



Katten Financial Markets and Funds *Quick Take*

April 2025

SEC Marketing Rule Update: New Staff FAQs on Performance Presentations

By Adam Bolter

On March 19, Staff from the Securities and Exchange Commission (SEC) issued much-needed (and anticipated) relief in the form of [two new frequently asked questions \(FAQs\)](#), related to rule 206(4)-1 under the Investment Advisers Act of 1940 (the Marketing Rule). [Read about the FAQs' key takeaways.](#)



FINRA Proposes and Seeks Comment on Simplified Rules for Outside Business Activities and Private Securities Transactions

By Wayne Aaron

On Friday, March 14, in [Regulatory Notice 25-05](#), the Financial Industry Regulatory Authority (FINRA) proposed a new rule to address when *registered* individuals engage in activities away from their member firms and when *associated* persons (which can be registered or unregistered individuals) engage in securities transactions away from their member firms. If adopted, new FINRA Rule 3290 would replace existing FINRA Rule 3270 (covering what was known as “Outside Business Activities” or “OBAs” and under the proposed rule will be known as “outside activities”) and FINRA Rule 3280 (covering what was known as “Private Securities Transactions” or “PSTs” and under the proposed rule will be known as “outside securities transactions”). [Read about FINRA's proposal.](#)

Adam Bolter Quoted in *The Daily Upside* on SEC's FAQs Related to Marketing by Investment Advisers

Adam Bolter, Financial Markets and Funds counsel, was quoted in a recent article by *The Daily Upside* discussing the SEC's updated set of FAQs addressing issues in the rules on marketing by investment advisers, and in particular, issues faced by private funds. Adam commented on the relief the new guidance brings advisors, suggesting the FAQs address “a known bottleneck”



in the marketing process for private funds and “should help advisors present information that they see as useful to investors.” [Read about Adam's comments.](#)

After 12 Enforcement Actions and 9 No-Action Letters, CFTC Staff Effectively Repeals the Pre-Trade Mid-Market Mark Disclosure Requirement

By Daniel Davis, Alexander Kim

The Commodity Futures Trading Commission's (CFTC) Market Participants Division (MPD) issued Letter 25-09, which effectively eliminates the pre-trade mid-market mark (PTMMM) disclosure requirement for uncleared swaps, foreign exchange forwards and foreign exchange swaps. For the CFTC's 106 registered swap dealers, MPD staff's April 4 action is very welcome news. Since the PTMMM disclosure requirement was adopted in February of 2012, the Commission has brought and settled 12 enforcement actions against registered swap dealers, each for their alleged failure to comply with the requirement. That averages to be almost one enforcement action per year. [Read about the PTMMM repeal.](#)

Winding Back the Clock: CFTC Withdraws Controversial SEF Registration Staff Letter

By Carl Kennedy, Carolyn Jackson, Nathaniel Lalone, Christopher Collins

The Division of Market Oversight (DMO) of the CFTC has withdrawn its previous staff advisory letter on swap execution facility (SEF) registration requirements. The CFTC's staff letter 25-05 withdrew letter 21-19 due to DMO's understanding that it “created regulatory uncertainty” regarding whether certain entities operating in the swaps markets were required to register as SEFs. The withdrawal of Letter 21-19 has removed what was seen by many parts of the swaps industry as a problematic widening of the interpretation of SEF regulatory requirements, which was difficult to apply and raised more questions than it answered. [Read about the end of this SEF registration requirement.](#)



SEC Provides Stablecoin Guidance Amid Legislative Developments

By Daniel Davis, Alexander Kim

On Friday, the Securities and Exchange Commission's (SEC) Division of Corporation Finance issued [guidance](#) clarifying when certain stablecoins may not constitute securities under the federal securities laws. This development comes as Congress is actively considering legislation — notably the [GENIUS Act](#) and the [STABLE Act](#) — that would explicitly carve out payment stablecoins from securities definitions and establish a comprehensive federal regulatory

framework for payment stablecoins. The timing suggests the SEC is attempting to provide interim clarity while legislative solutions remain pending. [Read about the Division's guidance.](#)



CFTC Withdraws Pair of Advisories on Heightened Review Approach to Digital Asset Derivatives

By Daniel Davis

On March 28, the staff of the Commodity Futures Trading Commission (CFTC) issued two press releases announcing the withdrawal of two previous advisories that reflected the agency's heightened review approach to digital asset derivatives. These announcements appear to mark the end of the CFTC's heightened review of digital asset products. [See the updated from](#)

[Katten RegWatch.](#)

SEC Clarifies Position on Proof-of-Work Mining: What It Means for Bitcoin and Beyond

By Daniel Davis, Alexander Kim

The SEC's Division of Corporation Finance issued a significant [statement](#) yesterday that certain proof-of-work (PoW) mining activities do not constitute securities offerings under federal securities laws. This statement arrives just one day before the SEC's Crypto Task Force hosts its inaugural [roundtable](#), "How We Got Here and How We Get Out – Defining Security Status," as part of its "Spring Sprint Toward Crypto Clarity" series. [Read about key takeaways from the SEC Crypto Task Force.](#)

EU/UK

Navigating DORA Compliance: Recent Developments

By Nathaniel Lalone, Ciara McBrien

The EU Digital Operational Resilience Act (DORA) took effect on 17 January 2025 after a two-year implementation period. DORA sets out new requirements for financial entities (FEs) and their information technology and communication (ICT) third-party service providers (TPPs). This note highlights recent developments in the EU's efforts to facilitate in-scope firms' compliance with DORA and authorities' attempts to avoid duplication of operational resilience requirements. [Read about recent DORA developments.](#)



Neil Robson Notes Lack of Real Regulatory Reform to Law360

Financial Markets and Funds Partner Neil Robson spoke with *Law360* in an article about the challenges facing UK capital markets and the impact of regulatory reforms post-Brexit. Neil expressed skepticism about the commitment of the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) to reduce regulatory reporting for companies. He described the statement about reducing regulatory burdens as more of a gesture or "soundbite" rather than a concrete action plan. [Read about Neil's comments.](#)



Nathaniel Lalone Discusses the Latest UK Government Regulatory Reform Efforts With *Law360*

The UK Government's recent moves to encourage the FCA to relax regulatory controls in hopes of promoting economic growth have sparked concerns about potential consumer harm. Financial Markets and Funds Partner Nathaniel Lalone spoke with *Law360* on the limitations of the government's concierge service aimed at helping overseas financial services companies navigate UK rules. He stated, "At least as far as the UK's wholesale markets are

concerned, maybe the best that can be said is that it's the thought that counts." [Read about Nate's comments.](#)

ICYMI

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

- "[April Welcomes More Flexible Co-Investment Exemptive Relief Under the Investment Company Act of 1940](#)," April 14, 2025
- "[March Brings New Beginnings: SEC Approves Multi-Share Class Exemptive Relief for Private BDCs and Certain Registered Closed-End Funds](#)," April 8, 2025
- "[SEC Extends Compliance Dates for the 'Names Rule' Amendments](#)," March 31, 2025
- "[US Treasury Issues Interim Final Rule That Removes the Requirement for US Companies and US Persons To Report Beneficial Ownership Information to FinCEN Under the Corporate Transparency Act](#)," March 25, 2025

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