Katten
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SEC/CORPORATE

Register for Our 2018 Proxy Season Update Webinar

On Thursday, December 14 at 12:00 p.m. (CT), please join Katten Muchin Rosenman LLP, Ernst & Young LLP and Strategic Governance Advisors for a webinar discussion of key developments and trends impacting public companies in the 2018 annual reporting and proxy season.

Further details are available here; click here to register.

FASB Ceases Work on Proposal To Amend Definition of "Materiality" for US GAAP

As previously discussed in the September 1edition of *Corporate & Financial Weekly Digest*, the Financial Accounting Standards Board (FASB) had issued Proposed Accounting Standards Update (ASU) No. 2015-310, in which the FASB had proposed to remove its definition of materiality established in Concepts Statement No. (CON) 8, Conceptual Framework for Financial Reporting, in favor of relying on the US federal courts' definition of materiality. The proposed change was intended to allow businesses to use discretion to determine whether certain information should be considered "material" and included in a financial statement footnote. After two years of criticism of the proposal, including from investors and investor groups, on November 8, the FASB ended its work with respect to proposed ASU No. 2015-310 and decided to revert back to the definition of materiality that had been applied under CON 2, Qualitative Characteristics of Accounting Information, which was in use until 2010.

SEC Division of Corporation Finance Issues New C&DI on Safeguards for Electronic Delivery of Information under Rule 701

On November 6, the Division of Corporation Finance (Division) of the Securities and Exchange Commission issued Compliance and Disclosure Interpretation (C&DI) 271.25 to address permissible safeguards for protection of Rule 701(e) electronic disclosures. Rule 701 provides an exemption from registration under the Securities Act of 1933 for offers and sales of securities under written compensatory benefit plans and contracts to an issuer's employees, directors, consultants and advisors. Rule 701(e) requires an issuer relying on the Rule 701 exemption to deliver to each investor a copy of the applicable benefit plan or contract. In addition, if the issuer sells securities with a value in excess of $5 million during any consecutive 12-month period, then, a reasonable period of time before the date of sale, the issuer must deliver additional information listed in Rule 701(e) (including financial statements and information about the risks associated with the investment), which requirement may be satisfied by an issuer delivering such information electronically.

As the disclosure required under Rule 701(e) is likely to include sensitive information, the Division acknowledged in C&DI 271.25 that issuers that deliver such information electronically are permitted to use "[s]tandard electronic safeguards, such as user-specific login requirements and related measures . . .." The Division noted, however, that, if an issuer uses a particular "electronic disclosure medium" to deliver such information, either alone or in addition to other safeguards, the safeguards should not be so burdensome that intended recipients cannot effectively access the required disclosures.

The complete text of the new C&DI is available here.

ISS and Glass Lewis Release 2018 Proxy Voting Guidelines

ISS Releases 2018 Proxy Voting Guideline Updates

On November 16, the Institutional Shareholder Services (ISS) published its 2017 Proxy Voting Guideline Updates, which will be effective for shareholder meetings held on or after February 1, 2018. The US 2018 updates cover numerous policies, and significant changes are summarized below:

Poison Pills

ISS will recommend voting against all board nominees of companies that maintain long-term shareholder rights plans (greater than one year) which have not been approved by shareholders. Under this revised voting policy, ISS will no longer consider a company's commitment to put a long-term shareholder rights plan to a shareholder vote a mitigating factor for adverse vote recommendations. Short-term shareholder rights plans will continue to be assessed on a case-by-case basis, with ISS focusing primarily on the rationale for adoption.

Non-Employee Director Compensation

ISS will generally recommend voting against members of board committees responsible for approving or implementing non-employee director compensation, if there has been a pattern (for two or more years) of excessive non-employee director pay without a compelling rationale or other mitigating factors.

Gender Diversity on Board

ISS will highlight boards that lack gender diversity; however it will not recommend adverse votes based on the lack of gender diversity.

Gender Pay Gaps

Introducing a new policy, ISS will make voting recommendations on a case-by-case basis with respect to requests for reports on a company's pay data by gender, or for reports on a company's policies and goals to reduce any gender pay gap. In making any such recommendation, ISS will evaluate (1) the company's current policies and disclosure related to its diversity and inclusion practices and its compensation philosophy and fair and equitable compensation practices, (2) whether the company has been the subject of recent controversy, litigation or regulatory action related to gender pay gap issues, and (3) whether the company's reporting regarding gender pay gap policies or initiatives is lagging its peers.

