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WILSON SONSINI

Focus on Fintech

Welcome to Wilson Sonsini's *Focus on Fintech* newsletter. This quarterly newsletter provides ongoing analysis and commentary on regulatory developments impacting the fintech industry.

In this issue, our attorneys discuss updates and developments from federal and state regulators, Congress, and presidential actions, including those related to cryptocurrency and virtual currency, regulated securities intermediaries, securities offerings, enforcement, consumer protection, and banking.

In This Issue

Regulatory and Policy Developments Around Crypto Assets

SEC Forms Crypto Task Force and Hosts Roundtables

The Securities and Exchange Commission (SEC) has established a dedicated Crypto Task Force (Task Force), which "seeks to provide clarity on the application of the federal securities laws to the crypto assets market and to recommend practical policy measures." The Task Force is chaired by Commissioner Hester Peirce.

Since its formation, the Task Force has issued two statements emphasizing the need for clearer regulation for the crypto industry. In connection with this goal, the Task Force is hosting a series of public roundtables to gather input from stakeholders and promote open dialogue on the challenges and opportunities within, and policy and regulatory solutions for, the crypto space. The discussion in the first of the series focused on how to define security status for crypto assets. The roundtable included input from in-house counsel at crypto companies, partners at law firms, law professors, and former SEC commissioners.

For more information, please see our alert here.

SEC Renames and Restaffs Crypto Assets and Cyber Unit

The SEC has launched a new Cyber and Emerging Technologies Unit (the CETU), which replaces the Crypto Assets and Cyber Unit. The CETU, led by Laura D'Allaird, will bring in a restaffed team and shift its focus towards addressing fraud in fields including but not limited to artificial intelligence, machine learning, use of social media, the dark web, false websites, and cybersecurity, in addition to crypto assets. The formation of the CETU reflects a general shift in the SEC's priorities, de-emphasizing its focus on enforcement against companies in the crypto asset space.

Pair of Executive Orders Redirects Federal Approach to Crypto

Two executive orders issued by President Trump pave the way for a

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Regulatory and Policy Developments Around Crypto Assets *(Continued from page 1)*

more friendly regulatory environment for crypto. An executive order titled, "Strengthening American Leadership in Digital Financial Technology," created a working group of cabinet-level officials to review digital-asset-related regulations and directed federal agencies to identify all regulations, guidance, and other materials related to digital assets by February 22, 2025, and to recommend if the regulations should be rescinded or modified by March 23, 2025. Meanwhile, a second executive order directed the Treasury Department to establish a Strategic Bitcoin Reserve and United States Digital Asset Stockpile with other forms of crypto, consisting of bitcoin and digital assets, respectively, owned by the U.S. Department of Treasury that were forfeited as part of criminal or civil asset forfeiture proceedings.

SEC Issues Staff Statements on Certain Proof-of-Work Mining Activities and Meme Coins

In departure from typical practice, the staff of the SEC's Division of Corporation Finance (the Staff) has issued two pieces of interpretive guidance clarifying that certain crypto-related activities, including proof-of-work mining and the offer and sale of "meme coins," do not involve securities transactions under the federal securities law.

The Staff stated that mining certain crypto assets on proof-of-work networks, either through self-mining or mining pools, does not constitute an offer or sale of securities under the Securities Exchange Act of 1934 (Exchange Act) if the activities are conducted consistent with the proof-of-work mining statement. Applying the Howey test, the staff concluded that miners are not relying on the entrepreneurial or managerial efforts of others to earn rewards. Instead, they earn rewards by providing computational resources and validating transactions under

preset network protocols, which are administrative or ministerial functions. Even in pooled mining, where a pool operator manages logistics and reward distribution, miners are actively contributing their own resources and do not profit passively from the operator's work. Thus, the activity does not trigger application of the securities laws.

