



Katten Financial Markets and Funds *Quick Take*

July 2024

A Brave New World: The Supreme Court Torpedoes the ‘Administrative State’

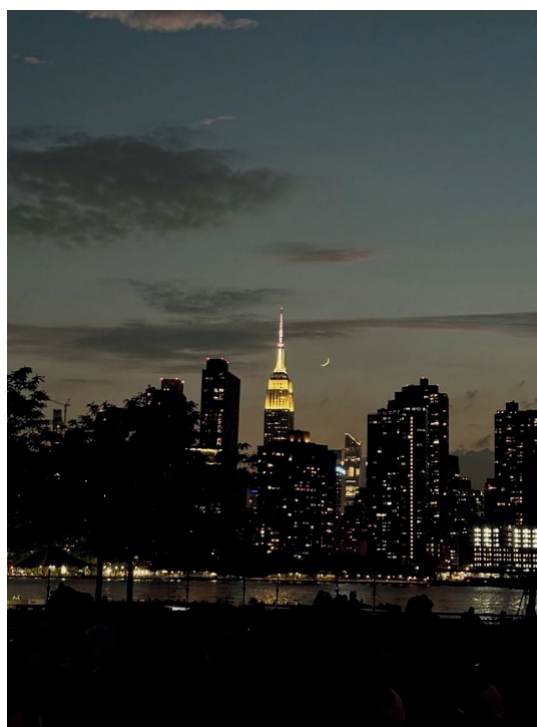
By Carl Kennedy, Daniel Davis, Richard Marshall, Adam Bolter, Alexander Kim, Robert Bourret

The Supreme Court is at war with the “administrative state.” In three major cases decided at the end of the Supreme Court’s last term, the Court decided against the administrative state, reducing the powers of administrative agencies. “*Chevron* deference” to agency interpretations in areas of their expertise was eliminated. The “public rights” exception to a target’s right to a jury trial in an action brought by an agency was redefined and limited. The statute of limitations to challenge agency rulemaking was extended to permit a new entity to challenge decades-old rules. Collectively, these decisions shift power away from the agencies (and in some cases Congress), transferring that power to the Courts. [Read Katten’s advisory.](#)

Ether’s Legal Status Clarified? CFTC Scores Win as Court Backs Agency’s Commodity Classification

By Daniel Davis, Gary DeWaal, Alexander Kim

In a victory for the Commodity Futures Trading Commission (CFTC), a federal court has granted summary judgment in favor of the agency in its case against Sam Ikkurty and his company Ikkurty Capital LLC. The July 1 ruling affirms the CFTC’s broad authority to combat fraud in cryptocurrency markets and explicitly declares Ether to be a commodity subject to CFTC oversight. The case stems from allegations that Ikkurty and his company operated a fraudulent cryptocurrency scheme, misappropriating investor funds and making misleading statements about trading profits. The court’s decision not only entitles the CFTC to disgorgement against the defendants but also addresses several key issues that have been the subject of ongoing debate in the crypto regulatory landscape. [Read about the US District Court for the Northern District of Illinois’s decision.](#)





SEC Targets Crypto Infrastructure Provider: Consensys Charged with Operating Unregistered Broker and Selling Unregistered Securities

By Daniel Davis, Gary DeWaal, Alexander Kim

In a significant escalation of its crypto enforcement efforts, the Securities and Exchange Commission (SEC) has filed charges against Consensys Software Inc., the developer of the popular MetaMask crypto wallet and suite of services. The complaint, filed on June 28, alleges that Consensys has operated and continues to operate as an unregistered broker and has engaged and continues to engage in the unregistered offer and sale of securities through two MetaMask staking programs. This action represents a new front in the SEC's crypto crackdown, as it targets a major infrastructure provider rather than a token issuer or exchange. The SEC is signaling that no part of the crypto ecosystem is beyond its reach by going after the company behind one of the most widely used self-custodial cryptocurrency wallets. [Read about the SEC's view of what constitutes broker activity in the crypto space.](#)

A Timely Reminder from CME Market Regulation of the Broad Reach of the Duty to Supervise

By Stephen Morris

The CME has issued a revised Market Regulation Advisory Notice on Supervisory Responsibilities for Employees and Agents that includes a new "FAQ Related to Supervisory Responsibilities" (the MRAN). The MRAN emphasizes that the duty of diligent supervision (including the duty to develop and diligently enforce supervisory programs that are reasonably designed to detect and deter violations of Exchange rules) belongs not just to members but to any person within the jurisdiction of the exchange – meaning, per CME Rule 418, any person "initiating or executing a transaction on or subject to the Rules of the Exchange directly or through an intermediary," as well as any person "for whose benefit such a transaction has been initiated or executed." [Read about the CME's MRAN.](#)



Redefining Limits: The CFTC's Updated Block and Cap Sizes for 2024

By Carl Kennedy, Nicholas Gervasi

The Division of Data (DOD) of the CFTC published updated post-initial appropriate minimum block sizes and post-initial cap sizes under Part 43 of the CFTC's regulations, effective October 7. In alignment, the Division of Market Oversight (DMO) extended its no-action position on failing to comply with the "Block and Cap Amendments" to October 7 as well, through [CFTC Letter No. 24-06](#) that modifies CFTC Letter No. 23-15. Based on industry data, block and cap sizes have increased over time to reflect the growing market value of swaps. Block trades are defined as publicly reportable swap transactions that have a notional or principal amount at or above the minimum block size. [Read about the CFTC's updated block and cap sizes.](#)

