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CORPORATE & FINANCIAL
WEEKLY DIGEST

June 21, 2013

CFTC

CFTC Extends No-Action Relief for Certain Transactions and Trading Platforms

On June 17, the Commodity Futures Trading Commission's Division of Market Oversight extended the no-action relief it previously granted to any person or entity offering, entering into, or rendering advice or services with respect to any agreement, contract or transaction in any agricultural, exempt or excluded commodity as set forth in paragraphs (2) through (4) of the CFTC's Second Amendment to the July 14, 2011 Order. This no-action relief allows a facility currently operating as an exempt commercial market, exempt board of trade or under the provisions of now-repealed sections (2)(d)(2), 2(e) or 2(g) of the Commodity Exchange Act to continue to operate under the no-action relief until October 2, 2013. Such a facility will not be able to rely upon the no-action relief after October 2, 2013, if it has not previously applied for temporary registration as a swap execution facility or has not registered as a designated contract market.

More information is available here.

NFA Issues a Notice Regarding Segregated Account Balance Reporting

On June 19, the National Futures Association (NFA) issued a notice to its members regarding the implementation of the second phase of the segregated account balance reporting requirements under Section 4 of the NFA's Financial Requirements. The second phase requires derivatives clearing organizations (DCOs) and clearing futures commission merchants (FCMs) acting as segregated funds depositories for customer funds of another FCM (non-clearing FCM) to report the end-of-day balances in all customer omnibus accounts held by DCOs and clearing FCMs to the non-clearing FCM's designated self-regulatory organization. The NFA's notice provides specific instructions that FCMs must follow to ensure compliance with the new requirements, which will become effective on September 4, 2013. The Chicago Mercantile Exchange is expected to issue a bulletin regarding the reporting of this information by DCOs within the next few weeks.

More information is available here.

CME Group Introduces Self-Match Prevention

On June 17, the Chicago Mercantile Exchange, Chicago Board of Trade, New York Mercantile Exchange and Kansas City Board of Trade issued an advisory notice that provides updated guidance on compliance with the exchanges' rules prohibiting wash trades, as well as information regarding the introduction of self-match prevention functionality on CME Globex. Beginning in June, the exchanges will introduce an optional self-match prevention functionality that, when employed, will automatically block the matching of buy and sell orders that are submitted to CME Globex with the same executing firm ID and the same self-match prevention ID. When the self-matching function is enabled, the trading engine will prevent opposing orders that have been entered with the same self-match prevention ID from matching by cancelling the resting order(s) and processing the incoming order.

Additional information on the self-matching prevention functionality and registration process for obtaining self-match prevention IDs can be found here.

The Market Regulation Advisory Notice is available here.

LITIGATION

US Supreme Court Defers to Arbitrator's Decision to Allow Class Arbitration in Healthcare Action

The US Supreme Court affirmed a ruling by the US Court of Appeals for the Third Circuit upholding an arbitrator's decision that a contract provided for class arbitration. The Court held that where parties consent to arbitrate an issue, neither party can challenge an arbitrator's decision on fact or law if the arbitrator made a good-faith effort to interpret the contract.

Plaintiff-pediatrician is a member of Petitioner Oxford Health Plans' (Oxford) network. He brought suit on behalf of himself and a proposed class of New Jersey doctors, claiming that Oxford had failed to make prompt payments in violation of the parties' contract, as well as state law. Oxford successfully moved to compel arbitration and the parties agreed that the arbitrator should decide whether the contract authorized class arbitration. The arbitrator relied on the text of the contract and concluded that it did.

Oxford moved to vacate the decision as exceeding the arbitrator's powers under § 10(a)(4) of the Federal Arbitration Act (FAA); the district court denied the motion and the Third Circuit affirmed. During the arbitration, the Supreme Court held in *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 684 (2010), that a party may not be compelled to submit to class arbitration unless there is a contractual basis for concluding that the party agreed to do so. Upon Oxford's request, the arbitrator reconsidered his decision and reached the same conclusion, distinguishing *Stolt-Nielsen*. Oxford again moved to vacate under § 10(a)(4); the district court again denied the motion and the Third Circuit affirmed.

