



Katten Financial Markets and Funds *Quick Take*

December 2023

FINRA Acts to Update its Advertising Rule

By Susan Light

The Financial Industry Regulatory Authority (FINRA) filed a proposed rule change with the Securities and Exchange Commission (SEC) on November 13, 2023, to amend FINRA Rule 2210. This amendment would allow a broker-dealer to project performance or provide a targeted return with respect to a security, asset allocation or other investment strategy in a communication distributed solely to qualified purchasers. [Read the proposed FINRA amendment.](#)

A Breath of Fresh Air: CFTC Proposes Voluntary Carbon Credit Market Guidance

By Carl Kennedy

After two years of examining carbon markets, the Commodity Futures Trading Commission (CFTC) proposed measures focused on improving integrity, transparency and enforcement in voluntary carbon credit markets (VCCMs). VCCMs are viewed by many as an increasingly important way to combat climate change. On December 4, the CFTC issued [proposed guidance](#) outlining certain factors a CFTC-regulated exchange, or designated contract market, should consider when addressing requirements of the Commodity Exchange Act (CEA) and CFTC regulations that are relevant to the VCCM contract design and listing process. [Read about the proposed guidance on VCCMs.](#)

Gary DeWaal Offers Clarity to *Fortune* on Why NFTs Are Not Securities

Fortune reached out to Financial Markets and Funds senior counsel Gary DeWaal regarding the regulatory status of non-fungible tokens (NFTs). Gary offered two reasons — (1) their non-fungibility or uniqueness sets them apart from traditional securities like stocks or bonds because every investment is an investment in a unique asset — there is no common enterprise. Also, (2) an NFT's rise in value is not necessarily tied to an underlying project; rather its value is tied to an individual something like baseball cards or beanie babies. [Read about Gary's comments.](#)

Daniel Davis Discusses Sam Bankman-Fried Trial and Its Impact on US Cryptocurrency Regulation With *CoinDesk*

Financial Markets and Regulation partner and co-chair Dan Davis appeared on *CoinDesk* TV's morning show "First Mover" to discuss the Sam Bankman-Fried (SBF) trial and its potential impact on US cryptocurrency regulation. Dan, who regularly contributes insights to *CoinDesk* publications and broadcasts, explained the associated risks of SBF's strategy to testify in his own case, including opening himself up to significant cross-examination by the government,

having his own publicly made statements used against him, and difficulty building credibility with jurors. [Read about Dan's comments.](#)

Financial Markets and Funds Team Authors *Chambers Overview on Alternative Funds*

Presented by *Chambers and Partners*, key members of Katten's Financial Markets and Funds practice — Wendy Cohen, New York Managing Partner and Co-Chair, Investment Management and Funds; Allison Yacker, Partner and Co-Chair, Investment Management and Funds; Henry Bregstein, Partner and Chair, Alternative Products; Lance Zinman, Partner and Global Chair, Financial Markets and Funds — authored the “Alternative Funds 2023 – USA” chapter, which provides an in-depth look at how the robust legal and regulatory framework in the United States results in it being the predominant jurisdiction for alternative funds and their managers and investors. [Read about the "Alternative Funds 2023 – USA" Chambers Global Practice Guide.](#)

EU/UK

The FCA Publishes Guidance Consultation on Anti-Greenwashing

By Neil Robson, Sara Portillo

On November 28, the Financial Conduct Authority (FCA) published its Policy Statement on Sustainability Disclosure Requirements (SDR) and Investment Labels (PS23/16) and a Guidance Consultation on the Anti-Greenwashing Rule (GC23/3). PS23/16 follows the FCA's consultation on SDR and Investment Labels issued in October 2022 and introduces measures to inform and protect consumers and improve trust in the market for sustainable investments. Notably, it introduces (i) an anti-greenwashing rule for all authorized firms (the Rule); (ii) four investment labels to help consumers navigate the market; and (iii) new rules and guidance for firms marketing investment funds based on their sustainability characteristics. [Read about the Anti-Greenwashing Rule.](#)

