



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

May 2023

### **Daniel Davis Shares Views on Digital Asset Regulation During House Subcommittee Hearing**

[In testimony](#) before the US House of Representatives Subcommittee on Commodity Markets, Digital Assets, and Rural Development, Daniel Davis, partner and co-chair of Financial Markets and Regulation, shared his views on digital asset regulation and the Commodity Futures Trading Commission's (CFTC) role in it. Dan, a former General Counsel at the CFTC, explained that there is a significant gap in federal spot market regulation because the large majority of digital asset spot market activity falls outside the regulatory jurisdiction of both the CFTC and the SEC. [Read five points highlighted in Dan's testimony.](#)

### **SEC Adopts Final Rule Amendments to Form PF**

*By Adam Bolter*

On May 3, the Securities and Exchange Commission (SEC) adopted a final rule amending Form PF, the confidential reporting form for certain SEC-registered investment advisers to private funds. Form PF is designed to facilitate both the Financial Stability Oversight Council's ability to monitor systemic risk, as well as the SEC's regulatory oversight of private fund advisers and investor protection efforts. The SEC noted that it is continuing to consider comments received relating to the proposed large liquidity fund adviser amendments (and the proposed amendments to Form N-MFP on which they are based) and thus not adopting such amendments at this time. [Read a brief overview of the final rule.](#)

### **Montana and Tennessee join Indiana and Iowa as the Next States to Pass Comprehensive Privacy Laws**

*By Trisha Sircar*

On April 21, Montana and Tennessee passed comprehensive bills in their respective state legislatures. Montana and Tennessee now join [Indiana](#) and [Iowa](#) this year to enact comprehensive state privacy laws. The [Montana Consumer Data Privacy Act](#) closely aligns with the [Connecticut Data Privacy Act](#). [The Tennessee Information Privacy Act](#) on the other hand, has some unique features. [Read about key provisions in each of these state privacy laws.](#)

### **President Biden's First Veto Frustrates Anti-ESG Coalition**

*By Allison Clark*

On March 20, President Joe Biden used his first presidential veto to block a GOP-sponsored anti-ESG bill from taking effect. The bill would have eliminated a Department of Labor rule that allows ERISA retirement fund managers to take environmental, social, and governance (ESG) factors into account when evaluating potential investments. The Republican-controlled House

attempted to override President Biden's veto but failed to gather the necessary two-thirds votes. Although the fight over ESG has dominated headlines, the DOL rule merely clarifies the factors ERISA plan fiduciaries may consider when evaluating investments or exercising their shareholder rights. [Read about ESG factors and ERISA.](#)

## **Katten Joins FIA Tech's Databank Network as a Law Firm Partner**

FIA Tech, the leading technology provider to the exchange-traded derivatives industry, recently announced that Katten has joined the FIA Tech Databank Network as its first law firm partner. Databank Network is FIA Tech's initiative to bring together independent software vendors (ISVs), exchanges, clearing houses and other data providers into an interoperable global network simplifying the use of reference data, analytics and software solutions from participating firms. Katten's regulatory approvals analysis will be incorporated into Databank's Foreign Security Futures offering. [Read the joint announcement.](#)

## **How Ordinals Make Bitcoin Both Fungible and Non-Fungible**

*By Daniel Davis, Alexander Kim*

Published in *Bloomberg Law*, the article explores the unique attributes of Bitcoin Ordinals, which allow units of Bitcoin to be simultaneously fungible and non-fungible. The rising popularity of Bitcoin Ordinals sparks new regulatory considerations as developers rush to replicate its features on other blockchain networks. [Read Katten's article.](#)

