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Weekend Reading - A selection of regulatory and other relevant developments across the trading and markets industry

Please feel free to reach out with any questions or if we may otherwise support you in any way.

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Markets Regulatory Notes from Washington D.C.

- ***SEC Chairman Gensler Speaks on Artificial Intelligence.*** In a Dec. 6, 2023 [interview with The Messenger](#), Chairman Gensler cautioned on the risk of “herding” or “mono-cultures” - when large parts of the financial sector use the same or similar AI models (or data sets) to inform and guide their trading (or other business activities) and cause increased volatility and price spikes or crashes as many actors engage in similar conduct. He also (1) warned firms not to engage in “AI washing”, a practice of overstating or suggesting an affiliation or involvement with AI that is inconsistent with the organization’s actual involvement with or use of AI; and (2) reminded the audience of the SEC’s Oct. 2023 proposed rule on [Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers](#). He concluded by observing that the SEC staff uses AI today, in its examinations, enforcement, and economic work.
- ***CFTC Issues Proposed Guidance for Listing Voluntary Carbon Credit (VCC) Derivatives.*** The guidance sets out the expectations for exchanges seeking to list these products for trading, and it covers issues such as VCC quality and design considerations, transparency, governance, accreditation and certification/validation, and market



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monitoring requirements. MSP's client note summarizing the proposal is available [here](#). Comments are due Feb. 16, 2024.

- ***CFTC to Hold [Dec. 13, 2023 Open Meeting](#); Consider Several Proposals.*** On Dec. 13, 2023, the CFTC will hold an open meeting to consider four proposed rules: *Operational Resilience Framework for Futures Commission Merchants, Swap Dealers, and Major Swap Participants*; *Capital and Financial Reporting Requirements for Swap Dealers and Major Swap Participants*; *Protection of Clearing Member Funds Held by Derivatives Clearing Organizations*; and *Amendments to Swap Data Recordkeeping and Reporting Requirements*. The CFTC will also consider the Amended Application of Bitnomial Clearinghouse, LLC for Registration as a Derivatives Clearing Organization.
- ***McHenry (R-N.C.) and McCarthy (R-CA) Leaving Congress.*** Rep. Patrick McHenry (R-N.C.) has announced that he will not seek re-election next year. McHenry is the Chairman of the Financial Services Committee and was acting Speaker of the House of Representatives in October 2023. Rep. Kevin McCarthy (R-CA) has also announced that he will resign from the House of Representatives at the end of 2023. McCarthy had been the Speaker of the House of Representatives from January 2023 to October of 2023.
- ***Dem. Senators Fetterman (D-PA), Brown (D-OH), and Smith (D-MN) Write [Letter to CFTC Chair Rostin Behnam Criticizing the CFTC's Proposed Rule on Seeded Funds and Money Market Funds, re: Margin Rules for Nonbank Swap Dealers](#).*** The proposed rule, if adopted, would apply to certain swaps involving nonbank swap dealers (for which the CFTC sets margin requirements, whereas the prudential regulators set the margin rules for bank swap dealers). As a reminder, [the proposed rule](#) would (i) provide a limited exemption to swap dealers and major swap participants from the requirement to exchange initial margin on uncleared swaps with certain start-up investment funds; (ii) eliminate a provision that disqualifies certain money market and similar funds engaging in repurchase or similar transactions from being eligible as initial margin collateral for uncleared swaps; and (iii) add a footnote to the haircut schedule for eligible collateral to specify the discount rate applicable to money market and similar funds. In their letter, the Senators assert that the proposal would “create a divergence between rules that apply to non-bank swap dealers and prudentially regulated swap dealers” and undermine Dodd-Frank’s goals of getting more margin into swaps trades.

Global Derivatives Regulatory Notes



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- ***UK FCA Publishes Consultation on Reforming the Commodity Derivatives Regulatory Framework.*** [Released Dec. 4, 2023](#), the UK Financial Conduct Authority is setting out proposals concerning position limits, the exemptions from those limits, position management controls, the reporting regime and the ancillary activities test. The proposal would apply to trading venues in the UK which admit to trading commodity derivatives and persons, including commercial users and financial firms, who trade commodity derivatives in the UK. Comments are due by Feb. 16, 2024.

