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Regulatory Recap

February 14, 2024

Notable Developments:

- SEC adopted amendment to “dealer” and “government securities dealer” definitions
- SEC and CFTC adopted joint final rules to amend Form PF
- SEC charged sixteen firms for electronic recordkeeping failures
- SEC charged a Florida based company for offering unregistered crypto lending products
- SEC approved FINRA’s proposed rule change regarding dissemination of Treasury transactions reported to TRACE
- FINRA amended its arbitration procedures

SEC Adopted Amendment to “Dealer” and “Government Securities Dealer” Definitions

On February 6, 2024, the SEC adopted [final rules](#) that further define the phrase “as a part of a regular business” in the statutory definitions of “dealer” and “government securities dealer” under the Securities Exchange Act of 1934 (“Exchange Act”). The SEC considers this as part of continuous efforts to enhance the liquidity and resiliency of the Treasury market structure by requiring certain proprietary and principal trading firms to be subject to the SEC and SRO’s oversight.

Under the Exchange Act, a “dealer” is defined as a person engaged in the business of buying and selling securities for its own account and does not include a person that buys or sells securities for its own account, either individually or in a fiduciary capacity, but *not as a part of a regular business*. This “not as a part of a regular business” exclusion is often relied on to distinguish a trader from a dealer. The final rules further define what “as part of a regular business” means to include certain proprietary and principal trading firms that would not previously be required to register as a broker-dealer. Specifically, a person engaged in buying and selling securities for its own account is engaged in such activity “as a part of a regular business” if the person engaged in a regular pattern of buying and selling securities that has the effect of providing liquidity to other market participants by:

- (i) regularly expressing trading interest that is at or near the best available prices on both sides of the market for the same security and that is communicated and represented in a way that makes it accessible to other market participants; or
- (ii) earning revenue primarily from capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interest.

The rules exclude persons with less than \$50 million total assets, registered investment companies, central banks, sovereign entities and international financial institutions from the definition of “as a part of a regular business”.

The final rules will be effective 60 days after the publication in the Federal Register and the compliance date will be one year after the effective date of the final rules.

SEC and CFTC Adopted Joint Final Rules to Amend Form PF

On February 8, 2024, the SEC and CFTC jointly adopted [amendments to Form PF](#), which is a confidential reporting form for certain SEC-registered investment advisers to private funds, including those private fund advisers who are also registered with the CFTC as commodity pool operators or commodity trading advisers. The SEC and CFTC entered into a memorandum of understanding regarding sharing Form PF data.

According to [the SEC](#), the amendments are designed to enhance how large hedge fund advisers report investment exposures, borrowing and counterparty exposure, market factor effects, currency exposure, turnover, country and industry exposure, central clearing counterparty reporting, risk metrics, investment performance by strategy, portfolio liquidity, and financing and investor liquidity and to enhance the ability of the Financial Stability Oversight Council to monitor and assess systemic risk and the SEC's oversight of private fund advisers.

The final amendments will become effective one year after publication in the Federal Register and the compliance date is the same as the effective date.

Enforcement Actions:

- On February 9, 2024, the SEC [settled charges](#) against 16 firms (including five broker-dealers, seven dually registered broker-dealers and investment advisers, and four affiliated investment advisers) and imposed more than \$81 million combined civil penalties for their failures to maintain and preserve electronic communications as a result of employees engaging in off-channel communications via text messaging. One firm was ordered to pay lower civil penalty than others that reflects its voluntary self-report and cooperation.
- On February 7, 2024, the SEC [settled charges](#) against TradeStation Crypto, Inc., a Florida-based company, for offering and selling unregistered crypto lending products with an interest payment feature.

In Case You Missed It...

- SEC Approved FINRA's [proposed rule change](#) that provides for end-of-day dissemination of transactions in U.S. Treasury securities that are On-the-Run Nominal Coupons reported to FINRA's Trade Reporting and Compliance Engine ("TRACE") with specified dissemination caps for large trades.
- FINRA [amended](#) its Code of Arbitration Procedures to reflect recommendations made in the report from independent law firm's review to provide greater transparency and consistency. The amendments are effective for arbitration cases filed on or after March 4, 2024.