Katten
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## BROKER-DEALER

### FINRA Requests Information Regarding Firm Culture and Values

The Financial Industry Regulatory Authority is requesting firms to submit information regarding their organizational culture and how those values impact business decisions. FINRA's 2016 Regulatory and Examination Priorities Letter defined "firm culture" as "the set of explicit and implicit norms, practices and expected behaviors that influence how employees make and carry out decisions in the course of conducting the firm's business." FINRA believes that a broker-dealer's view of firm culture" influences how the firm conducts its business and manages conflicts of interest. For example, FINRA notes that firms have encountered $300 billion in fines and litigation costs related to cultural failures since 2010.

FINRA intends to meet with firms and review how they establish, communicate and implement cultural values within their organizations. In preparation for these meetings, FINRA has requested that each firm submit the following information by March 21: (1) a summary of key policies and processes by which the firm establishes cultural values; (2) a description of the processes employed by firm management in establishing, communicating and implementing cultural values; (3) a description of how the firm assesses and measures the impact of cultural values; (4) a summary of the processes used to identify policy breaches; (5) a description of how the firm addresses breaches of policies and processes once discovered; (6) a description of the firm's policies and procedures for identifying and addressing subcultures that run counter to the firm's culture; (7) a description of how compensation practices reinforce the firm's cultural values; and (8) a description of how cultural values are used to determine compensation, promotions or other rewards.

FINRA notes that firms should not view these inquiries as an indication that they are violating any rules or regulations. Rather, FINRA intends to use the information to better understand industry practices and develop future guidance.

A discussion of the requested compliance materials is available here.

## DERIVATIVES

### SEC Adopts Additional Rule for Cross-Border Security-Based Swaps

The Security Exchange Commission has added an additional piece to its array of cross-border rules for security-based swaps (SBS). The new rule confirms that, consistent with the position taken by the Commodities Futures Trading Commission with respect to cross-border swaps, a non-US person must include in its *de minimis* calculations for security-based swap dealer registration any non-cleared "dealing" SBS it executes with a non-US-person counterparty if the swap is "arranged, negotiated or executed" by personnel of the non-US person located in a US branch or office or by agents of the non-US person located in a U.S. branch or office.

The compliance date for this rule provides a reminder of the overall time frame the SEC has in mind for completion of the full regulatory regime for security-based swaps. That compliance date is the later of (1) February

21, 2017, or (2) the SBS Entity Counting Date. The SBS Entity Counting Date is a date two-months prior to the Registration Compliance Date, which has been defined by the SEC as “the later of:

- six months after the date of publication in the *Federal Register* of a final rule release adopting rules establishing capital, margin and segregation requirements for security-based swap dealers and major security-based swap participants (SBS Entities);
- the compliance date of final rules establishing recordkeeping and reporting requirements for SBS Entities;
- the compliance date of final rules establishing business conduct requirements under Exchange Act sections 15F(h) and 15F(k); or
- the compliance date for final rules establishing a process for a registered SBS Entity to make an application to the Commission to permit an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on its behalf.”

The new rule is available here.

*See also “CFPB Issues Final Policy on No-Action Letters” in the Banking section and “ISDA Publishes Principles for US and EU Trading Platform Recognition” in the UK Developments section.*

## BANKING

### Federal Banking Agencies Expand Number of Banks Qualifying for 18-Month Examination Cycle

On February 19, federal banking agencies increased the number of small banks and savings associations eligible for an 18-month examination cycle rather than a 12-month cycle. The changes are intended to reduce regulatory compliance costs for smaller institutions, while still maintaining safety and soundness protections. Under the interim final rules, qualifying well-capitalized and well-managed banks and savings associations with less than $1 billion in total assets are now be eligible for an 18-month examination cycle. Previously, firms with less than $500 million in total assets could be eligible for the extended examination cycle. The examination cycle changes may also apply to qualifying well-capitalized and well-managed US branches and agencies of foreign banks with less than $1 billion in total assets.