FOCUS: Review and Summary of the Binance Settlements

- ***Binance Settlement with U.S. Government.*** On Nov. 21, 2023, Global crypto exchange Binance, along with its CEO Changpeng Zhao (“CZ”, who has now resigned), pled guilty to anti-money laundering, unlicensed money transmitting, and sanctions violations charges as part of a more than \$4 billion resolution with several U.S. government authorities. The settlement involved coordination resolutions with the Department of Justice, the Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) and Office of Foreign Assets Control (OFAC) and the U.S. Commodity Futures Trading Commission (CFTC). With respect to the CFTC, Binance was charged with the operation of an illegal digital assets derivative exchange.
- ***Internal Communications.*** The resolutions cite multiple internal communications, amongst other evidence, in support of the charges. According to the DOJ, Zhao told employees it was “better to ask for forgiveness than permission,” and prioritized Binance’s growth over compliance with U.S. law.
- ***\$4.3 Billion in Penalties.*** As part of the plea agreement with the DOJ, Binance agreed to forfeit more than \$2.5B and to pay a criminal fine of more than \$1.8B for a total financial penalty of more than \$4.3B. Binance separately also reached agreements with the CFTC, FinCEN, and OFAC, and the DOJ has indicated that it will credit approximately \$1.8 billion toward those resolutions.
- ***Compliance Monitorships; Agreement to Exit U.S.*** The DOJ Press Release indicates that Binance has also agreed to retain an independent compliance monitor for three years and remediate and enhance their anti-money laundering and sanctions compliance programs. The Treasury Press Release indicates that FinCEN will also impose a five-year monitorship and requires significant compliance undertakings, including to ensure Binance’s complete exit from the United States.



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- ***Voluntary Disclosure and Cooperation Credit.*** The DOJ observed: “Binance did not make a timely and voluntary disclosure of wrongdoing, but it received partial credit for its cooperation with the Department’s investigation, and it has taken steps to remediate its compliance program. Binance did not receive full credit for its cooperation because it delayed producing relevant evidence, including recorded meetings in which Binance executives discussed U.S. legal requirements.”
- ***DOJ Documents:*** [Binance Plea Agreement](#). [Zhao Plea Agreement](#). [Binance Information](#). [Zhao Information](#). [DOJ Press Release](#).
- ***Treasury Documents:*** [Treasury Press Release, re: Binance](#). FinCEN documents: [Binance Consent Order](#). OFAC documents: [Binance Settlement Agreement](#); [OFAC Press Release, re: Binance](#).
- ***CFTC Documents:*** [CFTC Press Release, re: Binance](#). As a reminder, the CFTC had previously filed a complaint against Binance, Zhao, and Binance’s former chief compliance officer, Samuel Lim, charging the group with illegally offering and executing commodity derivatives transactions to and for U.S. customers, and accepting funds from those customers, who for most of the relevant period were not required to provide any identity-verifying information before trading on the platform. The CFTC’s Mar. 27, 2023 complaint is available [here](#).
- ***SEC Complaint:*** As a reminder, the [SEC’s June 5, 2023 lawsuit against Binance](#) was not part of the Nov. 21, 2023 settlements and remains pending.

Digital Asset Markets Regulatory Developments.

- ***Tether Working with DOJ.*** Nov. 20, 2023 - Tether and global crypto exchange and Web3 technology company OKX announced that they have assisted the United States Department of Justice (DOJ) in an investigation that led to Tether proactively and voluntarily freezing approximately 225 million in USDT tokens in external self-custodied wallets linked to an international human trafficking syndicate in Southeast Asia responsible for a global “pig butchering” romance scam ([LINK](#)). On Nov. 21, 2023, Tether separately [announced](#) that it had assisted the U.S. DOJ and U.S. Secret Service in criminal investigations and victim recovery, and that it has on-boarded the United States Secret Service into its platform and will be working with the Federal Bureau of Investigation to do the same. The same day, the DOJ announced that it had seized \$9



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million of USDT tied to “pig butchering” scams, and the DOJ thanked Tether in their [press release](#).

