



Katten Financial Markets and Funds *Quick Take*

May 2025

SEC's Division of Trading and Markets Issues New FAQ Guidance on Broker-Dealer Custody and Net Capital Treatment of Cryptoassets

By Daniel Davis, Susan Light, Wayne Aaron, James Brady, Alexander Kim

The Securities and Exchange Commission (SEC) has taken a significant step toward permitting broker-dealers to custody digital assets and toward accounting for such proprietary digital assets in a broker-dealer's net capital computation. On May 15, the SEC's Division of Trading and Markets released a [new FAQ](#) titled "Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology," while simultaneously withdrawing its 2019 [Joint Statement](#) with the Financial Industry Regulatory Authority (FINRA) on the broker-dealer custody of digital asset securities. The new FAQ marks a notable shift from the Division staff's cautious approach in the 2019 Joint Statement, offering more practical pathways for broker-dealers to establish possession and control over "crypto assets that are securities", in compliance with Rule 15c3-3 under the Securities Exchange Act of 1934. [Read about the joint statement.](#)



A Sigh of Relief: SEC Reporting Parties Can Continue Following CFTC Reporting Rules When Reporting Security-Based Swap Data Until 2029

By Carl Kennedy, Nicholas Gervasi

As a result of the SEC recently [extending relief that the Commission originally granted under its 2019 Compliance Statement, security-based swap \(SBS\) market participants are allowed to continue following the Commodity Futures Trading Commission's \(CFTC\) swap reporting rules](#) instead of complying with certain requirements in the SEC's Regulation SBSR. The SEC's relief, which was once set to expire in November 2025, will now remain in effect through November 5, 2029.

A New Playbook: What the CFTC's Operating Divisions Will Consider When Making Enforcement Referrals



By Carl Kennedy

The three operating divisions of the CFTC (Division of Market Oversight, Market Participants Division, and the Division of Clearing and Risk, together the Operating Divisions) issued an [advisory](#) on April 17, explaining the materiality criteria they will use when determining whether to make a formal referral to the agency's Division of Enforcement (DOE) for self-reported violations, supervision violations, or other non-compliance issues. The Referral Advisory comes off the heels of DOE's February 25 advisory regarding self-

reporting, cooperation and remediation by a CFTC registered entity or registrant when recommending an investigation or enforcement action to the Commission, including the factors DOE will consider when evaluating whether to reduce the proposed civil monetary penalties in enforcement actions. [Read about the CFTC's advisory.](#)

Carl Kennedy Discusses Industry Reactions to CFTC's Settlement Initiative

Partner and Financial Markets and Regulation Co-Chair Carl Kennedy spoke with *Bloomberg Law* on a recent initiative by the CFTC to resolve low-stakes enforcement cases. Acting Chairman Caroline Pham offered firms a chance to settle cases that did not involve market abuse or customer harm, with a two-week window to propose "reasonable" offers. [Read about Carl's comments.](#)

Think Compliance Got Easier? Think Again—DOJ's New Era in White-Collar Enforcement

By Ryan Meyer, Johnjerica Hodge, Taylor Stilwell

Many have speculated as to how white-collar enforcement may change during President Trump's second term. A recent memorandum by the Head of the Department of Justice's Criminal Division, Matthew R. Galeotti, sheds light on that issue. Specifically, on May 12, Galeotti issued a memorandum—["Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime."](#) Galeotti covers a number of topics in the memorandum, including the "three core tenets" that the Criminal Division will follow when prosecuting white-collar matters. Those tenets are: "(1) focus; (2) fairness; and (3) efficiency." We will cover each of those pillars in three posts this week. [Read about the first tenet.](#)



Increased Clarity for White-Collar Clients: The Department of Justice Unveils its Revised Corporate Self-Disclosure Policy

By Scott Resnik, Alan Brudner, Michael Rosensaft, Nicholas Liotta

What should U.S. businesses take from the DOJ's revisions to its Corporate Enforcement and Voluntary Self-Disclosure Policy? While DOJ has long promoted self-disclosure of wrongdoing as a key way to obtain leniency, DOJ's revised policy states clearly and unequivocally that self-disclosure will lead to non-prosecution in certain circumstances. On May 12, the Criminal Division released a memorandum detailing the new administration's goals for prosecuting corporate and white-collar crimes. The memorandum sets forth the government's view that "overbroad and unchecked corporate and white-collar enforcement burdens US businesses and

harms US interests,” and directs federal prosecutors to scrutinize all their investigations to avoid overreach that deters innovation by US businesses. [Read about the Self-Disclosure Policy.](#)



