Futures and Derivatives

Katten has a deep knowledge of both futures and derivatives products that are economically similar but legally distinct. Our Futures and Derivatives team combines that knowledge with a focus on our clients' commercial objectives to help them succeed in these businesses.

Practical counsel leads to efficient solutions

Katten's futures and derivatives attorneys represent a wide range of clients (dealers, end users, proprietary traders, brokers, advisors, exchanges and clearing organizations) on an equally wide range of commercial transactions (futures, structured products, and cleared and uncleared swaps) encompassing many different asset classes (interest rates, credit, commodities, event contracts, securities and foreign exchange). This breadth of our practice gives us a valuable perspective on issues and a basis for creative problem-solving.

The foundation of our practice is a deep understanding of futures and derivatives regulation, market practices and documentation. We negotiate agreements to help our clients close deals, not to prolong the negotiation process. We also help them understand and comply with the myriad rules and regulations affecting their businesses, and we defend them effectively when regulatory or litigation problems arise. Where appropriate to further our clients' business objectives, we have also been successful in obtaining regulatory relief that resolves issues before they turn into problems.

Our strong US and UK teams are fully coordinated so we can efficiently and consistently serve the needs of clients who do business on both sides of the Atlantic. Clients often rely on us to design three-cornered analyses for their activities in the UK, the EU and the US.

Established relationships create efficiencies

Katten's team includes attorneys who have worked at the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) as well as senior in-house counsel and business counsel at global investment banks. We maintain excellent relationships with national regulators, self-regulatory bodies, exchanges and clearing organizations, which often gives us direct access to advance our clients' interests. Other members of our team have served in senior in-house roles at both financial services firms and trade associations.

Our attorneys are thought leaders in the futures and derivatives world. Our publications and financial service blogs provide insightful views and are regularly read by clients, nonclients and regulators around the world.

Key Contacts



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Because of our reputation for extensive industry knowledge, regulators and industry decision makers often ask for our insights. Members of the Futures and Derivatives team are active in industry projects and initiatives and some serve on government advisory committees. These activities give us a front-row seat from which to monitor new futures and derivatives developments and offer input that benefits our clients.

Structured products capabilities expand our reach

Katten's Structured Products and Derivatives practice works closely with our Futures and Derivatives team to provide clients with integrated coverage across the derivatives landscape. We advise on the structuring, documentation and regulatory aspects of complex derivatives and structured finance transactions.

As one of the leading full-service deal-contingent derivatives practices, we counsel on the derivatives components and regulatory, antitrust and other deal-closing conditions in infrastructure/projects and M&A corporate transactions that influence closing certainty. We help clients evaluate risk holistically and move transactions forward efficiently.

With a high volume of International Swaps and Derivatives Association (ISDA) and Global Master Repurchase Agreement (GMRA) transactions for investment banking clients alone, we bring significant market intelligence and experience to every engagement.

Event contracts and prediction markets

Katten provides comprehensive legal and regulatory guidance to innovators in the event contracts and prediction markets sector. Our clients include exchanges listing or trading outcome-based products and entities seeking to register new trading platforms. We also represent clearinghouses seeking to clear these products and intermediaries who help bring them to retail investors and traders.

Event contracts, also called binary options, are derivative financial tools that buyers use to predict the outcomes of major events like the Super Bowl or presidential elections. The Commodity Exchange Act generally regulates these contracts as swaps, subjecting them to CFTC oversight. Our highly skilled attorneys assist clients in navigating the full spectrum of CFTC registration and meeting the regulatory requirements to list and clear these products. The team also advises on compliance programs for intermediaries looking to enter this space.

Katten played a key role in the process of listing the first sports event contracts on a federally regulated exchange, kicking off a new era for event-based derivatives in the United States. Since then, we have worked closely with federal regulators and industry stakeholders to support the responsible growth of this fast-paced market. Our team closely monitors related litigation from state and tribal authorities to stay ahead of developments and keep clients informed of efforts to assert limits on some of these new contracts. With a deep derivatives bench and strong

regulatory relationships, we position clients to build, scale and operate efficiently in this dynamic sector.