## **Do you really intend to offer NFTs, digital collectibles, and virtual goods? If not, no trademark**

*By Michael Justus*

The NFT explosion has led to a "gold rush" of thousands of new U.S. trademark applications covering NFT-based digital files, digital collectibles, and the like. There are offensive and defensive motivations for brand owners to join in the NFT trademark frenzy. Offensively, they may see NFTs as a legitimate business opportunity for which they have concrete plans to capitalize. Defensively, brand owners may be concerned about preventing unscrupulous third parties from using or registering brands without authorization. But are the owners of those trademark applications actually using the marks for those items, or have a *bona fide* intent to do so? [Read Katten's second NFT Thought Leadership Series article.](#)

## **Bored Ape Yacht Club NFT Drama Isn't Boring At All**

*By Jessica Kraver*

NFTs are a new medium that embodies traditional forms of intellectual property, including trademarks and copyrights. NFT creators can be simultaneously accused of infringing both trademark and copyright rights. In 2021, Yuga Labs, Inc. (Yuga Labs) launched a collection of NFTs featuring graphic images of apes — known as the Bored Ape Yacht Club (BAYC). The collection garnered over \$2 billion in sales, finding fans among high-profile celebrities and prominent consumer brands. Part of what makes the Bored Ape NFTs so coveted is their rarity. [Read Katten's third NFT Thought Leadership Series article.](#)

## **NY Attorney General Proposes to Increase Obligations on Crypto Businesses Operating in NY or with NY Residents**

*By Gary DeWaal, Daniel Davis*

Businesses engaged in certain digital currency activities from or within New York would be subject to enhanced obligations and restrictions if a bill entitled the "Crypto Regulation, Protection, Transparency, and Oversight (CRPTO) Act" proposed by the Attorney General of the State of New York (AG) on May 5, 2023, is enacted into law. Among other things, this proposed law is designed to provide (1) the New York Department of Financial Services (DFS) with explicit authority to oversee virtual currency businesses involving New York or with NY residents – as it

has been doing since 2015 – and (2) the AG with more expansive enforcement authority over certain enumerated cryptocurrency businesses. [Read about the CRPTO Act proposal.](#)

## **HMT and Regulators Move Forward with SMCR Review**

*By Neil Robson, Ciara McBrien*

Following our recent article on the Government's proposed reforms to the Senior Manager and Certification Regime (SMCR) (available [here](#)), HM Treasury (HMT) launched a call for evidence (Call for Evidence), and the Financial Conduct Authority and the Prudential Regulatory Authority (together, the "Regulators") jointly published a discussion paper (DP1/23). These reviews aim to determine whether there are opportunities whereby the SMCR's core objectives can be delivered in a more effective manner, in order to enhance the UK's attractiveness for financial services business, supporting wider Government aims to drive growth across the economy. [Read the latest about the SMCR.](#)

## **FCA Publishes Findings from its Whistleblowing Survey 2022**

*By Neil Robson, Ciara McBrien*

The Financial Conduct Authority (FCA) recently published the findings from its 2022 whistleblowing qualitative assessment survey, together with the steps it intends to take to improve whistleblower confidence. The FCA's summary and press release are available [here](#) and [here](#). The FCA conducted the survey to understand whistleblowers' experience of reporting to the FCA and to capture views about their experience of notifications of wrongdoing to the regulator. Many respondents to the survey reported significant dissatisfaction with their experience, and did not feel there was sufficient dialogue with the FCA to enable proper understanding of their concerns. [Read about the FCA's findings.](#)

## **MiCA and Crypto Transfer Rules Approved by the European Parliament**

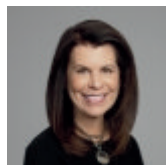
*By Neil Robson, Christopher Collins*

After many delays, the European Parliament has approved the long-awaited proposed regulation on markets in cryptoassets (MiCA), alongside the proposed regulation on information accompanying transfers of funds and certain cryptoassets (the Recast EU Wire Transfer Regulation, or WTR2). The aim of the draft regulations is to create a uniform legal framework for cryptoasset markets in the EU, thereby making the EU one of the first major jurisdictions to have formal legislation regulating cryptoassets. [Read about MiCA and WTR2.](#)

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## **CONTACTS**

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