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Regulatory Recap

March 15, 2024

Notable Developments:

- SEC adopted amendments to Regulation NMS Rule 605 to expand the scope and detail of mandatory reporting of order execution quality information for NMS stocks.
- SEC adopted final rules to enhance and standardize disclosures concerning climate-related risk in registration statements and annual reports filed with the SEC.
- FICC filed proposed rule changes with the SEC regarding expansion of access to clearing and segregation of margin; CME announced its plan to clear U.S. Treasuries and ICE also expressed interest in offering Treasury clearing services.

SEC Enforcement

- SEC settled charges against ShapeShift for acting as unregistered broker-dealer by operating a crypto exchange.
- HG Vora Capital Management LLC agreed to civil penalty for failure to disclose beneficial ownership interest ahead of acquisition bid.
- SEC settled charges against EV pickup truck manufacturer, Lordstown Motors, for misleading statements concerning vehicle pre-orders during a de-SPAC public offering.
- SEC announced charges and filed complaint against 17 individuals involved in CryptoFX's \$300 million Ponzi scheme.

In Case You Missed It

- FINRA published Regulatory Notice 24-06 to announce amendments to several rules to disseminate individual transactions in U.S. Treasury securities.
- Judge ruled against Genesis and Gemini to allow the SEC to move forward with its case regarding "Gemini Earn".
- Judge ruled that the SEC has jurisdiction over crypto token insider trading case involving a former Coinbase personnel.

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SEC adopted amendments to Regulation NMS Rule 605 to expand the scope and detail of mandatory reporting of order execution quality information for NMS stocks.

On March 6, 2024, the SEC adopted final [rule amendments](#) that update the disclosure required under Rule 605 of Regulation NMS for order executions in national market system stocks (NMS stocks). Rule 605 was originally adopted in 2000 to help the public compare and evaluate execution quality at different market centers.

The amendments (1) expand the scope of entities subject to Rule 605 to include broker-dealers with a larger number of customer accounts and single dealer platforms; (2) modify the categorization of order

information required to be reported to include expanding “covered orders” to include certain orders submitted outside trading hours, submitted with stop prices or as short sales; (3) modify the content of order information required to be reported to include statistics from the time such orders become “executable;” (4) modify the categorization of orders by size as well as type, to capture execution quality information for fractional share orders, odd-lot orders, and larger-sized orders; and (5) require reporting entities to produce a publicly available summary report of execution quality that includes realized spread time horizons and new statistical measures of execution quality, such as average effective divided by quoted spread and size improvement statistics.

In a statement, SEC Chair Gensler said he was “pleased to support this adoption because it will improve transparency for execution quality and facilitate investors’ ability to compare brokers, thereby enhancing competition in our markets.”

SEC adopted final rules to enhance and standardize disclosures concerning climate-related risk in registration statements and public companies’ annual reports. On March 6, 2024, the SEC [adopted final rules](#) to require public companies to disclose climate-related information in registration statements and annual reports filed with the SEC. The information required to disclosure includes, among other things, material climate-related risks; activities to mitigate or adapt to client-related risks; information about the board of directors’ oversight of climate-related risks and management’s role in managing material climate-related risks; and information on any climate-related targets or goals that are material to the business, results of operations, or financial condition. The final rules also require disclosure of Scope 1 and/or Scope 2 greenhouse gas emissions by certain larger public companies when the emissions are material and filing an attestation report, both on a phased-in basis; and disclosure of the financial statement effects of severe weather events and other natural conditions including, costs and losses.

FICC filed proposed rule changes with the SEC regarding expansion of access to clearing and segregation of margin; CME announced its plan to clear U.S. Treasuries and ICE expressed interest in offering Treasury clearing services.

FICC posted on its website two proposed rule changes submitted to the SEC as required by the final rules adopted by the SEC in December 2023 concerning mandatory clearing of eligible secondary market Treasury securities transactions. The [first proposed rule change](#) is designed to facilitate access to FICC’s clearing services, which included renaming the current correspondent/prime broker clearing model to agent clearing model and removing the category 1 sponsoring members and applying the activity limit currently applicable to category 2 sponsoring members to all sponsoring members. The proposed rule change also removes the QIB requirement applicable to sponsored members.

The [second proposed rule change](#) is designed to establish a new account structure and account types to comply with the segregation requirement in the new SEC rules. This rule change proposes to provide for the separate calculation, collection and holding of margin supporting a netting member’s proprietary transactions and the margin supporting the transactions a netting member submits on behalf of indirect participants. FICC would calculate the margin requirement of a segregated indirect participant account as the sum of the margin requirements applicable to each segregated indirect participant whose transactions are recorded in such account, as though each segregated indirect participant were a separate netting member with a single margin portfolio consisting of such transactions. This would result in FICC calculating separate margin amounts for each segregated indirect participant on a gross basis. In addition, FICC also proposes to cap the current excess capital premium charge at two times a netting member’s excess capital

differential (i.e., the amount by which a netting member's VaR charge exceeds its capital) and limit FICC's ability to waive an excess capital premium charge to exigent circumstances. The VaR charge calculated with respect to segregated indirect participants would not be included in a netting member's excess capital ratio and excess capital differential; instead, the VaR charge assessed for each segregated indirect participant would be satisfied by such segregated indirect participant, not by the netting member. In connection with the filing of the second proposed rule change, FICC also submitted an advance notice pursuant to section 806(e) of Title VIII of the Dodd Frank Act.

