

## SEC/CORPORATE

See *“SEC Proposes Allowing ‘Finders’ to Raise Capital Without Registering as Broker-Dealers” in the Broker-Dealer section.*

## BROKER-DEALER

### **FINRA Requests Comments for Proposed Amendments to FINRA Rule 2165**

On October 5, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 20-34, which requests comment on proposed amendments to Rule 2165. In August 2019, FINRA conducted a retrospective review to evaluate the effectiveness of its rules and processes related to the protection of seniors. Based on the results received from their review, which are also reflected in Regulatory Notice 20-34, FINRA has proposed amendments to FINRA Rule 2165 that are intended to address suspected financial exploitation of senior investors. Rule 2165, among other things, permits a member firm to place a temporary hold on a disbursement of funds or securities from the account of a “Specified Adult” (i.e., a natural person age 65 and older or a natural person age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests). FINRA asserts that temporary holds on disbursements are crucial in providing member firms a way to quickly respond to suspicions of financial exploitation before the customer suffers any potential significant losses.

FINRA requests comment on all aspects of the proposed amendments to Rule 2165 and has enumerated a list of specific issues that they are requesting to be specifically addressed.

The comment period expires December 4.

A copy of Regulatory Notice 20-34 is available [here](#).

### **FINRA Alerts Firms to Widespread Phishing Email**

The Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 20-35, alerting firms of an ongoing phishing campaign that involves fraudulent emails purporting to be from FINRA asking member firms to complete a survey. The email was sent from the domain “@regulation-finra.org” and was preceded by “info” followed by a number, e.g., info5@regulation-finra.org. FINRA recommends that anyone who has clicked any link or otherwise engaged with the email to immediately notify the appropriate personnel in his or her firm to rectify any potential issues.

See [Regulatory Notice 20-35](#) for additional information and a sample of the fraudulent email.

### **SEC Proposes Allowing ‘Finders’ to Raise Capital Without Registering as Broker-Dealers**

The Securities and Exchange Commission (SEC) has proposed an exemption from broker-dealer registration requirements for certain “finders” who raise capital for issuers in private offerings and receive transaction-based compensation for doing so (i.e., a “success fee”). The proposed exemption would apply only to natural persons and would create two classes of exempt finders — Tier I and Tier II. Tier I finders would only be able to provide

contact information of potential investors in connection with only a single capital raising transaction by a single issuer in any 12-month period. Tier II finders would be allowed to (1) identify, screen and contact potential investors; (2) distribute issuer offering materials to investors; (3) discuss issuer information included in any offering materials, provided that the Tier II Finder does not provide advice as to the valuation or advisability of the investment; and (4) arrange or participate in meetings with the issuer and investor.

The exemption from broker-dealer registration for both Tier I and Tier II finders would be subject to a number of conditions, including that the offering in question is a private offering (i.e., made in reliance on an exemption from registration under the Securities Act), all potential investors are accredited investors (or the finder has a reasonable belief that each potential investor is accredited), the finder and the issuer enter into a written agreement describing the services to be provided and the compensation to be paid, and the finder cannot be subject to a statutory disqualification as defined in the Securities Exchange Act. Additional heightened requirements would apply to Tier II finders, including that they would be required to make certain disclosures to potential investors prior to solicitation and obtain written acknowledgement of those disclosures prior to the time of investment. Finders would not be exempt from registration if they were to be involved in structuring the transaction or negotiating terms, handling customer funds or securities, prepare sales materials, perform independent analysis of the sale, engage in due diligence, provide financing or provide advice as to the valuation or financial advisability of the investment.

Katten will publish a detailed client advisory regarding the proposed exemptive order in the coming days.

The proposed exemptive order is available [here](#).

## FINANCIAL MARKETS

### **FCA Publishes Statement on MiFIR Trade Reporting and Position Limit Obligations**

On October 1, the United Kingdom's (UK) Financial Conduct Authority (FCA) published a statement on trade reporting and position limit obligations under the Markets in Financial Instruments Regulation (MiFIR) (the Statement).

The Statement is in response to the recent statement issued by the European Securities and Markets Authority (ESMA) stating that it intends to assess UK trading venues in relation to its opinions on MiFIR trade reporting and commodity derivatives position limits.

If the assessments are positive, UK trading venues will be added to the list of venues with a positive or partially positive assessment in respect of those opinions with effect from the end of the European Union (EU) withdrawal transition period on December 31.