Similarly, the Staff has stated that it will view many meme coin transactions, as described in the relevant statement, as outside the scope of the federal securities laws. According to the Staff, meme coins, defined as tokens inspired by internet culture and often traded for entertainment or speculative reasons, generally lack underlying enterprise activity, utility, or promises of future profit, and their value is driven by market sentiment rather than managerial efforts. Because they do not meet the criteria of an "investment contract" under Howey, the Staff has concluded that such meme coins are not securities. However, the Staff cautions that this guidance does not cover coins mislabeled as meme coins in an attempt to evade regulation, and that fraudulent activity in connection with any coin, even if not classified as a security, may still be subject to other federal or state enforcement actions.

For more information, please see our alert here.

Federal Banking Agencies Signal New Crypto Approach

The Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) both released guidance rescinding previous guidance that had mandated a supervisory non-objection process for banks under their respective purview seeking to engage in crypto-related activities. The OCC took the lead with the issuance of Interpretive Letter 1183, which removed its previous guidance that banks seeking to hold crypto in custody hold reserves backing stablecoins, or use distributed ledger technology (DLT) or stablecoins to facilitate payments obtain supervisory nonobjection from the OCC. The FDIC followed with its own letter rescinding its previous requirement for banks engaging in crypto-related activities to provide prior notification to the agency.

Federal Reserve Governor Waller Reflects on Stablecoin Market

Federal Reserve Governor Christopher Waller offered his thoughts on the stablecoin market in remarks at a California stablecoin conference. Federal Reserve Governor Waller noted four use cases for stablecoins: as a safe value store for crypto, for means to access U.S. dollars, for cross-border payments, and for retail payments. He observed that issuers can generate revenue from returns on the reserves they hold to back stablecoins, as well as through transaction fees. He noted that stablecoin issuers' profitability will depend on their ability to convince customers of stablecoins' benefits in these cases and scale accordingly, with a consistent regulatory environment being key for the industry's long-term success.

Proposed Crypto Legislation

Stablecoin Legislation Advances

Stablecoin legislation continues to advance in Congress, as the GENIUS Act passed the Senate Banking Committee with bipartisan approval. Meanwhile, Republicans in the House Financial Services Committee have introduced the STABLE Act. Both bills would require licensure of payment stablecoin issuers and regulate such issuers in a manner similar to banks, with capital, risk-management, and anti-money laundering (AML) requirements. Under the proposals, nonbank payment stablecoin issuers would be regulated on a federal level by the OCC while bank issuers would be regulated by their existing banking regulator. Both bills would take stablecoins out of the purview of the SEC and would prohibit the SEC from reissuing its now-rescinded Staff Accounting Bulletin (SAB) 121, which required banks holding cryptocurrency in custody to record an amount corresponding to such crypto as liabilities on their balance sheets—a requirement that made offering crypto-custody services cost prohibitive for banks.

A key difference between the bills is the proposed role of states in stablecoin regulation. Under the STABLE Act, any payment stablecoin issuer could choose to be regulated by a state banking authority instead of its designated federal regulator. The GENIUS Act would only allow issuers to opt for state regulation if they have $10 billion or less in market capitalization and the state in question has a "substantially similar" regulatory regime to the one outlined in the bill.

House Considers Proposals for Market Structure Legislation

The House Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence held a hearing titled, "American Innovation and the Future of Digital Assets Aligning the U.S. Securities Laws for the Digital Age," focused on considering ideas for market structure legislation to address the regulatory treatment of digital assets. In the hearing, Subcommittee Chair Bryan Steil (R-WI) expressed support for "legislation that provides clear guidelines for issuers and market participants, facilitates capital formation, and maintains the integrity of both the digital asset ecosystem and the traditional financial system." The hearing sets the stage for the reintroduction of legislation potentially similar to the proposed Financial Innovation and Technology for the 21st Century Act, which would have established a comprehensive regulatory framework for digital assets and expired at the close of the 118th Congress.

Representative Proposes Banning CBDC

Congressman Todd Emmer (R-MN) reintroduced legislation that would prohibit the Federal Reserve from issuing a central bank digital currency (CBDC). Congressman Emmer stated in a hearing that a CBDC would undercut private sector innovation in stablecoins and other digital currencies and raise privacy issues regarding government surveillance over Americans' transactions. Federal Reserve chairman Jerome Powell recently stated in a congressional hearing that the Federal Reserve will not develop a CBDC.

