

SEC/CORPORATE

SEC Chairman Clayton Makes First Public Speech Outlining His Vision for the Commission

On July 12, in his first major address since becoming Chairman of the Securities and Exchange Commission earlier this year, Jay Clayton outlined his vision for the SEC under his Chairmanship based upon eight guiding “principles” and his approach for implementing those principles into practice.

In the speech, delivered at the Economic Club of New York, Chairman Clayton stressed that protection of investors—particularly retail investors (or as Chairman Clayton referred to them, the “Main Street Investor”)—will be a fundamental principle underlying the policies and actions of the SEC under his leadership. To that end, Clayton noted his intention to continue the SEC’s emphasis on its enforcement and examination programs in support of both vulnerable investors as well as sophisticated market participants. Clayton expressed support for the SEC’s long-standing disclosure-centric regulatory approach as the cornerstone of effective investor protection. Although Clayton advised against wholesale changes to the SEC’s regulatory framework, he noted his intention to focus on improving disclosure available to investors and encouraging various methods to educate investors. Clayton stressed that information about potential investments must be “easily accessible and meaningful” so that investors “can evaluate and make investment decisions that support more accurate valuations of securities and a more efficient allocation of capital.” He noted that the SEC has several initiatives underway in this regard, such as the modernization and simplification of the Regulation S-K disclosure rules and enhancing resources to educate investors on how to conduct online background searches on investment professionals.

Clayton also emphasized the importance of supporting capital formation and his desire to increase the attractiveness of the US public capital markets. Clayton noted that the gradual expansion of the scope of required disclosures—by the SEC, lawmakers and other regulators—has contributed to the approximately 50% decline in the total number of US listed public companies over the last two decades. He stated that an increasing number of companies seeking to raise capital have eschewed the public markets in favor of private markets, thereby largely preventing the Main Street Investor from participating in the growth of these companies. Clayton outlined some of the steps being taken by the SEC to enhance the ability of such investors to participate in investment opportunities while supporting the needs of companies to raise capital for growth in an efficient and cost-effective manner. He specifically cited the recent action taken by the SEC to broaden the application of JOBS Act provisions relating to confidential submissions of registration statements to companies that do not qualify as emerging growth companies (as discussed in the [July 7 edition of the Corporate & Financial Weekly Digest](#)). He also encouraged public companies, in connection with their capital raising activities, to consider requesting modifications to their financial reporting requirements where they believe those requirements impose burdensome disclosure obligations that would not provide information that is material to the total mix of information available to investors (pursuant to Rule 3-13 of Regulation S-X), indicating that the SEC staff is placing a high priority on responding timely to those requests.

Clayton also stressed the importance of coordination between and among regulatory agencies to the effective functioning of the markets and the reduction of unnecessary costs to market participants. One area of particular importance noted by Clayton was over-the-counter (OTC) derivatives. Clayton expressed his commitment to working closely with the Commodity Futures Trading Commission on issues relating to OTC derivatives—where a dual regulatory scheme exists—to avoid redundancy and undue complexity.

The complete text of Chairman Clayton’s speech is available [here](#).

BROKER-DEALER

FINRA Releases Additional Guidance With Respect To Enhanced Disclosure Requirements for Corporate and Agency Debt Securities Transactions

The Financial Industry Regulatory Authority, Inc. has released frequently asked questions (FAQs) related to the enhanced confirmation disclosure requirements for certain corporate and agency debt securities transactions pursuant to recently approved amendments to FINRA Rule 2232. The new requirements obligate FINRA members to disclose additional transaction-related information to retail customers for trades in corporate or agency debt securities where the FINRA member executes on offsetting principal trade in the same security on the same day. Required disclosure includes relevant mark-ups and mark-downs and time of execution, as well as the provision of links to security-specific webpages that contain relevant information about the securities on the confirmation. The new requirements go into effect on May 14, 2018. The FAQs provide additional information related to when disclosure requirements under FINRA Rule 2232 are triggered, the scope of securities and transactions to which the disclosure requirements pertain, the content and format of the required disclosures, and the determination of prevailing market price. FINRA expects to update the FAQs periodically.