The Supreme Court, in an opinion by Justice Kagan, unanimously affirmed the Third Circuit. The Court distinguished the case from *Stolt-Nielsen* on the basis that in *Stolt-Nielsen* the parties had stipulated that they had not reached an agreement on class arbitration. Therefore, in the absence of intent, class arbitration was unavailable. Here, however, the parties agreed that the arbitrator should decide the availability of class arbitration under the contract and Oxford had twice submitted to arbitration on the issue. The Court held that the arbitrator did not exceed his powers under § 10(a)(4), because, unlike the arbitrators in *Stolt-Nielsen*, he had not abandoned his interpretive role.

Oxford Health Plans LLC v. Sutter, No. 12-135, slip op. (US June 10, 2013).

Delaware Court of Chancery Appoints Receiver to Ensure Stockholders' Meeting

The Delaware Court of Chancery recently determined that the appropriate remedy for a corporation's failure to comply with court orders to hold a long overdue stockholders' meeting was to appoint a receiver with authority to ensure that a meeting occurred.

The court had twice previously ordered Defendant Fuqi International Inc. (Fuqi) to hold an annual stockholders' meeting. After Fuqi failed to comply, plaintiff moved to hold Fuqi in contempt of court, seeking monetary sanctions or appointment of a receiver to liquidate the corporation. Fuqi argued that it could not hold a stockholders' meeting without violating Regulations 14A and 14C promulgated by the Securities Exchange Commission because the company had not filed audited financial statements.

The court disagreed with Fuqi's argument, noting Fuqi's failure to explain why it had not filed audited financial statements for several years, and the lack of any indication of when it might do so. The court also determined that the plaintiff's suggested remedy of a significant daily fine would only further damage stockholders, and that the appointment of a receiver to liquidate the corporation would be "draconian."

Instead, the court decided to appoint a temporary receiver consistent with its decision in *Judy v. Preferred Communication Systems, Inc.*, C.A. No. 4662-CC, at 50-54 (Del. Ch. Dec. 4, 2009). The court determined that the receiver should "(1) evaluate whether audited financials sufficient to comply with SEC regulations can be filed; (2) if not, evaluate whether an exemption should be sought from the SEC; and (3) explore any other considerations to a holding of the stockholders' meeting." The court ordered that a stockholders' meeting be held within 90 days, but allowed the receiver to seek modification of the timetable if necessary.

Rich v. Fuqi International Inc., C.A. No. 5653-VCG (Del. Ch. June 12, 2013).

For more information, contact:

FINANCIAL SERVICES

Janet M. Angstadt	312.902.5494	janet.angstadt@kattenlaw.com
Henry Bregstein	212.940.6615	henry.bregstein@kattenlaw.com
Wendy E. Cohen	212.940.3846	wendy.cohen@kattenlaw.com
Guy C. Dempsey Jr.	212.940.8593	guy.dempsey@kattenlaw.com
Kevin M. Foley	312.902.5372	kevin.foley@kattenlaw.com
Jack P. Governale	212.940.8525	jack.governale@kattenlaw.com
Arthur W. Hahn	312.902.5241	arthur.hahn@kattenlaw.com
Carolyn H. Jackson	44.20.7776.7625	carolyn.jackson@kattenlaw.co.uk
Kathleen H. Moriarty	212.940.6304	kathleen.moriarty@jkattenlaw.com
Raymond Mouhadeb	212.940.6762	raymond.mouhadeb@kattenlaw.com
Marilyn Selby Okoshi	212.940.8512	marilyn.okoshi@kattenlaw.com
Ross Pazzol	312.902.5554	ross.pazzol@kattenlaw.com
Kenneth M. Rosenzweig	312.902.5381	kenneth.rosenzweig@kattenlaw.com
Fred M. Santo	212.940.8720	fred.santo@kattenlaw.com
Christopher T. Shannon	312.902.5322	chris.shannon@kattenlaw.com
Peter J. Shea	212.940.6447	peter.shea@kattenlaw.com
James Van De Graaff	312.902.5227	james.vandegraaff@kattenlaw.com
Robert Weiss	212.940.8584	robert.weiss@kattenlaw.com
Gregory E. Xethalis	212.940.8587	gregory.xethalis@kattenlaw.com
Lance A. Zinman	312.902.5212	lance.zinman@kattenlaw.com
Krassimira Zourkova	312.902.5334	krassimira.zourkova@kattenlaw.com

LITIGATION

Jason F. Clouser	212.940.6309	jason.clouser@kattenlaw.com
Michael M. Rosensaft	212.940.6631	michael.rosensaft@kattenlaw.com

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