Katten Capital Markets Compass

December 22, 2022

Editorial Note

This year-end issue of the *Compass* includes an overview of a recent conference Katten held regarding developments in cryptocurrency in the capital markets space, led by Mark Wood, national co-head of Katten's Capital Markets practice. You'll also see coverage of SEC enforcement action trends in 2022 and the SEC's guidance regarding their strategic plans over the next few years, our dive into the SEC's recent adoption of mandatory incentive-based clawback rules and certain other recent and notable developments on the SEC and capital markets front. If you have questions about the *Compass* or any articles in this issue (or would like a particular topic to be covered in our next issue), please reach out to your Katten contact or to any of the Capital Markets partners listed on the last page of the newsletter. Meanwhile, we wish you a safe, healthy and happy New Year!

Timothy J. Kirby and Jennifer L. Howard

In This Issue

Crypto in the Public Capital Markets: Opportunities and Challenges

By Michael A. Tremeski and Mark D. Wood

On October 20, Mark Wood, co-head of Katten's National Capital Markets practice, alongside representatives from investment bank H.C. Wainwright & Co., LLC and leading publicly traded Bitcoin miner Bitfarms Ltd., discussed the status of cryptocurrencies and capital raising by crypto-focused market participants as part of Katten's 2022 "Crypto with Katten" annual symposium (you can view the agenda for the symposium here). Below are highlights from the presentation.

Crypto in the US Public Capital Markets

A wide variety of companies in the crypto space have "gone public" in recent years — listing their common stock for trading on a securities exchange in the United States — including cryptocurrency mining companies, e-commerce and crypto-payment platforms, cryptocurrency exchanges and other financial services companies focusing on the evolving crypto ecosystem. Significantly, many overseas crypto businesses have also chosen to tap the United States capital markets for equity financing or chosen to list their stock on United States stock exchanges, including many of the largest crypto miners by market cap.[i]

From Record Highs to Challenging Markets

Publicly listed crypto companies experienced record growth through the end of 2021, with the market cap of publicly traded crypto miners alone exceeding $16.5 billion by the end of the year. Indeed, during 2021, the stock of many crypto-oriented listed companies appreciated at a faster rate than even the price of Bitcoin itself during the same time period. However, prices of "crypto" stocks have fallen alongside the general market in 2022, with the three largest publicly traded Bitcoin

mining companies losing more than $4.5 billion in market cap, spurred on by the collapse of cryptocurrency prices generally in addition to the rising costs of electricity and general economic and inflationary pressures. Year to date, the price of Bitcoin has fallen approximately 65 percent, with many leading Bitcoin mining companies experiencing percentage market cap declines of 74–90 percent over the same time period.

Price Correlation With Stocks

Prior to the COVID-19 pandemic, industry proponents cited the purported lack of correlation between the price of cryptocurrencies and traditional financial assets such as stocks and bonds as a major differentiator of the sector, arguing cryptocurrencies could act as a strategic hedge and diversification tool for investors. However, a recent study performed by the International Monetary Fund has confirmed that, at least over the last two years, a clear statistical correlation between the price of equity securities and cryptocurrencies (and thus crypto-focused stocks) has developed. In fact, the study notes the price of cryptocurrencies may be even more closely correlated to stock market prices than other traditional financial assets, such as bonds or precious metals.

Capital Raising Options for Public Crypto Companies

Despite a challenging economic environment, many publicly listed crypto companies continue to pursue capital raising opportunities, including via (1) traditional underwritten public offerings (and in some instances, confidentially marketed public offerings), (2) privately negotiated sales of common stock (referred to as private investments in public equity, or " PIPE" financings), (3) registered "direct" offerings, which are marketed directly to a select group of investors, (4) "at-the-market" (ATM) offerings and (5) the institution of "equity lines of credit," among other alternative financing structures.

