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Regulatory Recap  
May 15, 2024

**Notable Developments:**

- **SEC and FinCEN Jointly Proposes Customer Identification Program Requirements for Registered Investments and Exempt Reporting Advisers**
- **SEC Requests Comments on FINRA Proposed Rule Change to Adopt the FINRA Rule 6500 Series Concerning Securities Lending Reporting**
- **SEC Delays Decision on Bitcoin Options.**
- **CFTC Proposes New Rule to Ban Listing and Clearing of Events Contracts and Gaming Derivatives.**

**SEC Enforcement:**

- **Robinhood Receives Wells Notice from SEC.**
- **SEC Charges Audit Firm and Its Owner with Fraud Affecting More Than 1,500 SEC Filings.**
- **SEC Obtains Final Judgments Against Participants in Illegal Microcap Securities Offerings.**

**In Case You Missed It:**

- **SEC Approves NSCC Rule Change to Accommodate Shorter Settlement Cycle.**
- **SEC Extends Comment Period Concerning FICC's Clearing Agency Risk Management Framework Rule Change.**
- **House Votes Disapproval of SEC Crypto Custodial Staff Accounting Bulletin.**

**Notable Developments:**

**SEC and FinCEN Jointly Propose Customer Identification Program Requirements for RIAs and ERAs**

On May 13, 2024, the SEC and FinCEN jointly proposed a new rule that would require SEC-registered investment advisers (RIAs) and exempt reporting advisers (ERAs) to establish, document, maintain and implement a customer identification program (CIP), consisting of written policies and procedures reasonably designed to identify and verify the identity of their customers in order to form a reasonable belief that RIAs and ERAs know the true identity of their customers and maintain records of the information used to verify the customer's identity. This proposed rulemaking complements [FinCEN's proposal](#) published in February, which designate RIAs and ERAs as "financial institutions" under the Bank Secrecy Act and subject RIAs and ERAs to AML/CFT program requirements and suspicious activity report (SAR) filing requirements. The SEC Commissioner Hester M. Peirce previously submitted a public [comment letter](#) opposing to FinCEN's proposal to subject RIAs and ERAs to AML/CFT requirements.

### **SEC Requests Comments on FINRA Proposed Rule Change to Adopt the FINRA Rule 6500 Series Concerning Securities Lending Reporting**

On May 1, 2024, the SEC published [notice](#) of the FINRA's proposed rule change to implement new Exchange Act Rule 10c-1a adopted by the SEC in October 2023, which requires a cover person who agrees to lend, either on its own behalf or on behalf of other persons, a covered securities loan to provide certain terms of the covered securities loans to FINRA. Covered persons include any person agrees to a covered securities loan on behalf of the lender or as the lender or the broker-dealer when borrowing fully paid or excess margin securities but would not include any clearing agency when providing only the function of a CCP or CSD. Covered securities loans refer to transactions in which a person, either on its own behalf or on behalf of other persons, lends a reportable security (i.e., a security for which information is already reported or required to be reported to existing reporting regimes) to another person, which would not include positions at a registered clearing agency that result from CCP or CSD services or the use of margin securities by a broker-dealer unless the broker-dealer lends such securities to another person. FINRA is proposing to [adopt](#) the new FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)) to establish reporting requirements for covered securities loans and to provide for the dissemination of individual and aggregate covered securities loan information and loan rate statistics. The SEC published [notice](#) of the rule change on May 1, 2024.

Among other things, these proposed rules would define key terms for the reporting of covered securities loans and specify the reporting requirements with respect to both initial covered securities loans and loan modifications, including prescribing required modifiers and indicators. All covered persons Exchange Act Rule 10c-1a would be required to report

transaction data to FINRA, including non-confidential information such as the security issuer's legal name and identifier, the type of collateral used and the specifics of the securities loaned, which would then be made publicly available by FINRA.

The proposed rules would require reporting of confidential information. According to the proposal, the information will be kept confidential by FINRA and not disclosed publicly, except to law enforcement and other regulatory bodies.

In December 2024, The National Association of Private Fund Managers, Alternative Investment Management Association and The Managed Fund Association [filed](#) a lawsuit against the SEC in the U.S. court of Appeals for the Fifth Circuit, challenging two rules adopted by the SEC in October 2023, including Rule 10c-1a.

### **SEC Delays Decision on Bitcoin Options**

The SEC [delayed](#) its decision on the approval of options trading for spot Bitcoin Exchange Traded Products (“ETPs”) following proposed [rule changes](#) by various exchanges, including BOX Exchange, CBOE Exchange, MIAX International Securities Exchange, MIAX PEARL, Nasdaq and NYSE, to list and trade such options.

