



Katten Financial Markets and Funds *Quick Take*

June 2024

Vacation Alert: Fifth Circuit Vacates Private Fund Adviser Rules

By Adam Bolter

On June 5, the Fifth Circuit Court of Appeals [vacated](#) the entire set of private fund adviser rules adopted by the Securities and Exchange Commission (SEC) on August 23, 2023. Many private fund advisers would have been required to begin complying with some of the most challenging aspects of the rule package by September 14, 2024. In summary, the vacated rules include the preferential treatment rule, restricted activities rule, quarterly statement rule, adviser-led secondaries rule and audit rule. [Read about the Court's decision.](#)

Codifying and Demystifying: The CFTC Adopts Amendments to Capital and Financial Reporting Requirements for Swap Dealers Largely Based on Prior Relief

By Carl Kennedy, Robert Bourret

After adopting final rules in 2020, the Commodity Futures Trading Commission (CFTC) adopted amendments to the capital and financial reporting requirements for Swap Dealers (SDs), which were largely based on prior no-action letters and interpretive guidance issued by CFTC staff. Section 4s(e) of the Commodity Exchange Act (CEA) requires the CFTC to adopt minimum capital and margin requirements for SDs, and the CFTC issued final rules doing so on September 15, 2020. These rules, adopted in Part 23 of the CFTC's regulations, impose capital requirements on SDs that are not subject to a prudential regulator (nonbank SDs) and detailed financial reporting, recordkeeping and notification requirements, including limited reporting requirements for SDs subject to the capital requirements of a prudential regulator (bank SDs).

However, due to confusion surrounding these new requirements, the CFTC issued eight no-action and interpretative letters in 2021 to help SDs better understand their reporting obligations. The CFTC's policy rationale for adopting amendments almost three years later, on April 30, 2024, was largely to codify CFTC Staff Letters 21-15 and 21-18, on which certain SDs relied while adding clarity and specificity so that SDs can clearly demonstrate their compliance with capital and financial reporting requirements. [Read about the 2024 amendments.](#)

FinCEN AML Alert Part 2: Customer Identification Program Requirements for Investment Advisers

By Adam Bolter, Nicholas Gervasi

On May 13, the SEC and the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) jointly [proposed](#) to require that SEC-registered investment advisers (RIAs) and SEC-exempt reporting advisers (ERAs) adopt customer identification programs (CIPs),

which include procedures to verify the identities of its customers (CIP Proposed Rule). CIPs are intended to aid in preventing, detecting and prosecuting money laundering and the financing of terrorism. The CIP Proposed Rule complements FinCEN's February rule [proposal \(previously written about\)](#) that would designate RIAs and ERAs as "financial institutions" under the Bank Secrecy Act, subjecting them to AML/CFT program requirements and obligations to file suspicious activity reports (AML Proposed Rule). [Read about CIP Proposed Rule requirements.](#)

Katten Partners Examine New 'Dealer' Definitions and What It Means for Hedge Funds

Partners and Broker-Dealer Regulation Co-Chairs Wayne Aaron and Susan Light spoke with *The Hedge Fund Law Report* on the SEC's updated definitions of "dealer" and "government securities dealer" under the Securities Exchange Act of 1934, which may require some hedge funds to register as dealers. They recommend that hedge fund managers should now assess whether their funds fall under the new definitions and decide whether to register as a dealer or modify their funds or strategies to avoid this requirement. [Read about Wayne and Sue's comments.](#)

Minnesota Becomes the Next State to Enact a Comprehensive Data Protection Law

By Trisha Sircar

On May 24, Minnesota Governor Tim Walz signed the [Minnesota Consumer Data Privacy Act](#) (MCDPA), which will go into effect on July 31, 2025. The law applies to entities that within a calendar year: (1) control or process personal data of at least 100,000 Minnesota residents; or (2) derive over 25 percent of their gross revenue from selling personal data and process or control personal data of at least 25,000 Minnesota residents within a calendar year. [Read about the MCDPA.](#)

EU/UK

UK Regulators Publish Final Securitization Rules

By Christopher Collins, Peter Englund, Neil Robson, Nathaniel Lalone, Ciara McBrien, Sara Portillo

On 30 April, the Financial Conduct Authority (FCA) published a policy statement (PS24/4) setting out its final firm-facing rules relating to securitizations and summarising feedback to its earlier consultation for the UK securitization markets (CP23/17). The Prudential Regulation Authority (PRA and together with the FCA, the Regulators) also published a policy statement, in parallel with PS24/4, on its final firm-facing rules for those firms over which it has supervisory responsibility (PS7/24). This also follows the PRA's own parallel consultation (CP15/23). [Read about the FCA's policy statement on securitizations.](#)

OFSI Publishes FAQs on UK Financial Sanctions

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

On 1 May, the UK Office of Financial Sanctions Implementation (OFSI) published a new set of Frequently Asked Questions (FAQs). The FAQs provide short-form guidance and technical information on financial sanctions, including:

1. the Russian oil services ban;
2. the scope of General Licence INT/2024/4671884, permitting a UK law firm or UK counsel who has provided legal advice to a person designated under either the Russia or Belarus regime to receive payment from that designated person without an OFSI-specific license, provided that the terms of the General Licence INT/2024/4671884 are met; and

3. information on what constitutes “a letter of credit,” “dealing with funds,” “dealing with economic resources,” and “making available funds or economic resources.”

[Read about the latest OFSI guidance.](#)

Christopher Collins Discusses MTF Registration Compliance With *The Full FX*

Financial Markets and Funds Senior Associate Christopher Collins recently shared his insights with *The Full FX* on the challenges small tech providers in the UK and EU face in becoming regulated trading venues. These tech firms are caught between a rock and a hard place — invest heavily to become a regulated trading venue or risk operating in a regulatory “grey zone.” Chris points out that having clarity on where particular tech vendors fall within the regulations is critical for clients who are asking their tech vendors, “Are you sure that you’re not in scope?”

[Read about Chris’s comments.](#)

The European Data Protection Supervisor Issues Guidelines for Generative Artificial Intelligence

By Trisha Sircar

On [June 3](#), the European Data Protection Supervisor (EDPS) published [guidelines](#) on generative AI and personal data for EU institutions, bodies and agencies. The guidelines aim to help these organizations comply with the data protection obligations set out in Regulation (EU) 2018/1725 when using or developing generative AI tools. [Read about EDPS guidelines.](#)

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