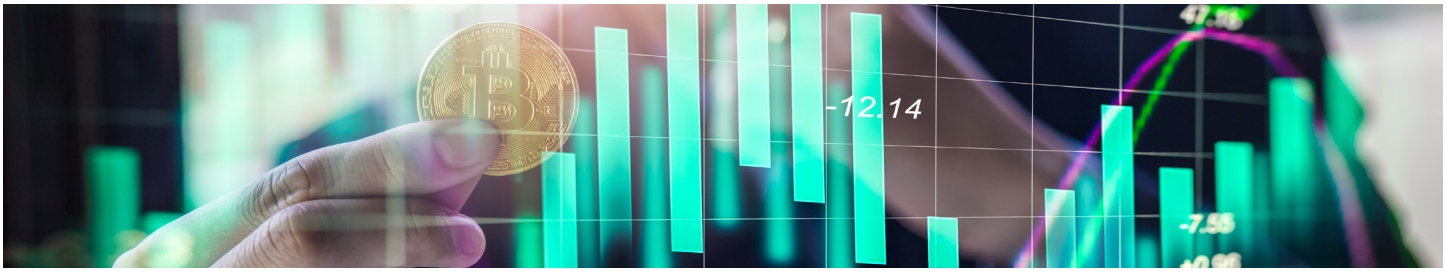
Recent SEC Statements and Comments

While Securities and Exchange Commission (SEC) Chairman Gary Gensler continues to publicly state that the vast majority of cryptocurrencies themselves are securities and thus fall under the SEC's jurisdiction, the SEC has also continued its close scrutiny of publicly listed crypto companies, noting that increased regulation and oversight of the space remains a strategic priority. For example, the panel discussed the staff's focus on the accounting treatment of crypto assets held by publicly traded crypto asset custodians, including the staff's release of guidance suggesting crypto assets should be accounted for as liabilities on companies' balance sheets, resulting in a leading crypto exchange to begin including additional responsive risk factors in its periodic reports. It also discussed an enforcement action brought against an international semiconductor chip manufacturer, which alleged that the company provided insufficient disclosure regarding the importance of crypto mining-related activity to the revenue growth of its specialty graphics processing unit chip business that produces chips used in Bitcoin and other cryptocurrency mining rigs. In addition, the panel noted that the SEC had nearly doubled the size of its "Crypto Assets and Cyber Unit" of the Division of Enforcement in May 2022.

Most recently, the SEC's Division of Corporation Finance released guidance and a sample comment letter, available here, advising companies to ensure they are adequately disclosing any material adverse exposure they may experience following recent crypto-related or adjacent bankruptcies and/or financial distress among crypto asset market participants. Specifically, the sample comment letter instructs companies to disclose, to the extent material, (1) how recent bankruptcies have impacted their business, (2) whether any crypto assets owned, issued and/or held by companies serve as collateral for loans or other financial activity to which they or any of their affiliates are a party and (3) any risks faced by companies related to regulatory developments in the crypto space, among other disclosures. The guidance notes that the sample comments are not intended to serve as an exhaustive list of crypto-related disclosures, and companies should evaluate how they may have individually been affected.

For more information on Katten's leading crypto and securities practices, please see overviews here and here.

[i] As of December 2021, more than half of the largest publicly traded crypto miners were headquartered overseas.



SEC Publishes Strategic Plan for Fiscal Years 2022-2026

By Michael A. Tremeski

On November 23, the US Securities and Exchange Commission (SEC) published its "Strategic Plan" for fiscal years 2022 through 2026, which provides an overview of the SEC's planned initiatives and strategic goals over the upcoming four-year period. The SEC's latest Strategic Plan, which is required to be published every four years by the Government Performance and Results Modernization Act of 2010, outlines three primary goals for the upcoming period: (1) protecting the investing public against fraud, manipulation and misconduct, (2) developing and implementing a robust regulatory framework to keep pace with evolving markets, business models and technologies and (3) supporting a workforce that is diverse, equitable, inclusive and equipped to advance the SEC's objectives.

The SEC's announcement of the publication of its Strategic Plan is available here, and the full text of the Strategic Plan is available here. Of note, the Strategic Plan cited increasing volatility, often driven by outside forces such as the COVID-19 pandemic, as well as the continuing evolution of financial markets, often without a corresponding evolution in regulatory oversight such as with the rise of cryptocurrencies in recent years, as existential threats to the investing public the SEC must seek to address. According to its Strategic Plan, these existential threats will be addressed via the SEC "pursu[ing] new authorities from Congress where needed" and increasing the funding and resources available to regulators tasked with monitoring such rapidly developing areas of the financial markets, among other means.

