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DERIVATIVES

See "CFTC Adopts New Position Limit Requirements," "CFTC Staff Provides Reporting Relief for Swaps Related to Certain Upcoming DCO Auctions" and "CFTC Approves Certain Final Rules Amending Margin Requirements for Certain Uncleared Swaps and Exemptions From Registration for Certain Foreign Intermediaries" in the CFTC section.

CFTC

CFTC Adopts New Position Limits Requirements

On October 15, the Commodity Futures Trading Commission adopted new rules on position limits. As described in greater detail in Katten's advisory, CFTC Adopts New Position Limit Requirements, the new rules (1) set forth federal position limits for 25 different futures contracts; (2) enhance the roles played by exchanges in setting limits and granting exemptions; (3) modify exemptions from federal position limits; and (4) eliminate Form 204 (Statement of Cash Positions in Grains) and portions of Form 304 (Statement of Cash Positions in Cotton).

More information, including a link to the new position limit rules, is available here.

CFTC Staff Provides Reporting Relief for Swaps Related to Certain Upcoming DCO Auctions

On October 13, the Division of Market Oversight (DMO) of the Commodity Futures Trading Commission issued two no-action letters that provide limited relief from swap transaction and pricing data reporting requirements for specific derivatives clearing organizations (DCOs) and market participants that take part in upcoming DCO auctions intended to assist in transitioning certain cleared swaps away from discounting using the Effective Federal Funds Rate and instead using the Secured Overnight Financing Rate (such auctions, Transition Auctions). This transition in discounting methods is an important step in the broader initiative to transition swaps that reference interbank offered rates, like the London Interbank Offered Rate (LIBOR), to swaps that reference alternative benchmark rates. In effect, the relief delays reporting requirements, until November 19, for swap transaction and pricing data under CFTC Regulation 43.3 with respect to swaps executed as part of either (1) LCH Limited's Transition Auction on October 16; or (2) CME Inc.'s Transition Auction on October 19.

The CFTC press release, which includes links to both no-action letters, is available here.

CFTC Approves Certain Final Rules Amending Margin Requirements for Certain Uncleared Swaps and Exemptions From Registration for Certain Foreign Intermediaries

On October 15, at the same open meeting in which it approved the final rule on position limits, the Commodity Futures Trading Commission unanimously approved two other unrelated final rules.

The first final rule extends the compliance date one year, from September 1, 2021 to September 1, 2022, for margin requirements for uncleared swaps for swap dealers and major swap participants for which there is no banking regulator. This rule will be effective 30 days after publication in the *Federal Register*.

The second final rule amends the registration exemptions available under CFTC Regulation 3.10(c) (collectively, 3.10 Exemption) for certain foreign-located persons, in connection with their US commodity transactions on behalf of persons located outside the United States. Among other things, these amendments: (1) clarify that non-US commodity pool operators (CPOs), whether CFTC registered or not, acting for non-US pools may claim 3.10 Exemption status for those pools on a pool-specific basis, even if such CPOs operate pools pursuant to other available registration exemptions; (2) provide a safe harbor under which non-US CPOs operating offshore pools can rely upon 3.10 Exemption status for such pools, provided they meet certain operating and offering-related conditions; and (3) allow US affiliates of non-US CPOs to contribute initial capital to offshore pools without

affecting the ability of those pools to claim 3.10 Exemption status. This rule will be effective 60 days after publication in the *Federal Register*.

The CFTC press release from the October 15 meeting, which includes links to the voting drafts for both of the above final rules, is available here.

BANKING

Federal Reserve Begins Census of Commercial Lenders

The Board of Governors of the Federal Reserve System initiated its 2020 Census of Finance Companies and Other Lenders (Census) with the mailing of a letter on October 6 to 26,000 companies requesting their participation.

