Having trouble viewing this email? Click here.

Katten Financial Markets and Funds *Quick Take*
April 2022

Editors' Note: *Welcome to the inaugural issue of Katten's Financial Markets and Funds Quick Take. Each month, Quick Take will highlight key noteworthy developments potentially affecting financial markets and funds.*

What to Worry About With the SEC's Move to Regulate Private Funds
The Securities and Exchange Commission (SEC) has been especially busy these last few weeks as evidenced by a series of rule proposals released as part of what looks like an ambitious agenda for 2022. This includes tackling areas such as cybersecurity, risk management, more reporting under Form PF, environmental, social and governance (ESG) disclosures, proposed amendments to the beneficial ownership regime and new reporting under short sale rules. The SEC also signaled a major shift for the Investment Advisers Act of 1940, which could affect the day-to-day business of almost all private fund advisers, as well as all other advisers (even those that are exempt from registration). *Read about the proposed rules*.

SEC Division of Examinations Announces 2022 Examination Priorities
On March 30, the SEC's Division of Examinations (the Division) announced its 2022 examination priorities. The Division publishes its examination priorities on an annual basis and identifies the areas it believes present potential risks to investors and the integrity of the US capital markets. For this year, the Division intends to focus on private funds, environmental, social and governance (ESG) investing, retail investor protections, information security, emerging technologies and cryptocurrency. *Read a detailed description of the Division's 2022 examination priorities*.

When Will FINRA Hold a CCO Liable for Supervisory Failures?
On March 17, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 22-10, "FINRA Reminds Member Firms of the Scope of FINRA Rule 3110 as it Pertains to the Potential Liability of Chief Compliance Officers for Failure to Discharge Designated Supervisory Responsibilities." Chief Compliance Officers (CCOs) at member firms are understandably concerned about being held responsible for every supervisory and compliance failure at their

firm. This regulatory Notice is designed to remind the industry about what is in and out of scope for CCO liability. *Read the full notice*.

Beware of DeFi-ing the SEC!
The SEC's regulatory purview over decentralized finance (DeFi) and cryptoassets could broaden in the near future. Proposed rulemaking by the SEC released on January 26, and currently in public comment period, would expand the scope of Regulation ATS, the regulatory scheme governing alternative trading systems. While it does not specifically reference DeFi or cryptoassets, the rulemaking would expand the definition of "exchange" under Section 3b-16 of the Securities Exchange Act of 1934 to include "communication protocol systems," which may cover certain DeFi and/or centralized finance (CeFi) cryptoasset trading platforms, subjecting them to registration requirements under the Act.

More recently, on March 28, the SEC proposed to expand the definition of "securities dealer" in a manner that could potentially be read as applying to automated market makers with more than $50 million in total assets under management, potentially subjecting certain DeFi platforms to SEC registration requirements to the extent they are not already considered subject to registration as a national securities exchange (unless expressly exempt). *Read the January and March releases*.

Notice of Employee Monitoring in New York
Effective May 7, all New York State employers must provide employees with written notice upon hiring of electronic monitoring, including interception or monitoring of telephone conversations or transmissions, email or internet usage. The law does not apply to general computer system maintenance or protection. *Read New York Senate Bill S2628*.

CFTC's Focus on Retail Markets: Three Areas to Watch
A growing number of people engage with the financial markets and their engagement has broadened in scope. These participants look not only to traditional stocks and mutual funds to seek returns, but also to the more complex products regulated by the Commodity Futures Trading Commission (CFTC). The CFTC is keeping up with the broadening interests of retail market participants, which includes complex products ranging from precious metals to digital assets. With changes to the CFTC's composition under the new administration, there are three areas where the CFTC is looking to find balance in their responsibilities to retail market participants: retail commodity transactions, social media and binary options. *Read the full article.*

SEC Proposes to Expand Reach of Dealer Registration Requirements
The SEC has proposed two new rules that, if adopted, would dramatically expand who may be considered a dealer or a government securities dealer under the Securities Exchange Act of 1934, as amended (the Exchange Act), and be required to register in such capacity.

If adopted, these proposed new rules would largely eliminate decades of established precedent distinguishing between "dealer" activity necessitating registration and "trader" activity that does not. In particular, under the proposed new rules, the following activities would require registration as a dealer and/or government securities dealer: (i) routinely engaging in day trading; (ii) putting out bids and offers on both sides of the market; and (iii) earning revenue "primarily" from capturing the bid-ask spread or from capturing incentives offered by trading venues to supply liquidity. In addition, the proposed new rules include a catch-all provision requiring government securities dealer registration for any firm that buys and sells more than $25 billion in government securities during a six-calendar-month period. *Read the full advisory*.

CONTACTS

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

Wendy E. Cohen

vCard

Gary DeWaal

vCard

Mark D. Goldstein

Editor
vCard

Christopher T. Shannon

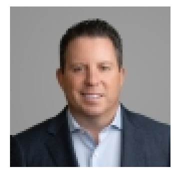
vCard

Robert Weiss

Editor
vCard

Allison C. Yacker

vCard



Lance A. Zinman

vCard