SEC Announces Year-End Enforcement Results, Highlighting Record-Breaking Penalties

By Brandon A. Bucio

On November 15, the Securities and Exchange Commission (the SEC) released its summary of enforcement actions brought during the 2022 fiscal year, announcing that in 2022 the SEC filed 760 enforcement actions and recovered an all-time record of $6.4 billion in penalties and disgorgement on behalf of investors, reflecting a nine percent increase compared to the 2021 fiscal year. Sanjay Wadhwa, Deputy Director of the Division of Enforcement, emphasized the SEC's continuing strong stance against market manipulation and unjust enrichment, stating that the SEC is "pursuing wrongdoers and obtaining remedies that promote market integrity while helping to protect investors." While the total civil penalties levied by the SEC tend to fluctuate from year to year, it is notable that in the first full year of Chairman Gensler's leadership of the SEC, the agency almost tripled the amount of money levied in civil penalties and disgorgement when compared to fiscal year 2021.

The SEC further highlighted its continued focus on the following areas:

1. Cryptocurrency

The SEC announced that it will add 20 new positions to its Crypto Assets and Cyber Unit (Crypto Unit) to regulate the crypto space, nearly doubling the unit in size from 30 to 50 dedicated staff members. Chairman Gensler, noted that "the Crypto Assets and Cyber Unit has successfully brought dozens of cases against those seeking to take advantage of investors in crypto markets. By nearly doubling the size of this key unit, the SEC will be better equipped to police wrongdoing in the crypto markets while continuing to identify disclosure and controls issues with respect to cybersecurity." Since the creation of the Crypto Unit in 2017, the SEC has brought over 80 crypto-related enforcement actions, including against crypto market participants for violations of the Investment Company Act of 1940, for perpetuating Ponzi schemes and against crypto market participants engaging in insider trading.

2. Insider Trading

The SEC's Enforcement Division brought 43 cases against individuals for insider trading in fiscal year 2022, with such cases accounting for 6 percent of the total actions during the year. Among many notable examples, on July 25, 2022, the SEC charged nine individuals, including a former chief information security officer, with three separate alleged insider trading schemes that together yielded more than $6.8 million in ill-gotten gains. The defendants allegedly shared confidential information about two potential corporate acquisitions with their friends, who then traded on that confidential information. The SEC's Enforcement Division further noted that "we stand ready to leverage all of our expertise and tools to root out misconduct and to hold bad actors accountable no matter the industry or profession. That's what's required to restore investor trust and confidence."

SEC Announces Year-End Enforcement Results, Highlighting Record-Breaking Penalties (cont.)

3. Whistleblower Protections

In fiscal year 2022, the SEC received more than 12,300 whistleblower tips, resulting in 103 awards being made to whistleblowers, and making $229 million in whistleblower awards. The number of whistleblower tips received was approximately 100 tips higher when compared to fiscal year 2021. The SEC noted they are also seeking to actively protect whistleblowers by pursuing entities or individuals who threaten, retaliate against or otherwise prevent whistleblowers from alerting authorities of potential issues.

4. Environmental, Social and Governance (ESG)

The SEC announced in March 2021 the formation of a Climate and ESG Task Force in the Division of Enforcement with a mandate to identify material gaps or misstatements in issuers' ESG disclosures. As ESG-related investments continued to attract headlines in 2022, the SEC has particularly focused on the accuracy of disclosures made by market participants regarding their use of and adherence to ESG metrics when bringing enforcement actions. For example, on May 23, the SEC charged a large financial advisor for making allegedly materially misleading statements and omissions by citing the ESG metrics it claimed to review when making investment recommendations to investors, while not actually conducting reviews of their recommendations adherence to such ESG metrics.

5. Financial Fraud and Issuer Disclosure

The accuracy and proper presentation of financial statements and related disclosures by market participants remains a key focus of the Enforcement Division. Kristina Littman, Chief of the SEC Enforcement Division's Crypto Assets and Cyber Unit, noted that "all issuers, including those that pursue opportunities involving emerging technology, must ensure that their disclosures are timely, complete, and accurate."

6. Focus on Gatekeepers

The SEC concluded their announcement by continuing to emphasize that "gatekeepers," such as auditors, compliance officers, lawyers, and transfer agents, are the first line of defense against market abuses and should speak up when clients or employers behave unethically.

SEC Adopts Mandatory Rules for Clawing Back Incentive-Based Compensation: Questions and Answers for Public Companies and Best Practices

By Timothy J. Kirby, Mark D. Wood, Mitchel C. Pahl, Peter J. Dalmasy and Jennifer L. Howard

On October 26, the Securities and Exchange Commission (SEC) adopted long-delayed rules which will require companies to implement mandatory "clawback" policies with respect to incentive-based compensation if the company's financial statements tied to achieving the relevant incentive payments are later required to be restated.

