

Wenchi Hu PLLC  
Regulatory Recap  
November 29, 2024

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- **SEC No-Action Letter Exempts Certain Debt Securities from Quotations Rule Requirements**
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- **SEC Fines UPS for Overstating Asset Values**
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#### **In Case You Missed It:**

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- **SIFMA and EY Publish Treasury Clearing Industry Considerations Report**
- **National Financial Services LLC Settles FINRA Charges for Reg NMS Reporting Violations**
- **CFTC Staff Issues Advisory on Options on Commodity ETFs**

#### **Notable Developments:**

##### **US District Court Strikes Down SEC "Dealer Rule"**

On November 21, 2024, a US District Court "[vacated](#) in its entirety" the SEC's "Dealer Rule." The rule would have expanded the definitions of "dealer" and "government securities dealer" to entities that had historically been considered "traders" and therefore outside the scope of the broker-dealer registration requirement.

In *National Association of Private Fund Managers v. SEC*, the District Court for the Northern District of Texas rejected the SEC's request to limit the or modify the scope of its decision,

saying "Complete vacatur is warranted because . . . the very promulgation of the Rule was in excess of [the SEC's] statutory authority."

The Court said that the SEC's expanded definition of "dealer" was "in excess of the Commission's authority based on the text, history and structure of the Exchange Act." Furthermore, the Court stated that the SEC's interpretation of the term "dealer" was inconsistent with the Exchange Act's history and purpose.

The Court also asserted that the SEC's rule was so broad that it would have required the Federal Reserve to register with the SEC as a dealer in securities, had a specific exception not been included as part of the rule.

### **SEC No-Action Letter Exempts Certain Debt Securities from Quotations Rule Requirements**

On November 22, 2024, SEC staff issued a [no-action letter](#) exempting certain traded debt securities from the application of Exchange Act Rule 15c2-11. This no-action letter replaces the last of a series of no-action letters issued by the SEC staff, following the adoption of amendments to Rule 15c2-11.

Under Exchange Act Rule 15c2-11, as amended, broker-dealers are now allowed to publish or submit quotations, including continuous quotations, in quotation mediums that are not "interdealer quotation systems" without complying with the information review requirements before publishing or submitting each quotation. The November 22, 2024 no-action letter would provide a no-action relief in circumstances where brokers or dealers quoted certain fixed income securities without complying with the information review requirements for each such quotation if the broker or dealer publishing or submitted such quotation reasonably has determined that the fixed income security or its issuer meets certain criteria, such as those being issued by a company: (1) that also has a class of securities that is listed on a national securities exchange; (2) that is otherwise subject to the reporting requirements under Sections 13 or 15(d) of the Exchange Act and has filed all required periodic reports during the preceding 12 months; (3) that is a foreign private issuer that has a class of equity securities that is exempt from registration pursuant to Rule 12g3-2(b) under the Exchange Act; (4) where a qualified interdealer quotation system makes a publicly-available determination (in accordance with the requirements in Rule 15c2-11(a)(3)) that there is current and publicly available information about the issuer for any class of security of the issuer that is eligible for an exception in paragraphs (f)(2)(iii)(B), (f)(3)(ii)(A), or (f)(7) of Rule 15c2-11; (5) about which there is current and publicly available information (consistent with Rule 15c2-11(b)); (6) that is a bank as defined in Section 3(a)(6) of the Exchange Act, a bank holding company, or a credit union regulated by the National

Credit Union Association (“NCUA”) that reports information to the Federal Financial Institutions Examination Council or files call reports with the NCUA; or (7) that is an asset-backed issuer covered by the 2011 no-action position from the Division of Corporation Finance regarding its reporting requirements in respect of its outstanding asset-backed securities. In addition, the no-action letter also provides relief to broker-dealers’ quotations, including continuous quotations, in a quotation medium, for any fixed income security that is foreign sovereign debt or a debt security guaranteed by a foreign government.

