

## SEC/CORPORATE

**SEC Adopts Amendments To Simplify and Update Certain Disclosure Requirements**

On August 17, the Securities and Exchange Commission announced the adoption of proposed rule amendments (Amendments) to update and simplify certain disclosure requirements that “have become redundant, duplicative, overlapping, outdated or superseded” in light of (1) US Generally Accepted Accounting Principles (GAAP); (2) International Financial Reporting Standards (IFRS); (3) other SEC disclosure requirements; or (4) changes in the information environment, noting that the Amendments are intended to reduce the compliance burden for registrants without “significantly altering the total mix of information available to investors.” The SEC first proposed (and requested comment on) the Amendments in July 2016, as previously reported in the July 22, 2016 edition of the [Corporate & Financial Weekly Digest](#). The Amendments are part of the SEC’s ongoing efforts to review and improve disclosure requirements for the benefit of investors and issuers, as well as implement provisions of the Fixing America’s Surface Transportation (FAST) Act.

The following are some highlights of the Amendments:

- The Amendments eliminate or revise several disclosure requirements under Regulation S-K. For example:
  - **Segments (Item 101(b) of Regulation S-K).** Registrants will no longer be required to disclose segment information in the business section of a prospectus or periodic report. The SEC noted that similar disclosure is required in the notes to the registrants’ financial statements and in the management’s discussion and analysis (or MD&A) section of the relevant filing.
  - **Research and Development (Item 101(c)(1)(xi) of Regulation S-K).** Disclosure of amounts spent on research and development activities for all years presented in a prospectus or periodic report will no longer need to be presented in the business section of the relevant filing, with the SEC noting that GAAP requires similar disclosure in the notes to the financial statements.
  - **Financial Information by Geographic Area (Items 101(d)(1) and 101(d)(2) of Regulation S-K).** Disclosure of financial information by geographic area in the business section of a prospectus or periodic report will no longer be required. The SEC noted that similar disclosure is required under GAAP to be included in the notes to the financial statements and may otherwise be presented in the risk factors section of the relevant filing.
  - **Market Price (Item 201(a)(1) of Regulation S-K).** Due to the widespread availability of market quotes, registrants whose common equity is traded on an established public market will no longer be required to disclose in prospectuses or annual reports the high and low sale prices for shares of their common equity for each quarter within the two most recent fiscal years and any subsequent interim period. However, registrants will be required to disclose the trading symbol for their common equity in prospectuses and annual reports.
  - **Seasonality in Interim Reports (Instruction 5 to Item 303(b) of Regulation S-K).** Registrants will no longer be required to include a discussion of the seasonality of the registrant’s business in MD&A in interim reports. The SEC noted that reasonably similar disclosure is required under GAAP and the remainder of Item 303 of Regulation S-K. Following the effectiveness of the Amendments, registrants

will still be required under Item 303(b) of Regulation S-K to provide MD&A disclosure in interim reports concerning seasonality at the segment level, if material to the registrant's business as a whole, and registrants will continue to be required under Item 101(c)(1)(v) to provide disclosure concerning seasonality in their annual reports.

- **Ratio of Earnings to Fixed Charges (Items 503(d) and 601(b)(12) of Regulation S-K and Item 1010(a)(3) of Regulation M-A).** When registering debt securities or preferred stock, registrants will no longer be required to disclose the historical and pro forma ratios of earnings to fixed charges or, in the case of preferred stock, the historical and pro forma ratios of earnings to fixed charges and preferred stock dividends. Registrants will also no longer be required to provide the corresponding ratio of earnings to fixed charges calculation exhibited in their registration statements and periodic reports. The SEC's final rule adopting release indicates that these requirements were eliminated for a number of reasons, including because other ratios that accomplish similar objectives can be calculated based on information readily available in the financial statements and in light of the sentiment that the provided information is "generally not used by investors or other users of financial statements."
- The Amendments eliminate or revise certain disclosure requirements under Regulation S-X where the SEC noted that such requirements were reasonably similar to disclosure that is required under GAAP. For example, the Amendments eliminate the requirement under Rule 4-08(n) of Regulation S-X and Note 2(b) to Rule 8-01 of Regulation S-X that registrants disclose in the notes to the financial statements accounting policies for certain derivative instruments.
- The Amendments also identify a number of areas in which the SEC's disclosure requirements overlap with, but require incremental information to, GAAP and refer those matters to the Financial Accounting Standards Board (FASB) to consider whether the incremental requirements should be incorporated into GAAP in connection with FASB's standard-setting process, including, among others, SEC disclosure requirements concerning:
  - Major customers (Item 101(c)(1)(vii) of Regulation S-K);
  - The effect of derivatives on a registrant's statement of cash flows;
  - Certain equity compensation plan information; and
  - Income taxes in the notes to a registrant's financial statements.

