Katten Financial Markets and Funds *Quick Take*
September 2022

Katten Named Best Onshore Law Firm for Hedge Fund Client Services

HFM recognized Katten for its industry-leading hedge fund client offerings during the 2022 HFM US Services Awards ceremony on September 13 in New York. Awardees were chosen based on rigorous judging by a panel of top hedge fund chief operating officers, chief financial officers, general counsels and others. Accepting the Katten award during the HFM ceremony were Wendy Cohen and Allison Yacker, co-chairs of the firm's Investment Management and Funds practice.

"Receiving this distinction underscores what clients and others have told Wendy and Allison that they appreciate about Katten and the entire Investment Management team: That we provide excellent and sophisticated counsel in a business-savvy manner that takes into account the practical aspects of our clients' business; that we analyze complex market and legal issues and close investments and transactions, navigating regulatory issues quickly and comprehensively; and that we quickly see the big picture, to name just some of what we hear," said Lance Zinman, Global Chairman of Katten's Financial Markets and Funds group, which encompasses the firm's Investment Management and Funds practice.

"Wendy and Allison are thoroughly pleased and quite honored to receive this award on behalf of the entire Investment Management team," said Zinman, whom *American Lawyer* named a "Trailblazer" for his pioneering legal work in the fields of proprietary, quantitative and algorithmic trading. "We are deeply appreciative of the opportunity to serve captains of the hedge fund industry and in the field of finance generally." *Read about Katten's HFM Best Onshore Law Firm for Hedge Fund Client Services award.*

FINRA Proposes Trade Reporting Requirements for OTC Options Transactions

By Michael Lohnes, Charles DeVore, Michael Diver and Jamie Noonan

The Financial Industry Regulatory Authority (FINRA) released Regulatory Notice 22-14, which proposes to establish new trade reporting requirements for certain over-the-counter (OTC) options transactions. Listed options are traded through registered options exchanges, while OTC options are traded directly by the parties to the option contract. In some instances, OTC options have terms that are identical or substantially similar to a listed option (there can be both OTC

and listed options on the same underlying security). FINRA has proposed requiring firms to report OTC options transactions that are puts or calls on listed underlying securities. The proposal is limited to options with terms that are identical or substantially similar to listed options. Comments on this proposal are due September 20. Regulatory Notice 22-14 and public comments submitted to date are available here. *Read Katten's advisory.*

The SEC Remains in Search of and Is Looking for Finders

By Paul McCurdy, Susan Light and Aileen Tan

Much has been written on the topic of finders and arrangers of securities transactions, including when a person or entity acting as a finder (i.e., someone who merely makes an introduction) has crossed the line and engaged in activities or conduct that requires registration as a broker-dealer. Shortly before the end of Jay Clayton's term as Chairman of the Securities and Exchange Commission (SEC), he issued a proposed order providing an exemption from broker-dealer registration requirements for certain "finders" who limit their activities in accordance with the conditions set forth in the proposed order. Ultimately, the proposal was not adopted. Today, finders and unregistered securities transaction activity continue to be on the SEC's radar, with several actions filed in the federal courts against unregistered finders, confirming that the activity of unregistered persons and entities participating in capital raising remains squarely on the SEC agenda. *Read Katten's advisory.*

Federal Reserve's New Master Account Guidelines Provide Transparent Path For Crypto Industry

By Christina Grigorian, Daniel Davis and Gary DeWaal

State-chartered crypto banking entities and other crypto financial institutions will now be subject to a "transparent and equitable framework" when applying for direct access to the Federal Reserve's payment systems (specifically, access to so-called "master accounts") and to engage in other financial transactions permitted only to such accountholders under new guidelines approved by the Board of Governors of the Federal Reserve System (Federal Reserve) on August 15. Master accounts have long been sought by state-chartered crypto bank entities and other crypto financial institutions as a means to both diversify customer product offerings and to lower the costs of processing certain payment transactions. *Read Katten's advisory.*

SEC Proposes to Clear-Up Clearing Agencies' Governance to Mitigate Directors' Potential Conflicts of Interest

By Susan Light

Clearing agencies registered with the Securities and Exchange Commission (SEC) will have to make governance changes to their boards of directors under a new rule proposed by the SEC on August 8.