Pay for Performance

In addition to existing tests currently in place, ISS will now consider the rankings of CEO total pay and company financial performance within a peer group measured over a three-year period.

The full text of the ISS 2018 Americas Proxy Voting Guidelines Updates is available here.

Glass Lewis Releases 2018 Proxy Paper Guidelines

On November 22, Glass Lewis released its 2018 US Proxy Paper Guidelines. The US 2018 updates cover numerous policies, and significant changes are summarized below:

Board Gender Diversity

Glass Lewis will not make voting recommendations solely on the basis of the diversity of the board, but rather will consider diversity of the board as one of many considerations when evaluating a company's oversight structure. However, Glass Lewis clarified that, beginning in 2019, they will generally recommend voting against the nominating committee chair (and, depending on other factors, other members of the nominating committee) of a board that has no female members, but notes that they may refrain from such adverse recommendations if, for example, the board has provided a "sufficient rationale" for not having any female board members.

Dual-Class Share Structures

In general, Glass Lewis views dual-class voting structures as not being in the best interest of common shareholders, and that one vote per share generally ensures that those who hold a significant amount of minority shares are able to weigh in on issues set forth by the board. Accordingly, Glass Lewis will generally recommend in favor of recapitalization proposals that would eliminate a dual-class structure, and generally recommend against proposals to adopt a new class of common stock. In addition, when evaluating corporate governance following an IPO or spinoff within the past year, Glass Lewis will now include the presence of dual-class share structures as an additional factor in determining whether shareholder rights are being severely restricted indefinitely.

Board Responsiveness

Glass Lewis clarified its view that. in some circumstances where 20 percent or more of shareholders dissent from management's recommendation on a proposal, particularly in the case of a compensation or director election proposal, the board should be responsive to some level in addressing shareholder concerns. For companies where voting control is held through a dual-class structure with disproportionate voting and economic rights, Glass Lewis will examine the level of approval or disapproval attributed to unaffiliated shareholders when determining whether board responsiveness is warranted.

Virtual Shareholder Meetings

Noting the relatively small, but increasing, number of companies holding shareholder meetings by virtual means only, in 2018, Glass Lewis will not make voting recommendations solely on the basis of a company holding virtual shareholder meetings. However, where a company chooses to hold a virtual-only shareholder meeting, Glass Lewis will look for robust disclosure in a company's proxy statement assuring shareholders they will be afforded the same rights and opportunities to participate as they would in an in-person meeting. Beginning in 2019, Glass Lewis will generally recommend voting against members of a governance committee of a board of a company planning to hold virtual-only meetings that does not provide such robust disclosure in their proxy statements.

The full text of the Glass Lewis 2018 Proxy Season Guidelines can be found here.

CEO Pay Ratio

Neither ISS nor Glass Lewis included CEO pay ratio as a factor for consideration with respect to voting recommendations in its updated guidelines.

BROKER-DEALER

FINRA Releases Guidance In Light of FinCEN Customer Due Diligence Requirements

On November 21, the Financial Industry Regulatory Authority issued Regulatory Notice 17-40, which provides member firms guidance as it relates to compliance with Rule 3310 in light of the Financial Crimes Enforcement Network's (FinCEN) adoption of Customer Due Diligence Requirements (CDD Rule).

The CDD Rule identifies four components of customer due diligence: (1) customer identification and verification, (2) beneficial ownership identification and verification, (3) understanding the nature and purpose of customer relationships, and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information. Through the second component, the CDD Rule adds a new requirement to identify and verify the beneficial owners of all legal entity customers at the time a new account is opened. The third and fourth components codify requirements that covered firms are already subject to as a result of their suspicious activity reporting requirements and require firms to adopt anti-money laundering programs that include risk-based procedures for conducting ongoing customer due diligence. This ongoing due diligence requires that member firms understand the nature and purpose of customer relationships for the purpose of developing customer risk profiles. In addition, if, in the course of normal monitoring for suspicious activity, the member firm detects information relevant to a customer's risk profile, it must update its customer information.

The CDD Rule enhances anti-money laundering requirements already applicable to member firms pursuant to the Bank Secrecy Act and FINRA Rule 3310. The CDD Rule does not change the requirements of Rule 3310, with which member firms must still comply.