Any such SEC disclosure requirement that becomes integrated into GAAP may potentially be eliminated in the future as a separate, stand-alone SEC disclosure requirement.

The Amendments will become effective 30 days after publication in the *Federal Register*.

The full text of the SEC's press release announcing the adoption of the Amendments is available [here](#), and the full text of the SEC's final rule adopting release is available [here](#).

### **President Trump Asks SEC To Explore Replacing Quarterly Reporting With Half-Yearly Reporting**

On August 17, President Donald Trump announced via Twitter that, after speaking with "some of the world's top business leaders" concerning ideas to improve business in the US, he has asked the Securities and Exchange Commission to study the current requirement that publicly traded companies report financial results on a quarterly basis and explore the possibility of transitioning to half-yearly reporting. President Trump added that half-yearly reporting would allow publicly traded companies greater flexibility, while also saving them money. SEC Chairman Jay Clayton said in a statement that President Trump's proposal had underscored "a key consideration for American companies and, importantly, American investors and their families—encouraging long-term investment in our country."

The full text of Chairman Clayton's statement is available [here](#).

## BROKER-DEALER

### SEC Amends Disclosure Obligations in Municipal Securities Market

The Securities and Exchange Commission has adopted new disclosure requirements for participants in the municipal securities market. As background, Rule 15c2-12 under the Securities Exchange Act of 1934 requires each broker, dealer and municipal securities dealer that acts as an underwriter in a primary offering of municipal securities with an aggregate principal amount of \$1,000,000 or more (unless subject to an exception or exemption) to reasonably determine that an issuer or an obligated person has agreed to provide to the Municipal Securities Rulemaking Board timely notice of 14 enumerated events. These events include, among other things, a merger, consolidation, acquisition or asset sale involving an obligated person, delinquencies on principal or interest payments, and various other events that may signify financial distress affecting the offering.

The SEC has amended Rule 15c2-12 to require timely notice of two additional events:

- (15) Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and
- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

The amended rule will become effective 60 days after publication in the *Federal Register*. However, the amended rule will affect only offerings that occur on or after the compliance date, which will be 180 days after the rule's publication in the *Federal Register*.

The SEC has provided a fact sheet, which is available [here](#). The amended rule is available [here](#).

### SEC Disapproves Bitcoin Exchange-Traded Products

The Securities and Exchange Commission, acting through authority delegated to the Division of Trading and Markets (Division), disapproved proposals by the New York Stock Exchange Arca Exchange and the Chicago Board Options Exchange (Cboe) BZX Exchange to list bitcoin exchange-traded products (ETPs) for trading. Both exchanges previously filed proposals to list ETPs that invest in bitcoin futures and/or related derivative instruments.

In rejecting the proposals, the Division emphasized that the disapprovals do not “rest on an evaluation of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment.” Rather, the Division noted that the exchanges had not entered into a surveillance-sharing agreement with a “regulated market of significant size.” The bitcoin futures markets at the Chicago Mercantile Exchange and the Cboe Future Exchange were deemed to be insufficient for these purposes due to limited trading volume in the relevant products.

The SEC subsequently issued a stay of the Division's actions to allow it to review the delegated actions. During the review period, the exchanges will not be able to list the bitcoin ETPs.