Originally introduced by Congress in 2010 as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the final rules require national securities exchanges to amend their listing standards to mandate that public companies enact clawback policies that seek to recover any incentive-based compensation (whether cash or equity) that was paid to a current or former executive officer during the three fiscal years preceding a required accounting restatement, provided 1) such incentive compensation was calculated based on a misstated financial reporting measure that was subsequently restated and (2) that non-compliance resulted in an erroneous overpayment.

The final rules require recovery on a "no-fault" basis — meaning without regard to any misconduct or responsibility of the executive for the misstated financials — and represent a significant expansion from initial proposals, which would have required clawbacks only for material accounting errors that resulted in full restatements of a prior year's financial results.[i]

12 Questions and Answers to Consider

Which issuers are covered by the new clawback rule? The clawback rule generally applies to all public companies listed on a United States stock exchange, including certain classes of issuers that are exempt from certain other SEC rules and requirements, such as smaller reporting companies, emerging growth companies, controlled companies, foreign private issuers and business development companies. The clawback rules also apply to issuers of listed debt or other non-equity securities that trade on an exchange. Limited exceptions are available for certain registered investment companies and issuers of security futures products and standardized options.

Which executive officers are subject to the clawback rule? All current and former "executive officers" are subject to the rule, whether or not they were responsible for or involved in the events that led to a restatement. The definition of "executive officer" for purposes of the rule is similar to the definition of "officer" under Section 16 of the Securities Exchange Act of 1934, as amended, and includes a company's president, principal financial officer, principal accounting officer or controller, any vice-president of the company in charge of a principal business unit, division, or function and any other officer who performs a policy-making function.

What incentive-based compensation is subject to recovery? All incentive-based compensation that was "*received*" during the three-year period immediately preceding the date on which the company was "*required*" to issue a restatement is subject to recovery, with "*received*" for purposes of the rule referring to the date the performance measure that must be achieved was attained (and not for example, when the award was granted, vested or paid) and "*required*" for purposes of the rule meaning the earlier of (1) the date when the board of directors or management concluded, or significantly, reasonably should have concluded, that the company was required to prepare an accounting restatement or (2) a court or regulator ordering the company to prepare an accounting restatement.

What events trigger a clawback? Recovery procedures will be triggered whenever an accounting restatement occurs (1) to correct an error in previously issued financial statements that is determined to be material to those previously issued financial statements (referred to as a "Big R" restatement) or (2) that would result in a material misstatement if the error were

corrected in the current period or left uncorrected in the current period (referred to as a "little r" restatement). Out-of-period adjustments correcting errors that are immaterial to the current period and the prior period would not trigger a recovery event. The rules provide that the materiality determination will be left to the company but should be made in consultation with the audit committee and utilizing customary accounting guidance from the Staff.

When is the deadline to implement a compliant clawback policy, and what is the earliest year incentive-based compensation may be subject to recovery? Exchanges are required to issue proposed listing standards within 90 days after publication of the final rule in the Federal Register (which is expected to occur by the end of November), with such proposed listing rules becoming effective within one year from issuance and providing issuers a 60 day period from effectiveness to adopt a compliant policy. In short, clawback policies will likely need to be in place by the second half of 2023. Note that only incentive compensation "*received*" after an exchange's listing standards become effective will be subject to a clawback policy, meaning that only compensation "*received*" (see above for a discussion of what constitutes "*received*" within the context of the clawback rule) in 2023 or later will be subject to the new rules.

Which types of incentive compensation are subject to the clawback policy? Any compensation, including cash or equity (including stock options), that is granted, earned or vests wholly or in part based on any financial reporting measures used in preparing or derived from the company's financial statements is subject to the clawback policy. Conversely, compensation that is granted, vests or is earned based solely upon the occurrence of non-financial events, such as base salary, or a bonus awarded solely at the discretion of the board and not based on the achievement of a financial performance measure, is not subject to the clawback rules.

How will the amounts to be recovered be determined? Recovered amounts will reflect the difference between what was actually paid to the executive officer and what would have been paid had the incentive compensation payout been calculated based on the restated financial information. If recoverable amounts are based on total shareholder return or stock price metrics, the excess amount will be calculated based on the company's reasonable estimate of the effect of the restatement on the company's stock price (with the process for arriving at the estimate of the effect being documented and disclosed).