Developments in SEC Guidance

Marketing Compliance Frequently Asked Questions

The SEC Division of Investment Management has updated its guidance on frequently asked questions (the FAQ) regarding compliance with the Marketing Rule under the Advisers Act, specifically addressing questions related to the 2020 amendments to the Marketing Rule. The updates include new guidance on disclosures for marketing of extracted performance and portfolio "characteristics" such as yield, coupon rate, volatility, and other performance metrics. The FAQ offers staff views to assist advisers but does not carry legal force, impose new obligations, or reflect official Commission approval.

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Developments in SEC Guidance *(Continued from page 3)*

SEC Staff Confirms High Minimum Investment Plus Written Representations May Satisfy Rule 506(c) Verification Requirements

The Staff of the SEC has issued interpretive guidance in the form of a no-action letter confirming that, under certain conditions, an issuer may take "reasonable steps" to verify accredited investor status in a Rule 506(c) offering by relying on high minimum investment thresholds paired with written purchaser representations.

Specifically, if a purchaser makes a substantial investment (not financed by a third party) and provides written representations confirming their accredited status and the source of funds, and the issuer has no contrary knowledge, the Staff agrees it may be reasonable for the issuer to limit or even skip additional verification steps.

The Staff reiterates in the letter that verification is an objective, facts-and-circumstances determination, and the letter reflects Staff views only and is not a rule or binding SEC action.

SEC Brings Enforcement Actions Against Illegally Unregistered Broker-Dealers

The SEC has brought multiple actions and settled charges against VCP Financial LLC and its investment adviser representatives, Arete Wealth Management LLC and its representatives, and PMAC Consulting LLC and its founder for, among other alleged violations, engaging in broker-dealer activities and receiving transaction-based compensation without registering as broker-dealers under the Exchange Act. The broker-dealer activities alleged by the SEC included identifying and soliciting investors, providing investors with marketing materials, and connecting investors with companies that were raising financing.

Without admitting or denying the findings, the firms agreed to penny stock suspensions and civil money penalties and to cease and desist from future violations. These enforcement actions have underscore that the SEC continues to view "finders" for securities transactions as broker-dealers requiring registration.

For more information, please see our alert here.

Enforcement Updates in the Crypto Industry

SEC Announces Dismissal of Several Civil Enforcement Actions Against Crypto Companies

The SEC has entered into joint stipulations to dismiss, with prejudice, its civil enforcement actions against several large cryptocurrency exchanges. Additionally, as of April 23, 2025, the SEC has reportedly closed its investigations into several major crypto entities and has reportedly dropped its appeal against Ripple Labs, Inc.

SEC and New York AG Charge DCG, Genesis Ex-CEO, and Gemini Trust for Misleading Investors on Financial Risk

The SEC has announced $38.5 million settlement orders with Digital Currency Group Inc. (DCG) and the CEO of its former subsidiary Genesis Global Capital (Genesis), Soichoro "Michael" Moro, for allegedly misleading investors about Genesis's financial health following a major borrower default in June 2022. Connectedly, the New York Attorney General has entered into a consent order with Gemini Trust Company, LLC (Gemini) for its alleged violations in failing to conduct adequate due diligence on Genesis, the sole lending partner for its "Earn" program.

According to the orders, after crypto hedge fund Three Arrows Capital defaulted on a $1 billion margin call in June 2022—an event that severely impacted Genesis—DCG and Moro allegedly downplayed the damage. Moro allegedly made false public statements on Twitter suggesting Genesis remained

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Enforcement Updates in the Crypto Industry *(Continued from page 4)*

financially sound and had mitigated the risk of fallout to it, with DCG executives amplifying the message. Moro also allegedly mischaracterized a promissory note as a capital injection, despite no funds being transferred. Although there were internal concerns at Gemini about the stability of Genesis, Gemini allegedly continued to tout Earn as a safe, interest-bearing product, even after Genesis's financial condition significantly deteriorated.

