



## Katten Financial Markets and Funds *Quick Take*

September 2024



### FinCEN Adopts Final Rule: AML Programs for Investment Advisers

*By Adam Bolter*

On August 28, the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued a [final rule](#) that expands anti-money laundering (AML) and countering the financing of terrorism (CFT) program requirements to cover Securities and Exchange Commission (SEC) registered investment advisers (RIAs) and SEC exempt

reporting advisers (ERAs) (collectively, Investment Advisers). FinCEN has narrowed the scope of investment advisers subject to the final rule, excluding "investment advisers" from the definition, such as RIAs that register with the SEC solely because they are (i) "mid-sized advisers;" (ii) multi-state advisers; or (iii) pension consultants; and RIAs that are not required to report any AUM to the SEC on Form ADV (e.g., an adviser that does not directly manage client assets).

[Read about the rule changes and core requirements.](#)

### Richard Marshall Quoted by *Law360* on the Latest SEC Rulemaking Agenda

Partner Richard Marshall was quoted in a *Law360* article about the SEC's rulemaking agenda and its recent slowdown as the 2024 election nears. In July, the SEC filed its latest rulemaking agenda that reflects fewer near-term priorities of the SEC's chair in comparison to the past few filings. The agency has dialed back its ambitious rulemaking spree following its approval of 39 substantive rules since 2021, as tallied by investor group Better Markets and reported by *Law360*. However, it has also introduced about 20 more proposals that have yet to receive a vote under SEC Chair Gary Gensler. [Read about Richard's comments.](#)

### SEC Scrutiny into Cash Sweep Programs: What Investment Advisers Need to Know

*By Michael Diver, Susan Light, Wayne Aaron,  
Lindsey Smith, David Luger, David Goldberg*

In recent years, the SEC has initiated several probes into how advisory firms manage their cash sweep programs, which are designed to transfer idle cash from investment advisory accounts into

interest-earning sweep vehicles to generate additional interest income for investors. While broker-dealers also provide cash sweep programs, the SEC probes have been limited to an investment advisor's use of cash sweep accounts and potential breaches of an advisor's fiduciary duty to its managed accounts. The most common sweep options offered by investment advisors are bank deposit accounts and money market funds. [Read about compliance and disclosure considerations.](#)



## CFTC's Uniswap Settlement Sparks Debate on DeFi Regulation

*By Daniel Davis, Alexander Kim*

The Commodity Futures Trading Commission (CFTC) continues to expand its regulatory reach in the decentralized finance (DeFi) space, this time targeting Uniswap Labs, the developer behind a prominent decentralized exchange protocol. This [enforcement action](#) continues the CFTC's recent trend of targeting DeFi platforms, following [similar cases against protocols](#) like Oryn, Deridex and ZeroEx. The CFTC fined Uniswap \$175,000, alleging violations of the Commodity Exchange Act for offering off-exchange leveraged retail crypto commodity products on its platform. [Read about the CFTC's action.](#)



## A Look At The Regulatory Scrutiny Facing Liquid Restaking

*By Daniel Davis, Alexander Kim*

Published by *Law360*, the article discusses the emergence and increased regulatory scrutiny of liquid restaking and liquid restaking tokens (LRTs) in the cryptocurrency industry. Liquid restaking allows users to stake ether to validate transactions on multiple protocols on top of Ethereum. LRTs represent these restaked positions and can be traded or used in DeFi applications. While the potentially higher yields are attractive, liquid restaking introduces risks such as potential slashing events if a validator misbehaves, systemic risks from widespread use as collateral in DeFi and complex interdependencies that could lead to cascading failures. [Read Katten's article.](#)

## Crypto Compliance in Focus: FINRA Unveils Key Insights on Member Firms' Digital Asset Activities

*By Alexander Kim, Susan Light, James Brady*

The Financial Industry Regulatory Authority (FINRA) released a comprehensive [update](#) on its insights into its member firms' involvement in crypto asset activities, revealing significant trends and compliance challenges in the growing crypto asset sector. In 2023, FINRA distributed a questionnaire to nearly 600 member firms, identifying approximately 390 firms with some form of crypto asset involvement. The survey uncovered a wide range of crypto-related activities among member firms, including private placements of crypto assets, operation of alternative trading systems (ATs) for crypto asset securities, and custody services. FINRA found that some firms

have established relationships with affiliates or third parties to provide customers access to crypto trading and custody services, while others are engaging in blockchain and have distributed ledger technology initiatives. [Read about FINRA's survey results.](#)