Member firms must comply with the CDD Rule by May 11, 2018. The Regulatory Notice is available here.

DERIVATIVES

See "CFTC Issues No-Action Letter Extending Swap Reporting Relief for Enumerated Jurisdictions," "CFTC Extends No-Action Relief for Shanghai Clearing House," and "CFTC Provides Additional Time for Annual SEF Reports," in the CFTC section.

CFTC

CFTC Issues No-Action Letter Extending Swap Reporting Relief for Enumerated Jurisdictions

On November 30, the Commodity Futures Trading Commission issued No-Action Letter (NAL) 17-64, which extends, for an additional three years, swap reporting relief originally granted to most swap dealers established under the laws of Australia, Canada, the European Union, Japan or Switzerland (collectively, the "Enumerated Jurisdictions") by NAL 13-75 (December 20, 2013). The relief continues to be unavailable to a non-US swap dealer in one of the Enumerated Jurisdictions that is affiliated with a US (1) swap dealer, (2) major swap participant, (3) bank, (4) bank holding company or (5) financial holding company.

The purpose of the original relief was to allow time for the CFTC and regulators from the Enumerated Jurisdictions to reach agreement on comparability determinations that would mitigate the potential burdens arising from the position taken by the CFTC in its Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations (78 Fed. Reg. 45292, July 26, 2013) that non-US swap dealers are obligated to report swaps with non-US persons to a US swap data repository (SDR), unless they are subject to a comparable reporting regime. As noted in NAL 17-64 and previous extension letters, such comparability determinations concerning swap reporting regimes have not yet been made due in large part to data privacy issues that have prevented the grant to foreign regulators of direct access to swaps data.

The relief being extended, which was set to expire on December 1, now expires with respect to any non-US swap dealer on the earlier of (a) 30 days following the issuance of a comparability determination by the CFTC with respect to the swap reporting rules for the jurisdiction in which the non-U.S. swap dealer is established, or (b) December 1, 2020. The letter contains the explicit advance warning that the CFTC "has no current intention to provide any further extensions after the expiration of the no-action relief provided herein." This self-imposed limit can be interpreted as a message being sent by the CFTC to its regulatory counterparts in the Enumerated Jurisdictions that three years is a reasonable time period for reaching agreement on all comparability issues.

As before, the relief does not have any effect on the reporting obligations of a US person registered as a swap dealer executing a swap with a non-US counterparty or on the reporting obligations of a non-US person swap dealer established in a country other than one of the Enumerated Jurisdictions.

The CFTC press release concerning NAL 17-64 is available here.

NAL 17-64 is available here.

CFTC Extends No-Action Relief for Shanghai Clearing House

The Commodity Futures Trading Commission's Division of Clearing and Risk (DCR) has extended no-action relief previously granted to the Shanghai Clearing House in May.

The no-action relief provides that DCR will not recommend the CFTC take enforcement action against the Shanghai Clearing House for failure to register as a derivatives clearing organization (DCO) in light of Shanghai Clearing House's pending petition for an exemption from registration as a DCO. Pursuant to the no-action relief, Shanghai Clearing House is permitted to clear certain swaps subject to mandatory clearing in the People's Republic of China on behalf of the proprietary accounts of US clearing members.

The relief was set to expire on November 30, but DCR has extended the expiry date to February 28, 2018, or the date on which the CFTC formally exempts Shanghai Clearing House from registration as DCO.

CFTC Letter No. 17-62 is available here.

CFTC Provides Additional Time for Annual SEF Reports

The Commodity Futures Trading Commission's Division of Market Oversight (DMO) has issued relief to allow swap execution facilities (SEFs) an additional 30 days to prepare and submit their annual compliance reports and financial reports for the fourth quarter.

As background, CFTC regulations require each SEF to file a financial report within 60 days after the end of the SEF's fourth fiscal quarter. Likewise, CFTC regulations require each SEF to file an annual compliance report within 60 days after the end of the SEF's fiscal year concurrently with the filing of the SEF's fourth fiscal quarter financial report.

DMO has extended the 60-day deadline to 90 days for both reports. This relief will expire on November 30, 2020.

CFTC Letter 17-61 is available here.