The SEC has not accepted the above proposed rule changes and have not published a notice of filing in the Federal Register. Therefore, these proposed rule changes may be rejected by the SEC on the basis of technical defects.

Reuters and Financial Times [reported](#) on March 12 that CME Group plans to apply to clear U.S. Treasury securities. Intercontinental Exchange also told Reuters that ICE is also interested in offering Treasury clearing services.

Enforcement Actions:

- **SEC settled charges against ShapeShift for acting as unregistered dealer by operating a crypto exchange.** On March 5, 2024, the SEC issued an administrative [order](#) concerning settled charges against ShapeShift, a Denver-based crypto exchange. ShapeShift had been operating its exchange beginning in 2014, but had ceased operations in the U.S. in 2021. The SEC alleged ShapeShift operated as an unregistered broker-dealer in cryptocurrencies that were securities, accusations similar to those the SEC has brought against Coinbase, Kraken and Binance US. ShapeShift offered, and the SEC accepted, a settlement that included a \$275,000 fine and assurances not to violate the Exchange Act in the future.

Commissioners Peirce and Uyeda issued a [dissent](#) that criticized the SEC's policy approach, citing the SEC's inability to state which assets on ShapeShift's exchange were Securities under the Exchange Act and the *Howey* test. The dissent further noted that had ShapeShift attempted to define certain assets as securities prior to its ceasing operations in 2021, it would have been encountered ambiguity and a probable failure to reach any consensus with the SEC, and thus would have been unable to remedy any alleged violation, a result the dissenters found particularly troubling, since no harm to investors was alleged. The dissenters lamented the chilling effect such a result could have on innovation in the marketplace.

- **HG Vora Capital Management LLC agreed to civil penalty for failure to disclose beneficial ownership interest ahead of acquisition bid.** On March 1, 2024, the SEC [announced](#) settled charges against HG Vora Capital Management LLC, a New York-based investment adviser, for failure to make timely disclosures of its ownership position and its control purpose while it built up its position in the trucking fleet company Ryder System Inc.'s common shares in the lead-up to its acquisition bid. According to the [SEC order](#), HG Vora agreed to pay a \$950,000 civil penalty.
- **SEC settled charges against EV pickup truck manufacturer, Lordstown Motors, for misleading statements concerning vehicle pre-orders during a de-SPAC public offering.** On February 29, 2024, the SEC [announced charges](#) against Lordstown Motors Corp, which exaggerated the true demand for its flagship electric pickup truck when it went public by merging with a special purpose

acquisition company (SPAC) in 2020. Lordstown filed for bankruptcy in 2023. Lordstown's former auditor, responsible for auditing Lordstown while it was a private company and also auditing the same financial statements in connection with the Lordstown's de-SPAC merger, was also [charged](#) by the SEC for violating auditor independence standards.

- **SEC announced charges and filed complaint against 17 individuals involved in CryptoFX LLC's \$300 million Ponzi scheme.** On March 14, 2024, the SEC [announced](#) its [complaint](#) filed with the U.S. District Court for the Southern District of Texas against 17 individuals involved in CryptoFX's \$300 million Ponzi scheme.

In Case You Missed It...

- **FINRA announced amendments to disseminate individual transactions in U.S. Treasury securities.** On March 8, 2024, FINRA published Regulatory Notice [24-06](#) to announce amendments to several FINRA rules regarding dissemination of transactions in active U.S. Treasury securities at the end of the day as part of the post-trade transparency enhancement in the Treasury securities market. The new transaction-level data will be publicly available on FINRA's website free of charge on a next-day basis.
- **Judge ruled against Genesis and Gemini to allow the SEC to move forward with its case regarding "Gemini Earn".** On March 13, 2024, Judge Ramos of the U.S. District Court, Southern District of New York, issued an [opinion and order](#) that denied Gemini's and Genesis' motions to dismiss the [complaint](#) filed by the SEC on January 12, 2023, which alleged that the Gemini and Genesis engaged in unregistered offering of securities through the "Gemini Earn" program, which paid interest on crypto assets investors tendered to Genesis.
- **Judge ruled that the SEC has jurisdiction over crypto token insider trading case involving a former Coinbase personnel.** On March 1, 2024, Judge Tara Lin of the U.S. District Court, Western District of Washington, [ruled](#) in partial favor of the SEC in a case brought by the SEC regarding insider trading of crypto assets by a former Coinbase personnel and his brother and friend. Judge Lin ruled that the crypto assets involved are securities even though they were traded in the secondary market on Coinbase and that the SEC has jurisdiction over the insider trading.