

SEC/CORPORATE

SEC Approves Amendments to Harmonize and Simplify Offering Exemptions

On November 2, the Securities and Exchange Commission voted to adopt a set of amendments (the Amendments) to “harmonize, simplify and improve the multilayer and overly complex exempt offering framework” to “promote capital formation and expand investment opportunities while preserving or improving important investor protections,” according to the SEC’s press release announcing the Amendments. As highlighted in the press release, the Amendments, among other things:

- establish a new integration framework that clarifies, in one rule, the ability of issuers to move from relying on one exemption to another and ultimately to a registered offering, including four non-exclusive safe harbors from integration;
- increase the offering limits for Regulation A (raising the maximum offering limit under Tier 2 from \$50 million to \$75 million and the maximum limit for secondary sales under Tier 2 from \$15 million to \$22.5 million), Regulation Crowdfunding (raising the offering limit from \$1.07 million to \$5 million) and Rule 504 offerings (raising the maximum offering limit from \$5 million to \$10 million) and revise certain related individual investment limits;
- set clear and consistent rules governing certain offering communications between investors and issuers, providing greater certainty to issuers and protection to investors, including permitting certain “test-the-waters” and “demo day” activities without violating the prohibition on general solicitation and permitting an issuer to “test-the-waters” (1) prior to determining which exemption it will use for the sale of securities and (2) under Regulation Crowdfunding prior to filing an offering document with the SEC; and
- harmonize certain disclosure and eligibility requirements and bad actor disqualification events applicable to different forms of exempt offerings.

The Amendments are based upon amendments the SEC proposed in March, which were previously discussed in the [March 6, 2020 edition of Corporate & Financial Weekly Digest](#), with certain modifications in response to commenters’ feedback. The SEC approved the Amendments on November 2, and we plan to cover the Amendments in greater detail in an upcoming client advisory.

The Amendments become effective 60 days after publication in the Federal Register, except for the extension of temporary Regulation Crowdfunding provisions that will be effective upon publication in the Federal Register.

The full text of the Amendments is available [here](#), and the press release and fact sheet are available [here](#).

CFTC

CFTC Approves Changes to Swap Clearing Requirement Exemptions

On November 2, the Commodity Futures Trading Commission (CFTC) voted to approve final rules that exempt swaps entered into by certain financial institutions from the CFTC’s clearing requirement under Section 2(h)(1) of the Commodity Exchange Act. These financial institutions include central banks, sovereign entities, international

financial institutions, certain bank holding companies, savings and loan holding companies and community development financial institutions. In addition, the CFTC released a compliance schedule identifying the past compliance dates for the swap clearing requirement regulations released in 2012 and 2016. The rule will become effective 30 days after its publication in the Federal Register.

The CFTC press release, which includes a link to the rule, is available [here](#).

CFTC Approves Eris Clearing, LLC to Clear Fully-Collateralized Swaps

The Commodity Futures Trading Commission (CFTC) has approved an amended order authorizing Eris Clearing LLC (Eris) to clear additional products. Under the order, Eris, which previously had been authorized to clear fully-collateralized futures on virtual currency, is now authorized to provide clearing services on fully-collateralized futures and swaps on all products.

The CFTC press release, including a link to the amended order, is available [here](#).

CFTC Approves KalshiEX LLC as Designated Contract Market

On November 4, the Commodity Futures Trading Commission (CFTC) announced that it had approved the application of KalshiEX LLC for designation as a contract market under Section 5 of the Commodity Exchange Act and Part 38 of the CFTC's regulations.

The CFTC press release, including a link to the Order of Designation, is available [here](#).

CFTC Expands Its Part 30 Exemptive Program of International Cooperation

On November 2, the Commodity Futures Trading Commission (CFTC) issued Part 30 exemptive orders to multiple non-US intermediaries, upon determining that they are subject to comparable customer protection standards in their home jurisdiction. Those intermediaries are the Bombay Stock Exchange (BSE), the National Stock Exchange International Financial Service Centre Limited (NSE IFC), the Montreal Exchange (MX), NZX Limited (NZX) and UBS AG (UBS). The orders issued to BSE, NSE IFC and NZX extend exemptive relief to their respective members, while the order issued to MX amends and consolidates prior exemptive relief granted on behalf of its members.

The order issued to UBS is particularly noteworthy, as it is the first such order issued to an entity that is not a foreign self-regulatory organization or regulator.

The CFTC press release, including links to the exemptive orders, is available [here](#).

CFTC Approves SEF Registration Exemptions for Additional Recognized Market Operators in Singapore

On November 2, the Commodity Futures Trading Commission (CFTC) issued an amended order exempting eight Recognized Market Operators (RMOs) authorized within Singapore from swap execution facility (SEF) registration requirements. The affected RMOs are BGC Partners (Singapore) Ltd., Euronext Markets Singapore Pte Ltd., GFI Group Pte Ltd., ICAP (Singapore) Pte Ltd., Nittan Capital Singapore Pte Ltd., Refinitiv Transaction Services Pte Ltd., TFS Currencies Pte Ltd. and Tullett Prebon (Singapore) Limited. The total number of exempted Approved Exchanges and RMOs is now 13.