NFA Issues Investor Advisory on Futures on Virtual Currencies

Concurrent with the Commodity Futures Trading Commission's statement regarding the expected launch of futures on virtual currencies by the Chicago Mercantile Exchange, the Chicago Board Options Exchange Futures Exchange and the Cantor Exchange, the National Futures Association (NFA) has issued an advisory cautioning investors that trading these products "involves a high level of risk and may not be suitable for all investors." Among other risks, NFA notes that virtual currencies "experience significant price volatility, and fluctuations in the underlying virtual currency's value between the time you place a trade for a virtual currency futures contract and the time you attempt to liquidate it will affect the value of your futures contract and the potential profit and losses related to it." The advisory also encourages investors to conduct due diligence on any individuals and firms soliciting for an investment in futures on virtual currencies and be aware of the risk of Ponzi scheme operators and fraudsters seeking to capitalize on the current attention focused on virtual currencies.

In its statement, the CFTC noted that virtual currencies are unlike any commodity the agency has dealt with in the past. As a result, the CFTC has held "extensive discussions" with the three exchanges, as a result of which, "they have agreed to significant enhancements to protect customers and maintain orderly markets." In this regard, CFTC Chairman Giancarlo emphasized that the agency expects the futures exchanges, through information-sharing agreements, will monitor the trading activity on the relevant cash platforms for potential impacts on the futures contracts' price discovery process, including potential market manipulation and market dislocations due to flash rallies and crashes and trading outages. For its part, the CFTC will "engage in a variety of risk-monitoring activities," including monitoring and analyzing the size and development of the market, positions and changes in positions over time, open interest, initial margin requirements, and variation margin payments, as well as stress testing positions.

NFA's Investor Advisory is available here. The CFTC's statement is available here.

NFA Proposes To Amend Recordkeeping Requirements for Members Subject to Enhanced Supervisory Requirements

The National Futures Association (NFA) has proposed amendments to its interpretive notice entitled "Compliance Rule 2-9: Enhanced Supervisory Requirements." Specifically, the proposed amendments would require all members subject to enhanced supervisory requirements to maintain a record of all electronic written messages, including emails, text messages, instant messages, chat room discussions and other social media communications. Members subject to enhanced supervisory requirements must prepare a catalog of electronic written communications and require associated persons to maintain a log of those written electronic communications.

The proposed amendments are intended to parallel the current recordkeeping requirements relating to telephone sales solicitations by members subject to enhanced supervisory requirements.

The proposed amendments will be effective as of December 7, unless the CFTC determines to review the proposals for approval.

The proposed amendments are available here.

UK/BREXIT DEVELOPMENTS

FCA and BaFIN Publish Position Limits for Commodity Derivative Contracts

Under the revised Markets in Financial Instruments Directive (MiFID II), limits are required to be established on the size of a net position a person can hold (at all times) in commodity derivatives traded on European Union/European Economic Area trading venues and economically equivalent over-the-counter contracts.

On November 28, the UK Financial Conduct Authority (FCA) updated its webpage in connection with position limits for commodity derivative contracts. The FCA webpage lists the commodity derivative contracts that the FCA has currently identified as trading on a UK trading venue and for which, beginning January 3, 2018, there will be a bespoke position limit set.

On November 29, the German regulator (Bundesanstalt für Finanzdienstleistungsaufsicht or "BaFin"), also published a webpage on indicative position limits for commodity derivative contracts traded on German venues.

Each of the lists of the FCA and BaFin will be subject to changes and updates from time to time, and firms are encouraged to check them regularly.

The FCA webpage and BaFin webpage are available here and here (in German).

Barnier Discusses Meaning of Brexit for Financial Services

On November 20, the European Commission published a speech on the future of the European Union given by Michel Barnier, the EU's chief Brexit negotiator, at the Centre for European Reform.

In the Speech, Mr. Barnier focused on Brexit and identified three keys to the European Union building a strong partnership with the United Kingdom:

- agreement on the terms for the UK's orderly withdrawal from the European Union, especially in relation to citizens' rights, financial settlement and the Irish border;
- maintenance of the integrity of the EU's Single Market; and
- a level playing field between the European Union and the United Kingdom.

