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SEC/CORPORATE

ISS Updating QuickScore Methodology and Opening Data Validation Period

On February 18, 2014, Institutional Shareholder Services (ISS), a leading proxy advisory firm, will launch the second generation of its QuickScore governance risk scoring system and analytical tool for Russell 3000 companies. Version 2.0 will include seven new, as yet unidentified, governance factors as well as modified weightings, all to be announced on January 27, 2014. In addition, the new version will monitor certain regulatory filings and other disclosures on an ongoing basis for governance-related information and automatically update QuickScores. According to ISS, the updated version will “better align with company performance quantitative modeling results and ISS voting policy.” Version 2.0 will continue to score companies on an overall basis and on four separate “pillars”: board, compensation/remuneration, shareholder rights and audit.

Prior to the launch, companies will have access to a verification site to preview and verify the data used to calculate their scores from 9:00 a.m. EST on Monday, January 27, 2014 through 8:00 p.m. EST on Friday, February 7, 2014. Companies will also have the opportunity to request changes. ISS has indicated that it will review and respond to all such requests. After the February 18, 2014 launch, the data verification site will remain available for updating and re-verifying QuickScore data throughout the year.

CFTC

First MAT Determinations Are Deemed Certified

In October 2013, Javelin SEF, LLC (Javelin) and trueEX, LLC (trueEX) self-certified their determinations that certain interest rate swaps are made available to trade (MAT) for purposes of the Commodity Exchange Act (CEA) and Commodity Futures Trading Commission regulations. The CFTC’s Division of Market Oversight has announced that Javelin’s and trueEX’s MAT determinations are deemed certified, meaning that all swaps covered by the determinations will be subject to the trade execution requirement in CEA Section 2(h)(8) as of February 15, 2014 (for swaps covered by Javelin’s MAT filing) or February 21, 2014 (for all other swaps covered by trueEX’s MAT filing).

Counterparties must execute swaps that are subject to the MAT determinations on or pursuant to the rules of a swap execution facility (SEF) or designated contract market. A swap subject to the MAT determinations cannot be executed over the counter unless one or both of the parties invokes a valid exemption from clearing for the swap, which also operates as an exemption from the trade execution requirement. MAT swaps executed on or pursuant to the rules of an SEF are “required transactions,” so they must be executed through either the SEF’s order book or request-for-quote system unless the swap qualifies as a block trade.

Javelin’s MAT determination covers fixed-to-floating interest rate swaps referencing US dollar London Interbank Offered Rate (USD LIBOR) or the Euro Interbank Offered Rate (EURIBOR). USD LIBOR swaps have spot and IMM start dates with a par fixed rate and tenors of 2, 3, 5, 7, 10, 12, 15, 20 and 30 years. EURIBOR swaps have spot start dates with a par fixed rate and tenors of 2, 3, 5, 7, 10, 15, 20 and 30 years.

trueEX's MAT determination additionally covers fixed-to-floating interest rate swaps referencing USD LIBOR with IMM start dates, a "standard coupon" rate (meaning a fixed coupon rate consistent with the ISDA Market Agreed Coupon contract) and tenors of 1, 2, 3, 5, 7, 10, 15, 20 and 30 years.

Javelin's MAT filing, which was amended on November 29, is available [here](#). trueEX's MAT filing is available [here](#).

The CFTC's press releases are available [here](#) and [here](#).

CFTC Interdivisional Working Group to Review Swap Reporting

The Commodity Futures Trading Commission has announced the formation of an interdivisional staff working group, led by the director of the Division of Market Oversight. The working group will review swap data reporting and recordkeeping requirements in Part 45 and related CFTC regulations and publish a request for public comment on such regulations by March 15, 2014. The working group will review the public comments and make recommendations to the CFTC in June 2014.

More information is available [here](#).

CFTC Reopens Comment Period for Concept Release on Automated Trading

The Commodity Futures Trading Commission has reopened the comment period for its concept release on risk controls and system safeguards for automated trading environments. The concept release, which was published in the *Federal Register* on September 12, 2013 (available [here](#)), requests comment on a series of questions relating to automated trading systems. A short summary of the concept release is available in the [Corporate and Financial Weekly Digest](#) edition of September 13, 2013.

The new comment period extends through February 14, 2014. The CFTC's announcement to reopen the comment period is available [here](#).

