Wenchi Hu PLLC
Regulatory Recap
March 31, 2025

Notable Developments:

- **SEC Issues Guidance on Verification of Accredited Investors**
- **SEC Says Crypto Mining Not Subject to Securities Laws**
- **SEC Withdraws Its Defense of the Climate Disclosure Rule**
- **SEC Extends Compliance Dates for Amendments to the Investment Company Names Rule**
- **CFTC Staff Withdraws Advisory on SEF Registration Requirement**
- **FINRA Undertakes Review to "Modernize" Rules**

SEC Enforcement:

- **SEC Charges Investment Adviser and His Firm with Fraud and Other Violations**

In Case You Missed It:

- **FICC Launches Agent Clearing Services, Separation of House and Customer Activity and Segregation of Customer Margin**
- **SEC Crypto Task Force to Host More Roundtables**
- **SEC Announces Agenda and Panelists for A.I. Roundtable**
- **CAT LLC Proposes Removal of all Personal Information on National Market System Plan**

Notable Developments:

SEC Issues Guidance on Verification of Accredited Investors

On March 12, 2025, the SEC Division of Corporation Finance confirmed that an issuer could use a minimum investment amount as a determinative factor in verifying accredited investor status.

In its interpretive guidance, the staff confirmed that an issuer conducting an offering under Securities Act Rule 506(c) will be deemed to have taken reasonable steps to verify a purchaser's accredited investor status if the issuer requires purchasers to commit to a sufficient minimum investment amount, coupled with representations from the investor and subject to certain other conditions.

Under the rule as clarified by this guidance, an issuer may satisfy its verification obligations by:

- requiring a minimum investment amount of at least $200,000 for a natural person and $1,000,000 for a legal entity.
- obtaining written representations from a purchaser that it qualifies as an accredited investor and that the minimum investment amount is not financed by a third party for the specific purpose of making the investment.
- confirming the absence of actual knowledge indicating that a purchaser is not accredited or that the investment amount has been improperly financed.

SEC Says Crypto Mining Not Subject to Securities Laws

On March 20, 2025, the SEC Division of Corporation Finance ("Corp Fin") issued a statement ("Statement") regarding proof-of-work mining. It is important to note that Corp Fin limits the scope of the Statement to addressing the mining of crypto assets that are intrinsically linked to the programmatic functioning of a public, permissionless network, and are used to participate in and/or earned for participating in such network's consensus mechanism or otherwise used to maintain and/or earned for maintaining the technological operation and security of such network. Corp Fin refers in this statement to these crypto assets as "Covered Crypto Assets" and their mining on proof-of-work networks as "Protocol Mining."

In the Statement, Corp Fin states that it would not view "Mining Activities" (defined in this statement) in connection with Protocol Mining, under the circumstances described in this statement, as involving the offer and sale of securities within the meaning of Section 2(a)(1) of the Securities Act of 1933 (the "Securities Act") and Section 3(a)(10) of the Securities Exchange Act of 1934 (the "Exchange Act"). Therefore, Corp Fin takes the view that participants in Mining Activities do not need to register transactions with the Commission under the Securities Act or fall within one of the Securities Act's exemptions from registration in connection with these Mining Activities.

The Statement defines "Mining Activities" as: (1) mining Covered Crypto Assets on a PoW network; and (2) the roles of mining pools and pool operators involved in the Protocol Mining process, including their roles in connection with the earning and distribution of Rewards. Only Mining Activities undertaken in connection with the following types of Protocol Mining are addressed in the Statement.

- Self (or Solo) Mining, which involves a miner mining Covered Crypto Assets using its own computational resources. The miner may work alone or together with others to operate a node and mine Covered Crypto Assets.

- Mining Pool, which involves miners combining their computational resources with other miners to increase their chances of successfully validating transactions and mining new blocks on the network. Reward payments may flow from the network directly to the miners or indirectly to them through the pool operator.

Commissioner Caroline A. Crenshaw criticized the statement saying the statement relied on flawed logic by assuming that miners mine solely to "receive rewards," not profits from others' efforts. She also noted that by issuing the statement, Corp Fin acknowledged that a *Howey* analysis is needed to determine if a "specific mining arrangement" qualifies as an investment contract.

SEC Withdraws Its Defense of the Climate Disclosure Rules

On March 27, 2025, the SEC announced that it voted to end its defense of the rules requiring disclosure of climate-related risks and greenhouse gas emissions. The rules were adopted by the SEC on March 6, 2024 and were challenged by the states and private parties. The litigation was consolidated in the Eighth Circuit (Iowa v. SEC, No. 24-1522 (8th Cir.). The SEC previously stayed effectiveness of the rules pending completion of the litigation. Briefing in the cases was completed before the change in Administrations. Following the SEC's vote to end its defense of the rules, SEC staff notified the court that the SEC counsel is no longer authorized to advance the arguments in the legal brief previously filed and the SEC yields any oral argument time back to the court.

SEC Extends Compliance Dates for Amendments to Investment Company Names Rule

On March 14, 2025, the SEC announced a six-month extension of the compliance dates for amendments adopted in September 2023 to the Investment Company Act "Names Rule". The compliance date for larger fund groups is extended from Dec. 11, 2025, to June 11, 2026, and the compliance date for smaller fund groups is extended from June 11, 2026, to Dec. 11, 2026.

