

## SEC/CORPORATE

### **SEC Issues Smaller Reporting Company Compliance Guide**

On August 10, the staff of the Securities and Exchange Commission published [A Small Entity Compliance Guide for Issuers](#) (the Guide), which summarizes and explains rules adopted by the SEC with respect to the recently amended definition of “smaller reporting company” and the accommodations available to smaller reporting companies. The Guide is one of a series of small business compliance guides published by the SEC to provide guidance with respect to certain SEC rules. The Guide contains details for issuers on the timing and transition to the amended definition of smaller reporting company—which goes into effect on September 10—including as to when a company may first take advantage of the scaled disclosure requirements available to smaller reporting companies. It also includes a chart of the scaled financial and non-financial disclosure requirements available to smaller reporting companies. The amended definition of smaller reporting company was described in detail in the [Corporate & Financial Weekly Digest](#) edition of July 20, 2018.

The full text of the Guide is available [here](#).

### **New Foreign Investment Law Expands CFIUS Jurisdiction**

On August 13, President Trump signed into law the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). The new law expands the jurisdiction and powers of the Committee on Foreign Investment in the United States (CFIUS) and will have material implications for investments made in US businesses by foreign investors. Certain provisions of the new law went into effect immediately. Others will become effective after implementing regulations are adopted.

The most significant provisions of FIRRMA:

- expand the scope of CFIUS jurisdiction to cover a wider range of transactions, including certain transactions where the foreign investor will not “control” a US business;
- establish that the parties file mandatory “declarations” describing certain transactions before closing;
- extend the time period for CFIUS to review notifications;
- provide some relief from CFIUS to foreign investors who make indirect, non-controlling investments in US businesses through US investment funds; and
- impose a filing fee of up to \$300,000 for notified transactions.

For foreign investors seeking to acquire US businesses or assets, CFIUS is now an increasingly important regulatory hurdle to consider in evaluating US investments and in setting a timeline for closing.

## BROKER-DEALER

### **FINRA Publishes Regulatory Notice Regarding ATS Supervision Obligations**

On August 13, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 18-25 to remind Alternative Trading Systems (ATS) to evaluate their supervisory systems to ensure compliance with their supervision obligations, including, without limitation, with respect to business continuity, recordkeeping, Regulation ATS, Regulation NMS, Regulation SHO and the SEC's Market Access Rule, to the extent applicable. As a general matter, consistent with existing supervision obligations, FINRA expects that an ATS's supervisory system be reasonably designed to identify "red flags," including potentially manipulative or non-bona fide trading that occurs on or through its systems.

The regulatory notice is available [here](#).

## DERIVATIVES

*See "Joint Audit Committee Publishes Regulatory Alert Regarding Residual Interest Withdrawals" in the CFTC section.*

## CFTC

### **Joint Audit Committee Publishes Regulatory Alert Regarding Residual Interest Withdrawals**

On August 14, the Joint Audit Committee (JAC) released Regulatory Alert #18-04. The Alert, which responds to industry requests, clarifies the procedures that a futures commission merchant (FCM) should follow prior to making an intra-day withdrawal from the residual interest amount that the FCM maintains in its segregated, secured 30.7 and cleared swap customer accounts (Accounts) in order to ensure compliance with applicable Commodity Futures Trading Commission regulations.

CFTC regulations require FCMs to maintain in each Account a targeted residual interest amount, which is comprised of the FCM's own funds. This target amount is designed to reasonably ensure that the FCM maintains sufficient funds in each Account to comply with applicable regulations. Specifically, an FCM must ensure that it has enough residual interest in the segregated and secured 30.7 accounts, by 6:00 p.m. EST each business day, to cover the aggregated gross margin deficiencies associated with its customers' remaining (unmet) margin calls from the prior business day. For cleared swaps customers, the FCM must have sufficient residual interest to cover the aggregated gross margin deficiencies of all cleared swaps customers prior to the end-of-day and intra-day payment cycle of initial and/or variation margin.

An FCM may only make withdrawals of the residual interest amount from an Account (other than for the benefit of customers) after completing and submitting to the CFTC and the FCM's designated self-regulatory organization the required segregation calculation for the prior day for each Account. The calculations must be submitted by 12:00 p.m.

Prior to making any withdrawal of residual interest from an Account (not for the benefit of customers), the Alert instructs FCMs to prepare a pro-forma segregation calculation with respect to the relevant account, taking into consideration (1) any withdrawals from the Account; (2) any deposits into the Account; (3) estimated debit/deficits arising from market movements and trading activity; and (4) any significant events or other material impacts that may materially impact residual interest. The pro forma calculation must be retained.

The Alert notes that strong internal controls and procedures pertaining to the withdrawal of residual interest amounts are necessary to ensure the protection of customers and the maintenance of sufficient customer funds at all times.

The Alert is available [here](#).

## DIGITAL ASSETS AND VIRTUAL CURRENCIES

See “ECON Publishes Draft Report on Proposed Regulation on European Crowdfunding Service Providers” in the EU Developments section.

## ANTITRUST

See “New Foreign Investment Law Expands CFIUS Jurisdiction” in the SEC/Corporate section.

## EU DEVELOPMENTS

### **ECON Publishes Draft Report on Proposed Regulation on European Crowdfunding Service Providers**

On August 10, the European Parliament's Economic and Monetary Affairs Committee (ECON) published its draft report on the European Commission's March 2018 proposal for a regulation on European crowdfunding service providers (CSPs).

The draft report contains a draft European Parliament legislative resolution, the text of which sets out suggested amendments to the European Commission's proposal. It also contains an explanatory statement in which the rapporteur, Ashley Fox, summarizes the changes he considers would improve it. In particular, Mr. Fox highlights the following:

- The threshold proposed for crowdfunding offers should be raised from EUR1 million to EUR8 million. While the lower threshold tracks the threshold for the publication of a prospectus in accordance with other European requirements, certain Member States have higher thresholds. Having a low threshold for crowdfunding offers and a high threshold for a prospectus requirement would make crowdfunding a less attractive funding option.
- The experience of national competent authorities (NCAs) on granting authorization and supervising the crowdfunding platforms should be recognized and their role in the European framework should be enhanced. Mr. Fox believes that there is no need for the pan-European regulator, the European Securities and Markets Authority (ESMA), to hold primary supervisory responsibility, which should remain with NCAs within a common supervisory framework.
- As crowdfunding platforms vary in complexity, the proposed Regulation could differentiate between simple platforms, which facilitate the matching of investors and project owners, and more advanced platforms, which also determine the pricing and packaging of offers, by requiring different disclosure requirements for each. In doing so, there would be an opportunity to provide more proportionate regulation based on the varying activities and risks associated with each.
- The regulation is an opportunity to provide regulation for initial coin offerings (ICOs) by imposing standards on ICO issuers and providing protections for consumers.
- Third-country CSPs that wish to offer their services across the European Union should be able to, provided that they are authorized to do so in their own jurisdiction and measures are in place to guarantee that such CSPs adhere to the same rules as CSPs with a European passport.

The next step is for ECON to vote on the draft report before it is considered by the European Parliament in plenary.

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

The European Commission's original proposal 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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\* Click [here](#) to access the *Corporate & Financial Weekly Digest* archive.

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