



Katten Financial Markets and Funds *Quick Take*

February 2024

Katten Fact Sheet for Certain Firms That Must Become FINRA Members

By Susan Light, James Brady

With the Securities and Exchange Commission's (SEC) recent adoption of amendments to Rule 15b9-1 of the Securities Exchange Act of 1934 (SEA Rule 15b9-1), nearly all broker-dealers will be required to become Financial Industry Regulatory Authority (FINRA) members if the broker-dealer effects transactions other than on an exchange of which it is a member. FINRA will allow eligible firms to undergo the New Member Application (NMA) process with a short-form application due no later than May 9, 2024. [Read Katten's fact sheet on SEA Rule 15b9-1.](#)

Third Time's a Charm? SEC & CFTC Finalize Amendments to Form PF

By Adam Bolter, Robert Bourret

On February 8, the SEC and Commodity Futures Trading Commission (CFTC) jointly adopted [amendments to Form PF](#), the confidential reporting form for certain registered investment advisers to private funds. Form PF's dual purpose is to assist the SEC's and CFTC's regulatory oversight of private fund advisers and investor protection efforts, as well as help the Financial Stability Oversight Council monitor systemic risk. In addition, the SEC entered into a memorandum of understanding with the CFTC to facilitate data sharing between the two agencies regarding information submitted on Form PF. [Read about Form PF.](#)

SEC Broadens 'Dealer' Definition

By James Brady, Susan Light, Richard Marshall

On February 6, the SEC adopted two new rules that expand who may be considered a dealer or a government securities dealer under the Securities Exchange Act of 1934 and must register in such capacity. The new rules depart significantly from decades of established precedent distinguishing between "dealer" activity necessitating registration and "trader" activity that does not. The SEC adopted the new rules in a controversial 3-2 vote. [Read about how the dealer definition affects registration requirements.](#)

How Resilient Are You? The CFTC Proposes Operational Resiliency Rules for FCMs, Swap Dealers and Major Swap Participants

By Carl Kennedy

Adopted partially in response to a 2023 cyberattack on a widely used, third-party service provider to several financial services firms, the CFTC has [proposed new requirements and guidance](#) for swap dealers, major swap participants, and futures commission merchants to establish frameworks reasonably designed to identify, monitor, manage and assess operational risks. [Read about the operational resilience framework.](#)

Supreme Court Considers Whether Pure Omissions Can Support Section 10(b) Liability

By Sarah Eichenberger, Jonathan Rotenberg

On January 16, the US Supreme Court held oral argument on a question that could have significant consequences for securities litigants: whether a failure to disclose information under Item 303 of Regulation S-K is, standing alone, an actionable omission under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. While it remains to be seen what the Court will ultimately decide, the Justices' questions signaled a narrow ruling that would foreclose such liability. [Read about liability and disclosure obligations.](#)

What Businesses Should Know About NJ Privacy Bill

By Trisha Sircar

Published by *Law360*, the article looks at New Jersey's comprehensive privacy bill and how it compares to similar legislative action in other states. The article covers what distinguishes NJ's bill from others, its applicability and scope, and its consumer rights provisions. It includes a list of five steps businesses should take to plan for the law, including organizing categories of data collected, scrutinizing consumer consent requirements, reviewing policies and preparing additional compliance budgets. [Read Katten's article.](#)

EU/UK

UK Government Grants Equivalence to EEA UCITS Funds Under the Overseas Funds Regime

By Neil Robson, Christopher Collins, Ciara McBrien

On January 30, the UK government published a written statement granting an equivalence decision for European Economic Area (EEA) undertakings for the collective investment in transferable securities (UCITS funds) under the UK Overseas Funds Regime (OFR). This means that subject to additional legislation being put in place, EEA UCITS funds may be marketed into the UK without needing to meet any additional UK requirements. [Read about the UK's OFR.](#)

UK Regulators Consult on Operational Resilience for Critical Third Parties

By Nathaniel Lalone, Ciara McBrien

On December 7, 2023, the Bank of England (BoE), Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) published a joint consultation paper on operational resilience for critical third parties (CTPs) in the UK financial sector. In the consultation, the Regulators propose new rule requirements and accompanying expectations for CTPs. [Read about CTP designation.](#)

FCA Publishes Consultation on UK Overseas Funds Regime

By Ciara McBrien, Neil Robson, Christopher Collins

On December 4, 2023, the FCA published a consultation (CP23/26) on the implementation of the UK's overseas funds regime (OFR). The OFR is a new statutory framework that is intended to

provide non-UK domiciled funds with a more streamlined route to become eligible to be marketed to UK retail investors. There are currently two potential routes available for overseas funds to market to UK retail investors —EEA undertakings for UCITS and “individual recognition” under the Financial Services and Markets Act 2000 (FSMA). [Read about the FCA's OFR.](#)

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

- [“UK and European M&A: Predictions for 2024,”](#) February 1, 2024

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