The Cboe BZX Exchange order is available [here](#). The NYSE Arca Exchange orders are available [here](#) and [here](#). The stay letters are available [here](#), [here](#) and [here](#).

## DERIVATIVES

See “CFTC Adopts Amendments To Simplify Chief Compliance Officer Duties and Annual Report Rules” and “CFTC Proposes To Exempt Some Companies and Institutions From the Clearing Requirement for Certain Swaps” in the CFTC section.

## CFTC

### **CFTC Adopts Amendments To Simplify Chief Compliance Officer Duties and Annual Report Rules**

On August 21, the Commodity Futures Trading Commission adopted amendments to Rule 3.3, which sets out the duties of a chief compliance officer (CCO) of a futures commission merchant, swap dealer and major swap participant (each, a registrant). The amended rules are designed to simplify a CCO's duties under the rule and to harmonize further CFTC and parallel rules previously adopted by the SEC. Among other changes, the amended rules: (1) clarify that a CCO's duty is to administer policies and procedures that are specific to the registrant's business as such; (2) provide that a CCO must take reasonable steps to resolve "material" conflicts of interest arising from the registrant's business as such (rather than resolve any conflicts of interest); (3) require that the CCO take "reasonable steps" to establish and maintain written policies and procedures and remove the requirement that the CCO consult with the board of directors in doing so; and (4) require that the CCO take "reasonable steps" to establish written procedures for the handling of noncompliance issues and remove the requirement that the CCO consult with the board of directors in doing so.

The CFTC also simplified the requirements with respect to the preparation and filing of the CCO Annual Report and adopted revised guidance on the form and content of the Report.

The amended rules will take effect 30 days after publication in the *Federal Register*. The amended rules are available [here](#).

### **CFTC Proposes To Exempt Some Companies and Institutions From the Clearing Requirement for Certain Swaps**

On August 23, the Commodity Futures Trading Commission proposed amendments to Rule 50.5 in order to exempt certain bank holding companies, savings and loan holding companies, and community development financial institutions from the clearing requirement for certain swaps. The proposed amendments would codify no-action relief that the Division of Clearing and Risk (DCR) had granted these institutions in 2016. Consistent with the earlier no-action letters, amended Rule 50.5 would exempt from the clearing requirement a swap entered into to hedge or mitigate commercial risk, if one of the counterparties to the swap is either (1) a bank holding company or savings and loan holding company, each having no more than \$10 billion in consolidated assets, or (2) a community development financial institution transacting in certain types and quantities of swaps.

Comments with respect to the proposed rules are due 60 days after the proposed rules are published in the *Federal Register*. The proposed rules are available [here](#).

### **CFTC Issues Orders of Registration to Two Foreign Boards of Trade**

On August 22, the Commodity Futures Trading Commission announced it had issued Orders of Registration to Osaka Exchange, Inc. (OSE), a Foreign Board of Trade (FBOT) located in Japan, and Nasdaq Oslo ASA (Nasdaq Oslo), an FBOT located in Norway. The Orders authorize OSE and Nasdaq Oslo to provide their identified members or other participants located in the US with direct access to their electronic order entry and trade matching systems.

The OSE Order of Registration is available [here](#).

The Nasdaq Oslo Order of Registration is available [here](#).

## UK DEVELOPMENTS

### **UK BoE, PRA and FCA Publish Paper on Operational Resilience of UK Financial Services Sector**

On July 5, the Bank of England (BoE), UK Prudential Regulatory Authority (PRA) and UK Financial Conduct Authority (FCA) (together, the Supervisory Authorities) published a joint discussion paper on an approach to

improve the operational resilience of firms and financial market infrastructures (FMIs) in the UK financial services sector.

The paper highlights the importance of operational resilience, which relates to the ability of firms, FMIs and the financial services sector to prevent, respond to, recover and learn from operational disruptions. Such disruptions (including cyber-attacks) have the potential to harm consumers and market participants, threaten the viability of firms and FMIs, and cause instability to the financial system.

The paper focuses on the concept of "impact tolerance" in order to encourage firms and FMIs to think differently by including an assumption that operational disruptions will occur, allowing for evaluation of the potential vulnerabilities in business and operating models.