Undertaken by the Federal Reserve approximately every five years, the Census is intended to help the agency "understand the size and structure of lenders that supply credit or lease financing to US households and businesses." Among other things, the Census asks for information about assets and liabilities as well as the companies' sources of funds.

Participation in the survey is voluntary.

The Federal Reserve Board's press release is available here.

BREXIT/UK DEVELOPMENTS

FCA and PRA Publishes Dear CEO Letter on Final Preparations for the End of Brexit Transition Period

On October 9, the UK's Financial Conduct Authority (FCA) and the UK's Prudential Regulation Authority (PRA) jointly published a Dear CEO letter to regulated firms regarding final preparations for the end of the Brexit transition period (the Letter).

The key areas addressed by the FCA and PRA in the Letter include:

- requiring each firm to continue making arrangements to prepare itself, its clients and customers on a range of potential scenarios at the end of the transition period;
- facilitating the continuity of business and contracts for affected clients — from repapering and on-boarding, to considering the impact of the changes and providing support in each client's best interests; and
- implementing standard contractual clauses in relevant contracts that are used by European Economic Area (EEA) firms, as a means to comply with the EU's cross-border personal data transfer laws after the expiration of the transition period (the European Commission is currently deciding on the adequacy of the UK's data protection legislation).

The Letter is available here.

FCA Updates Webpage on Its Directory of Certified and Assessed Persons

On October 12, the UK's Financial Conduct Authority (FCA) updated its webpage on its directory of certified and assessed persons (the Directory) to clarify data submission requirements for solo-regulated firms under the Senior Managers and Certification Regime (SM&CR) (the Webpage).

On the Webpage, the FCA states that from mid-December, it will periodically publish on the Directory data from solo-regulated firms as such data is submitted. Firms can submit their information prior to the March 31, 2021 deadline, if necessary.

Firms with more than 10 Directory persons can submit their data using the multiple add or amend submission form. By October 12, the FCA will contact firms who it believes has 10 or more Directory persons and inform the firms to use multiple add or amend data submission. Upon contact, the FCA will provide available dates and timeslots to use multiple data submission.

If a firm has not been contacted by October 14 regarding a multiple add or amend submission form or timeslot, but that firm has more than 10 Directory persons and believes the multiple add or amend submission is necessary, they should do the following:

- Firms submitting prior to the earliest publication date should submit between November 26 and December 4. Firms can use the single submission form to submit up to December 9 and their data will appear from mid-December.
- Firms submitting prior to the earliest publication date but before the deadline on March 31 should submit between January 11 and March 18, 2021. Firms can use the single submission form until the deadline.

Under the SM&CR, the FCA will publish and maintain the Directory on the Financial Services Register (Register). Consumers and professionals can check the details of key individuals working in financial services. The Directory will be published on the Register towards the end of 2020.

The Webpage is available here.

EU DEVELOPMENTS

European Parliament Adopts Resolution on Digital Finance and Data Sharing

On October 8, the European Parliament published a press release announcing that it had adopted a resolution regarding the creation of a robust EU framework for crypto-assets, cyber resilience, data sharing and customer safety (the Press Release).

The basis of the resolution originates from a previous report that the Economic and Monetary Affairs Committee (ECON) had voted to adopt in September 2020.

The European Parliament's resolution expands on the previous ECON report by:

- establishing a single European supervisor working alongside European Supervisory Authorities (ESA) and national competent authorities;
- proposing legislative changes in the area of information and communication technology and to cyber security requirements for the EU financial sector with a focus on modernization, international compliance standards and operational resilience testing;
- developing legislative framework on crypto-assets to facilitate a stable conversion rate between stablecoins and fiat currencies. Regulatory amendments should be made to existing provisions to prevent the potential increased risk of money laundering regarding crypto-assets;
- promoting a free flow of data within the EU for innovative finance that would require monitoring and guidance through EU legislation on privacy and data protection; and
- encouraging digital finance in developing financial markets to increase financing and investment opportunities for companies and citizens.

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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