

### No-Action Relief Granted to Newly Registered Commodity Pool Operators

On July 10, 2012, the U.S. Commodity Futures Trading Commission (“CFTC”) issued a no-action letter in response to correspondence from the investment management industry, including the Investment Company Institute, regarding the recent rescission of Regulation 4.13(a)(4) and the amendments to Regulation 4.5 (“Rules”). Among other items, the correspondence “identified operational constraints that will prevent certain affected persons from being compliant with the Commission’s regulations within the time period set forth in the Commission’s recent final rule release.” This no-action letter from the Division of Swap Dealer and Intermediary Oversight which is applicable to pools launched after July 10, 2012, provides relief for compliance with the Rules until December 31, 2012. In order to receive relief, new pools must comply with certain requirements and submit a claim to the CFTC.

The no-action letter can be found on the CFTC website at:

<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/12-03.pdf>

### Guidelines Tighten Securities Lending Rules for European Funds

On July 25, 2012, the European Securities and Markets Authority (“ESMA”) published guidelines on ETFs and other UCITS issues (the “Guidelines”), together with a consultation paper on the recallability of repo and reverse repo arrangements (the “Repo Rules”). According to Steven Maijoor, the ESMA Chair, “[t]hese comprehensive guidelines are aimed at strengthening investor protection and harmonizing regulatory practices.” The Guidelines discuss disclosure requirements with regard to index-tracking UCITS and UCITS ETFs. They also specify new requirements for UCITS entering into securities lending, OTC derivative transactions and other techniques for efficient portfolio management.

The Guidelines clarify what information funds should provide to investors to promote transparency in the fund’s securities lending and repo and reverse repo investments. The Guidelines also specify that UCITS entering into securities lending arrangements should be able to recall the assets or terminate the arrangement at any time. Additionally, profits from investments in security lending should flow through to the investors.

The final guidelines, comprising both the Guidelines and the Repo Rules, will become effective two months after publication on the ESMA website of the translations into the official languages of the EU.

**ESMA Summary:** <http://www.esma.europa.eu/news/ESMA-publishes-ETF-guidelines-and-consults-repo-arrangements?t=326&o=home>

**Report and Consultation paper:** [www.esma.europa.eu/system/files/2012-474\\_0.pdf](http://www.esma.europa.eu/system/files/2012-474_0.pdf)

#### HIGHLIGHTS

**Compliance Date for CFTC Rules Extended for Certain Pools**

**European funds under stricter securities lending rules**

**U.S. SEC approves database plan to audit stock trades across U.S. equity and options markets**

**ICI Challenges FINRA Regarding Ad Review Increase**

## **SEC Approves New Rule Requiring Consolidated Audit Trail to Track and Monitor Trading Activity**

On July 11, 2012, the U.S. Securities and Exchange Commission ("SEC") approved a new rule ("Rule 613") under the Securities Exchange Act of 1934 which requires the national securities exchanges and national securities associations ("SROs") to jointly develop, implement, and maintain a market-wide consolidated audit trail called the National Market System ("NMS").

NMS will act as a centralized database for all exchange-listed equities and equity options in the U.S. market and will facilitate regulatory collection and analysis of market activities, market structure and the impact of new rules on the market. Each broker dealer and national exchange will be assigned a unique, cross-market identifier which will be reported to the central repository together with each reportable event. NMS is expected to provide regulators with a more detailed timeline of broad-based market events and allow the enforcement division more accurate and efficient information to pursue insider trading and market manipulation investigations.

Rule 613 specifies the type of data that will be collected, how data is to be submitted (uniform electronic format), and when it is to be transmitted for regulatory use. It will track trade information relating to origin, routing information, trade cancellations or modifications, and trade executions in each SRO's respective market. Rule 613 will become effective 60 days after publication in the Federal Register and SROs are required to submit their NMS plan to the SEC within 270 days of the date of publication. After the SEC approves the NMS plan, SROs are required to report data to the central repository within one year, and most members of the SROs are required to report within two years.

**Source:** "SEC Approves New Rule Requiring Consolidated Audit Trail to Monitor and Analyze Trading Activity." SEC News Room. Press Releases., 11 July. 2012. 2012-134 (<http://www.sec.gov/news/press/2012/2012-134.htm>).

## **ICI Challenges FINRA Regarding Ad Review Increase**

On June 22, 2012, the SEC published a notice of filing and immediate effectiveness of a proposed rule change by the Financial Industry Regulatory Authority ("FINRA") to its by-laws to increase fees charged for the review of advertisements, sales literature and other

communications filed with and reviewed by FINRA. Despite rising costs to administer the filings program and the volume of filings, FINRA has not increased its filing fee since 2005. In response to the SEC's solicitation of comments, the Investment Company Institute ("ICI") filed a letter opposing the fee increases and recommending that the SEC disapprove the proposal, noting that it would increase advertising filing costs for member firms by 20 to 25 percent. The ICI asserts that FINRA has not met the burden of demonstrating that the proposal is consistent with Rule 19b-4(f) under the Securities Exchange Act of 1934. As an alternative to a fee increase, the ICI offered several solutions including the implementation of a 30 day guaranteed turnaround time for regular filings, and conducting a thorough review of each submission upon the first filing in order to reduce the need for repetitive re-filing following commentary. The SEC can temporarily suspend FINRA's proposed rule within 60 days of the filing of the proposed rule change.

### **Sources:**

[http://www.ignites.com/c/387302/43832/skewers\\_finra\\_review\\_hikes?referrer\\_module=categoryListing&module\\_order=1](http://www.ignites.com/c/387302/43832/skewers_finra_review_hikes?referrer_module=categoryListing&module_order=1)

[http://www.ici.org/my\\_ici/memorandum/ci.memo26315.print](http://www.ici.org/my_ici/memorandum/ci.memo26315.print)

<http://sec.gov/rules/sro/finra/2012/34-67239.pdf>

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-28/pdf/2012-15851.pdf>

**For more information, please speak to your relationship manager or visit [jpmorgan.com/wss](http://jpmorgan.com/wss).**

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