What about awards on which the executive officer has already paid income taxes? Recovery will be based on the original amount determined to be erroneously awarded and will not be net of any income taxes paid. Note that after being subject to a clawback, executives may seek to recover taxes paid to relevant taxing authorities, but at this time, guidance from taxing authorities with respect to whether they will refund such amounts has not been released. As a result, companies may consider implementing structural protections in their incentive plans, such as mandatory deferral of a portion of incentive compensation for a period that covers some or all of the lookback period, to defer taxation and mitigate any potential clawback.

May companies waive recovery or indemnify or insure executive officers? Companies may not waive or reduce the amount of incentive compensation that is determined to have been erroneously awarded except in certain limited circumstances, such as a finding that the expense of collecting the recovery would exceed the amount recovered. However, companies are permitted to exercise discretion in terms of methods of recovery, including, for example, allowing recovery over time from future pay or cancellation of unvested equity. Companies are also not permitted to purchase insurance, pay for premiums or otherwise reimburse executive officers for the cost of any third-party insurance they choose to individually purchase to protect against potential clawbacks.

What are the ongoing disclosure obligations with respect to the clawback rule? A company will be required to file its clawback policy as an exhibit to its annual report and, in the event the policy is triggered, will be required to provide detailed disclosure regarding the circumstances of the clawback, the amounts erroneously awarded and any amounts subsequently recovered.

What are the consequences for failure to comply with the clawback rule? A listed company that does not comply with the clawback rule by either (1) failing to adopt a clawback policy, (2) failing to enforce its clawback policy or (3) failing to make the required clawback disclosures may be delisted.

What about existing clawback policies? Many large public companies (including all of the S&P 500) have already adopted some form of clawback policy. However, such policies are often triggered by a finding of misconduct as opposed to the no-fault approach of the new clawback rule, apply to broader or narrower groups of employees than the new clawback rule or include triggers unrelated to financial restatements. To ensure compliance with the new rule and avoid certain of the prescriptive and non-discretionary aspects of the new clawback rule, issuers will need to consider whether adopting a new clawback policy specifically tailored to the new rule, rather than amending an existing policy, is appropriate.

Next Steps for Public Companies and Best Practices

Before the effectiveness of these requirements following the adoption of new listing standards by national securities exchanges, companies should:

- notify their board of directors and audit and compensation committees regarding the new requirements for clawback policies;
- review existing clawback policies to determine the extent to which they comply with the SEC's final rules and the national securities exchanges and associations' listing standards. The review should include analysis of references to clawbacks in equity incentive and cash bonus plans as well as in executive employment agreements. Particular areas of focus should be the need, if any, to expand such policies to cover additional forms of compensation, a larger employee population or a longer look-back period. Issuers should monitor further developments from the exchanges and associations on their final listing standards before adopting formal revisions;
- review existing incentive-based compensation arrangements and documentation covering executives to (1) determine the scope of such arrangements captured by the final rules and listing standards and (2) add language that contemplates and allows for the recoupment of incentive-based compensation pursuant to new listing standards (private companies that are anticipating an IPO or listing on the horizon should consider consulting with their securities and executive compensation advisors about the desirability of adopting clawback policies compliant with the SEC's rule and applicable listing standards); and
- assess internal controls over disclosure and financial reporting processes, with specific emphasis on the impact of "little r" restatements and effect of recoupment pursuant to clawback policies following such restatements.

[i] Katten's past commentary on earlier formulations of the clawback rule is available here. The SEC's press release and fact sheet announcing the final rule are available here and here, respectively.

Editor's Note: This client alert was originally published on November 17, 2022.

