

# LOREZ LEGAL

The **revolution** needs **pioneers**



-Welcome to **Lorez Legal's Newsletter**, where we blend legal expertise with a passion for the digital frontier. In each edition, we aim to keep you well-informed about the latest developments in regulation, digital art, digital fashion, and crypto assets, along with updates about our firm and the individuals behind it. As we dive into the realms of Web3 technologies, we are committed to sharing our enthusiasm and dedication while fostering collaborations with like-minded entrepreneurs and companies who share our vision for the future.

**Dr. Karin Lorez**



# FINMAs recent staking guidance

FINMA's recent guidance (08/2023) sheds light on custodial staking's impact on bankruptcy protection and regulations. The guidance, released on 20th December, 2023, differentiates direct staking and staking chains, emphasizing third-party involvement in cryptoasset management.

In staking chains, cryptoassets move through various institutions, introducing complexities that demand rigorous due diligence. Delegating validator node operation establishes a fiduciary claim, treating assets as exempt from bankruptcy (Art. 16 no. 2 BA), with adherence to Swiss Banking Directives being crucial. The institution must manage counterparty risks, ensure due diligence, and create a Digital Assets Resolution Package (DARP) for risk management.

In direct staking, an institution manages staking and withdrawal keys, bypassing segregation requirements. Due to legal uncertainties, FINMA refrains from imposing capital requirements if specific conditions are met, emphasizing customer instructions, transparent risk disclosure, and risk mitigation. A DARP is essential for risk management. In a supervised entity's bankruptcy, staked cryptoassets should be segregated and returned to custody account holders under Art. 16 no. 2 BA, based on current FINMA assessment pending legal clarifications.

As regulations evolve, institutions must stay vigilant, adapting to changing norms.

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## A Milestone in Crypto: SEC Approval of Bitcoin ETFs

The cryptocurrency market witnessed a historic moment as the U.S. Securities and Exchange Commission (SEC) officially approved Bitcoin Exchange-Traded Funds (ETFs). This regulatory nod marks a significant development that could reshape the landscape of crypto investments, bringing newfound opportunities and increased legitimacy to the sector.

Bitcoin ETFs are publicly traded investment funds designed to provide investors with exposure to Bitcoin's price movements without the need to directly own the cryptocurrency. Unlike traditional crypto exchanges, these ETFs trade on well-established securities exchanges such as the New York Stock Exchange and Nasdaq.



Investors in a Bitcoin ETF do not directly purchase Bitcoin. Instead, they buy shares in a fund managed by an asset management company, which securely holds the underlying Bitcoin with a custodian. In exchange for an annual fund management fee, the financial institution handles the purchasing, storing, and safekeeping of Bitcoin on behalf of the ETF's investors.

While Bitcoin futures ETFs have been available for some time, the SEC's approval of spot Bitcoin ETFs is a ground-breaking step that holds the promise of further mainstream adoption, regulatory clarity, and market maturity for Bitcoin as an asset class. Investors and industry participants are now closely watching how this approval will shape the future of cryptocurrency investments and pave the way for additional regulatory developments in the crypto space.

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## New Guidelines on Trademark Application for NFTs, virtual goods and services



On 1st January 2024 the Swiss Federal Institute of Intellectual Property (IPI) published its new Trade Mark Guidelines (Guidelines). In its Guidelines the IPI explains its new practice regarding trademark applications in connection with virtual goods, non-fungible tokens (NFTs) and services in virtual environments. So far there has been some degree of legal uncertainty regarding the Nizza classification of virtual goods, NFTs and services in virtual environments. By developing the Guidelines further, the IPI reacts to the constant development of technology and provides clarity with regard to trademark classifications.

The IPI's new Guidelines now clearly state regarding virtual goods (Part 2, Para. 4.16) that virtual goods are not to be understood as physical goods that are used in virtual environments (and therefore classified in the class of the respective physical good), but rather as “downloadable digital goods” and therefore classified in class 9.

The Guidelines further clarify that NFTs must be classified according to the goods that are to be represented by the respective NFT.



Examples:

downloadable virtual shoes authenticated by NFTs in Class 9, or, clothing authenticated by NFTs in Class 25.

Nike Dunk Genesis Cryptokicks, to buy as NFT on Metaverse

With regard to services in virtual environments the Guidelines distinguish between two cases: one where the service is represented by an NFT and one

where the service has an NFT as such as its subject matter or theme. In the first case the service must be described and the goods which are represented by the NFT can be named. In the latter case the term «NFT» can be used without further specification.

For more information or guidance, reach out to us.



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contact@lorezlegal.com

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