The CFTC press release, including a link to the amended order, is available [here](#).

New FAQs Published Regarding the Post-Trade Name Give-Up Rule in CFTC Regulation 37.9(d)

The Commodity Futures Trading Commission has published certain FAQs prepared by the Division of Market Oversight (DMO) in response to questions from market participants on the post-trade name give-up rule prior to the November 1 compliance date. The new FAQs address certain aspects of compliance with the rule with respect to: "made available for trade" (MAT) swaps that are packaged with non-MAT swaps; voluntarily cleared non-MAT swaps; and swaps rejected by processing systems because the LEIs on either side of the trade are matching.

Further discussion of the new FAQs is available [here](#).

UK DEVELOPMENTS

FCA Publishes Statement on Approach to Share Trading Obligation After Brexit Transition Period

On November 4, the UK's Financial Conduct Authority (FCA) published a statement regarding its approach to the UK share trading obligation (STO) after the end of the Brexit transition period.

The FCA's statement follows the recent statement made by the European Securities and Markets Authority (ESMA), in which ESMA set out its final position on the STO as it applies to EU investment firms (see the [October 30, 2020 edition of Corporate & Financial Weekly Digest](#)). The FCA's approach reflects its continued view that the International Securities Identification Number (ISIN) or currency that a share carries and trades in does not, and should not, determine the scope of the STO. The FCA also maintains that mutual equivalence between the United Kingdom and European Union should be easy to agree and remains the best way of dealing with overlapping STOs.

The FCA states that it will use its Temporary Transitional Power (TTP) to allow UK investment firms to continue trading shares on EU trading venues and systematic internalisers (SIs) where they choose to do so, and where the regulatory status of those venues and SIs permits such activity. The FCA will publish a transitional direction to give effect to this approach before the end of the transition period. However, it will monitor market developments closely and review its use of the TTP if conditions change.

Under the FCA's approach, all EU trading venues that continue to have UK participants or undertake a relevant regulated activity in the United Kingdom from the end of the transition period will need to:

- be a UK recognized overseas investment exchange;
- use the FCA's Temporary Permissions Regime; or
- be certain that their activities meet all of the conditions required in order to benefit from the UK's overseas persons exclusion.

The FCA goes on to state that it will discuss with market participants and trading venues the future steps that may be needed to protect the integrity of UK markets and to ensure that UK participants can continue to achieve high standards of execution for their clients.

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

EU DEVELOPMENTS

ESG: European Commission Extends Consultation Period for Rules Under Disclosure Regulation

On October 30, the European Commission (the Commission) published a letter from John Berrigan (the Commission's Director General for Financial Stability, Financial Services and Capital Markets Union) to the European Securities and Markets Authority, European Insurance and Occupational Pensions Authority, and the European Banking Authority (jointly the European Supervisory Authorities (ESAs)) regarding a delay to the implementation of detailed subordinate rules under the Sustainable Finance Disclosure Regulation (SFDR or Disclosure Regulation) caused by the COVID-19 pandemic (the Letter).

It was originally intended for the ESAs jointly to develop draft detailed subordinate rules under the SFDR by December 30, with such rules to apply from March 10, 2021. In the Letter, Mr. Berrigan states that: "It was clear from the outset that this would be a very challenging deadline, given the time needed for the adoption of the rules, scrutiny in accordance with the [ESAs' regulations] and subsequent publication in the Official Journal [of the EU]."

He further notes that: "The unprecedented economic and market stress caused by the Covid-19 crisis has necessitated an extension of the deadline for the public consultation on the draft [detailed subordinate rules]. While the delay is unfortunate, it is justified by the need to guarantee sufficient stakeholder involvement in the process given the current difficult circumstances. This extension will allow stakeholders the time needed to properly address the complex issues contained in the joint consultation paper."

However, the Letter clarifies the SFDR's implementation is not conditional on the formal adoption and entry into force of the detailed subordinate rules, so all EU financial market participants and financial advisers subject to the SFDR will still need to comply with its high level and principle-based requirements from March 10, 2021, with the new detailed rules becoming effective at a later date.

It is noteworthy that even though the United Kingdom will have formally left the European Union at 23:00 London time on December 31, the SFDR's high level and principle-based requirements will be applicable to UK-based financial market participants and financial advisers on March 10, 2021. The UK Government is yet to decide if the detailed subordinate rules will be applicable to UK firms.

The Letter 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

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

FINANCIAL MARKETS AND FUNDS

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

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Carolyn H. Jackson	+44.20.7776.7625	carolyn.jackson@katten.co.uk
Nathaniel Lalone	+44.20.7776.7629	nathaniel.lalone@katten.co.uk
Neil Robson	+44.20.7776.7666	neil.robson@katten.co.uk

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