

BROKER-DEALER

SEC Adopts Rules to Modernize Infrastructure for NMS Market Data

On December 9, the Securities and Exchange Commission adopted final rules that aim to modernize the infrastructure related to the collection, consolidation, and dissemination of market data for exchange-listed national market system stocks (referred to “NMS market data”). These final rules update and expand the content of NMS market data (for example, by adding new data fields and defining existing fields with more granularity) and revise the method by which NMS market data are consolidated and disseminated to make the process more competitive and decentralized. The final rules represent a significant step forward in updating the NMS market data system to keep up with modern market developments, as the rules governing the content of, and the process for sending out, NMS market data has not been materially updated since its implementation in the late 1970s.

The SEC press release, including a link to the final rule text, is available [here](#).

SEC Announces Stand-Alone Office Focused on Innovation and Financial Technology

On December 3, the Securities and Exchange Commission announced that its Strategic Hub for Innovation and Financial Technology (FinHub), will migrate from its current position within the Division of Corporate Finance and be designated as a stand-alone office. FinHub will continue to be led by Valerie A. Szczepanik, who will become its first director and will report directly to the SEC Chairman. FinHub leads the SEC’s work in encouraging responsible innovation in the financial sector, including through the use of new technologies and business models. FinHub engages directly with market participants to further these efforts.

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

DERIVATIVES

See “*More USD LIBOR Transition Developments*” in the *Banking* section.

CFTC

CFTC Unanimously Approves Final Rules Related to SEFs and Withdraws Comprehensive Proposals

On December 8, the Commodity Futures Trading Commission (CFTC) approved a final rule amending Part 37 of the CFTC Regulations addressing operational issues facing swap execution facilities (SEF) and their market participants in connection with the CFTC’s regulatory requirements for a SEF’s audit trail data, financial resources, and chief compliance officer (CCO). Specifically, the Final Rule (1) eliminates the requirement for a SEF to capture and retain post-execution allocation information in its audit trail data, (2) applies the existing Core Principle 13 financial resources requirements to SEF operations in a less burdensome manner, and (3) streamlines requirements for the CCO position and allows SEF management to exercise greater discretion in CCO oversight.

Additionally, the CFTC approved a final rule establishing two exemptions from the requirement to execute certain types of swaps on a SEF or a designated contract market. The first such exemption applies to a swap that meets the requirements of any exception or exemption under part 50 of the CFTC regulations. The second trade execution exemption codifies relief provided under CFTC Letter No. 17-67 and other staff letters, and applies to a swap that is entered into by eligible affiliate counterparties and cleared, regardless of the affiliates' ability to claim the inter-affiliate clearing exemption under CFTC Regulation Part 50.52.

The CFTC also withdrew more comprehensive proposals to overhaul the SEF regulatory framework.

The press release and access to the final rules are available [here](#).

CFTC Unanimously Approves Final Rules Related to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

On December 8, the Commodity Futures Trading Commission (CFTC) unanimously approved two final rules related to margin requirements for uncleared swaps for swap dealers (SD) and major swap participants (MSP).

The CFTC approved a final rule that amends the margin requirements for uncleared swaps for SDs and MSPs for which there is no prudential regulator (CFTC Margin Rule). The final rule permits the application of a minimum transfer amount (MTA) up to \$50,000 for each separately managed account of a legal entity that is a counterparty to an SD or MSP in an uncleared swap transaction and allows the application of separate MTAs for initial margin and variation margin.

Additionally, the CFTC approved a final rule amending the CFTC Margin Rule's definition of material swaps exposure (MSE) by revising the method for calculating the average aggregate notional amount of uncleared swaps and other financial products (AANA) for determining MSE. Specifically, the final rule changes the period for calculating AANA from June, July and August of the prior year, to March, April and May of the current year, requiring the averaging of month-end AANA instead of daily AANA over the three-month calculation period. The final rule also establishes September 1 of each year as the date for determining MSE after the end of the phased compliance schedule for initial margin.

Each rule is effective 30 days after publication in the Federal Register.

The final rules are available [here](#).

CFTC Approves Final Rules Regarding Electronic Trading Risk Principles and Bankruptcy Regulations

On December 8, the Commodity Futures Trading Commission (CFTC) approved a final rule amending CFTC Regulation Part 38 to address the risk of a designated contract market's (DCM) trading platform experiencing a market disruption due to electronic trading. The final rule sets forth three principles applicable to DCMs concerning:

- the implementation of exchange rules applicable to market participants to prevent, detect and mitigate market disruptions and system anomalies;
- the implementation of exchange-based, pre-trade risk controls for electronic orders; and
- the prompt notification of CFTC staff by DCMs of any significant market disruptions on their electronic trading platform.