## Court Denies SEC's Request for Disgorgement in Ripple Case

By Daniel Davis, Alexander Kim

In a setback to the SEC's crypto enforcement efforts, a federal court has denied the agency's request for disgorgement of profits in its case against Ripple Labs. The [ruling](#), issued by Judge Analisa Torres of the US District Court for the Southern District of New York on August 7, deals a blow to the SEC's strategy of seeking large disgorgement penalties in cases based solely on registration violations. The court's decision stems from the SEC's enforcement action against Ripple, which alleged that the company's sales of XRP tokens constituted unregistered securities offerings. While Judge Torres previously ruled that some of Ripple's XRP sales to institutional buyers should have been registered under the securities laws, she has now rejected the SEC's bid to disgorge \$876 million in profits from those sales. [Read about the court's decision.](#)



### (mis)Conduct, Money & Reputation: A Look at Equifax, CrowdStrike & Cybersecurity

Hosted by Neil Robson

In the [latest episode of \(mis\)Conduct, Money & Reputation](#), Katten Financial Markets and Funds Partner [Neil Robson](#) and David Masters of reputation specialists Lansons/Team Farnar examine high-profile breaches such as the Equifax data scandal and NHS ransomware attack. They explore why these failures should be seen more widely as misconduct, common myths about cybercrime, debunking misconceptions

about its targets and motives and how others are addressing these challenges as digital threats evolve and in light of the recent CrowdStrike IT outage. For most financial services firms, it's about when and how often these attacks will come, not if. This episode provides a crucial guide for asset managers and financial services professionals to prepare for, mitigate against and avoid the reputational fallout that occurs when things go wrong. [Read about this \(mis\)Conduct, Money & Reputation podcast episode.](#)

---

## EU/UK

### ESG Corporate Reporting Requirements — Don't miss the deadline to comply!

By Neil Robson, Brigitte Weaver, Christy Wilson

The new Corporate Sustainability Reporting Directive (CSRD) was adopted by the EU in April 2021 to meet its Paris Agreement climate change goals. In-scope companies (which includes those admitted to trading on an EU-regulated market, large EU companies and groups, and non-EU companies generating annual EU revenues surpassing €150 million, with an EU branch

annual net turnover of €40 million) will have granular reporting requirements on their ESG activities which must be published alongside the company's financial statement. The key objective of the CSRD is to require businesses to increase transparency and accountability in their "green" reporting. These reporting requirements will come into effect on a staggered basis between 2024 and 2028, depending on the size of the relevant **entity or group**. The first reporting deadline applies to large companies or groups. [Read about the CSRD large-size criteria.](#)

## FCA Consults on Proposals for the UK Wholesale Markets

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

The Financial Conduct Authority (FCA) recently published three consultations on the new Public Offers and Admission to Trading Regulations (POATR) regime, the new regime for public offer platforms (POPs), and the derivatives trading obligation (DTO) and post-trade risk reduction (PTRR) services (together, the Consultations).

Alongside the Consultations, the FCA published its final rules that give asset managers greater freedom in how they pay for investment research by allowing the "bundling" of payments for research and trade execution. This forms part of a package of measures designed to help strengthen the UK's capital markets and the UK's and London's position as a global financial center. [Read about the Consultations and next steps.](#)



---

## ICYMI

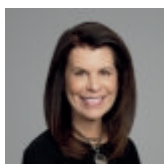
Here's a look back at recent client advisories and thought leadership from Katten.

- ["Capital Markets: Derivatives 2024 – Global Overview,"](#) September 4, 2024
- ["Capital Markets: Derivatives 2024: Trends & Developments – England and Wales,"](#) September 4, 2024
- ["Capital Markets: Derivatives 2024: Law & Practice – England and Wales,"](#) September 4, 2024
- ["Judge Dismisses Case Against Seeking Alpha: Implications for Publishers of Financial Information,"](#) August 26, 2024
- ["Selection of Gov. Walz as VP Harris's Running Mate Triggers Federal Pay-to-Play Restrictions on Investment Advisers and Other Financial Industry Professionals,"](#) August 22, 2024
- ["QPAM Exemption Initial Notification Deadline Nearing,"](#) August 21, 2024

---

## CONTACTS

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



[Wendy E. Cohen](#)



[Daniel J. Davis](#)



[Carl E. Kennedy](#)

[vCard](#)



**[Christopher T. Shannon](#)**

[vCard](#)

[vCard](#)



**[Allison C. Yacker](#)**

[vCard](#)

[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](https://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](mailto:kattenmarketingtechnology@katten.com).

[katten.com](https://katten.com)