The CFPB Shuts Down Controversial ‘Regulation Through Guidance’ Practices

By Ted Huffman, Eric Hail

The acting head of the Consumer Financial Protection Bureau (CFPB) continues to winnow out regulatory tools used by agency staff under the prior administration. Just a month after revoking certain interpretative rules and announcing the deprioritized enforcement of others, the CFPB has now reportedly discontinued the Bureau’s longstanding practice of “regulation through guidance.” [Read about the](#)

[CFPB’s latest regulatory changes.](#)

Choose your GenAI model providers, models, and use cases wisely

By Michael Justus

Generative AI (GenAI) vendors, models, and use cases are not created equal. Model providers must be trusted to handle sensitive data. Models, like tools in a toolbox, may be better suited for some jobs than others. Use cases vary widely in risk. When it comes to the selection of GenAI model providers (e.g., tech companies and others offering models) and their models, due diligence is wise. For example, DeepSeek dominated headlines in early 2025 as a trendy pick for high-performance and lower-cost GenAI models. But not everyone is sold. A [number of US states](#) and the [federal government](#) are reportedly implementing or considering bans because the models allegedly transfer user data to China, among other concerns. [Read about GenAI compliance concerns.](#)

EU/UK

HM Treasury and FCA Proposals to Reform Regulation of UK AIFMs

By Neil Robson, Edward Tran, Christopher Collins, Ciara McBrien

On April 7, HM Treasury (HMT) published a consultation on the reform of the UK regulatory regime for alternative investment funds (AIFs) and their managers, alternative investment fund managers, and the Financial Conduct Authority (FCA) simultaneously published a call for input on how to create a more proportionate, streamlined and simplified regime. The Proposals follow the UK’s implementation of the EU Alternative Investment Fund Managers Directive (UK AIFMD) in 2013 and the UK’s withdrawal from the European Union (Brexit) in 2020. The Proposals aim to simplify the regulations relating to AIFMs and streamline the existing framework with the intention of making the UK more “attractive” for investment and to encourage growth within the UK economy. [Read Katten’s advisory.](#)



UK Cryptoassets: Draft Legislation and FCA Discussion Paper Published

On April 29, UK Chancellor Rachel Reeves announced the publication by HM Treasury of near-final legislation to bring cryptoassets within the scope of the UK's regulatory perimeter. Shortly after, the UK Financial Conduct Authority (FCA) also published a discussion paper seeking views on its approach to regulating cryptoasset trading platforms, intermediaries, cryptoasset lending and borrowing, staking, decentralised finance (DeFi), and the use of credit to purchase cryptoassets. The draft legislation, titled the Financial Services and Markets Act 2000 Order 2025, and the discussion paper are closely aligned with HM Treasury's consultation and subsequent response on the future financial services regulatory framework for cryptoassets in the UK. [Read about the draft cryptoassets legislation.](#)



Replacing UK PRIIPs: FCA Consults on Further Proposals for Consumer Composite Investments

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

The FCA has recently published a consultation paper setting out further proposals on product information for consumer composite investments (CCIs) (i.e., investments where the returns are dependent on the performance of or changes in the value of indirect investments). [Read about the](#)

[FCA's proposals.](#)

Neil Robson Discusses Potential Whistleblower Reward Scheme With *Solicitors Journal*

Solicitors Journal recently spoke with Financial Markets and Funds Partner Neil Robson regarding the whistleblower reward scheme the UK Government is considering as part of a new Fraud Review. Neil states, "For a long time, in the USA, the rules have been such that whistleblowers have been financially incentivized to provide information on wrongdoing." He sees the potential in such a program domestically, which previously only had US agencies providing rewards. [Read about Neil's comments.](#)

Opinion: Pie in the Sky or Sensible Proposition: UK Government Asks Regulators to Ensure They Support Growth, Not Hinder It

By Neil Robson

Published by *Thomson Reuters*, the opinion article discusses the UK government's initiative to reduce regulatory burdens and promote economic growth. The Labour government, led by Chancellor Rachel Reeves, aims to cut the administrative cost of regulation by a quarter, making the UK a more attractive place for business. The article questions whether these proposals are realistic or merely political rhetoric. [Read Katten's article.](#)



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

- [“State Regulators Poised to Aggressively Respond to Shifting Federal Enforcement Priorities,”](#) May 12, 2025

CONTACTS

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



[Cathleen A. Booth](#)

[vCard](#)



[Daniel J. Davis](#)

[vCard](#)



[Carl E. Kennedy](#)

[vCard](#)



[Christopher T. Shannon](#)

[vCard](#)



[Lance A. Zinman](#)

[vCard](#)

Partners [Wendy Cohen](#) ([vCard](#)), [Stephen Morris](#) ([vCard](#)) and [Jonah Roth](#) ([vCard](#)) serve as co-editors of Katten Financial Markets and Funds Quick Take.



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