CFTC Staff Withdraws Advisory on SEF Registration Requirement

On March 13, 2025, the CFTC withdrew an advisory after concluding that it had "created regulatory uncertainty regarding whether certain entities … are required to register as a swap execution facility with respect to their particular functions within the swaps market…"

The Swap Execution Facility Registration Advisory had been issued "to remind entities of the registration requirements" under Section 5h(a)(1) of the Commodities Exchange Act and CFTC Rule 37.3(a)(1). Under the withdrawn advisory, the CFTC outlined scenarios that would trigger the registration requirement, including: (i) facilities offering one-to-many or bilateral communications; (ii) entities listing only swaps that are not subject to the trade execution

requirement; (iii) facilities offering non-electronic methods of trading; and (iv) entities registered with the CFTC in some other capacity.

FINRA Undertakes Review to "Modernize" Rules

On March 12, 2025, FINRA initiated a "broad review of its regulatory requirements" to "modernize" its rules and potentially update its regulatory approach. In connection with such review, FINRA is requesting comments on its current rules.

FINRA requested comment on (i) current regulations on capital acquisition brokers and other "limited purpose" broker-dealer models designed to support capital formation; (ii) research analysts and research reports; and (iii) "other NASD or FINRA rules, guidance and processes impacting capital raising."

FINRA also requested comment on current requirements regarding: (i) branch offices and remote work; (ii) credentialing and education; (iii) internal and customer communications; and (iv) recordkeeping.

FINRA also requested comment on its rules on outside business activities of registered and associated persons, consolidating FINRA Rules 3270 and 3280 into proposed FINRA Rule 3290.

The proposed rule would categorize two types of activity, (1) "investment-related activity," which "pertain[s] to financial assets, including securities, crypto assets, commodities, derivatives, ... real estate and insurance; ... this term also includes personal securities transactions;" and (2) "outside securities transactions," which refers to conduct away from an individual's employment that involves securities transactions.

Rules regarding the former, investment-related activity, would apply only to "registered persons;" while rules regarding the latter, "outside securities transactions," would apply to persons of a "broker-dealer," including persons that are not required to be registered.

The proposed rule requires registered persons to provide their member firm notice of any investment-related activity, including any "outside securities transactions;" and associated persons (i.e., not registered) to provide notice of any activity involving "outside securities transactions."

Notice would not be required for outside activities that are not investment-related, activities conducted for an affiliate of the member firm, securities transactions effected without compensation for "immediate family members;" and transactions involving personal-use real estate.

Further, FINRA also requested comment on guidance and process relating to capital formation.

FINRA requested comment on rules regarding "capital acquisition brokers," a special type of broker-dealer engaged in selling newly-issued unregistered securities to institutional investors. FINRA asked whether these firms should be permitted to engage in a broader range of activities. FINRA requested comments on amending rules so that costs for these entities could be reduced. FINRA also requested comment concerning distribution of securities from these entities.

SEC Enforcement:

On March 17, 2025, the SEC announced that it filed a complaint against a New Jersey investment adviser and his firm for misconduct and for investing more than 25 percent of the assets of the fund managed by the adviser and his firm in a single company over multiple years, causing losses of $1.6 million. According to the complaint filed by the SEC, the adviser and his firm previously settled charges with the SEC regarding violation of its policy by investing more than 25% of its assets in one industry, committing fraud and breach fiduciary duties. Despite being ordered to cease the violations, the adviser and his firm continued their violations, which resulted in $1.6 million losses to the fund and its investors.

In Case You Missed It:

FICC Launches Agent Clearing Services, Separation of House and Customer Activity and Segregation of Customer Margin

On March 25, 2025, DTCC announce its successful launch of its enhanced Agent Clearing Service and new capabilities to separate house and customer activity and margin segregation for those customers who elect to post margin to FICC.

SEC Crypto Task Force to Host More Roundtables

On March 25, 2025, the SEC announced that its Crypto Task Force will host four more roundtables in its ongoing series discussing crypto asset regulation as follows:

- April 11, 2025 - Between a Block and a Hard Place: Tailoring Regulation for Crypto Trading
- April 25, 2025 - Know Your Custodian: Key Considerations for Crypto Custody
- May 12, 2025 – Tokenization - Moving Assets Onchain: Where TradFi and DeFi Meet
- June 6, 2025 - DeFi and the American Spirit

Each roundtable will be open to the public at SEC's headquarters at 100 F Street, N.E., Washington, D.C. and streamed live on SEC.gov.

SEC Announces Agenda and Panelists for A.I. Roundtable

On March 20, 2025, the SEC announced the agenda and panelists for the March 27 roundtable on artificial intelligence in the financial industry. The roundtable will be held at the SEC's headquarters at 100 F Street, N.E., Washington, D.C. from 9:00 a.m. – 4:15 p.m. and will be open to the public and webcast live on the SEC's website.

CAT LLC Proposes Removal of all Personal Information on National Market System Plan

The Consolidated Audit Trail, LLC filed a proposal with the SEC to amend the CAT Rules to make the removal of personal information mandatory.

The proposed amendment would: (i) require deletion of previously reported customer information; (ii) "prohibit the continued reporting of [previously] exempted Customer information to the CAT; (iii) "cover all natural persons (including, for example, foreign natural persons that are not reported with transformed SSNs or ITINs) and all legal entity Customers;" and (iv) "allow CAT LLC to achieve an estimated $12 million in annual cost savings."