Regulators consider institutions to be well-capitalized and well-managed if they have a composite rating of 1 or 2—the top ratings in the five-point scale indicating the safety and soundness of a bank or savings association. The changes were implemented by the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Office of the Comptroller Currency.

More information is available here.

### FDIC Approves Proposal on Deposit Recordkeeping Requirements in Large Bank Failures

On February 17, the Federal Deposit Insurance Corporation (FDIC) approved a proposal for recordkeeping requirements for FDIC-insured institutions with a large number of deposit accounts to facilitate rapid payment of insured deposits to customers if those institutions were to fail. The proposed rule would apply to insured depository institutions with more than 2 million deposit accounts. Under the proposal, these institutions would generally be required to maintain complete and accurate data on each depositor. Further, the institutions would be required to ensure that their information technology systems are capable of calculating the amount of insured money for each depositor within 24 hours of a failure. The FDIC is not proposing or considering making these requirements applicable to smaller institutions, including community banks.

The FDIC issued an advanced notice of proposed rulemaking on deposit account recordkeeping for institutions with a large number of deposit accounts in April 2015 to solicit public comment, and had noted, “That feedback helped shape the proposal issued today.”

The FDIC will accept comments on the proposal for 90 days after it is published in the *Federal Register*.

The FDIC’s notice is available here.

### Federal Banking Agencies Release Economic Scenarios for 2016 Stress Testing

On February 7, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Board) jointly released the economic scenarios that will be used by certain financial institutions with total consolidated assets of more than $10 billion for stress tests, as required under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

The baseline, adverse and severely adverse scenarios include key variables that reflect economic activity, including unemployment, exchange rates, prices, income, interest rates and other salient aspects of the economy and financial markets.

The baseline scenario represents expectations of private sector economic forecasters. The adverse and severely adverse scenarios are not forecasts, rather, they are hypothetical scenarios designed to assess the strength and resilience of financial institutions and their ability to continue to meet the credit needs of households and businesses under stressed economic conditions.

More information from the OCC is available here and here.

### Revised Comptroller's Handbook Installment Lending Booklet

On February 12, the Office of the Comptroller of the Currency (OCC) issued the "Installment Lending" booklet of the *Comptroller's Handbook*. This revised booklet updates and replaces the "Installment Loans" booklet issued in March 1990 (and examination procedures issued in March 1998). The revised booklet also replaces section 217, "Consumer Lending," issued in January 2000 as part of the former Office of Thrift Supervision *Examination Handbook*, for examining federal savings associations. The revised booklet incorporates national bank and federal savings association statutes and regulations, guidance and examination procedures. The booklet also provides updated guidance to examiners on assessing and managing the risks associated with installment lending activities.

The OCC's booklet is available here.

### Revised Comptroller's Handbook Country Risk Management Booklet

On February 12, the Office of the Comptroller of the Currency (OCC) issued the "Country Risk Management" booklet of the *Comptroller's Handbook*. This revised booklet replaces the booklet of the same title issued in March 2008. This booklet is prepared for use by OCC examiners in assessing a bank's exposure to country risk and includes procedures to evaluate the adequacy of the bank's country risk management framework. Country risk management topics include board and management oversight; policies and procedures; country exposure reporting system; country risk analysis process; country risk ratings; country exposure limits; monitoring country conditions; stress testing and integrated scenario planning; and independent risk management, internal controls, and audit.

The OCC's booklet is available here.

### CFPB Issues Final Policy on No-Action Letters

The Consumer Financial Protection Bureau (Bureau) issued its final policy on its issuance of no-action letters on February 18, which is intended to further objectives under section 1021 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). Under the Policy, Bureau staff would, "in its discretion, issue no-action letters (NALs) to specific applicants in instances involving innovative financial products or services that promise substantial consumer benefit where there is substantial uncertainty whether or how specific provisions of statutes implemented or regulations issued by the Bureau would be applied . . ." According to the Bureau, a NAL would advise the recipient that, subject to its stated limitations, the staff has no present intention to recommend initiation of an enforcement or supervisory action against the requester with respect to a specified matter. However, NALs would be subject to modification or revocation at any time at the discretion of the staff, and may be conditioned on particular undertakings by the applicant with respect to product or service usage and data-sharing with the Bureau. Further, NALs would be nonbinding on the Bureau, and would not bind courts or other actors who might challenge a NAL recipient's product or service, such as other regulators or parties in litigation.

