



Katten Financial Markets and Funds *Quick Take*

November 2023

SEC Division of Examinations Publishes 2024 Priorities: Spotlight on Investment Advisers and Broker-Dealers

By Adam Bolter

On October 16, the Securities and Exchange Commission's (SEC) Division of Examinations (Division) published its [examination priorities](#) for its fiscal year 2024, noting there will be a greater presence of examiners in the field. The Division also issued a [Risk Alert](#) regarding how the Division employs its risk-based examination approach, including how it selects registrants to examine and how it makes scoping decisions for those examinations. Notably, the Risk Alert also provides an attachment with the Division's typical initial document request list. [Read more about the examination priorities.](#)

Back to the Future: CFTC Proposes to Amend Customer Funds Investment Rule Including to Again Permit Investments in Certain Non-US Sovereign Debt

By Carl Kennedy, Gary DeWaal, Stephen Morris, Daniel Davis

In a newly issued Notice of Proposed Rulemaking (NPRM), the Commodity Futures Trading Commission (CFTC) proposed to lessen a blanket restriction on the investment of customer funds in all non-US sovereign debt instruments imposed on future commission merchants (FCMs) and derivative clearing organizations (DCOs) following the dramatic collapse of MF Global in October 2011. In response to two public petitions for rulemaking, the CFTC proposed amendments to its longstanding regulations governing the safeguarding and investment of derivatives customer segregated, secured and cleared swap customer funds held by FCMs and DCOs on November 3. [Read more about the proposed amendments.](#)

SEC Sues SolarWinds and its CISO for Fraud and Other Violations Related to Massive Data Breach

By Danette Edwards

On October 30, the SEC sued SolarWinds and its chief information security officer (CISO) for fraud, false reporting, and internal and disclosure control violations related to the massive UNBURST cybersecurity attack. The SEC could not reach a settlement with the company or the CISO following the conclusion of its enforcement investigation and was forced to file a litigated action against the defendants. The CISO is the only defendant in the SEC's suit, even though it

previously sent Wells Notices to other SolarWinds officers and employees. [Read more about the SEC's allegations.](#)

President Biden Issues Executive Order on Safe, Secure and Trustworthy Artificial Intelligence

By Trisha Sircar

Pursuant to the [Fact Sheet](#) published on October 30, 2023, by the White House, President Biden issued a landmark Executive Order to ensure that America leads the way in seizing the promise and managing the risks of artificial intelligence (AI). The Executive Order establishes new standards for AI safety and security, protects Americans' privacy, advances equity and civil rights, stands up for consumers and workers, promotes innovation and competition, and more. [Read more about the Executive Order.](#)

UK Regulators Publish Policy Statement on the Bonus Cap Removal

By Neil Robson, Carolyn Jackson, Nathaniel Lalone, Christopher Collins, Ciara McBrien, Sara Portillo

On October 24, the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) (together, the Regulators) published their joint policy statement to remove the existing limits on the ratio between fixed (i.e., salary) and variable (i.e., bonus) components of total remuneration (the Bonus Cap). This follows the Regulators' joint consultation on the Bonus Cap in December 2022 and comes nearly a year after Liz Truss' short-lived government first announced plans to abolish the Bonus Cap to boost the attractiveness of the UK financial services sector. [Read more about the policy statement.](#)

UK FCA Publishes Statement on Common Cryptoasset Marketing Issues

By Neil Robson, Christopher Collins, Ciara McBrien, Sara Portillo

On October 25, the FCA published a statement warning about common issues with cryptoasset marketing in the UK. The FCA has been supervising firms' compliance with its new cryptoasset financial promotions regime since it went into effect on October 8. The FCA identified several common issues with cryptoasset financial promotions. [Read more about regulatory concerns for cryptoasset marketing.](#)

ICYMI

Here's a look back at recent client advisories from Katten.

- [“Copy and Paste: The SEC Adopts Security-Based Swap Execution Facility Rules that Closely Resemble Existing CFTC Swap Execution Facility Rules,”](#) November 14, 2023
- [“Action Required: Corporate Transparency Act Reporting Is Here,”](#) November 8, 2023
- [“SEC Accelerates Beneficial Ownership Filing Deadlines but Holds Off on Other Changes,”](#) November 7, 2023
- [“You Say Hello. I Say Goodbye: The DnaNudge Case and Differences of Opinion on Share Conversions and Other Variations of Class Rights,”](#) November 6, 2023
- [“New FTC Rule Requires Certain Financial Institutions to Report Loss of Unencrypted Customer Data,”](#) November 1, 2023
- [“No Such Thing as a Free Lunch...?,”](#) October 31, 2023

- [“Junk or a Value-Added Service? Federal Regulators and the Biden Administration Go After “Junk” Fees,”](#) October 17

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