The final rule provides that a DCM can comply with these principles by adopting certain acceptable practices, including by implementing rules and risk controls reasonably designed to prevent, detect and mitigate market disruptions and system anomalies associated with electronic trading.

Additionally, the CFTC also unanimously approved comprehensive amendments to CFTC Regulation Part 190, which governs bankruptcy proceedings of commodity brokers. For a more fulsome description of the amendments, please see Katten's April 29, 2020 [Advisory](#) on the proposed rules.

The press release and access to the final rules are available [here](#).

CFTC Interprets and Issues No-action Relief from Certain Clearing and Trade Execution Requirements

On December 3, the Commodity Futures Trading Commission's (CFTC) Division of Clearing and Risk (DCR) and Division of Market Oversight (DMO, and collectively, the Divisions) issued CFTC Letter No. 20-43, an interpretation regarding Sections 2(h)(1) and 2(h)(8) of the Commodity Exchange Act (CEA) and the CFTC regulations thereunder.

Section 2(h)(1)(A) of the CEA prohibits a person from engaging in a swap that is required to be cleared unless that person submits such swap for clearing to a derivatives clearing organization (DCO) that is either registered or exempt from registration under the CEA. CFTC Regulation 50.4 enumerates classes of swaps that are required to be cleared.

Section 2(h)(8) of the CEA requires that swap transactions that are subject to the clearing requirement must be executed on a designated contract market or a swap execution facility that is either registered or exempt from registration under the CEA, unless no such entities make the swap available for trade or the relevant swap transaction is subject to the clearing exception under CEA Section 2(h)(7).

At the request of the Chicago Mercantile Exchange, the Divisions confirmed that Sections 2(h)(1) and 2(h)(8) of the CEA do not subject to the clearing and trade execution requirements certain swaps transactions entered into by a DCO to reduce and manage the risk associated with a clearing member default.

On the same day, the Divisions issued CFTC Letter No. 20-44, responding to a request from LCH Limited (LCH) on behalf of its futures commission merchant (FCM) clearing members, for relief from compliance with certain trade execution requirements under Section 2(h)(8) of the CEA. Specifically, LCH requested the Divisions to confirm that, in the event of a customer default, an FCM clearing member may effect swap transactions subject to the trade execution requirement under Section 2(h)(8) of the CEA without executing such transactions on (1) a swap execution facility (SEF); (2) a SEF that is exempt from SEF registration; or (3) a designated contract market.

CFTC Staff Letter 20-43 is available [here](#).

CFTC Staff Letter 20-44 is available [here](#).

CFTC Staff Provides Further Brexit-Related Relief to Provide Market Certainty

On December 4, the Commodity Futures Trading Commission's (CFTC) Market Participants Division (MPD) and Division of Clearing and Risk (DCR) jointly issued no-action relief, effective immediately, to provide greater certainty to the global marketplace in connection with the withdrawal of the United Kingdom from the European Union. The relief permits market participants to transfer certain swaps to an affiliate without such swaps becoming subject to the CFTC's swap clearing requirement or uncleared swap margin requirement. The relief applies to transfers that occur up to one year following the conclusion of the transition period.

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

CFTC Staff Letter 20-42 is available [here](#).

CFTC Unanimously Approves Technical Amendments to Reflect Organizational Changes

On December 8, the Commodity Futures Trading Commission (CFTC) approved a final rule making technical amendments to CFTC regulations to align with recent organizational changes, remove unnecessary language, and correct inaccurate text and other typographical errors. The amendments are immediately effective upon publication in the Federal Register, unless otherwise noted.

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

NFA Issues Notice to Members Regarding Compliance Date Swaps Proficiency Requirements

On December 8, the National Futures Association (NFA) issued Notice I-20-45 to remind member firms that the compliance date for NFA's Swaps Proficiency Requirements (Requirements) is January 31, 2021 (Compliance Date). As more fully discussed in the July 10, 2020 edition of the [Corporate & Financial Weekly Digest](#), NFA

Members with associated persons (AP) required to satisfy the Requirements must ensure that covered individuals are in compliance by the Compliance Date. Individuals who do not satisfy the Requirements by the Compliance Date will be unable to engage in swaps activities until they have done so. After the Compliance Date, any individual seeking to engage in swaps activity will need to satisfy the Requirements prior to being approved as a swap AP at an intermediary or acting as an AP at a swap dealer.

For complete details regarding who must fulfill the Requirements, Notice I-19-09 is available [here](#).

Notice I-20-45 is available [here](#).

BANKING

More USD LIBOR Transition Developments

The Alternate Reference Rates Committee (ARRC), convened under the auspices of the Federal Reserve Bank of New York, has published a “Guide on the Endgame for USDA LIBOR” that encompasses the flurry of announcements made last week about the postponement of the demise of the most heavily used tenors of US Dollar LIBOR.