### **SEC Approves FICC Rules Implementing Mandatory Treasury Clearing**

On November 21, 2024, the SEC two propose rule changes, i.e., [SR-FICC-005](#) and [SR-FICC-007](#), filed by FICC to implement mandatory clearing of Treasury securities, which concern FICC’s clearing access models and margin separation and account segregation. including changes related to, among other things, the separate calculation, collection, and holding of margin for proprietary transactions of direct participants and indirect participant transactions. In the SEC’s view, FICC’s rules, as currently amended, would allow a registered fund’s margin to be posted at FICC consistent with the FICC registered fund margin framework.

In connection with the approvals of SR-FICC-2024-007, the SEC's Division of Investment Management issued a [statement](#) on November 22, 2024 to confirm that the FICC's account structure would allow registered funds' margin to be posted at FICC. This would apply to both tri-party and bilateral repo transactions.

### **States Challenge SEC’s Digital Asset Regulation**

A coalition filed [suit](#) to challenge the SEC's "sweeping enforcement campaign" against the digital asset industry and accused the agency of regulatory overreach.

In the Complaint, the plaintiffs argued that the SEC's interpretation of the Securities Act of 1933 and the Securities Exchange Act of 1934 exceeds statutory boundaries. The plaintiffs cited federal case law, including *SEC v. W.J. Howey Co.*, to argue that digital assets typically do not qualify as "investment contracts" and, thus, fall outside the SEC's jurisdiction. They emphasized that the SEC's enforcement actions lack the due process safeguards required under the Administrative Procedure Act.

The plaintiffs allege further SEC overreach, including that the SEC's actions lack transparency, disregard the regulatory frameworks developed by states and stifle innovation in the digital asset ecosystem. The plaintiffs seek declaratory and injunctive relief, urging the Court to limit the SEC's jurisdiction over digital assets and compel the agency to cease enforcement actions targeting platforms and secondary market participants.

## **SEC Enforcement:**

### **SEC Charges Former Co-CIO of Western Asset Management with Fraud**

On November 25, 2024, the SEC [announced](#) fraud charges against the former co-chief investment officer (“co-CIO”) of Western Asset Management Company. According to the SEC’s [complaint](#), the co-CIO placed trades and then waited until later in the trading day to allocate the trades among clients in the portfolios he managed. Such delay between placing and allocating trades gave him the opportunity to observe price movements and then disproportionately allocate trades at a first-day gain to favored portfolios and trades at a first-day loss to disfavored portfolios. The allocation of net first-day gains to favored portfolios also benefited the co-CIO personally.

### **SEC Charges Advisory Firm La Mancha and its Owner David Kushner with Fraud**

On November 21, 2024, the SEC [announced](#) charges against La Mancha Funding Corp. and its president and sole owner David Kushner with defrauding nearly two dozen investors out of approximately \$2.1 million in a series of private securities offerings.

As alleged in the SEC’s [complaint](#), Kushner and La Mancha raised approximately \$10.5 million from investors through a series of “LLCs” for the purpose of investing in short-term loans made to, among others, sports agents and professional athletes. However, Kushner and La Mancha allegedly made material misrepresentations to the investors about what would be done with the investors’ funds, secretly taking hundreds of thousands of dollars in undisclosed “fees” for themselves out of the intended loan proceeds.

The complaint alleges that the defendants also misappropriated nearly \$1.5 million of loan repayments that, according to the terms of the LLC operating agreements, were supposed to go back to the investors. Kushner used those and other misappropriated funds, including the undisclosed fees, to pay personal expenses, such as payments for personal credit card bills, college tuition, country club dues, a luxury vacation, a Mercedes Benz, and a rental home in the Hamptons.

The SEC’s complaint, filed in the U.S. District Court for the Southern District of New York, charges Kushner and La Mancha with violating the antifraud provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940. The complaint seeks a permanent injunction, disgorgement plus prejudgment interest, and civil monetary penalties, as well as a conduct-based injunction and an officer-and-director bar against Kushner.