The ESMA statement means that EU investment firms trading on the UK venues would not be required to publish the details of those transactions through an Approved Publication Arrangement (APA) in the EU. Commodity derivatives traded on UK venues would also not be considered as economically equivalent Over-the-Counter (OTC) contracts counting towards the EU's commodity derivatives position limits regime.

In the Statement, the FCA confirms its position that it does not require UK investment firms trading on venues outside of the UK, in the EU or elsewhere, to publish the details of those transactions through a UK APA. The FCA also confirms it does not consider commodity derivative contracts traded on trading venues within the EU or elsewhere, as economically equivalent OTC contracts and therefore, such contracts do not count towards the UK's commodity derivatives position limit regime.

The FCA adds that it does not maintain a list of assessed overseas venues for these purposes.

The Statement is available [here](#).

## DERIVATIVES

### ISDA Efforts to Help Markets Deal With LIBOR Replacement Clear DOJ Hurdle

On October 1, the United States Department of Justice (DOJ) issued a favorable business review letter to the International Swaps and Derivatives Association (ISDA) that clears the way for ISDA to complete its work on developing standard amendments to swap documents to account for the discontinuation of LIBOR and other interbank offered rates (collectively, IBORs).

Because of the global scope of the IBOR replacement problem, ISDA had been concerned that its work in developing standard document solutions could be perceived as promoting coordination among competitors. The DOJ letter alleviates those concerns: “Based on the information and representations you provided, after a thorough review, and for the reasons explained below, the Department does not presently intend to challenge ISDA’s proposed amendments to its standardized documentation. . . . The Department believes that ISDA’s proposal is likely to have substantial procompetitive benefits and that these benefits outweigh the possible anticompetitive effects.”

ISDA has indicated that it has also sought similar comfort from competition authorities in other jurisdictions. Assuming those inquiries have similar results, ISDA should be able to fulfill its previously announced intention to publish relevant documentation and accompanying protocols early in 2021.

The DOJ Press release is available [here](#).

The business review letter (and the ISDA request letter) is available [here](#).

## CFTC

### CFTC Unanimously Approves Amendments to Form CPO-PQR

On October 6, the Commodity Futures Trading Commission (CFTC) unanimously approved a final rule adopting amendments to Form CPO-PQR for commodity pool operators (CPOs). These rule changes were originally proposed in April and were the subject of a Katten client advisory, available [here](#).

The amendments, which were adopted in substantially the same form as they were originally proposed, (1) eliminate existing Schedules B and C of the form, except for the Pool Schedule of Investments; (2) amend the information requirements and instructions to request Legal Entity Identifiers for commodity pool operators and their operated pools that have them and to delete questions regarding pool auditors and marketers; and (3) make certain other changes due to the rescission of Schedules B and C, including the elimination of all existing reporting thresholds. These amendments will generally streamline and harmonize the filing obligations for all registered CPOs, in contrast to the current form, which requires different levels of reporting based on the amount of assets managed by the reporting CPO.

The final rule also amends CFTC Regulation 4.27 to permit reporting CPOs to file NFA Form PQR (which, as a result of these changes, will collect substantially identical information to that required by the Form CPO-PQR) in lieu of filing the CFTC’s revised form. However, the amendments will also eliminate the ability of CPOs who are dually-registered as investment advisers with the Securities and Exchange Commission to file Form PF — the private fund reporting form that must be filed by certain SEC-registered investment advisers — in lieu of filing portions of the Form CPO-PQR.

The amendments will take effect 30 days after their publication in the Federal Register, but the first report to be filed on the revised version of the form will be due on May 30, 2021 (reporting on the calendar quarter ending on March 31, 2021).

The press release announcing these changes is available [here](#).

The voting draft, which includes effective and compliance dates, is available [here](#).

## **CFTC and the Office of Financial Research Sign Memorandum of Understanding to Allow Information Sharing**

On October 6, the Commodity Futures Trading Commission (CFTC) announced a Memorandum of Understanding (MOU) with the Office of Financial Research (OFR) that permits the CFTC to share with OFR information and data reported on Form CPO-PQR. OFR intends to use this data to carry out its statutory responsibilities and functions, which include conducting financial stability-related research and collecting data on behalf of the Financial Stability Oversight Council.

The press release announcing the MOU is available [here](#).

The MOU is available [here](#).

