

BROKER-DEALER

FINRA Requests Comment on Proposed New Rule Governing Outside Business Activities

On February 26, the Financial Industry Regulatory Authority released Regulatory Notice 18-08, which solicits comments on a proposed new rule to address the outside business activities of registered persons. The proposed rule would replace existing Rule 3270 (Outside Business Activities of Registered Persons) and Rule 3280 (Private Securities Transactions of an Associated Person) with a single rule governing outside business activities.

As proposed, new Rule 3290 (Outside Business Activities) would require registered persons to provide members with prior written notice of investment-related or other business activities and require members to conduct a reasonable risk assessment of the investment-related activities. A registered person's personal investments are not subject to the proposed rule. Additionally, the proposed rule excludes activities performed on behalf of a member's affiliate, unless those activities would require registration as a broker-dealer but for the person's association with a member.

The proposed rule also imposes supervisory obligations on the member in two circumstances. First, if a member has imposed conditions on a registered person's investment-related activities, the member must reasonably supervise the registered person's compliance with those conditions. Second, if a registered person's approved participation in an investment-related activity would require registration as a broker-dealer but for the registered person's association with the member, the member must treat such investment-related activities as the member's own business. Consequently, the member must comply with all applicable laws with respect to such activity. In addition to supervisory requirements, the proposed rule has certain recordkeeping obligations.

FINRA is now seeking commentary on all aspects of the proposal by April 27, 2018. More information is available in [Regulatory Notice 18-08](#).

DERIVATIVES

See "[CFTC Extends No Action Relief for Shanghai Clearing House](#)" and "[CFTC Extends Exemptive Relief From Quarterly Account Statements](#)" in the CFTC section.

CFTC

CFTC Extends No Action Relief for Shanghai Clearing House

On February 23, the Commodity Futures Trading Commission's Division of Clearing and Risk (DCR) issued No-Action Letter 18-04, which extends relief previously granted to the Shanghai Clearing House (SHCH) under CFTC No-Action Letter 16-56 (as reported in the June 3, 2016, edition of [Corporate and Financial Weekly Digest](#)), and renewed in CFTC No-Action Letters 17-26 and 17-62. CFTC No Action Letter 17-62 expired on February 28.

In CFTC No-Action Letter 18-04, DCR stated it would not recommend the CFTC take enforcement action against SHCH for failure to register as a derivatives clearing organization (DCO) in light of its pending petition for an exemption from registration as a DCO. Under the terms of the letter, SHCH is permitted to clear certain swaps subject to mandatory clearing in the People's Republic of China for the proprietary trades of SHCH clearing members that are US persons or affiliates of US persons.

Before the CFTC can grant SHCH an exemption, it must first execute a Memorandum of Understanding (MOU) with the clearing organization's home country regulator. DCR granted the extension because it needs more time to make a decision regarding the petition, as well as to complete the MOU process.

The extension will last until the earlier of February 28, 2019, and the date on which the CFTC exempts SHCH from registration as a DCO.

CFTC Letter No. 16-56 is available [here](#).

CFTC Letter No. 18-04 is available [here](#).

CFTC Extends Exemptive Relief From Quarterly Account Statements

On February 20, the Commodity Futures Trading Commission's Division of Swap Dealer and Intermediary Oversight issued Exemptive Relief Letter 18-05, which granted relief to a commodity pool operator (CPO) of a commodity pool operated as a "fund of funds." The Letter provided the CPO with additional time after the end of each calendar quarter to distribute quarterly statements to pool participants, as required under CFTC regulation 4.7(b)(2), due to delays in receiving financial reports from underlying funds in which the pool invested.

The relief is conditioned on the CPO (1) distributing to all pool participants within 45 calendar days of the end of each month an account statement that includes all of the information required under CFTC regulation 4.7(b)(2) and that is signed and affirmed in accordance with CFTC regulation 4.22(h), and (2) informing current and prospective pool participants that such accounts statements will be provided within 45 calendar days after the end of the covered month.

CFTC Letter No. 18-05 is available [here](#).

UK DEVELOPMENTS

FCA Announces Public Register of Certification Employees

On February 26, the UK's Financial Conduct Authority (FCA) published a statement announcing that it will consult on proposals to make information publicly available on a wider range of individuals at firms authorized by the FCA and the UK's Prudential Regulation Authority (PRA) than had been planned.

The FCA and the PRA currently maintain a public financial services register (FS Register) of the firms they regulate and the individuals they have approved. In July 2017, the FCA published proposals to extend the senior managers and certification regime to almost all firms regulated in the UK. Under the initial proposals, the FCA would only approve the most senior individuals within firms—meaning that only senior managers would appear on the FS Register and not employees certified by firms as being fit and proper under the extended certification regime (including portfolio managers, investment advisors and traders).

In response to its initial proposals, the FCA has received substantial feedback on the public value of it maintaining a central public record of certification employees and other important individuals in regulated firms. The FCA stated that it will consult by summer 2018 on policy proposals to address the feedback.

The FCA has also stated that it plans to issue an update shortly on its work to improve the usability of the FS Register, which will incorporate feedback from the UK's Work and Pensions Select Committee.

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

EU/BREXIT DEVELOPMENTS

The EC Publishes Draft UK/EU Withdrawal Agreement

On February 28, the European Commission (**EC**) published a draft withdrawal agreement on the withdrawal of the United Kingdom from the European Union.

The draft agreement consists of six parts and represents the EU's attempt to reflect in a binding legal text the principles of the political agreement reached between the UK and EU in December 2017. It also sets out proposals for outstanding issues relating to the withdrawal of the UK from the EU, of which the most significant include the following:

- There shall be a transition period, to commence on the date of the draft agreement's publication and to end on December 31, 2020, during which time EU law will apply to and in the UK;
- During the transition period, the UK shall contribute to and participate in the implementation of the EU budgets; and
- A common regulatory area shall be established between the EU and Northern Ireland, to which EU law on the free movement of goods shall apply.

The draft agreement will now be sent to the European Council and the European Parliament's Brexit Steering group before being sent to the UK for negotiation.

The draft agreement is available [here](#).

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