



Katten Financial Markets and Funds *Quick Take*

January 2024

Neither a Borrower Nor a Lender Be!

By Susan Light

FINRA filed a rule amendment with the Securities and Exchange Commission (SEC) on January 2 to propose amending FINRA Rule 3240, Borrowing From or Lending to Customers (SR-FINRA-2024-001). This proposed rule amendment is designed to strengthen the general prohibition against borrowing and lending arrangements, narrow some existing exceptions to that general prohibition, modernize the immediate family exception, and enhance the requirements for giving notice to members and obtaining members' approval of such arrangements. [Read about proposed amendments to FINRA Rule 3240.](#)

CFTC Settles Enforcement Action Against Commodity Trading Firm for Alleged Fraud in Connection with Physical Commodity Trading Only – No Derivatives

By Gary DeWaal, Dan Davis, Carl Kennedy

Emphasizing its broad authority over fraud solely in connection with commodities – not just fraud in connection with derivatives referencing commodities – the Commodity Futures Trading Commission (CFTC) settled an enforcement action against [Freepoint Commodities LLC](#) on December 14, 2023, where it alleged that the firm illegally traded fuel oil based on non-public information obtained through “corrupt payments” in violation of an applicable provision of the Commodity Exchange Act ([7 USC Sec. 9\(1\)](#)) and a CFTC rule ([180.1](#)). [Read about the enforcement action.](#)

SEC Regulatory Update: Fall 2023 Rulemaking Agenda Published

By Adam Bolter

The Office of Information and Regulatory Affairs recently released the semi-annual, Fall 2023 regulatory agenda. The agenda outlines the SEC Chairman's rulemaking priorities over the next 12 months, reflecting a continued focus on finalizing various regulatory initiatives [previously proposed](#). [Read about key initiatives for investment advisers and broker-dealers.](#)

The SEC's Treasury Clearing Mandate

By Stephen Morris

New rules have been adopted, mandating central clearing in the US Treasury market for transactions that used to occur bilaterally or on triparty repo platforms. The SEC cites benefits such as reduced counterparty credit risk, centralized default management and improved market structure. While the adopted mandate is less extensive than initially proposed in September 2022, the SEC remains open to evaluating and potentially expanding the requirement for clearing cash transactions with hedge funds and leveraged accounts in the future. [Read Katten's advisory.](#)

New SEC Clawback Rules Create a 'Two-Policy' Corporate Conundrum

By Mitchel Pahl

Published by *Bloomberg Tax*, the article assesses new clawback rules by the SEC and their impact on publicly traded companies. Effective December 1, public companies were required to enact policies complying with recent SEC guidance on clawing back incentive-based compensation "erroneously awarded" to executives. [Read Katten's article.](#)

New Jersey Passes Comprehensive Privacy Bill

By Trisha Sircar

On the final day of the 2023 legislative session, the New Jersey Legislature granted final passage to a comprehensive privacy bill, [Senate Bill 332](#). The bill was amended to its comprehensive framework in December 2023 before receiving same-day approval from the Senate and Assembly on January 8, 2024. [Read about New Jersey's privacy bill.](#)

EU/UK

***Thomson Reuters - Regulatory Intelligence* Discusses AIFMD II With Neil Robson**

In an article in *Thomson Reuters - Regulatory Intelligence*, Financial Markets and Funds Partner Neil Robson helped break down the European Council's final compromise text of the revised Alternative Investment Fund Managers Directive (AIFMD II) and Undertakings for Collective Investment in Transferable Securities Directive (UCITS) amendments, and what it means for hedge fund, private equity, and investment fund managers. [Read about Neil's comments.](#)

FCA Publishes Update on UK Market Share Test for Ancillary Activities Exemption 2024–2025

By Carolyn Jackson, Ciara McBrien

On December 20, 2023, the Financial Conduct Authority (FCA) published a statement providing an update on the ancillary activities exemption (AAE) for commodity derivatives for 2024–2025. The AAE enables firms carrying on investment services and activities relating to commodity derivatives and emission allowances on an "ancillary" basis to their main business to not be required to be authorized by the FCA. [Read about the AAE update.](#)

FCA Consults on UK Commodity Derivatives Regulatory Framework Reform

By Carolyn Jackson, Ciara McBrien

On December 4, 2023, the FCA published a consultation paper (CP23/27) on reforming the UK commodity derivatives regulatory framework. CP23/27 sets out the FCA's proposals regarding commodity derivatives, including position limits, the exemptions from those limits, position management controls, the reporting regime, and the ancillary activities test (AAT). [Read about the FCA's reforms.](#)

UK Regulators Publish Policy Statement on Margin Requirements for Non-Centrally Cleared Derivatives

By Carolyn Jackson, Ciara McBrien

On December 18, 2023, the FCA and the Prudential Regulation Authority (PRA) published a joint policy statement on the UK's bilateral margin requirements for non-centrally cleared derivatives under the onshored European Market Infrastructure Regulation (UK EMIR). The Policy Statement contains the FCA and PRA's final policy in the form of amendments to Binding Technical Standards (BTS) 2016/2251. [Read about the bilateral margin requirements.](#)

Preparing for the Implementation of EMIR REFIT

By Carolyn Jackson, Ciara McBrien

Published by the *Journal of Financial Compliance*, the article examines the new obligations under the European Market Infrastructure Regulation (EMIR) Regulatory Fitness and Performance Programme (REFIT), which requires EU or UK entities involved in derivatives transactions to adopt new reporting standards and upgrade outstanding derivatives transactions to the new reporting format. The implementation date is April 29, 2024 in the EU and September 30, 2024 in the UK. [Read Katten's article.](#)

ICYMI

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

- "[Foreign Listed Stock Index Futures and Options Approvals December 2023](#)," December 19, 2023

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