On the second bullet point, Mr. Barnier referred specifically to the financial services sector and commented on the contradiction of beliefs in the United Kingdom between those who believe the United Kingdom will "set itself free" of EU bureaucracy and those who claim it will still be possible to participate in the EU's Single Market. Mr. Barnier went on to state that, in his words, the "legal reality" is that ending the free movement of people, one of the four indivisible freedoms of the European Union, means that the United Kingdom will lose the benefits of the Single Market. Furthermore, in relation to financial services, Mr. Barnier definitively stated that "Brexit means Brexit, everywhere," and that the legal consequence of Brexit is that UK financial service providers will lose their ability to easily provide services cross-border into the EU, known as the EU passport.

However, Mr. Barnier went on to say that the European Union will "have the possibility to judge some UK rules as equivalent," based on a proportional and risk-based approach, and in those areas where EU legislation foresees equivalence.

The speech is available here.

EU DEVELOPMENTS

ESMA Publishes Video and Slides on LEI Requirements Under MiFID II

On November 20, the European Securities and Markets Authority (ESMA) published a video and accompanying presentation slides that it used for a webinar on the legal entity identifier (LEI) requirements under the revised Markets in Financial Instruments Directive (MiFID II) and the accompanying Markets in Financial Instruments Regulation (MiFIR).
The webinar covered:

- scope and deadlines;
- LEI requirements; and
- reporting scenarios.

ESMA previously published a briefing on the importance of LEIs to enable firms to comply with their obligations under MiFID II and MiFIR (for more information, please see the *Corporate Financial Weekly Digest* of October 13).

The webinar materials are available here and here.

ESMA Updates Q&A on the Implementation of EMIR

On November 20, the European Securities and Markets Authority (ESMA) published an updated version of its Questions & Answers (Q&As) on European Market Infrastructure Regulation (EMIR) implementation. The Q&As aim to promote common supervisory approaches and practices in the application of EMIR.

Part III of the Q&As concerns trade repositories and has been amended as follows:

- A new Trade Repository (TR) Q&A 24(b) has been added regarding buy/sell indicators. ESMA states that, in the case of foreign exchange swaps and cross-currency swaps, where multiple exchanges of currencies take place, the relevant point in time for the determination of the buyer and seller should be the far leg, which is closer to the maturity date.
- TR Q&A 40 has been modified, which concerns updating legal entity identifiers (LEIs) as a result of mergers or acquisitions. This answer has been modified to clarify that, to the extent possible, the reporting entity should provide the required information in advance so that the change is not done retrospectively, but by the date on which it takes place.
- TR Q&A 44 has also been modified, concerning the validation of reports relating to old outstanding trades. This answer now clarifies that counterparties will provide all applicable data elements for a type of action, which is new when sending “Modification” or “Correction” reports for the first time upon the applicate date of the revised technical standards.

The updated version of the Q&As is available here.

Deadline Set for Banks To Meet New Payment Standards in Europe

The Payment Services Directive (PSD2) becomes effective in January 2018, and its regulatory technical standards (RTS) on strong customer authentication and common and secure open standards of communications are scheduled to be published in September 2019 in the *Official Journal of the European Union*. But the requirements of the RTS will now be considered actionable by European banks and service providers 18 months after the RTS are published.

Under PSD2, simply providing a password or details shown on a credit card, will no longer suffice when making a payment in most situations. In certain cases, a code that is only valid for a given transaction will be needed, together with two independent elements—which could be a physical item, for example a mobile phone, as well as a password or a biometric feature, such as fingerprints—before making a payment.

Payment service providers may be exempted if they have developed ways of assessing the risks of transactions and can identify fraudulent transactions. Exemptions may also apply to contactless payments, transactions for small amounts and certain types of payments such as urban transport fares or parking fees.

The practice of third-party access without identification to payment account information, known as "screen scraping," will also be banned under the new rules and replaced by new interfaces to be provided by banks. Payment service providers, including banks, will have to define transparent key performance indicators and service-level targets for such interfaces, and they will be expected to be "at least as stringent as those for the interface used for their payment service users." The European Commission (EC) has stated that all communication interfaces, whether dedicated or not, will be subject to a "prototype" test for three months and a "live" test in market conditions for a further three months.

The EC is promoting the establishment of a market group—composed of representatives from banks, payment initiation and account information service providers—and payment service users to review the quality of bank interfaces for customer data sharing. Banks that fail to satisfy those requirements will have to provide contingency measures for third parties to gain unrestricted rights to "screen scrape" the bank account as provided for in PSD2. This compromise amendment has been welcomed by start-up campaigning groups.

