



Katten Financial Markets and Funds *Quick Take*

April 2024

SEC Stays Climate Disclosure Regulations in Response to Consolidated Eighth Circuit Challenges

By Farzad Damania, Ryan Lilley

On April 4, the SEC issued an [order](#) staying the implementation of the recently finalized [climate disclosure rules](#) (Final Rules) in response to the consolidated legal challenges in the US Court of Appeals for the Eighth Circuit. The SEC has discretion to stay its rules pending judicial review and the SEC stated that a stay would “allow the court of appeals to focus on deciding the merits [of the cases].” However, this voluntary stay should not be taken as a sign that the SEC intends to abandon the Final Rules, as the SEC said it will “continue vigorously defending the Final Rules’ validity in court and looks forward to expeditious resolution of the litigation.”

The Final Rules have faced a slew of legal challenges since adoption and the SEC also noted that the stay avoids potential uncertainty if registrants were to become subject to the Final Rules during the pendency of the legal challenges.

Ether’s Security Designation Creates Risk of Market Disruption

By Daniel Davis, Gary DeWaal

Financial Markets and Regulation Co-Chair Daniel Davis and Financial Markets and Funds Senior Counsel Gary DeWaal authored an article for *Bloomberg Law* regarding the recent news that a special purpose broker dealer (SPBD) disclosed its intention to custody the digital asset ether (ETH) as a digital asset security. Generally considered a non-security by most of the crypto industry, if ETH is classified as a security, it could become a security future on a single security subject to joint SEC and Commodity Futures Trading Commission (CFTC) oversight, and may require industry participants to be dual-registered with the CFTC and SEC. [Read Katten’s article.](#)

Stephen Morris Talks Mandatory Clearing for Treasuries with *Risk.net*

Financial Markets and Funds Partner Stephen Morris spoke with *Risk.net* for a recent article regarding the implementation of the SEC’s sweeping clearing mandate for cash and repo transactions in US Treasuries. The piece focuses on concerns in the industry about the ability of the single clearing organization currently authorized to clear such transactions (the Fixed Income Clearing Corporation, or FICC) to handle expected volumes from buy-side firms that are not direct members of FICC and highlights expected moves by both CME and ICE to seek regulatory approval to launch competing clearing services. Steve noted that most buy-side firms affected by the new mandate “would prefer to have something that works like options and futures clearing.” [Read about Steve’s comments to Risk.net.](#)

FCA Proposes ‘New’ Option for Investment Research Payments – Back to Bundled Payments?

By Neil Robson, Sara Portillo

On April 10, the Financial Conduct Authority (FCA) published a consultation paper proposing the introduction of a ‘new’ option for investment research payments, alongside the existing two options (CP24/7). In essence, the FCA is proposing to reintroduce the concept of bundled payments for both research and execution services, which long existed in the UK before being prohibited in 2018 by the Markets in Financial Instruments Directive, as revised in January 2018 (MiFID II). [Read about Investment Research Payments.](#)

UK FCA Publishes Guidance on Social Media Financial Promotions

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

On March 26, the FCA issued its finalized guidance in relation to financial promotions on social media. The Finalized Guidance follows the FCA’s July 2023 consultation on a draft version of this guidance. Annex 1 of the Finalized Guidance contains a feedback statement to the consultation in which the FCA summarizes the feedback received and its response. The Finalized Guidance replaces the FCA’s previous guidance on social media and customer communications, published in March 2015. [Read about the Finalized Guidance.](#)

UK HMT Publishes Policy Paper on its Approach to Designation of Critical Third Parties

By Nathaniel Lalone, Ciara McBrien

On 21 March 2024, HM Treasury (HMT) published a policy paper (Policy Paper) setting out its approach to designating critical third parties (CTPs). This follows the Bank of England, Prudential Regulation Authority and Financial Conduct Authority’s (together, the Regulators) December 2023 consultation on operation resilience for CTPs in the UK financial sector (Consultation). For more information on the Consultation, please see our article available [here](#). [Read about CTPs designations.](#)

ICYMI

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

- [“Third Circuit Says Statutory Trusts are ‘Covered Persons’ Under Consumer Financial Protection Act,”](#) March 22, 2024

CONTACTS

For questions about developments in the [Financial Markets and Funds](#) industry, please contact any of the following Katten attorneys.



[Wendy E. Cohen](#)



[Daniel J. Davis](#)



[Carl E. Kennedy](#)

[vCard](#)



[Christopher T. Shannon](#)

[vCard](#)

[vCard](#)



[Allison C. Yacker](#)

[vCard](#)

[vCard](#)



[Lance A. Zinman](#)

[vCard](#)

Partners Stephen Morris and Jonah Roth serve as co-editors of Katten Financial Markets and Funds Quick Take.



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