The SEC proposed the new rule to mitigate the conflicts of interests inherent in clearing agency relationships. The rule follows episodes of market volatility in 2021 that included large fluctuations surrounding COVID-19 and the meme stock craze. *Read Katten's advisory.*

Broker-Dealer Proprietary Trading Groups: FINRA May Be In Your Future

By James Brady, Susan Light and Alexander Kim

Almost all proprietary trading firms that are currently registered as broker-dealers with the Securities and Exchange Commission (SEC) would likely be required to join the Financial Industry Regulatory Authority (FINRA) under rule amendments proposed by the SEC on July 29. Specifically, the proposed Rule would eliminate the *de minimis* allowance and the proprietary trading exclusion (both as defined below) that currently exempt certain broker-dealers from

FINRA registration. The proposed amendments would require a broker-dealer to join FINRA if it effects securities transactions other than on an exchange where it is a member, unless it can rely upon one of the amended rule's narrow exemptions. *Read Katten's advisory.*

SPAN 2: Coming Soon(ish) to a CME Clearing Member Near You

By Stephen Morris

After years of development and testing, discussions with industry participants, and delays due to pandemic lockdowns, the Chicago Mercantile Exchange (CME) has announced a multi-year, phased schedule for the rollout of its long-anticipated SPAN 2 margin methodology. CME (and over 30 CCPs around the world to which CME has licensed it) relies on the Standard Portfolio Analysis of Risk system to generate margin requirements for all futures and options on futures listed on its exchanges. (CME cleared swaps are margined using an historical Value at Risk (VaR) system; likewise ICE's margin risk model is VaR-based.) CME clearing members in turn are required to use SPAN to generate margin requirements for their customers' futures portfolios (as well as for their proprietary futures accounts). *Read about SPAN 2's rollout.*

Shareholder Inspection Rights Out of Control

By Richard Zelichov

Professor Geeyoung Min at Michigan State University College of Law and Alexander M. Krischik, an associate at Richards, Layton & Finger, P.A., recently published an article summarized in the CLS Blue Sky Blog entitled "Realigning Shareholder Inspection Rights." The article discusses Section 220 of the Delaware General Corporation Law and notes that two recent shifts in the law present challenges for both corporate defendants and stockholder plaintiffs. For corporate defendants, the article notes that Delaware courts "have expanded the scope of books and records available under Section 220 to include emails, text messages, and other electronically stored information." For stockholder plaintiffs, the article notes that "Delaware plaintiffs have become more vulnerable to a risk of preclusion due to the extra time … required to exercise their inspection rights" in light of the Delaware Supreme Court's decision in *California State Teachers' Retirement System v. Alvarez*, 179 A.3d 824 (Del. 2018).

I would suggest that this paper overstates the problem facing stockholder plaintiffs pursuing Section 220 demands vis-a-vis stockholders who do not pursue such demands. For stockholder plaintiffs who make Section 220 demands, they can address in large part the issues faced from the risk of preclusion by moving to intervene in lawsuits filed by stockholders who do not. *Read about the implications of Section 220 for boards and stockholders.*

New Pay Versus Performance Disclosure to be Required in Upcoming Proxy Statements

By Lawrence Levin

On August 25, the Securities and Exchange Commission (SEC) adopted final rules which will require disclosure of a comparison of the company's performance to the compensation actually paid to the company's principal executive officer and other executive officers. The new pay versus performance disclosure requirements will become effective 30 days following publication of the adopting release in the *Federal Register*. Companies will need to comply with these disclosure requirements in proxy and information statements that are required to include executive compensation disclosure for fiscal years ending on or after December 16. As a result, companies with a calendar year fiscal year will need to promptly begin collecting the information needed for this new disclosure. Smaller reporting companies (SRCs) will be subject to scaled reporting requirements. Emerging growth companies, registered investment companies, and foreign private issuers are all exempt from the rule. *Read about executive compensation disclosure requirements.*

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