CFTC Chairman Behnam Discusses the Regulatory Outlook Towards Voluntary Carbon Markets

By Nicholas Gervasi, Johnjerica Hodge, India Williams

CFTC Chairman Rostin Behnam recently spoke about voluntary carbon markets (VCMs) in a speech entitled “Climate in the Center of Economy.” There are two types of carbon markets: compliance markets which are established by governments that control the supply of credits and regulate their trading; and VCMs where private buyers and sellers, who are under no formal obligation to achieve a specific target, exchange carbon credits in a more noncentralized manner. Robust VCMs are critical for reducing greenhouse gas emissions and meeting global reduction goals. [Read about Chairman Behnam’s remarks on VCMs.](#)



Law360 Talks With James Brady About Recent SEC Ether Approvals

Financial Markets and Funds Partner James Brady spoke with *Law360* regarding the SEC’s recent approvals of exchange-traded products (ETPs) holding ether (ETH) and what that means for other cryptocurrencies waiting to determine what is considered a security and subject to SEC regulation. James sees this as an explicit acknowledgment by the SEC that ETH is a commodity rather than a security, which places it outside the SEC’s jurisdiction. He states, “We finally have something definitive from the SEC that states that ETH is not a security, it’s a nonsecurity commodity.” [Read about James’s comments.](#)

Lance Zinman and Daniel Davis Talk Market Trends and Crypto Regs With *John Lothian News*

During the FIA’s International Futures Industry Conference, Partner and Financial Markets and Funds Global Chair Lance Zinman, and Partner and Financial Markets and Regulatory Co-Chair Daniel Davis shared their perspectives on the current state and future trends in cryptocurrency markets, the impact of SEC rules on active traders, the transition to broker-dealer status, proprietary trading, digital asset trading and challenges in asset management with *John Lothian News*. [Watch this interview.](#)

Will Texas Stock Exchange Provide Regulatory Haven?

By Elizabeth McNicol, Ryan Lilley

In an article published by *Law360*, the Texas Stock Exchange intends to apply to register with the SEC later this year as a national securities exchange. The TXSE will be headquartered in Dallas and plans to begin facilitating trades of corporate securities, exchange-traded funds and American depositary receipts in late 2025, and listing companies in 2026. Looking to differentiate itself from the NYSE and the Nasdaq, as well as other upstart exchanges, the TXSE hopes to garner support from some of the largest financial institutions and liquidity providers in the world, and offer “more stability and predictability around listing standards and associated costs.” [Read Katten’s article.](#)



SCOTUS Set To Weigh In On the PSLRA’s Heightened Pleading Standards

By Jonathan Rotenberg

The Supreme Court will review the Ninth Circuit’s decision in *Ohman v. Nvidia Corp.*, which affirmed in part and reversed in part the district court’s dismissal of claims brought against Nvidia and three of its officers under the Securities Exchange

Act of 1934. The appeal will provide the Supreme Court with the opportunity to resolve two splits among the circuit courts in applying the heightened pleading standard for securities fraud under the Private Securities Litigation Reform Act of 1995 (PSLRA). [Read about how the Supreme Court decision could impact securities laws.](#)

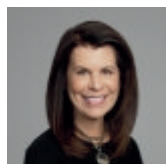
ICYMI

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

- [“New Rules for Investment Advisers and Brokers Relating to Cybersecurity Breaches,”](#) June 27, 2024
- [“Supervising FINfluencers’ Social Media Spin: Don’t Believe Everything You View on Your Phone,”](#) June 27, 2024

CONTACTS

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



[Wendy E. Cohen](#)

[vCard](#)



[Daniel J. Davis](#)

[vCard](#)



[Carl E. Kennedy](#)

[vCard](#)



[Christopher T. Shannon](#)

[vCard](#)



[Allison C. Yacker](#)

[vCard](#)



[Lance A. Zinman](#)

[vCard](#)

Partners Stephen Morris and Jonah Roth serve as co-editors of Katten Financial Markets and Funds Quick Take.



Attorney advertising. Published as a source of information only. Newsletters and advisories give general information only as of the publication date. They are not intended as legal advice, opinion or to give a comprehensive analysis. The information contained herein is not to be used as a substitute for legal or other professional advice, please contact us for specific advice.

CONFIDENTIALITY NOTICE: This electronic mail message and any attached files contain information intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information may be subject to legal restriction or sanction. Please notify the sender, by electronic mail or telephone, of any unintended recipients and delete the original message without making any copies.

Katten refers to Katten Muchin Rosenman LLP and the affiliated partnership as explained at katten.com/disclaimer. Katten Muchin Rosenman UK LLP, a Limited Liability Partnership with registered number OC312814, a law firm in England & Wales authorised and regulated by the Solicitors Regulation Authority.

Privacy

For details on how we handle personal information, please reference our [Privacy Notice](#) and [Cookie Notice](#). To opt-out from receiving marketing communications from Katten, please click on the unsubscribe link below. Opting out of receiving marketing communications will not affect our continuing communications with you for the provision of our legal services. If you wish to update your contact details or for any queries, please contact kattenmarketingtechnology@katten.com.

katten.com