Artificial Intelligence and Machine Learning Across the UK, EU and US: Bridging the Regulatory Divide

By Neil Robson, Ciara McBrien, Sara Portillo

On 8 November 2023, Financial Markets and Funds partner Neil Robson moderated a panel discussion on the regulatory divide for artificial intelligence (AI) across the UK, EU and US, with a focus on providing legal and compliance insights for the asset management industry. The panel and subsequent advisory explore the existing regulatory framework of AI within the UK financial services industry, make a brief comparison against the global landscape and attempt to predict what lies ahead. [Read key takeaways from the panel discussion.](#) [Read Katten's advisory.](#)

UK Regulators Publish Updates for the Regulation of Fiat-Backed Stablecoins

By Neil Robson, Ciara McBrien, Sara Portillo, Nathaniel Lalone, Carolyn Jackson, Christopher Collins

On 6 November 2023, the Bank of England (BoE) published a discussion paper on the “Regulatory Regime for Systemic Payment Systems Using Stablecoins and Related Service Providers” (the Discussion Paper). The Discussion Paper has been published alongside (1) the Financial Conduct Authority (FCA) discussion paper “Regulating Cryptoassets Phase 1: Stablecoins”, detailing their regulatory approach to stablecoin issuers and custodians (DP23/4); (2) a letter from the Prudential Regulation Authority (PRA) to bank chief executive officers on “Innovations in the Use by Deposit-takers of Deposits, E-money and Regulated Stablecoins” (the Letter); and (3) a “Cross-authority Roadmap on Innovation in Payments” (the Roadmap), issued by the BoE, PRA and FCA (jointly, the Regulators) [Read about regulatory plans for fiat-backed stablecoins.](#)

UK Confirms Proposals for the Future Financial Services Regulatory Rules for Cryptoassets

By Neil Robson, Ciara McBrien, Sara Portillo, Nathaniel Lalone, Carolyn Jackson, Christopher Collins

On 30 October 2023, HM Treasury (HMT) published a response to its February 2023 consultation and call for evidence on its proposals for the future financial services regulatory framework for cryptoassets used within financial services (the Consultation). The Response summarizes the 131 comments received by HMT following the Consultation and sets out policy decisions based on such feedback. [Read about the HMT's Consultation.](#)

UK Government Publishes a Response to its Consultation – Failure or Success?

By Neil Robson, Sara Portillo, Christopher Collins

On 30 October 2023, HM Treasury (HMT) published a response to its May 2022 consultation (the Consultation) on its approach to managing the failure of systemic digital asset (including stablecoin) firms (the Response). The Consultation sought views on the proposed application of a modified Financial Market Infrastructure Special Administration Regime (FMISAR) to systemic payment systems, and service providers of systemic importance to those systems, that use digital settlement assets (DSAs). [Read about the proposed modified FMISAR.](#)

UK FCA Publishes Marketing Guidance for Cryptoasset Firms

By Neil Robson, Ciara McBrien, Sara Portillo, Christopher Collins

On 2 November 2023, the FCA published final, non-handbook guidance on cryptoasset financial promotions in the United Kingdom (FG23/3) together with a press release to further support cryptoasset firms complying with the new marketing rules. FG23/3 provides information on, and sets out the FCA's expectations of, the communication and approval of financial promotions relating to qualifying cryptoassets. Qualifying cryptoassets are defined broadly to mean any cryptographically secured digital representation of value or contractual rights that are transferable and fungible. [Read about cryptoasset marketing guidance.](#)

ICYMI

Here's a look back at recent client advisories from Katten.

- [“Fraud, Reform and the Registrar: Economic Crime and Corporate Transparency Act 2023,”](#) November 27, 2023
- [“The Latest State of Play for the Regulation of AI in the UK Financial Services Industry,”](#) November 27, 2023
- [“FTC Unveils Sweeping Rule to Tackle 'Junk Fees' and Redefine Consumer Pricing Transparency,”](#) November 15, 2023

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