The discussion paper suggests the following approach for potential supervisory expectations and assessment:

- **Preparation:** Firms and FMIs identify and focus on the continuity of their most important business services as a means of prioritizing their own analysis, work and investment in operational resilience. They set impact tolerances for their important business services and are able to demonstrate substitutability or the capability to adapt processes during disruption.
- **Recovery:** Firms and FMIs assume disruptions will occur and develop the means by which they can adapt their business processes and practices in the event of shocks, in order to preserve continuity of service.
- **Communications:** Firms and FMIs have strategies for communicating with their internal and external stakeholders, including the supervisory authorities and consumers. This should include how to handle the situation to minimize the consequences of disruption.
- **Governance:** Firms' and FMIs' boards and senior management are crucial in setting the business and operational strategies and overseeing their execution in order to ensure operational resilience.

The Supervisory Authorities encourage market participants to respond to the questions and other observations raised in the discussion paper. The deadline for responses is October 5.

The discussion paper is available [here](#).

## EU/BREXIT DEVELOPMENTS

### European Commission Adds Pakistan to List of High-Risk Third Countries Under MLD4

On August 22, the European Commission (EC) published a Delegated Regulation it adopted on July 27, amending the list of high-risk third countries set out in Delegated Regulation (EU) 2016/1675, which supplements the Fourth Money Laundering Directive (MLD4).

Article 9(2) of MLD4 gives the EC power to adopt delegated acts identifying high-risk third countries. These are countries identified as presenting strategic deficiencies in their anti-money laundering and counter-terrorist financing regime that pose significant threats to the EU financial system. The amending Delegated Regulation adds Pakistan to the list of high-risk third countries set out in the Annex to Delegated Regulation (EU) 2016/1675. Article 18a of MLD4 requires entities covered by MLD4 to apply enhanced customer due diligence measures when dealing with natural persons or legal entities established in high-risk third countries.

Previous coverage of MLD4 is available in the [January 30, 2015](#) and [February 12, 2016](#) editions of the *Corporate & Financial Weekly Digest*.

The Delegated Regulation is available [here](#).

## UK Government Publishes No-Deal Brexit Technical Notice for Financial Services

On August 23, the UK government published guidance in the form of a technical notice on the effect on banking, insurance and other financial services should the UK leave the EU without agreement (No-Deal Brexit).

The guidance is one of a series of technical notices that aim to provide information to UK businesses and citizens on how to prepare for a No-Deal Brexit. This describes the situation in which the UK and the EU fail to conclude a draft withdrawal agreement by the time of the UK's exit from the EU in March 2019, and would mean that there would be no implementation period, currently intended to run from March 2019 to December 2020 (for further information on the UK government's intentions, please see the July 13 edition of the [Corporate & Financial Weekly Digest](#))

The technical notice emphasizes that the UK government will take unilateral action, where necessary, to ensure as much continuity as possible for firms located both in the UK and the European Economic Area (EEA). The technical notices refer to one such unilateral measure, the temporary permissions regime and temporary recognition regimes (for further information, please see the July 27 edition of the [Corporate & Financial Weekly Digest](#)), which will enable EEA firms that currently passport into the United Kingdom to continue to provide those services to UK customers for up to three years after the UK's exit.

The technical notice states that, at this stage, firms should continue to plan on the basis that an implementation period will be in place between March 2019 and December 2020. It goes on to state that "provision will be made" for any firm that does not wish to continue carrying out regulated activities in the United Kingdom, or is unsuccessful in applying for authorization, to discontinue their UK regulated activities in an orderly manner.

The technical notice discusses the impact of a No-Deal Brexit on a variety of stakeholders, including:

- Individual and business customers, including UK customers dealing with UK- and EEA-based firms, as well as EEA customers dealing with UK-based firms;
- Financial services firms and fund managers, including those who currently rely on portfolio delegation; and
- Financial market infrastructure, including central counterparties, central securities depositories, payment and settlement systems, trading venues, credit rating agencies and trade repositories.

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



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SEC/CORPORATE

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