



## **Katten Financial Markets and Funds *Quick Take***

January 2023

### **Katten Named Leader in Blockchain and Cryptocurrency in Chambers FinTech 2023 Guide**

Katten announced that the firm had attained a superior ranking in the *Chambers FinTech 2023* guide. Katten was recognized as a leader in the FinTech Legal: Blockchain & Cryptocurrencies - USA category, which identifies and differentiates the leading blockchain and cryptocurrency professionals globally. Chambers cited Katten's "strong blockchain and cryptocurrency practice, acting for market-leading crypto companies, traditional financial institutions investing in the industry, and major brands launching NFT [nonfungible token] projects" as among the reasons for its recognition. The guide also featured Katten client comments praising the firm as including one that "incredibly knowledgeable about the digital asset space, not only from a regulatory perspective, but also from a technological and practical perspective." [Read Katten's press release.](#)

### **It's Time for Congress to Pass a Federal Virtual Currency Law**

*By Daniel Davis and Gary DeWaal*

In an op-ed published by *Bloomberg Law*, Dan and Gary call on Congress to pass holistic crypto legislation, placing plenary federal oversight over spot virtual currency and related businesses under the Commodity Futures Trading Commission (CFTC). Their article further argues that any legislation must address cryptoassets that might have been deemed securities at one point, but may have morphed to non-securities at a later point – a potential circumstance identified previously by staff of the Securities and Exchange Commission (SEC). Finally, they note that the idea of a morphing financial instrument is nothing new, and has been addressed by Congress, the CFTC and SEC for over 20 years in law and rules related to futures based on security indices which routinely change from securities to non-securities and vice versa. A legislative proposal in Congress and this model could be utilized to address morphing cryptoassets. [Read "It's Time for Congress to Pass a Federal Virtual Currency Law."](#)

### **Katten Submits Comment Letter on QPAM Exemption**

*By Mitchel Pahl and Matthew Rutchik*

As previously discussed in [Issue 5 of the Financial Markets and Funds Quick Take](#), the US Department of Labor (DOL) recently proposed extensive changes to Prohibited Transaction Class Exemption 84-14 (QPAM Exemption). The QPAM Exemption is the most utilized exemption for relief from certain "prohibited transaction" rules under the Employee Retirement Income Security Act of 1974 (ERISA) for purchases, sales, extensions of credit and other

transactions between employee benefit plans, IRAs and other entities subject to ERISA. Katten, along with several other prominent firms, submitted a comment letter to the DOL on the proposed changes to the QPAM Exemption, available [here](#). [Read other public comments](#).

## **FCA ESG Rules Now in Effect for All UK Asset Managers With AUM Over GBP £5bn**

*By Neil Robson*

The UK Financial Conduct Authority's (FCA) new [Environmental, Social and Governance \(ESG\) sourcebook](#) went into effect on January 1, 2022 for the largest UK asset management firms (those with more than £50 billion in assets under management (AUM)), with a year's deferral to January 1, 2023 for firms with between £5bn and £50bn.

The new ESG rules require disclosures on an annual basis of:

- *Entity-level reports* — An annual Task Force on Climate-related Financial Disclosures (TCFD) entity report must be published “in a prominent place” on the firm’s website describing how the firm takes climate-related matters into account in managing investments on behalf of clients and consumers.
- *Product-level reports* — Disclosures (including a core set of climate-related metrics) on the firm’s products and portfolios must be published “in a prominent place” on the firm’s main website and included (or cross-referenced) in client communications or made available on request to certain eligible institutional clients.

The FCA's ESG rules require firms' entity- and product-level reports to be consistent with the four recommendations and the 11 recommended disclosures set forth in Figure 4 of Section C of the June 2017 [Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures](#) (and take other elements of the report into account).