The European Parliament and the Council now have three months to scrutinize the RTS before they become applicable under PSD2.

The RTS are available here and the annex is available here.

MiFIR and EMIR Indirect Clearing Regulatory Technical Standards Now Published

On November 21, the following Commission Delegated Regulations (Delegated Regulations) were published in the *Official Journal of the European Union* (*OJEU*):

- Delegated Regulation ((EU) 2017/2154) (MiFIR IC RTS), which supplements the Markets in Financial Instruments Regulation (Regulation 600/2014) (MiFIR) with regard to regulatory technical standards (RTS) on indirect clearing arrangements); and

- Delegated Regulation ((EU) 2017/2155) (EMIR IC RTS), amending Delegated Regulation (EU) 149/2013 with regard to RTS on indirect clearing arrangements, to reflect a mandate under Article 4(4) of the European Market Infrastructure Regulation (Regulation 648/2012) (EMIR).

The European Commission (EC) adopted the Delegated Regulations on September 22. They will become effective December 11, 20 days after their publication in the *OJEU*, and will apply from January 3, 2018, which is when the Markets in Financial Instruments Directive II (Directive 2014/65) (MiFID II), along with MiFIR, will repeal and recast the Markets in Financial Instruments Directive (Directive 2004/39/EC).

The aim of the Delegated Regulations is to:

- simplify and clarify the requirements relating to managing the default of a client providing indirect clearing services;
- adapt account structures to rationalize the offering of indirect clearing services;
- allow indirect clearing services to be provided in chains going beyond the client of a direct client, so long as appropriate and equivalent protection is ensured throughout the chain; and
- set out homogenous requirements for indirect clearing arrangements relating to both over-the-counter and exchange-traded derivatives.

The MiFIR IC RTS are available here and the EMIR IC RTS are available here.

ESAs Announce Urgent Review of Variation Margin Rules Applicable to Physically Settled FX Beginning January 3, 2018

As previously noted in this publication, on January 3, 2018, physically settled foreign exchange forward transactions (FX Forwards) are scheduled to become subject to the variation margin requirements set out in Commission Delegated Regulation (EU) 2016/2251 of October 4, 2016 (EU Margin Regulation) that apply generally to OTC derivatives.

On November 24, the European Supervisory Authorities (ESAs), however, threw the scope of FX Forwards variation margin obligations into some doubt. The ESAs announced an urgent review of whether the variation margin regulatory technical standards on risk mitigation techniques for OTC derivatives not cleared by a central counterparty (RTS) should apply to all counterparties entering into FX Forwards from the scheduled date. In their announcement, the ESAs explained that they intend to propose amendments to the RTS to harmonize the European Union's (EU's) variation margin rules (VM rules) under the European Market Infrastructure Regulation (EMIR) for FX Forwards with equivalent rules in other jurisdictions. The announcement indicates that the ESAs believe that VM rules should primarily apply to FX Forwards between "institutions," defined by the ESAs as credit institutions and investment firms. The ESAs, however, indicated that for some non-institution-to-non-institution transactions, the daily exchange of variation margin could lead to such non-institutions facing additional risks.

The ESAs stated a review was necessary because, although the VM rules form part of a globally agreed framework, some jurisdictions have a lower scope of application, and generally exempt all counterparties from FX Forward variation margin requirements.

The ESAs' announcement will create some compliance challenges for FX Forward counterparties on January 3 because neither the ESAs nor the national competent authorities have any power to disapply directly applicable EU law. As a result, any amendments to the VM rules proposed by the ESAs will only become effective when they are implemented through EU legislation. Given that the announcement indicates that the proposed amendments may not even be submitted to the European Commission before December 24, there is no doubt that any approved changes will not come into effect until substantially after January 3.

Indications in the market suggest that some counterparties that are not institutions, and that are not currently margining all their derivatives, expect that their 2018 FX Forwards will not be subject to the VM rules on the assumption that a permanent exemption will be forthcoming based on the ESAs' announcement, and that it is therefore unnecessary to comply with the law in the interim. The ESAs, at the end of their announcement, give some support to this view, stating that "the ESAs expect competent authorities to generally apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in a proportionate manner." Institutions, however, should continue to prepare to exchange variation margin for FX Forwards with credit institutions and investment firms from January 3, 2018, since there is no reason to expect that the changes proposed by the ESAs will exempt those trades.

The ESAs' announcement 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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