NFA Requests Comment on CPO/CTA Requirements

National Futures Association (NFA) has requested comments from its commodity pool operator (CPO) and commodity trading advisor (CTA) members on whether to adopt capital requirements to ensure that CPOs and CTAs have adequate funds to operate as a going concern. NFA has also requested comments on other customer protection and related measures, including the following: (i) whether an independent third party should review and authorize a CPO's disbursement of pool funds; (ii) whether an independent third party should prepare or verify a pool's monthly or quarterly account statements and performance results; (iii) whether depositories with accounts holding customer funds for a pool should report the balances in those accounts to NFA on a daily basis; and (iv) whether inactive CPO/CTA members should remain NFA members.

NFA's notice to members is available [here](#).

LITIGATION

SEC Obtains \$5.6 Million Judgment Against Stockbroker for Insider Trading of Burger King Stock

Earlier this month, the US District Court for the Southern District of New York entered a \$5.6 million judgment in favor of the Securities and Exchange Commission against Waldyr Da Silva Prado Neto (Prado), a Brazilian citizen formerly employed by Wells Fargo Advisors, LLC, for insider trading. The SEC alleged that in 2010, a customer informed Prado that private equity firm 3G Capital Partners Ltd. planned to acquire Burger King. According to the complaint, Prado then used the material nonpublic information to illegally trade Burger King securities, reaping \$175,000 in profits, and he tipped at least four customers to do the same. The SEC alleged violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 14(e) of the Exchange Act and Rule 14e-3. The court granted the SEC's request for a permanent injunction and entered an order requiring Prado to pay \$5,195,500 in civil monetary penalties and disgorge \$397,111 in illicit profits.

Securities and Exchange Commission v. Waldyr Da Silva Prado Neto, No. 12-CIV-7094 (S.D.N.Y. Jan. 7, 2014).

Delaware Court Rules in Favor of Former LLC Member in LLC's Competition Claim

Last week, the Delaware Court of Chancery ruled that because a limited liability company (LLC) agreement did not contain a provision precluding or restricting competition, *i.e.*, a non-compete provision, a former member did not violate the agreement by opening a competing business nearby. In 2009, Louis Bascio (Bascio) formed Touch of Italy Salumeria & Pasticceria, LLC, an Italian grocery store, with several other members. They entered into an LLC agreement and, subsequently, an amended LLC agreement, which lacked any restrictions regarding competition. In late 2012, after the business had become successful and profitable, Bascio informed his fellow members that he planned to withdraw from the LLC. According to the complaint, Bascio assured his fellow members that he would not open a competing business nearby. However, after his departure from the LLC, Bascio opened a competing Italian grocery store down the street. The LLC and its members brought nine claims against Bascio, including breach of contract, breach of fiduciary duty, fraud and negligent misrepresentation, and they sought monetary damages and injunctive relief. The court dismissed all nine claims, holding that the LLC provided each member with a right of withdrawal and contained no provisions restricting Bascio from competition. Plaintiffs' claims for fraud and negligent misrepresentation failed because plaintiffs failed to show detrimental reliance on Bascio's supposedly actionable misrepresentation.

Touch of Italy Salumeria and Pasticceria, LLC v. Bascio, C.A. No. 8602-VCG (Del. Ch. Jan. 13, 2014).

BANKING

FFIEC Revises Items to Be Reported on Call Reports; Items Include Remittances and Websites Soliciting Deposits

On January 24, the Federal Financial Institutions Examination Council (FFIEC) announced that it has approved several revisions to the Consolidated Reports of Condition and Income (Call Report) for implementation as of March 31, 2014, and March 31, 2015. The FFIEC also has approved revisions to the FFIEC 101 Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework that will take effect March 31, 2014.

The changes apply to all Federal Deposit Insured Corporation-insured banks and savings associations, including community institutions, although certain Call Report revisions are not applicable to institutions under \$1 billion in total assets, and other Call Report changes will not be applicable to certain institutions of this size because of the subject matter of the new data items. The FFIEC 101 report is generally not applicable to institutions with under \$1 billion in total assets.

Institutions should review FIL-3-2014, dated January 22, for further information about the regulatory reporting revisions for March 2014 and March 2015. FIL-3-2014 can be accessed [here](#).

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