## **NFA Issues Notice on Effective Dates of Amendments to Code of Arbitration and Member Arbitration Rules**

On October 6, the National Futures Association (NFA) issued Notice I-20-36 to announce the effective dates of several amendments to the NFA's Code of Arbitration and Member Arbitration Rules. For all cases pending on or after October 6, the following amendments will apply: (1) a party may withdraw or amend its claim or ask for a hearing or summary postponement if the member firm respondent withdraws its NFA membership during the course of the proceeding; (2) claims against former NFA member firms will be voluntary, rather than mandatory; (3) the NFA will permit service by e-mail without the need for express consent; and (4) in extraordinary circumstances, an arbitration panel may order parties to conduct hearing sessions on a virtual basis when an in-person hearing is not feasible. In addition, there will be increased filing and hearing fees and restructured claim tiers for any case filed on or after October 6.

The NFA's September 22 submission letter (available [here](#)) contains additional details related to these rule changes.

Notice I-20-36 is available [here](#).

## **NFA Issues Notice on Expiration of Temporary Relief from Fingerprinting Requirements**

On October 6, the National Futures Association (NFA) issued Notice I-20-37 to announce changes to the no-action relief that had previously been issued relating to fingerprinting requirements for applicants for registration as an associated person (AP) and natural person principals of an applicant or registrant found at NFA Registration Rules 204(a)(2)(A) and 206(a)(1)(A). The NFA's action follows a decision by the Commodity Futures Trading Commission's (CFTC) Division of Swap Dealer and Intermediate Oversight (Division) that the Division would not extend beyond September 30, parallel no-action relief from the fingerprinting requirements set out in CFTC Regulations 3.10(a)(2) and 3.12(c)(3). (For additional information regarding this no-action relief, please refer to the [July 24, 2020 edition of Corporate & Financial Weekly Digest](#).)

Effective October 1, therefore, all applicants for AP registration and all natural persons listed as a principal of an applicant or registrant must comply with the fingerprinting requirement. Additionally, all persons currently relying on the now-expired no-action relief, as well as APs that have been granted a temporary license, must submit a fingerprint card to the NFA by November 2.

Notice I-20-37 is available [here](#).

## **CFTC Announces Open Commission Meeting to Consider Final Rules on Margin Requirements for Uncleared Swaps, Registration Exemptions for Foreign Intermediaries and Derivative Position Limits**

On October 8, the Commodity Futures Trading Commission (CFTC) announced that it will hold an open meeting on October 15. At this meeting, the CFTC will consider the following:

- Final Rule: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (Phase VI Compliance Date Extension);

- Final Rule: Exemption from Registration for Certain Foreign Intermediaries; and
- Final Rule: Position Limits for Derivatives.

The meeting will be held virtually in accordance with CFTC's implementation of social distancing due to COVID-19. More information is available [here](#).

## EU DEVELOPMENTS

### European Commission Adopts New Standards for Cooperation Under MAR

On October 5, the European Commission (the Commission) published the text of an Implementing Regulation, laying down Implementing Technical Standards (ITS) with regard to procedures and forms for an exchange of information and cooperation under Articles 24 and 25 of the Market Abuse Regulation (MAR) (the Implementing Regulation).

The key areas addressed by the Commission in the Implementing Regulation include:

- requiring cooperation and exchanges of information between competent authorities, the European Securities and Markets Authority (ESMA), the Commission and other regulatory entities;
- providing ESMA with up-to-date contact details from each specified body, which will be maintained and circulated;
- permitting the use of electronic means to request information;
- obligating the requesting body to provide specific details and clearly identify any issues relating to confidentiality; and
- specifying procedures to be followed by ESMA and national regulatory authorities (NRA) for acknowledging, replying and processing pending requests and how to respond to unsolicited cooperation or exchange of information.

The relevant forms to be used by ESMA and NRA are set out in the Annexes to the Implementing Regulation.

The Implementing Regulation was adopted on October 2 and will take effect on October 27.

The Implementing Regulation is based on the draft ITS submitted by ESMA to the Commission in February 2018.

The Implementing Regulation is available [here](#).

### ECOFIN Removes the Cayman Islands From Non-Cooperative Tax List

On October 6, the European Union's Economic and Financial Affairs Council (ECOFIN) removed the Cayman Islands from the European Union's (EU) list of non-cooperative jurisdictions for tax purposes (EU List).