The Guide provides a convenient summary of these recent developments, as well as highlights that the spread adjustment between Fallback SOFR and LIBOR could be determined early next year (2021) when the ICE Benchmark Administration (IBA) announces the result of its consultation, even if Fallback SOFR does not replace USD LIBOR until June 2023.

IBA published its proposed LIBOR consultation on December 4. The consultation solicits comments on IBA’s plans for ceasing publication of various interbank offered rates. The consultation process is described as follows: “Please provide feedback to IBA at IBA@theice.com by 5pm London time on Monday January 25, 2021. . . . After the feedback period has closed, IBA intends to share the results of the consultation with the FCA and to publish a feedback statement summarizing responses from the consultation shortly thereafter. IBA will also publish the comments received unless confidentiality has been requested by the originator of the comments.”

If (as is likely to be the case) IBA announces the cessation dates for all IBOR currencies and tenor settings, including USD LIBOR at the end of the consultation, the spread adjustment between Fallback SOFR and LIBOR will be calculated at that time on the basis of a five year look back.

The Guide is available [here](#).

The IBA Consultation is available [here](#).

UK DEVELOPMENTS

FCA Post-Brexit ‘Cutover Plan’ for Firms Transferring to FCA FIRDS and FITRS

On December 4, the United Kingdom’s Financial Conduct Authority (FCA) published a press release announcing details of its ‘cutover plan’ for firms transferring to the FCA Financial Instruments Transparency System (FCA FITRS) and FCA Financial Instruments Reference Data System (FCA FIRDS) upon Brexit (the Press Release).

Following the end of the transition period at 23:00 (UK time) on December 31, the European Securities and Markets Authority will stop the FCA’s access to two key systems that are required to operate the Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR) regimes. In preparation for this, the FCA has created equivalent systems for UK MiFID reporting called FCA FIRDS and FCA FITRS.

Firms are currently able to use these systems for testing, however the FCA will make both systems unavailable from December 16 until January 2, 2021 to rebuild its data and launch with refreshed data.

The FCA has also published a [webpage](#) detailing a cutover system availability timeline and provides further information for firms to better understand each system.

The Press Release is available [here](#).

EU DEVELOPMENTS

European Commission Consults on Review of CSDR

On December 8, the European Commission (the Commission) published a consultation paper on its review of the Central Securities Depositories Regulation (909/2014) (CSDR) (the Consultation Paper).

Under Article 75 of the CSDR, the Commission was required to review and prepare a report on the Regulation and its implementation by September 19, 2019. The report was to be submitted to the European Parliament and the Council of the European Union with proposed legislative changes. However, the Commission explains a comprehensive review of the CSDR is currently not possible as some requirements did not apply until the effectiveness of the relevant regulatory technical standards in March 2017. Additionally, some EU central securities depositories (CSDs) have only recently been authorized under the CSDR.

The purpose of the Consultation Paper is to acquire the opinions of stakeholders concerning the implementation of the CSDR to assist with the upcoming Commission report. The Commission will also include an assessment of the potential supervision by ESMA of third-country CSDs. The report will explore a wide range of specific areas and produce action points to ensure the fulfilment of the CSDR's objectives. The Commission advises stakeholders to take into account recent developments, particularly the impact of the COVID-19 pandemic on markets when providing feedback.

The Commission intends to simplify the CSDR and lower costs incurred in cross-border transactions post-Brexit. Details of its intentions can be found in the Commission's 2021 work program and its 2020 Capital Markets Union Action Plan, which has already been announced.

The Commission calls for a wide range of stakeholders to respond to the Consultation Paper.

The deadline for comments on the Consultation Paper is February 2, 2021. The Commission intends to use comments in preparation of its final report.

The Consultation Paper is available [here](#).

EBA Publishes Statement for Consumers Regarding Post-Brexit Arrangements

On December 8, the European Banking Authority (EBA) published a statement informing customers of UK financial institutions regarding practical and contractual arrangements following the end of the Brexit transition period (the Statement).

The key areas addressed in the Statement by the EBA include:

- providing advice for UK financial institutions that plan to continue offering their services in the European Union and providing advice for those that plan to cease their services;
- alerting EU-based payment service providers of the additional information required from the payer when processing cross-border payments and direct debits from the European Union to the United Kingdom;
- advising EU consumers with existing UK bank accounts of the relevant UK legal requirements to ensure continuous access to their accounts; and
- encouraging all financial institutions to inform their consumers of the impact of Brexit in a timely manner.

The Statement 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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FINANCIAL MARKETS AND FUNDS

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