

DERIVATIVES

See “ESMA Publishes Discussion Paper on Mandatory Trade Execution Obligations for OTC Derivatives Under MiFIR” in the EU/BREXIT Developments section.

CFTC

CFTC To Host Roundtable on Recent CPMI-IOSCO Guidance

The Commodity Futures Trading Commission will host a roundtable on October 6 to gather feedback in relation to a report on central counterparty resilience and recovery recently published by the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO). Roundtable panelists will include US derivatives clearing organizations (DCOs), their clearing members (futures commission merchants), and the customers of DCO participants.

The CPMI-IOSCO guidance was detailed in a recent [Corporate & Financial Weekly Digest](#) article on August 19. For the location of the meeting and listening information, please see the CFTC’s press release, available [here](#).

UK DEVELOPMENTS

FCA Publishes New Notification Form for Transaction Reporting Errors

On September 15, the UK Financial Conduct Authority (FCA) published a new form (Form) to be used when notifying the regulator of transaction reporting errors or failures in breach of Chapter 17 of the FCA’s Supervision Manual (SUP). Chapter 17 of SUP requires firms to notify the FCA of any transaction reporting errors or failures as soon as possible. Firms may (but are not required) use the Form to ensure all necessary information is provided to the FCA in compliance with this obligation.

The Form is available [here](#).

EU/BREXIT DEVELOPMENTS

Brexit and Passporting: FCA Statistics

On September 20, the UK House of Commons Treasury Committee published a letter (Letter) from Andrew Bailey, Chief Executive of the UK Financial Conduct Authority (FCA), dated August 17. The Letter contains figures on UK firms currently holding single-market “passports” under certain EU directives to provide services or establish branches elsewhere in the European Union.

Passporting is a significant right for firms in the European Union, as it allows EU-authorized (i.e., licensed) financial services firms (including EU banks, insurance companies, fund managers, investment advisers, proprietary trading firms and market makers, among others) to conduct cross-border business in other EU

Member States with few formalities, including without having to become authorized in each other relevant EU Member State where they wish to conduct those activities. Significantly, particularly for EU banks, it also allows EU-authorized firms to establish branches in other EU Member States. However, depending on how the United Kingdom's negotiations with the remainder of EU Member States progresses, a key consequence of its vote to leave the EU (or Brexit) could be that UK-based firms currently relying on single-market passports may lose the benefit of their passports once the UK ceases to be an EU Member State. This issue is currently a fundamental aspect of the UK's exit negotiation (together with the contested immigration issue/ free movement of workers concept).

The figures set out in the Letter are in relation to "outbound" passports (issued by the FCA or the UK Prudential Regulation Authority and held by UK-authorized firms) and "inbound" passports (issued by EU regulators and held by EU-authorized firms), granted under nine EU directives (together the Single Market Directives, which includes the EU Alternative Investment Fund Managers Directive (AIFMD), Insurance Mediation Directive, Markets in Financial Instruments Directive, Mortgage Credit Directive, Payment Services Directive, Undertakings for Collective Investment in Transferable Securities (UCITS) Directive and previous UCITS Management Directive, Electronic Money Directive, Capital Requirements Directive and Solvency II Directive).

The Letter shows that under the Single Market Directives there are:

- 5,476 UK-authorized firms that hold one or more outbound passports to do business in another EU or European Economic Area (EEA) Member State;
- 8,008 firms authorized in other EU or EEA Member States that hold inbound passports to do business in the United Kingdom; and
- 336,421 passports held in total by UK firms for multiple business activities in EU Member States.

A copy of the Letter is available [here](#) and an accompanying press release, [here](#).

ESMA Publishes Discussion Paper on Mandatory Trade Execution Obligations for OTC Derivatives Under MiFIR

On September 20, the European Securities and Markets Authority (ESMA) published a discussion paper (Discussion Paper) on mandatory trade execution obligations for derivatives under the Markets in Financial Instruments Regulation (MiFIR).

Articles 28 and 32 of MiFIR establish an obligation for certain over-the-counter (OTC) derivative transactions to be concluded on a regulated market, multilateral trading facility, organized trading facility or a trading venue in a third country that is declared equivalent under MiFIR (Trading Obligation). The Trading Obligation is closely connected to the clearing obligation for derivatives under the European Market Infrastructure Regulation (EMIR), such that once a transaction is subject to clearing under EMIR, ESMA is required to determine which classes of those derivatives should be subject to the Trading Obligation. MiFIR also restricts the Trading Obligation to apply only to classes of derivatives that are: 1) admitted to trading or traded on at least one trading venue (the Trading Venue Test); and 2) sufficiently liquid and have sufficient third-party buying and selling interest (the Liquidity Test).

ESMA's latest Discussion Paper is divided into nine sections, which cover the development of trading obligations in other jurisdictions (including the United States, Japan and Switzerland), the clearing obligation in the European Union, the Trading Venue test, liquidity assessment and the Liquidity Test, and proposed implementation and phase-in dates for the Trading Obligation (among others). Notably, ESMA has included a summary table of the dates when the Trading Obligation will apply and has proposed for the Trading Obligation to apply to the same four categories of counterparties identified for the clearing obligation under EMIR. ESMA has proposed for the Trading Obligation to apply to counterparties in EMIR categories 1 and 2, trading interest rate derivatives (in major currencies and other currencies) and/or credit derivatives, from January 3, 2018 (the MiFIR application date and the earliest date for the EMIR clearing obligation to go into effect).