The ECOFIN placed the Cayman Islands on its EU List in February because the Cayman Islands had failed to implement legislative amendments (relating to the regulation and oversight of collective investment fund vehicles) before the agreed deadline. (The EU's previous Code of Conduct Group meeting was on February 4, whereas the Cayman Islands enacted The Private Funds Law, 2020 and the Mutual Funds (Amendment) Law, 2020 only three days later on February 7. The meeting reviewed each jurisdiction's commitment to reform their tax policies and recommendations were made to place jurisdictions on the EU List for non-cooperative jurisdictions for tax purposes).

In the recent October meeting, the ECOFIN recognized that the Cayman Islands' legislative amendments were consistent with the EU's requirements and thus removed the Cayman Islands from the EU List.

Further information is available [here](#).

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

**For more information, contact:**

SEC/CORPORATE

<a href="#">Diane E. Bell</a>	+1.312.902.5512	diane.bell@katten.com
<a href="#">James J. Calder</a>	+1.212.940.6460	james.calder@katten.com
<a href="#">Bonnie Lynn Chmil</a>	+1.212.940.6415	bonnie.chmil@katten.com
<a href="#">Brian J. Hecht</a>	+1.212.940.8516	brian.hecht@katten.com
<a href="#">David S. Kravitz</a>	+1.212.940.6354	david.kravitz@katten.com
<a href="#">Laura Keidan Martin</a>	+1.312.902.5487	laura.martin@katten.com
<a href="#">Mark J. Reyes</a>	+1.312.902.5612	mark.reyes@katten.com
<a href="#">Jonathan D. Weiner</a>	+1.212.940.6349	jonathan.weiner@katten.com
<a href="#">Mark D. Wood</a>	+1.312.902.5493	mark.wood@katten.com

FINANCIAL MARKETS AND FUNDS

<a href="#">Henry Bregstein</a>	+1.212.940.6615	henry.bregstein@katten.com
<a href="#">Wendy E. Cohen</a>	+1.212.940.3846	wendy.cohen@katten.com
<a href="#">Guy C. Dempsey Jr.</a>	+1.212.940.8593	guy.dempsey@katten.com
<a href="#">Gary DeWaal</a>	+1.212.940.6558	gary.dewaal@katten.com
<a href="#">Kevin M. Foley</a>	+1.312.902.5372	kevin.foley@katten.com
<a href="#">Mark D. Goldstein</a>	+1.212.940.8507	mark.goldstein@katten.com
<a href="#">Jack P. Governale</a>	+1.212.940.8525	jack.governale@katten.com
<a href="#">Christian B. Hennion</a>	+1.312.902.5521	christian.hennion@katten.com
<a href="#">Carolyn H. Jackson</a>	+44.20.7776.7625	carolyn.jackson@katten.co.uk
<a href="#">Susan Light</a>	+1.212.940.8599	susan.light@katten.com
<a href="#">Richard D. Marshall</a>	+1.212.940.8765	richard.marshall@katten.com
<a href="#">Paul McCurdy</a>	+1.212.940.6676	paul.mccurdy@katten.com
<a href="#">Fred M. Santo</a>	+1.212.940.8720	fred.santo@katten.com
<a href="#">Christopher T. Shannon</a>	+1.312.902.5322	chris.shannon@katten.com
<a href="#">Robert Weiss</a>	+1.212.940.8584	robert.weiss@katten.com
<a href="#">Allison C. Yacker</a>	+1.212.940.6328	allison.yacker@katten.com
<a href="#">Lance A. Zinman</a>	+1.312.902.5212	lance.zinman@katten.com
<a href="#">Krassimira Zourkova</a>	+1.312.902.5334	krassimira.zourkova@katten.com

EU DEVELOPMENTS

<a href="#">Carolyn H. Jackson</a>	+44.20.7776.7625	carolyn.jackson@katten.co.uk
<a href="#">Nathaniel Lalone</a>	+44.20.7776.7629	nathaniel.lalone@katten.co.uk
<a href="#">Neil Robson</a>	+44.20.7776.7666	neil.robson@katten.co.uk

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

Attorney advertising. Published as a source of information only. The material contained herein is not to be construed as legal advice or opinion.  
©2020 Katten Muchin Rosenman LLP. All rights reserved.



CENTURY CITY | CHARLOTTE | CHICAGO | DALLAS | LONDON | LOS ANGELES | NEW YORK | ORANGE COUNTY | SHANGHAI | WASHINGTON, DC

Katten refers to Katten Muchin Rosenman LLP and the affiliated partnership as explained at [katten.com/disclaimer](#).