The SEC is asking commenters to submit supportive data as to whether:

- the proposed rule changes should include data demonstrating that the shares of each of the specified Bitcoin ETPs are “widely held and actively traded,” as required by the Exchanges’ rules;
- the options on the specified Bitcoin ETPs should be subject to the same position limits as options on stock;
- the available supply of Bitcoin should be considered in establishing position limits for options on Bitcoin ETPs;
- the proposed rule changes should analyze the potential impact that listing options on Bitcoin ETPs could have on Bitcoin market quality and function;
- the proposed rule changes should include representations regarding how the Exchanges would obtain information regarding trading in the Bitcoin ETPs from the exchanges where the Bitcoin ETPs trade; and
- the proposed rule changes provide an adequate basis for the SEC to find that it is consistent with Exchange Act 6(b)(5) to permit the listing of such options, rather than approving options on ETPs that hold Bitcoin on a product-by-product basis.

In a related matter, the SEC also [requested](#) comment on a proposed rule change by Nasdaq that would allow the listing of ETPs based on Ethereum.

## **CFTC Proposes New Rule to Ban Listing and Clearing of Events Contracts and Gaming Derivatives**

The CFTC [proposed](#) a [rule](#) to ban the listing and clearing of "events contracts" and "gaming" derivatives. The proposed rule would amend CFTC Rule 40.11 to further specify types of event contracts fall within the scope of the Commodity Exchange Act Section 5c(c)(5)(C), and are contrary to the public interest, such that they may not be listed for trading or accepted for clearing on or through a CFTC-registered entity. The proposed regulations would cover derivative products that allow bets on sporting events as well as calamities such as terrorism and assassination. The comment deadline is July 9, 2024.

## **SEC Enforcement:**

### **Robinhood Receives Wells Notice from SEC**

Robinhood, according to its own recent SEC [8-K filing](#), received a Wells Notice from the SEC, indicating a potential coming enforcement action. According to Robinhood, the Wells Notice alleges violations of Section 15(a) and 17A of the Exchange Act and is focused on Robinhood's U.S. crypto business, allegedly the classification of crypto assets as securities. Robinhood [stated](#) that it had made difficult choices not to list certain crypto assets or provide products (such as crypto lending and staking) that the SEC previously alleged are securities and made efforts to register a special purpose broker-dealer with the SEC. These efforts were detailed in a [testimony](#) by its Chief Legal, Compliance and Corporate Affairs Officer before the House Committee on Agriculture.

### **SEC Charges Audit Firm and Its Owner with Fraud Affecting More Than 1,500 SEC Filings**

The SEC [charged](#) audit firm BF Borgers CPA PC and its owner, Benjamin F. Borgers, with deliberate and systemic failure to comply with Public Company Accounting Oversight Board standards in its audits and reviews incorporated in more than 1,500 SEC filings from January 2021 through June 2023. The firm and its owner were also charged with falsely representing to their clients that the firm's work would comply with PCAOB standards, fabricating audit documentation and falsely stating that the firm's audits complied with PCAOB standards.

The SEC's order finds that, among other things, both the firm and the individual failed to adequately supervise and review the work of the team performing the audits and reviews, did not properly prepare and maintain audit documentation, and failed to obtain engagement quality reviews, without which an audit firm may not issue an audit report. The SEC's order further finds that the firm and the individual engaged in improper professional conduct and violated, and caused violations of, the antifraud, recordkeeping, and other provisions of the federal securities laws.

To settle the SEC's charges, both the firm and the individual agreed to permanent suspensions from appearing and practicing before the SEC as accountants, as well as civil penalties.

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

#### **SEC Approves NSCC Rule Change to Accommodate Shorter Settlement Cycle**

The SEC's current rules concerning settlement cycle propose shortening the standard settlement cycle from two business days after the trade date ("T+2") to one business day after the trade date ("T+1"), with a compliance date of May 28, 2024. NSCC [filed](#), and the SEC approved, rule changes to be consistent with this upcoming industry-wide move to the shortened settlement cycle. NSCC states that the core functions of NSCC will generally continue to operate in the same way.

#### **SEC Extends Comment Period Concerning FICC's Clearing Agency Risk Management Framework Rule Change**

The SEC [announced](#) that a recent FICC rule change would have a longer comment period.

The rule change at issue was FICC's proposed [rule change](#) to its Clearing Agency Risk Management Framework covering FICC, DTC and NSCC. The proposed rule change would amend the framework to describe how FICC, DTC and NSCC may (1) solicit the views of their participants and other industry stakeholders in developing new, or re-evaluating existing, services or risk management practices; (2) provide for the annual assessment and subsequent review of FICC's Government Securities Division access models by FICC's Board of Directors in compliance with the requirements of Rule 17Ad-22(e)(18)(iv)(C); and (3) make other conforming and clean up changes.

## **House Votes Disapproval of SEC Crypto Custodial Accounting Bulletin**

The U.S. House of Representatives [passed](#) a resolution to "disapprove" of SEC Staff Accounting Bulletin No. 121, voting to overturn the SEC bulletin under the terms of the Congressional Review Act.

The SEC Staff Accounting Bulletin in question requires custodians of digital assets to report those assets on their balance sheets, potentially raising capital requirements for banks to offer such custodial services.

In a [statement](#), the White House confirmed that the President would veto the bill if it passed the Senate.