



Katten Financial Markets and Funds *Quick Take*

March 2024

The ‘Effective Spread’ of Order Execution Quality Reporting

By Wayne Aaron

On March 6, by unanimous vote, the Securities and Exchange Commission (SEC) [adopted changes](#) to Rule 605 under Regulation NMS, the provision that previously required only entities defined as “market centers” to publish detailed statistics on the quality of execution of “covered orders” in NMS stocks. [Read about how Amended Rule 605 expands reporting requirements.](#)

Back to the Drawing-Board: The CFTC Re-Proposes Rules to Codify Letter 19-17

By Stephen Morris

The Commodity Futures Trading Commission (CFTC) is attempting a second run at codifying Letter 19-17 in a new Regulation 1.44. Letter 19-17 addresses the processing of margin withdrawals by the customers of futures commission merchants (FCMs) that are clearing members of registered derivatives clearing organizations under CFTC Rule 39.13(g)(8)(iii). This “DCO margin adequacy rule” provides that a registered derivatives clearing organization (DCO) must require its FCM clearing members to ensure that their customers do not withdraw funds from their accounts unless the net liquidating value plus the margin deposits remaining in the customer’s account after the withdrawal would be sufficient to meet the margin requirement applicable to the account. [Read about Letter 19-17.](#)

Ensuring Everything Is Above Board: CFTC Proposes Simplified Rules for SEF and DCM Governance, Independence and Mitigating Conflicts of Interest

By Carl Kennedy, Nicholas Gervasi

Seeking to ensure that designated contract markets (DCMs) and swap execution facilities (SEFs) adequately incorporate an independent perspective, the CFTC [has proposed new rules and amendments](#) to existing regulations to establish governance and fitness requirements for market regulation functions and conflict of interest standards. The proposal – adopted on February 20 – seeks to establish uniform minimum fitness requirements for both SEFs and DCMs, as their respective officers, board members, committee members, disciplinary panels and dispute resolution panels share identical responsibilities in governing and overseeing operations, including market regulation functions. [Read about the CFTC’s proposal.](#)

FinCEN AML Alert: SEC Investment Advisers Again in Focus

By Adam Bolter, Nicholas Gervasi

On February 13, the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) proposed to expand anti-money laundering (AML) and countering the financing of terrorism (CFT) program requirements to cover SEC registered investment advisers (RIAs) and SEC exempt reporting advisers (ERAs). ERAs, in particular, have not previously been contemplated as in scope for specific AML compliance obligations of this nature and typically are subject to far fewer requirements applicable to SEC RIAs. [Read about FinCEN's AML rule proposal.](#)

Susan Light Guests on the *Oyster Stew* Podcast Discussing new SEC Rules for Market Participants to Become Registered

Partner and Broker-Dealer Regulation Co-Chair Susan Light appeared on the *Oyster Stew* podcast to discuss the SEC's amendments to the Securities Exchange Act of 1934, Rules 15b9-1, 3a5-4 and 3a44-2, where the SEC increased the types of financial entities that must become registered. The podcast takes a deep dive into these changes, including what it means for firms who must comply, the registration application process, challenges non-broker dealer entities may experience adapting to FINRA membership, and how FINRA has historically handled rule changes involving new membership. [Listen to this episode of the *Oyster Stew* podcast.](#)

EU/UK

UK Law Commission Publishes Draft Digital Assets Bill and Call for Evidence on Digital Assets in Private International Law

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

On February 22, the UK's Law Commission (Commission) published a consultation (Consultation) in relation to its draft Digital Assets Bill (Draft Bill), including two key clauses confirming that digital assets are capable of being recognized as personal property under English law. Separately, the Commission also issued a call for evidence (Call for Evidence) to examine the appropriate courts and law under which parties should litigate when dealing with international digital assets disputes. [Read about the draft *Digital Assets Bill*.](#)

Nathaniel Lalone Discusses Potential FCA Public Disclosure of Investigations

Financial Markets and Funds Partner Nathaniel Lalone spoke with *Law360* regarding the Financial Conduct Authority's (FCA) proposal to publicly identify firms it investigates when doing so is "in the public interest." The move is supposed to assure the public that it is "on the case" while deterring bad actors. Nate noted that the move would be out of step with the SEC's Wells process that maintains confidentiality until late in the process to encourage the exchange of information during an investigation. [Read about Nate's comments to *Law360*.](#)

ICYMI

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

- ["The Lesson of Prometheus – A Special Purpose Broker Dealer May Cause Havoc in TradFi by Unilaterally Declaring ETH To Be A Security,"](#) March 11, 2024
- ["A New 'Carrot' in the Government's Pocket: DOJ Announces Pilot Program to Reward Whistleblowers,"](#) March 11, 2024
- ["SEC Finalizes Much-Anticipated Climate Disclosure Rules,"](#) March 8, 2024
- ["Corporate Transparency Act Found Unconstitutional \(for Specific Plaintiffs\),"](#) March 4, 2024
- ["Action Required: Impact of Corporate Transparency Act on Investment Managers,"](#) February 29, 2024
- ["SEC Significantly Broadens "Dealer" Definition,"](#) February 23, 2024

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