



Katten Financial Markets and Funds *Quick Take*
February 2025

'Smart Contracts' Ruling Forces a Blockchain Development Rethink

By Daniel Davis, Alexander Kim

Published by *Bloomberg Law*, the article looks at the recent decision by the US Court of Appeals for the Fifth Circuit in the case of *Van Loon v. US Treasury* and its significant implications for blockchain technology, particularly concerning the distinction between mutable and immutable smart contracts. Smart contracts are self-executing programs on a blockchain that operate when specific conditions are met. The court clarified

that immutable smart contracts, which cannot be altered once deployed, do not fall under the legal definition of property and are beyond the sanctioning authority of the Office of Foreign Assets Control (OFAC) under the International Emergency Economic Powers Act. [Read Katten's article.](#)



White House Embraces Crypto as SEC Opens Door for Banks

By Daniel Davis, Alexander Kim

The Trump administration is moving swiftly to reshape federal digital asset policy. On January 23, President Trump issued an executive order ([Executive Order](#)) that reverses key elements of a Biden-era federal policy framework that emphasized strict oversight, enforcement actions, and consumer protection warnings. On the same day, the Securities and Exchange Commission (SEC) eliminated accounting rules that had

effectively prevented banks from offering crypto custody services — marking a dramatic and coordinated shift in the government's approach. [Read about Trump's executive order.](#)

CFPB Issues Order for Financial Data Exchange to Issue Standards Under CFPB's Personal Financial Data Rights Rule

On January 8, 2025, the Consumer Financial Protection Bureau (CFPB) [issued](#) an order recognizing Financial Data Exchange, Inc. (FDX) as a standard-setting body under the CFPB's [Personal Financial Data Rights](#) rule. The order of recognition is the first to be issued under the rule. The Personal Financial Data Rights rule, released in October 2024, requires financial institutions, credit card issuers, and other financial providers to unlock an individual's personal financial data and transfer it to another provider at the consumer's request for free. [Read about FDX.](#)



CFO Dive Discusses the Future of SEC Cyber Rules With Michael Diver

Michael Diver, partner and co-chair of the Securities Litigation Department and chair of Securities Enforcement Defense, spoke with *CFO Dive* about how the new administration could result in changes to the SEC's rule requiring the disclosure of "material" cybersecurity breaches in company filings. The article notes frustration with the current rule, which is vague, confusing and of little value to investors. [Read Michael's comments.](#)

EU/UK

FCA Publishes Policy Statement on UK's Commodity Derivatives Regulatory Framework Reform

By Carolyn Jackson, Christopher Collins, Ciara McBrien

On February 5, the UK Financial Conduct Authority (FCA) published a policy statement setting out its response and final position in relation to reforming the UK's commodity derivatives regulatory framework. The FCA consulted on the changes to the Framework in December 2023, proposing key changes regarding commodity derivatives transactions in the UK. These proposals related to the shift in responsibility for setting position limits from the FCA to trading venues, enhanced position management controls and monitoring, a narrower application of position limits to only certain commodity derivatives contracts, and available exemptions, including the potential removal of the ancillary activities test. [Read about the FCA Framework reforms.](#)



DORA: Navigating the Path Ahead

By Nathaniel Lalone, Ciara McBrien



Published by *Grip.*, the article looks at the EU Digital Operational Resilience Act (DORA) that took effect on January 17, 2025, marking a significant milestone in the EU's push to bolster digital operational resilience in the financial services sector. Given the sector's increasing reliance on technology, it has become more vulnerable to various information communication and technology (ICT)-related risks, including cyberattacks, ICT failures and disruptions caused by ICT third-party service providers. DORA aims to address such risks and provide a unified framework for managing digital operational resilience across the sector. [Read Katten's article.](#)

European Commission Clarifies Definition of "ICT Services" Under DORA

By Ciara McBrien, Nathaniel Lalone

The European Insurance and Occupational Pensions Authority recently published the European Commission's response (Q&A 2999) on the question of which services fall under the definition of "ICT services" under Article 3(21) of DORA. This guidance was highly anticipated by the financial services sector to clarify the distinction between ICT services and financial services. [Read about ICT services under DORA.](#)



FCA Consults on Second Phase of Enforcement Investigation Proposals

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

Following the FCA's February 2024 consultation on changes to its Enforcement Guide and publicizing enforcement investigations (CP 24/2) (First Consultation), the FCA has issued a further consultation on its proposals in November 2024 (CP 24/2, part 2) (Second Consultation). The Second Consultation sets out changes to the

FCA's initial proposals in response to feedback from the First Consultation. [Read about the FCA's key changes proposed for its Enforcement Guide.](#)

ICYMI

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

- ["SEC Issues Updated 'Names Rule' FAQ,"](#) February 6, 2025
- ["FINRA Publishes 2025 Annual Regulatory Oversight Report,"](#) January 30, 2025
- ["Will History Repeat Itself? Peering Into the Past to Predict the Next Four Years of CFTC Enforcement Actions,"](#) January 28, 2025
- ["Corporate Transparency Act Reporting Remains Voluntary,"](#) January 24, 2025

- [“Crypto in the Courts: Five Cases Reshaping Digital Asset Regulation in 2025,”](#) January 21, 2025

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