Other Recent Developments

By Jennifer L. Howard

- On December 14, the Securities and Exchange Commission (SEC) adopted amendments to Rule 10b5-1 under the Securities Exchange Act of 1934 and new disclosure requirements to enhance investor protections against insider trading. The amendments include updates to Rule 10b5-1(c)(1), which provides an affirmative defense to insider trading liability under Section 10(b) and Rule 10b-5.
- On December 13, the SEC Division of Corporation Finance posted an update to several Non-GAAP Financial Measures Compliance & Disclosure Interpretations (C&Dis). The updated C&Dis are included here.
- On December 7, the SEC reopened the comment period on proposed amendments intended to modernize and improve the disclosure required about an issuer's repurchases of its equity securities, commonly referred to as stock buybacks. The comment period was reopened to allow for time to consider the proposal in light of the potential tax impacts of the Inflation Reduction Act of 2022, which, beginning on January 1, 2023 imposes upon certain corporations a non-deductible excise tax equal to one percent of the fair market value of any stock of the corporation repurchased by such corporation during the taxable year. The comment period will remain open for 30 days from publication in the federal register.
- On December 1, Institutional Shareholder Services (ISS) announced updates to its benchmark voting polices that will be effective for the 2023 proxy season. Among other significant announcements, many updates relate to climate disclosure and related emissions targets, board diversity, officer exculpation of personal liability in certain situations, unequal voting rights, governance structures, political expenditures and share issuance mandates. Highlights include:
  - ISS will generally recommend a withhold or against vote for directors individually, committee members or the entire board (except new nominees, who would be considered on a case-by-case basis), if the company has a common stock structure with unequal voting rights (including classes of common stock that have additional votes per share, classes of shares that are not entitled to vote on all the same ballot items or nominees, or stock with time-phased voting rights).
  - Where a Delaware company proposes to amend its charter to provide for officer exculpation provisions (based on recent changes to Delaware law that allow companies to adopt charter provisions that eliminate personal liability of specified officers for breach of the duty of care), ISS will make its recommendations on a case-by-case basis, considering a number of factors, including the stated rationale for the change.
  - ISS is introducing a new policy for shareholder proposals requesting company transparency on alignment of its political contributions, lobbying and election spending with its public commitments, stated values and policies, such as the alignment between climate lobbying and expressed climate goals. ISS will generally vote on a case-by-case basis on these matters, taking into account board policies and oversight, disclosure, inconsistencies between expenditures and publicly stated values/priorities, and any recent significant controversies related to the company's political activities.
- On November 2, the SEC adopted amendments to Form N-PX to enhance the information mutual funds, exchange-traded funds, and certain other registered funds report about their proxy votes. The rulemaking will also newly require institutional investment managers to disclose how they voted on executive compensation, or so-called "say-on-pay" matters. The new rules and form amendments will be effective for votes occurring on or after July 1, 2023, with the first filings subject to the amendments due in 2024.
- On October 7, the SEC reopened the public comment periods for 11 SEC proposed rules and one request for comment due to a technological error that resulted in a number of public comments not being received by the SEC. Notable comment periods that were reopened include those relating to the Share Repurchase Disclosure Modernization Rule, the Climate-Related Disclosure Release, the SPAC Release and the Investment Company ESG and Names Rule Releases. The comment periods for each remained open for an additional 14 days after publication in the Federal Register.
- On September 26, the SEC announced that the EDGAR filing system can now accept electronic Form 144 filings. The SEC recently adopted rules that require most Forms 144 to be filed electronically by March 2023.
- On August 26, the SEC adopted two amendments to its whistleblower rules. The first rule change allows the SEC to pay whistleblowers for their information and assistance in connection with non-SEC actions in additional circumstances. The second rule affirms the SEC's authority to consider the dollar amount of a potential award for the limited purpose of increasing an award but not to lower an award.

- On August 26, the SEC announced that the fees that public companies and other issuers pay to register their securities with the SEC will increase from $92.70 per million dollars to $110.20 per million dollars. The new filing fee rate became effective on October 1.
- On October 26, a sharply divided SEC proposed a new rule governing outsourcing of certain services by investment advisers. Services covered by the proposed rule include:
  - services necessary for an adviser to provide services in compliance with law; and
  - services, if not performed or performed negligently, which would likely impact the adviser's clients or the ability for the adviser to provide advisory services.

  Specifically, an adviser would be required:
  - to conduct due diligence on the outsourced service provider and to update that due diligence periodically. Such due diligence would have to include (a) the scope of the outsourced services; (b) potential risks and mitigation of those risks; (c) the service provider's competence; (d) any subcontracting by the service provider; (e) the service provider's legal compliance efforts; and (f) plans for orderly termination of the arrangement;
  - to keep records of the adviser's due diligence;
  - to report information about outsourcing on the adviser's Form ADV; and
  - for third-party record-keepers, in addition to the above due diligence, to obtain reasonable assurances the record-keepers will meet the following four standards: (a) certain record-keeping requirements; (b) that they ensure records are kept in compliance with the record-keeping rules; (c) that they provide access to electronic records; and (d) they ensure records are kept even if the record-keeper is fired by the investment adviser.