The largest UK asset management firms (i.e., with more than £50bn AUM) must publish their entity-level reports and their product level reports by June 30 this year, based on their data for 2022. FCA-regulated firms with AUM between £5bn and £50bn should now start collecting data for the 2023 calendar year and must publish their entity-level reports and their product level reports by June 30 *next* year (i.e., by June 20, 2024, reflecting the 2023 calendar year).

## **Electronic Recordkeeping Final Rule Now in Effect**

*By Susan Light*

The SEC [amended](#) Rule 17a-4 of the Securities Exchange Act of 1934 (SEA) on October 12, 2022 to modify the requirements regarding the maintenance and preservation of electronic records, the use of third-party recordkeeping services to hold records, and the prompt production of records. The effective date for the amendments was January 3, 2023 and compliance date is May 3, 2023. Financial Industry Regulatory Authority (FINRA) prepared a useful [chart](#) that summarizes the most significant changes.

## **Update on Potential Rule Change Requiring Prop Trading Firms to Join FINRA**

*By Susan Light and Alexander Kim*

On December 15, FINRA issued Regulatory Notice 22-30 to re-open the comment period for Regulatory Notice 15-13, which had previously proposed an exemption to exclude from FINRA's Trading Activity Fee transactions by a proprietary trading firm on exchanges of which the firm is a member. FINRA issued Regulatory Notice 22-30 in support of the Securities and Exchange Commission's (SEC) recent proposed amendments to SEA Rule 15b9-1. Rule 15b9-1 currently provides proprietary trading firms with an exemption from membership in a national securities association (i.e., FINRA). If the SEC proposal is adopted, with limited exceptions the

amendments generally would require a proprietary trading firm relying on the current exemption from membership to register with FINRA if the firm continues to effect transactions other than on an exchange of which it is a member. FINRA membership would, among other things, subject these firms to FINRA's existing fee structure, including FINRA's Trading Activity Fee. Comments to FINRA are due by March 17, 2023. [Read FINRA's Regulatory Notice.](#) [Read the SEC's proposed rule.](#) [Read Katten's prior advisory on the rule change.](#)

## **Crypto Trading 101: Corporate Structuring for Digital Asset Traders**

*By Lance Zinman, Gary DeWaal, Timothy Kertland, Jill Darrow, Neil Robson and Mitchel Pahl*

Digital asset investment among proprietary trading firms, family offices, and asset managers peaked in the fall of 2021, dipped a bit in the summer of 2022, and now it's on the rise again — even with the turbulence in the market as a result of the FTX bankruptcy.

Setting up a crypto trading shop requires getting the fundamentals right — and it starts with corporate structuring. But following the model used by traders of traditional financial products can lead to serious problems for those trading in digital assets. Why is that?

To effectively engage in the crypto markets, you'll want to be able to access exchanges anywhere in the world — and that will require specific approaches to your corporate structure. [Read the insights from the "Investing and Trading in Digital Assets – Corporate and Tax Structuring for Principal Traders and Asset Managers" session of Katten's "Crypto With Katten Symposium."](#)

## **Crypto in the Public Capital Markets: Opportunities and Challenges**

*By Mark Wood and Michael Tremeski*

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. Topics ranged from "going public," to market challenges, to capital raising options and SEC regulatory concerns. [Read the insights from the "Crypto in the Public Capital Markets: Opportunities and Challenges" session of Katten's "Crypto With Katten Symposium."](#)

## **SEC Publishes Strategic Plan for Fiscal Years 2022-2026**

*By Michael Tremeski*

On November 23, the 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](#). [Read about the SEC's Strategic Plan.](#)

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## **CONTACTS**

For questions about developments in the [Financial Markets and Funds](#) industry, please contact any of the following Katten attorneys.



**Wendy E. Cohen**

[vCard](#)



**Gary DeWaal**

[vCard](#)



**Christopher T. Shannon**

[vCard](#)



**Allison C. Yacker**

[vCard](#)



**Lance A. Zinman**

[vCard](#)



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