FINRA's announcement regarding the release of the FAQs is available [here](#). The FAQs is available [here](#).

DERIVATIVES

See "SEC Chairman Clayton Makes First Public Speech Outlining His Vision for the Commission" in the SEC/Corporate section and "FCA Publishes Notification Guide for Firms Wanting To Rely on MiFID II Ancillary Activity Exemption" in the UK Developments section.

UK DEVELOPMENTS

FCA Publishes Notification Guide for Firms Wanting To Rely on MiFID II Ancillary Activity Exemption

On July 19, the UK Financial Conduct Authority (FCA) updated its webpage on the introduction of the commodity derivatives position limits and reporting regime under the revised Markets in Financial Instruments Directive (MiFID II).

The FCA explains that, under the MiFID II Directive, firms or individuals who trade in commodity derivatives on a professional basis may, under Article 2(1)(j) of MiFID II, be able to make use of an exemption from authorization (referred to as the "ancillary activity exemption"). This requires an assessment of their trading activities in accordance with the tests set out in the Commission Delegated Regulation, which establishes the regulatory technical standard (RTS) criteria for when an activity is considered to be ancillary to the main business (commonly referred to as "RTS 20").

Firms or individuals who rely on this exemption are required to notify the FCA annually through the FCA's online system, Connect. The notification form can be found on the Connect landing page. To help firms and individuals with their notifications, the FCA has published a notification guide on how to complete the exemption notification via Connect.

A notification lasts for 12 months from the date it is first made (or from January 3, 2018 for notifications made before that date). Notifications must be renewed before the end of each 12-month period using Connect.

The webpage is available [here](#).

FCA Publishes MiFID II Passporting Forms

On July 17, the UK Financial Conduct Authority (FCA) published a new webpage on passporting under the revised Markets in Financial Instruments Directive (MiFID II). Firms are required to make a passporting application under MiFID II if they intend to be conducting European Economic Area (EEA) activities that have been implemented as new MiFID II activities (such as operating an organized trading facility (OTF)), or if they will become newly authorized under MiFID II and need to passport after January 3, 2018.

The FCA recommends that firms should:

- submit branch passport notifications as soon as possible after the MiFID II passporting gateway opens on July 31; and
- submit services passport notifications by December 2 to help the FCA to assess notifications and send them to relevant EEA regulators before MiFID II goes into effect on January 3, 2018.

The webpage contains links to the forms for the different types of notice:

- branch passport—notice of intention to establish a branch or change branch particulars in another EEA state;
- service passport—notice of intention to provide cross-border services and activities in another EEA state;
- multilateral trading facility (MTF)/OTF—notice of intention to provide arrangements to facilitate the access to an MTF or OTF from another EEA state; and
- tied agent—notice of intention to use a tied agent established in another EEA state or to amend the details of a tied agent established in another EEA state.

The webpage is available [here](#).

EU DEVELOPMENTS

ESMA Consults on Evaluation of Short Selling Regulation

On July 7, the European Securities and Markets Authority (ESMA) published a consultation paper (CP) on the evaluation of certain elements of the Short Selling Regulation (Regulation 236/2012) (SSR).

The consultation is intended to help ESMA provide technical advice to the European Commission (EC) in respect to three main SSR aspects:

- the scope and functioning of the exemption for market making activities;
- the procedure for imposing a short-term ban on short selling where there is a significant fall in price of a financial instrument; and
- the transparency of net short positions, and related reporting and disclosure requirements.

ESMA will evaluate to what extent the SSR has achieved its original objectives in terms of relevance, effectiveness, coherence and efficiency. Aiming to improve the SSR, the technical advice to the EC will propose potential changes to the legal framework.

The CP consultation closes on September 4. ESMA expects to publish its final report by December 31.

The CP 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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UK/EU DEVELOPMENTS

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