objectives above should be established by the end of 2020 in order to ensure full application by the end of 2021. The taxonomy for the four remaining objectives should be established by the end of 2021 for application by the end of 2022.

The Press Release notes that the Council's decision was adopted at first reading and now requires adoption by the European Parliament at second reading before it goes into effect, following publication in the *Official Journal of the EU*.

The Press Release 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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UK/EU DEVELOPMENTS

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* Click [here](#) to access the *Corporate & Financial Weekly Digest* archive.

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