  The comment period for the proposed rule will remain open until the later of (i) December 27, 2022 and (ii) 30 days after publication in the *Federal Register*.
- On October 26, the SEC adopted new rules governing certain reporting and advertising by regulated funds. The new rule requires the semi-annual and annual reports of open-end funds to highlight certain information in these filings to make it easier for shareholders to review. This information will have to be delivered to shareholders, repealing a rule that permitted funds merely to inform their shareholders the filings are available on the fund's website. Funds will also be required to make available online and in Form N-CSR certain information about fund investments and financial information. All investment companies (including registered closed-end funds and business development companies) will be required to present fund fees and expenses in advertising materials in a manner that is consistent with the presentation of this information in the fund's prospectus. The new rule becomes effective 18 months after publication in the *Federal Register*.

Save the Date

35th Annual ROTH Conference

March 12-14

Katten's Capital Markets team is attending and sponsoring the 35th Annual Roth Conference March 12-14 at The Ritz Carlton, Laguna Niguel in Dana Point, California. The event will feature 1-on-1 / small group meetings, company presentations, analyst-selected fireside chats, and thematic industry panels.

Attendees will hear from and meet with executive management from approximately 400 private and public companies in various growth sectors, including: Business Services, Consumer / Health & Wellness, Healthcare, Resources: Oil & Gas / Metals & Mining, Technology, Media & AgTech and Sustainability/ESG.

Learn more about the 35th Annual Roth Conference.

In Case You Missed It

2023 Proxy Season Update

Katten, along with Ernst & Young LLP and Meridian Compensation Partners, presented the 2023 Proxy Season Update on December 6. Panelists including Lawrence Levin, partner and co-head of Katten's national Capital Markets practice, and Capital Markets partner Alyse Sagalchik, presented a timely discussion of key legal, governance and financial reporting developments and trends impacting public companies in the 2023 annual reporting and proxy season.

Read an overview.

View and listen to the recording.

View the materials.

2022 Crypto with Katten Annual Symposium

Katten hosted the inaugural Crypto with Katten Symposium on October 20. This event featured an engaging series of panels focusing on a multitude of current legal topics relevant to the crypto/blockchain industry. Speakers included Financial Markets and Funds Global Chair Lance Zinman, partners Daniel Davis, Christian Hennion, Timothy Kertland and Neil Robson, and associate Aileen Tan; Financial Markets and Regulation special counsel Gary DeWaal; Investment Management and Funds partner and co-chair Wendy Cohen; Insolvency and Restructuring co-chair Pete Siddiqui and partner Shaya Rochester; national Capital Markets co-head Mark Wood; Employee Benefits and Executive Compensation partner Mitchel Pahl; Litigation partner Patrick Smith and associate Sheehan Band; Securities Litigation partner Michael Lohnes; and Transactional Tax Planning partner Jill Darrow.

Topics addressed included regulatory developments, proprietary trading firm formation, fund formation, current tax issues, cryptoassets in financing and bankruptcy, private actions (including defending class actions), and capital markets.

View the materials.

42nd Ray Garrett Jr. Corporate & Securities Law Conference

Farzad Damania, a partner in Katten's Capital Markets practice, participated in the "ESG is Everywhere: Putting it in Perspective for Your Business" session on September 23. Panelists discussed: Best practices in ESG programs, including how a company decides where to focus, pitfalls to avoid and current trends; Climate 101: why companies need to focus on "E," what the terminology means, and how to set a climate goal; and Preparing for SEC/other climate disclosures.

General Counsel Conference East 2022

Farzad Damania, a partner in Katten's Capital Markets practice, participated in "ESG is not One Size Fits All: Undertaking ESG Integration for Businesses" on September 20. Panelists discussed the increasingly significant focus on ESG across different industries and locations, and how in-house counsel will need to align the goals of their organizations and help strategize the best plan of action to mitigate risks to come with regulations, enforcement and expectations continually evolving quickly around ESG matters. The discussion included information on how to advise businesses on implementing ESG policies and structure, stakeholder communications, reporting framework and monitoring the effectiveness of compliance efforts.

Katten's Capital Markets Practice

Capital markets activity is subject to complex disclosure and regulatory requirements from multiple agencies. Pragmatic guidance on public and private financing transactions requires a multipronged perspective. Katten's work on thousands of securities matters keeps clients' capital-raising deals on track and governance practices sound. For more information, click here.

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