According to industry critics, the limits on the protection that the no-action letters provide have raised fears that the new policy will not supply the space that companies need to come up with new and novel ways to serve customers.

The Bureau's policy is available here.

# UK DEVELOPMENTS

### ISDA Publishes Principles for US and EU Trading Platform Recognition

On February 24, the International Swaps and Derivatives Association Inc. (ISDA) published Principles for US/EU Trading Platform Recognition (Principles), which set out certain key principles and policy considerations that ISDA believes should facilitate comparability determinations and mutual recognitions between US and EU execution platforms. Notably, the Principles are primarily addressed to the US Commodities Futures Trading Commission (CFTC) in respect of the CFTC's comparability assessment of the EU regulatory framework applicable to regulated markets (RMs), multilateral trading facilities (MTFs) and organized trading facilities (OTFs).

The Principles encourage the CFTC to adopt a broad, outcomes-based approach informed primarily by the core principles for swap execution facilities (SEFs) set out in the US Commodity Exchange Act and to assess the SEF core principles against the goals and outcomes of applicable EU laws and regulation, rather than focussing on technical, rule-by-rule differences. To demonstrate this point more fully, ISDA included in the Principles a table analyzing the SEF core principles against the regulatory requirements contained in the amended Markets in Financial Instruments Directive, the Markets in Financial Instruments Regulation, the Market Abuse Regulation and the European Market Infrastructure Regulation for RMs, MTFs and OTFs.

ISDA urged the CFTC to develop a "registration-lite" approach to the trading venues above, and noted that the CFTC should look to the principles set out by the International Organisation of Securities Commissions (IOSCO) Final Report on Cross-Border Regulation, when making comparability determinations.

ISDA's Principles can be found here.

ISDA's accompanying press release can be found here.

IOSCO's Final Report on Cross-Border Regulation can be found here.

# EU DEVELOPMENTS

### EU Committee on Economic and Monetary Affairs Publishes Reports in Relation to MiFID II

As discussed in our *Corporate & Financial Weekly Digest edition of February 12, 2016*, on February 10, the European Commission (the Commission) announced proposals to provide for a one-year extension to the application dates of the amended Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR) (i.e., moving their start date from January 3, 2017 to January 3, 2018).

The European Parliament's Committee on Economic and Monetary Affairs (ECON) has now published two draft reports (dated February 16), one in relation to MiFID II (MiFID II Report), and another in relation to MiFIR, the Market Abuse Regulation, and the Regulation on improving securities settlement in the European Union and on central securities depositories (MiFIR Report).

The Reports set out draft European Parliament legislative resolutions in relation to the proposals announced by the Commission on February 10. The draft MiFID II Report amends the date on which Member States must transpose laws to comply with MiFID II from July 3, 2016 to July 3, 2017, and states that the European Parliament adopts the position, taking over the Commission proposal. The MiFID II Report includes a justification for the change, stating that the transposition date should be in line with the delay, particularly as MiFID II implementing legislation is still not available. The draft MiFIR Report similarly states that the European Parliament adopts the position, with no changes noted in the MiFIR Report to the Commission proposal.

The Reports also contain explanatory statements which note the failure of the European Securities and Markets Authority and the Commission to deliver the regulatory technical standards and delegated acts, and acknowledge the necessity of delaying the application dates due to the “immense problems at hand” calling the delay of the application dates by a year “sensible and justified”.

The MiFID II Report can be found here.

The MiFIR Report can be found here.

The proposals in relation to the one-year extension can be located here.

For additional coverage on financial and regulatory news, visit *Bridging the Week*, authored by Katten's Gary DeWaal.

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