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Katten Financial Markets and Funds Quick Take: May 2022

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SEC Reopens/Extends Comment Period on Major Rule Proposals, Including Private Fund Adviser Proposals

The Securities and Exchange Commission (SEC) announced it is extending the public comment period on the proposed rulemaking to enhance and standardize climate-related disclosures for investors until June 17. The SEC also announced that it will reopen the comment periods on the proposed rulemaking to enhance private fund investor protection and on the proposed rulemaking to include significant Treasury markets platforms within Regulation ATS for 30 days. Read the SEC's announcement.

SEC'S Division of Examinations Risk Alert on MNPI and Code of Ethics Compliance

On April 26, the Securities and Exchange Commission's (SEC) Division of Examinations (EXAMS) published a Risk Alert on deficiencies observed by EXAMS staff in their examinations of investment advisers related to Section 204A of the Investment Advisers Act of 1940 (Advisers Act). Section 204A requires all investment advisers, registered and unregistered, to establish, maintain and enforce written policies and procedures that are reasonably designed, taking into consideration the nature of the adviser's business, to prevent the misuse of material non-public information (MNPI). Examples of areas where deficiencies were observed by EXAMS staff include:

- use of expert networks;
- use of alternative data by private fund managers and other investment advisers; and

- “value-add investors,” who are clients or fund investors that are corporate executives or financial professional investors who may have MNPI.

The Risk Alert also discussed deficiencies associated with the Code of Ethics Rule (Rule 204A-1 under Advisers Act) identified by EXAMS staff.

Investment advisers should carefully review the Risk Alert and assess their compliance policies and procedures and practices focusing on the issues raised in the Risk Alert to determine whether these policies and procedures are reasonably designed to prevent the misuse of MNPI. Read the full Risk Alert.

SEC Chairman Raises Multiple Concerns Regarding Crypto Trading Platforms, Token Issuers and Stablecoins

Gary Gensler, Chairman of the Securities and Exchange Commission (SEC), raised multiple concerns regarding crypto trading platforms, token issuers in general, and stablecoins in particular, during a presentation before the University of Pennsylvania Law School on April 4. Chairman Gensler stated that, because crypto trading platforms are "likely trading securities," he has directed SEC staff to undertake several defined initiatives. These include: (1) getting the platforms ... registered and regulated much like exchanges; (2) assessing how best to ensure the protection of customer assets on such exchanges, and in particular whether it would be appropriate to segregate out custody; and (3) working with the Commodity Futures Trading Commission to consider how best to register and regulate platforms where the trading of securities and non-securities is intertwined. Chairman Gensler did not distinguish between centralized and decentralized trading platforms in laying out his initiatives, noting that his concerns apply to crypto trading and lending platforms, whether they call themselves centralized or decentralized (DeFI). Read about Chairman Gensler's comments.

FINRA Regulatory Notice on Sales Practice Obligations for Complex Products

The Financial Industry Regulatory Authority (FINRA) recently issued Regulatory Notice 22-08, which reminds FINRA members of their sales practice obligations for complex products and options and solicits comment on effective practices and rule enhancements. The comment period ends on May 9. FINRA is concerned that investors — especially those using a selfdirected platform — may not have the financial experience to understand complex products and their associated risks or that the investment may perform in unexpected ways in various market or economic conditions. This new guidance is timely because of the significantly increased trading in complex products, with more investors trading these products online, and the application of Regulation Best Interest. Read about the regulatory notice.

FDIC Requires Reporting of Crypto-Related Activities

Any Federal Deposit Insurance Corporation (FDIC)-supervised institution that is considering engaging in crypto-related activity must now notify the FDIC of its intent and provide all necessary information to create a dialogue with the agency about the risks related to such activity. This requirement follows the FDIC's issuance of a financial institution letter (FIL) on April 7 to all FDIC-supervised financial institutions (namely, state-chartered banks that are not members of the Federal Reserve System) requiring notification to the agency if the institution is engaged or intends to engage in crypto-related activities. Read the full advisory.

SEC Proposes Climate-Related Disclosure Requirements

On March 21, the Securities and Exchange Commission (SEC) proposed rule changes that would require public companies to include certain climate-related disclosure in their registration statements and periodic reports. The proposed rule would require public companies to disclose information regarding climate-related risks that are reasonably likely to have a material impact on their businesses, results of operations or financial conditions. Additionally, public companies would be required to disclose their greenhouse gas emissions (GHG Emissions) and to include certain climate-related metrics in their financial statements. Read the full article.

SEC's Climate-Related Comment Letters – Avoiding Potential Pitfalls

In September 2021, the Securities and Exchange Commission (SEC) provided a sample comment letter that included nine potential climate-related comments the SEC may issue to companies regarding their climate-related disclosure or the absence of such disclosure. The SEC has recently started to release the comment letters and responses. Katten attorneys reviewed the climate-related comment letters not related to a securities offering through April 24 and identified trends and some key takeaways that companies can consider to potentially reduce their securities compliance costs related to these climate-change comment letters. Read the full article.

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