- ***U.S. Treasury Lobbying Congress For Broader and Extraterritorial Crypto Oversight.*** In Nov. 29, 2023 [remarks by delivered by Deputy Secretary of the Treasury Wally Adeyemo](#) at the 2023 Blockchain Association’s Policy Summit, Adeyemo said: “Treasury provided Congress a set of common-sense recommendations to expand our authorities and broaden our tools and resources to go after illicit actors in the digital asset space.” He said that Treasury is asking for new sanctions tools via a secondary sanction regime that will not only cut off a firm from the U.S. financial system, but will also expose any firm that continues to do business with the sanctioned entity to being cut off from the US financial system. He also indicated that the Treasury is asking for its authorities to be extended to apply to any dollar-backed stablecoin, wherever located.
- ***Federal Reserve Oversight of Bank Crypto Activities.*** The Federal Reserve’s [Commercial Bank Examination Manual](#) was updated to add a new section (Section 5330.1) on “Crypto-Asset-Related Activities and Exposures.” The 6-page section of the manual, dated October 2023, covers notification requirements for crypto activities, legal permissibility of crypto activities, a supervisory non-objection process for activities involving dollar tokens, crypto related risks for banking organizations, liquidity risks resulting from crypto market vulnerabilities, and supervisory considerations for assessing a bank’s crypto activities.
- ***Treasury Sanctions Crypto Mixer “Sinbad”.*** On Nov. 29, 2023, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) sanctioned Sinbad.io (Sinbad), a virtual currency mixer that serves as a key money-laundering tool of the OFAC-designated Lazarus Group, a state-sponsored cyber hacking group of the Democratic People’s Republic of Korea (DPRK). Treasury observed that Sinbad has processed millions of dollars’ worth of virtual currency from Lazarus Group heists, including the Horizon Bridge and Axie Infinity heists.
- ***California “BitLicense” Rulemaking Opens a Request for Comment Period.*** The California Department of Financial Protection and Innovation is [seeking public comment](#) prior to engaging in formal rulemaking for the new Digital Financial Assets Law (i.e., a BitLicense-type of regulatory program and licensing requirement that would apply to companies engaging in digital asset business in California), signed into law by CA Governor Newsom on Oct. 13, 2023. Comments close on January 12, 2024, and DFPI will also host a virtual informal listening session with stakeholders on Jan. 8, 2024.



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- ***SEC Lawsuit Against Kraken.*** The SEC has sued cryptocurrency exchange Payward Inc. and Payward Ventures Inc. (which runs Kraken), charging that Kraken’s crypto trading platform was operating as an unregistered securities exchange, broker, dealer, and clearing agency. The Nov. 20, 2023 press release and complaint is [available here](#).

Selected Global Developments in Digital Asset Regulation.

- ***United Kingdom HMT Response on Digital Securities Sandbox Consult*** – On Nov. 22, 2023, HM Treasury in the United Kingdom published its response to the July 2023 consultation on the Digital Securities Sandbox. The consultation had set out HM Treasury’s proposed approach to delivering a Digital Securities Sandbox (DSS), which would be the first financial market infrastructure sandbox delivered under the powers granted as part of the Financial Services and Markets Act 2023. The response, which is a 32-page “report” styled publication, confirms HMT’s final approach to implementing the DSS to facilitate the use of digital assets in financial markets.
- ***Monetary Authority of Singapore Revises [Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies to Include Guidance on Digital Assets Investments](#)***. Updated on Nov. 29, 2023, Section 4.1.4 of the Guidelines provide minimum disclosure requirements for FMCs that invest in digital assets. The requirements include the heightened price, liquidity and volatility risks associated with digital assets; the risks of using intermediaries such as trading platforms and custodians; and any other regulatory and legal risks that are associated with investments in digital assets. Notably, the guidance states that: “FMCs should segregate customers’ assets and store bulk of the assets in cold wallet and only keep assets in hot wallet for the purpose of liquidity and operational needs. Disclosure of the custody arrangements should include the jurisdiction in which the custodians are suitably licensed, registered or authorised.”
- ***Monetary Authority of Singapore Publishes Final Responses to Feedback on Proposed Regulations for Digital Payment Tokens Service Providers***. On Nov. 23, 2023, MAS [published](#) its second and final tranche of responses to provide guidance on topics such as (1) business conduct and consumer access measures to limit potential consumer harm and (2) minimum technology and cyber risk management requirements for DPT service providers. The original Oct. 26, 2022 consultation and the two tranches of MAS responses are available [here](#).



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About us:

Miller Strategic Partners LLP is a law firm headquartered in New York City. We advise clients on trading and markets regulatory and commercial matters, investigations, and crisis management. MSP is a law firm member of the Futures Industry Association.

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