Comments on the Discussion Paper must be submitted to ESMA by November 21. ESMA expects to publish a further consultation paper in the first quarter of 2017, and to submit draft technical standards to the European Commission in mid-2017.

For more information on the Trading Obligation and the development of categories of counterparties under EMIR, see our *Corporate & Financial Weekly Digest* edition of [June 17, 2016](#) and [August 7, 2015](#) (respectively).

The Discussion Paper is available [here](#), and ESMA's accompanying press release is available [here](#).

European Commission Calls for Reforms Under the EU Capital Markets Union to be Accelerated

On September 14, the European Commission (Commission) published a communication (Communication) in relation to the Commission's Capital Markets Union (CMU) Action Plan. The Communication is addressed to the European (EU) Parliament, EU Council, EU Central Bank and the EU Economic and Social Committee and the Committee of the Regions, and calls for reforms under the CMU Action Plan to be accelerated.

As mentioned in previous updates, the Commission first launched the CMU Action Plan on September 30, 2015. The CMU Action Plan aims to facilitate the development of a single market for capital in the European Union, by supporting cross-border risk sharing, identifying and removing cross-border barriers to investment, and diversifying alternative sources of funding available for investors. In April 2016, the Commission published its first status report on work under the CMU Action Plan, detailing work achieved to date as well as future planned initiatives.

The latest Communication published by the Commission calls for the first phase of the CMU Action Plan to be implemented as soon as possible. The Commission notes that settling and implementing: 1) proposals for an EU framework for simple, transparent and standardized securitization will quickly generate additional funding and free up bank balance sheets; 2) reforms to modernize EU prospectus rules will bolster access to capital markets for smaller entities; 3) proposals to revise the Regulation on EU venture capital funds and the Regulation on EU social entrepreneurship funds will increase investor access to small and medium-sized companies; and 4) proposals for a Regulation to establish the structural reform support program will assist to launch projects to develop national capital markets at the start of 2017.

In addition, the Communication calls for the next phase of work under the CMU Action Plan with respect to national insolvency regimes and taxation to be accelerated, and for the next steps and priorities of the CMU Action Plan to be developed (including in relation to work to remove barriers to cross-border distribution of investment funds, and also, barriers in the post-trading environment), among others. The Communication also contains an annex detailing updates on the status of actions contained in the CMU Action Plan (which follows updates provided on work achieved to date in the first status report published in April 2016).

For further information on the CMU, see our *Corporate & Financial Weekly Digest* editions of [June 10, 2016](#), [May 6, 2016](#), [April 29, 2016](#), [October 16, 2015](#), [October 9, 2015](#) and [June 5, 2015](#).

The Commission's CMU Action Plan is available [here](#).

A copy of the Communication 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:

FINANCIAL SERVICES

| | | |
|-------------------------------|------------------|-----------------------------------|
| Janet M. Angstadt | +1.312.902.5494 | janet.angstadt@kattenlaw.com |
| Henry Bregstein | +1.212.940.6615 | henry.bregstein@kattenlaw.com |
| Kimberly L. Broder | +1.212.940.6342 | kimberly.broder@kattenlaw.com |
| Wendy E. Cohen | +1.212.940.3846 | wendy.cohen@kattenlaw.com |
| Guy C. Dempsey Jr. | +1.212.940.8593 | guy.dempsey@kattenlaw.com |
| Kevin M. Foley | +1.312.902.5372 | kevin.foley@kattenlaw.com |
| Jack P. Governale | +1.212.940.8525 | jack.governale@kattenlaw.com |
| Arthur W. Hahn | +1.312.902.5241 | arthur.hahn@kattenlaw.com |
| Christian B. Hennion | +1.312.902.5521 | christian.hennion@kattenlaw.com |
| Carolyn H. Jackson | +44.20.7776.7625 | carolyn.jackson@kattenlaw.co.uk |
| Ross Pazzol | +1.312.902.5554 | ross.pazzol@kattenlaw.com |
| Fred M. Santo | +1.212.940.8720 | fred.santo@kattenlaw.com |
| Christopher T. Shannon | +1.312.902.5322 | chris.shannon@kattenlaw.com |
| James Van De Graaff | +1.312.902.5227 | james.vandegraaff@kattenlaw.com |
| Robert Weiss | +1.212.940.8584 | robert.weiss@kattenlaw.com |
| Lance A. Zinman | +1.312.902.5212 | lance.zinman@kattenlaw.com |
| Krassimira Zourkova | +1.312.902.5334 | krassimira.zourkova@kattenlaw.com |

UK/EU/BREXIT DEVELOPMENTS

| | | |
|---------------------------|------------------|----------------------------------|
| David A. Brennand | +44.20.7776.7643 | david.brennand@kattenlaw.co.uk |
| Carolyn H. Jackson | +44.20.7776.7625 | carolyn.jackson@kattenlaw.co.uk |
| Neil Robson | +44.20.7776.7666 | neil.robson@kattenlaw.co.uk |
| Nathaniel Lalone | +44.20.7776.7629 | nathaniel.lalone@kattenlaw.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.
©2016 Katten Muchin Rosenman LLP. All rights reserved.

Katten

KattenMuchinRosenman LLP www.kattenlaw.com

AUSTIN | CENTURY CITY | CHARLOTTE | CHICAGO | HOUSTON | IRVING | LONDON | LOS ANGELES | NEW YORK | ORANGE COUNTY | SAN FRANCISCO BAY AREA | SHANGHAI | WASHINGTON, DC

Katten refers to Katten Muchin Rosenman LLP and the affiliated partnership as explained at kattenlaw.com/disclaimer.