### **SEC Fines UPS for Overstating Asset Values**

On November 22, 2024, United Parcel Service (“UPS”) settled SEC [charges](#) for misleading investors regarding the valuation of one of its business units.

According to the SEC’s order, UPS failed to comply with GAAP when evaluating the fair value of one of its underperforming business units during the relevant period. The SEC found that the company overstated its earnings, goodwill balances and shareholder equity by relying on external valuation reports based on unsupported assumptions, while disregarding internal analyses indicating a significantly lower fair value.

Specifically, the SEC’s order found that (1) internal financial projections were not adjusted to account for realistic standalone costs or diminished synergies if the business unit were sold; (2) internal valuations suggesting a sale of the unit would be at a fraction of its carrying value were concealed from the external valuation consultant and excluded from financial reporting; and (3) UPS failed to disclose ongoing negotiations to sell the unit at a significantly reduced price in its public filings, instead asserting that no indicators of impairment existed.

The SEC found that the company's misstatements were materially misleading and violated Securities Act Section 17(a), Exchange Act Rules 12b-20, 13a-1, 13a-11, 13a-13 and 13a-15.

### **SEC Announces Enforcement Results for Fiscal Year 2024**

On November 22, 2024, the SEC [announced](#) a [summary](#) of enforcement actions over the prior fiscal year. The SEC stated that it filed 583 total enforcement actions while obtaining orders for \$8.2 billion in financial remedies, the highest amount in SEC history.

The SEC further stated that “the 583 enforcement actions represent a 26 percent decline in total enforcement actions compared to fiscal year 2023.” The SEC also noted that approximately 56 percent of the \$8.2 billion financial remedies ordered is attributable to a monetary judgment obtained following the SEC’s jury trial win against Terraform Labs and Do Kwon, who were charged with one of the largest securities frauds in U.S. history. In addition, the SEC obtained orders barring 124 individuals from serving as officers and directors of public companies, the second-highest number of such bars obtained in a decade. Also highlighted by the SEC was that it distributed \$345 million to harmed investors.

### **In Case You Missed It:**

#### **SEC Chair Gary Gensler and Commissioner Jaime Lizarraga Resign**

On November 21, 2024, the SEC [announced](#) that Chair Gary Gensler will step down from the Commission on January 20, 2025. Mr. Gensler has been in his position since April 17, 2021. Commissioner Jaime Lizarraga also [announced](#) plans to step down from his role as Commissioner effective January 17, 2025.

## **SIFMA and EY Publish Treasury Clearing Industry Considerations Report**

On November 13, 2024, SIFMA and Ernst & Young issued an industry compliance considerations [report](#) intended to “identify and organize the various considerations and activities market participants should use while assessing and completing their preparations for the upcoming Securities and Exchange Commission rule compliance dates.”

## **National Financial Services LLC Settles FINRA Charges for Reg NMS Reporting Violations**

On November 12, 2024, National Financial Services LLC [settled](#) FINRA charges for erroneously reporting order routing data and failing "to disclose material aspects of its relationship with [execution] venues," in the firm's quarterly and monthly reports. The company was informed of certain of the reporting issues in September of 2022, but failed to remedy the erroneous reporting before April 2023.

## **CFTC Staff Issues Advisory on Options on Commodity ETFs**

In an advisory on the clearing of options on various spot commodity-based exchange traded fund share products, in an advisory dated November 15, 2024, CFTC Division of Clearing and Risk staff [concluded](#) that "it is substantially likely" that these products are securities and fall under SEC oversight, with no additional CFTC role.

According to the advisory, (i) Spot Commodity ETF shares based on various precious metals have been listed and traded on national securities exchanges since 2004, (ii) Spot Commodity ETF shares based on bitcoin have been listed and traded on national securities exchanges with the SEC since 2024 and (iii) that recently Spot Commodity ETF shares on Ethereum were approved by the SEC in May 2024, and therefore, CFTC staff concluded that Spot Commodity ETF shares would be held to be securities, and that “the clearing of these options by OCC would be undertaken in its capacity as a registered clearing agency subject to SEC oversight.”