Our Experience

- Defend major financial institutions (both US and non-US) against allegations of under-reporting or misreporting. Our work includes technology internal review, remediation, negotiation of relevant settlement documents, and extensive work with FINRA and the options exchanges.
- Represented major global financial services provider in investigation by the CFTC regarding trading of EFRPs. We submitted a Wells response and additional documentation; through several rounds of discussions with CFTC staff and the acting director of enforcement, we successfully settled the matter for a reduced fine and a recordkeeping charge against a single corporate entity.
- Represent financial institution's commodities trading unit regarding revenue put transactions relating to the full capacity for 1,000+-megawatt combined-cycle natural gas facilities to be constructed in New York and Pennsylvania.
- Counsel leading global investment banker with regard to exchange-traded derivatives, OTC options and related trading matters. We provide insight and advice into complicated and novel regulations affecting trading, respond to potential new trading issues, offer real-time trading advice to avoid future issues, and provide counsel after the fact when a trading activity may be problematic.
- Provide ongoing regulatory advice to commodity merchant and trading firms focused on the hedging of physical commodities. We regularly counsel clients on exchange-traded and OTC derivatives.
- Advise full-service brokerage and investment banking firm regarding registration as a floor trader and relevant CFTC rules.
- Defend corporate investment bank against allegations that it and other banks manipulated LIBOR. We direct all aspects of the bank's internal investigation and response to far-reaching discovery requests, conduct presentations to regulators, and manage the sweeping consolidated litigation and related appeals.
- Counsel corporate and investment bank on the full range of issues related to exchange-traded derivatives, including evolving exchange rules, block trades, and exchange and futures-related positions and position limits. We also advise the firm on execution and clearance issues under US law impacting its international affiliates.
- Represented one of the first swap execution facilities and clearinghouses authorized by the CFTC to trade and settle

derivatives contracts with digital currencies such as Bitcoin in obtaining both its SEF and DCO licenses.

- Represent State government on several amendments and novations to swaps, including negotiation of lower credit rating-termination triggers for the State's interest-rate swap deals with financial institutions.
- Represented prop trading firm and its founder in a CFTC suit alleging that the founder had engaged in "spoofing" and manipulated various commodity futures markets. We represented the clients in discovery, advised on trial strategy and negotiated a settlement in principle with the CFTC.
- Counsel industry association with regard to the regulation of exchange-traded derivatives markets and market participants, with particular focus on FCMs registered with the CFTC. Our representation includes (1) preparing comment letters with respect to proposed CFTC rules and ESMA regulations; (2) assistance with lobbying efforts before congressional committees; (3) drafting industry-standard documents, such as the EMIR Clearing Member Disclosure Statement for use by FCMs whose clients trade on EU markets; and (4) providing market education programs.
- Represented global financial services firm in investigation by the CBOE, NFA and CFE regarding allegedly manipulative trading of options and futures on the CBOE and the CFE. The investigation concerned the client's trading in several complex financial products, including options and futures related to the volatility of an underlying exchange-traded fund. We handled all aspects of the case, including analysis of issues and defenses, correspondence with the regulators, document production, witness preparation, testimony, coordination of joint defense counsel for the client's employees, and representation before the CBOE Business Conduct Committee in an enforcement action.
- Represented British clearinghouse in preparing and submitting to the CFTC a first-of-its-kind cross-border insolvency opinion reconciling the customer protection requirements under the US Commodity Exchange Act and US Bankruptcy Code with the requirements of EMIR. We also assisted the client with preparing a cross-border insolvency memo relating to the offer of clearing services to US clearing members in relation to securities, repos and certain futures contracts.
- Represented British clearinghouse in its registration as a derivatives clearing organization with the CFTC, in addition to orders expanding the types of products for which the client is able to provide clearing services to US participants. We prepared amendments to the client's Rulebook, Procedures and Default Rules to permit qualifying clearing clients to elect to be treated as "latent" clearing

members. We also provide assistance regarding CFTC requests, such as to commingle cleared swaps customer funds and foreign futures and options customer funds in the cleared swaps customer accounts.

- Represent multinational banking and financial services company on a credit-linked note issuance referencing broadly syndicated loans and structuring a cutting-edge repo transaction to finance the acquisition by a CLO manager of its US risk-retention obligations.
- Provision of registration and/or ongoing compliance advice to nine entities (eight US, one non-US) registered as swap dealers with CFTC and FIA.
- Provision of advice to numerous hedge funds regarding swap issues.
- Provision of advice to government pension plans regarding swap issues.

Recognitions

Recognized or listed in the following:

- *Best Law Firms*
  - Derivatives and Futures Law
    - National, 2011–2024
    - Chicago, 2011–2024
    - New York, 2020–2021
- *Chambers Global*
  - Derivatives, USA, 2014–2026
- *Chambers USA*
  - Derivatives
    - Nationwide, 2014–2026
- *IFLR1000*
  - Capital markets : Derivatives
    - United States, 2021
- *The Legal 500 United Kingdom*
  - Financial Services (Non–Contentious/Regulatory), 2013–2027
    Derivatives and Structured Products, 2016–2027
- *The Legal 500 United States*
  - Structured Finance: Derivatives and Structured Products, 2010-2026