

SEC/CORPORATE

Final Report Issued by SEC-Government-Business Forum on Small Business Capital Formation

In March 2017, the Government-Business Forum on Small Business Capital Formation of the Securities and Exchange Commission published its final report from the 2016 forum held on November 17, 2016. The forum is held annually “to provide a platform to highlight perceived unnecessary impediments to small business capital formation.” Each year the SEC’s Office of Small Business Policy (a part of the Division of Corporation Finance) invites federal government agencies, the North American Securities Administrators Association (consisting of state securities, or Blue Sky, regulators), and small business and professional organizations to participate in the forum, and each forum puts forth a list of recommendations to improve the capital formation process for small businesses. The 2016 forum’s final report included 15 recommendations, organized based on the forum participants’ perception of importance and urgency, which included the following as the top two:

- maintain the monetary thresholds included in the accredited investor definition, but expand the categories of qualification for accredited investor based on various types of sophistication (including education, experience or training); and
- revise the definition of a smaller reporting company to include an issuer with a public float of less than \$250 million or with annual revenues of less than \$100 million, and extend the period of exemption from Section 404(b) of the Sarbanes-Oxley Act of 2002 (which requires a publicly held company’s auditor to attest to, and report on, management’s assessment of the effectiveness of the company’s internal control over financial reporting) for an additional five years for pre- or low-revenue companies after they cease to be emerging growth companies or smaller reporting companies.

The full Final Report from the 2016 forum can be viewed [here](#).

BROKER-DEALER

FINRA Releases Additional Guidance Related to Social Media

The Financial Industry Regulatory Authority recently released Regulatory Notice 17-18, which contains guidance pertaining to social networking websites and business communications.

FINRA clarified a number of topics, including:

- Member firms are obligated to retain a record of communications that occur via text messaging applications and chat services between its registered representatives and investors in accordance with Rules 17a-3 and 17a-4 promulgated under the Security Exchange Act of 1934, as amended, and FINRA Rule 4511.
- An associated person may, in a personal communication, link to content made available by its firm that does not pertain to the firm’s products or services without implicating FINRA Rule 2210.
- If a firm shares or links to content posted by a third-party website (e.g., an article or a video), the firm has adopted such content and must ensure that the content, when read together with the firm’s original post, complies with the same standards applicable to communications created by the firm. If the shared or posted content contains links to other content, a firm generally does not adopt that other content, although the firm may be deemed to have done so in certain circumstances (e.g., if the firm controls such other content). A

firm may link to a section of a third-party website without adopting the content of such website if the link is continuously available to investors via the firm's site (regardless of whether the linked site contains favorable information about the firm), the linked site could be updated by the third party and investors would still be able to use the link, and the firm does not influence or control the linked content.

- Firms may use native advertising (i.e., advertising that appears alongside and in a manner similar to content posted by the publisher) provided that such advertising complies with FINRA Rule 2210, among other requirements.
- Comments or posts about a firm's brand, product or services that the firm has arranged to be posted must be labelled as advertisements. In addition, if a registered representative likes or shares favorable comments about him or herself that are posted by third parties on an unsolicited basis to such registered representative's business-use social media website, the registered representative would be deemed to have adopted the comments and such comments would be subject to FINRA's communication rules, including the prohibition on misleading or incomplete statements.

The guidance supplements, but is not intended to alter, guidance contained in previous FINRA regulatory notices pertaining to social media.

Regulatory Notice 17-18 is available [here](#).

DERIVATIVES

See *"CFTC Extends Relief to CTAs With Third-Party Recordkeepers"* in the CFTC section.

CFTC

CFTC Extends Relief to CTAs With Third-Party Recordkeepers

The Commodity Futures Trading Commission's Division of Swap Dealer and Intermediary Oversight (DSIO) has issued exemptive relief to commodity trading advisors (CTAs) from the requirement to keep records under CFTC Regulations 4.7(c)(2) and 4.33 at the CTA's main business office. As provided in the exemptive letter, a CTA may use a third-party recordkeeper so long as the CTA files a notice of claim with the DSIO containing the representations set forth in the exemptive letter. The notice of claim must be filed at the time the CTA registers with the CFTC, delegates its recordkeeping obligations, or June 30, 2017, whichever is later.

CFTC Letter No. 17-24 is available [here](#).

In September 2014, DSIO granted similar relief to commodity pool operators, which is available [here](#).

CFTC Adds 71 Names to Registration Deficient List

The Commodity Futures Trading Commission has added 71 names to its Registration Deficient (RED) List, which identifies foreign entities that illegally solicit US residents to trade binary options and forex. The RED List is available on the CFTC's [website](#).

More information on the 71 names identified is available [here](#).

BREXIT/EU DEVELOPMENTS

European Commission to Establish Blockchain Observatory

On April 18, the European Commission (EC) published a pre-information notice for a pilot project mandated by the European Parliament, consisting of a "Blockchain Observatory and Forum" (Project). A pre-information notice is published prior to a tender for services, which in this case is a service contract for setting up the Observatory.

The Project is expected to increase technical expertise and regulatory capacity for blockchain and distributed ledger technology (DLT). DLT has been gaining increased attention in mainstream financial services due to its potential application to a variety of processes, including client identification and settlement.

The stated purpose of the Project is to inform and assist the EC in understanding what role—if any—European public authorities should play in encouraging the development and up take of these technologies, and to formulate related policy recommendations.

A copy of the pre-information notice is available [here](#).

European Commission Publishes Speech on Equivalence and Supervisory Convergence

On April 25, the European Commission (EC) published a speech given by Vice President Valdis Dombrovskis, European Commissioner for Financial Stability, Financial Services and Capital Markets Union (CMU), on the challenges facing EU financial services policy. In the speech, among other things, Mr. Dombrovskis considered the implications for financial services of the UK's departure from the European Union, focusing on the following issues:

- **CMU.** Mr. Dombrovskis provided an update on the state of the CMU Action Plan devised by the EC, stating that 19 of the 33 measures announced in the CMU Action Plan have been delivered. Mr. Dombrovskis went on to state that the departure of the United Kingdom from the European Union will make achieving CMU more difficult, but also more important and urgent; and, in his view, it is only together as a CMU will the remaining Member States have the depth and liquidity for markets to function efficiently after the departure of the EU's largest financial center.
- **Equivalence.** Mr. Dombrovskis stated that while the European Union intends to continue to make active use of equivalence, it is not a right for all third countries, nor is it a blank check whereby the EU will give up control over key systemic risks to its financial stability. Instead, the EU must consider every case on its own merits, based on the principle of proportionality, and decide if and under which conditions equivalence can be granted, including ongoing monitoring of any change in circumstances.
- **Supervisory convergence.** Mr. Dombrovskis warned of the risks of a race to the bottom among national financial supervisors to win over business in the aftermath of the UK's departure from the European Union, at the expense of financial stability. He stated that firms must be subject to consistent supervision and enforcement of common rules in all Member States.

A copy of the speech 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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BREXIT/EU DEVELOPMENTS

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