Without admitting or denying the SEC's findings, DCG and Moro have agreed to cease-and-desist orders and civil penalties of $38 million and $500,000, respectively, and Gemini has agreed to cease and desist from committing or causing any violations or future violations of the Securities Act, enhanced compliance requirements, and ongoing cooperation with the Attorney General's office. The order also requires Gemini to pay $37 million in restitution and bars the company from operating crypto lending programs in New York without regulatory approval.

DOJ Announces Takedown of International Exchange Garantex

On March 7, 2025, the U.S. Department of Justice (DOJ) announced a coordinated action with law enforcement in Germany and Finland to take down Garantex, a cryptocurrency exchange that the DOJ alleged was used by criminal organizations to launder money and evade sanctions. The DOJ alleged that the Russian nationals running the exchange, who it indicted for conspiracy to violate sanctions and to operate an unlicensed money transmission business, knowingly allowed illegal activity to take place on the platform and took steps to conceal it from law enforcement.

Canadian Man Charged in $65 Million Cryptocurrency Hacking Schemes

Andean Medjedovic, a Canadian national, has been charged in a five-count criminal indictment for exploiting vulnerabilities in two decentralized finance protocols, KyberSwap and Indexed Finance, to allegedly steal approximately $65 million from investors, including those in the U.S. Between 2021 and 2023, Medjedovic allegedly manipulated smart contracts by engaging in deceptive trading that caused the protocols' systems to calculate incorrect values, allowing him to withdraw funds at inflated, artificial prices. As a result, the victims' investments became essentially worthless. Medjedovic also allegedly laundered the stolen funds through complex transactions, including swap and bridging transactions, and used digital asset mixers to conceal the origin of the funds. In a further attempt to exploit the victims, Medjedovic reportedly tried to extort them through a fake settlement proposal, demanding control of the KyberSwap protocol in exchange for returning a portion of the stolen assets. He faces multiple charges, including wire fraud, extortion, and money laundering, with potential sentences of up to 20 years in prison per count if convicted.

Two Estonian Nationals Plead Guilty in $577 Million Cryptocurrency Fraud Scheme

Two Estonian nationals, Sergei Potapenko and Ivan Turõgin, have pleaded guilty to operating a massive cryptocurrency Ponzi scheme through their company, HashFlare, which defrauded hundreds of thousands of people globally. The defendants sold contracts promising shares of cryptocurrency mined by HashFlare, but in reality, the company lacked the computing power to mine the cryptocurrency as claimed. Between 2015 and 2019, HashFlare generated over $577 million in sales, with most of the proceeds used for luxury purchases and personal investments by the two individuals. Potapenko and Turõgin have agreed to forfeit assets valued at over $400 million, which will be used to compensate victims. The pair faces up to 20 years in prison, with sentencing scheduled for May 8, 2025.

California DFPI Highlights Heightened Crypto Enforcement

The California Department of Financial Protection and Innovation (DFPI) announced the results of several investigations into crypto actors. The

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Enforcement Updates in the Crypto Industry *(Continued from page 5)*

DFPI highlighted its consent order with a company that extended crypto-collateralized loans to California consumers. The DFPI alleged that the company violated the California Financing Law by failing to adequately consider borrowers' ability to repay and understating fees and interest and fined the company over $300,000. More broadly, the DFPI announced that, in partnership with the California Department of Justice, it had shut down 26 crypto-related websites it alleged to be scams, based on tips made by consumers to the agencies' joint Crypto Scam Tracker.

New York DFS Scrutinizes Sentiment-Based Cryptocurrencies

The New York State Department of Financial Services (NY DFS) announced that it is "closely monitoring the rapid proliferation of sentiment-based virtual currencies." Such cryptocurrencies are priced by evaluating large volumes of data concerning customer sentiment, generally mined from social media. NY DFS noted that the platforms that enable creation of such coins do not meet NY DFS's licensing standards and are generally incompatible with its Guidance on Coin Listing and Market Manipulation, due to their price volatility and susceptibility to manipulation by insiders.

Enforcement Actions for Oversight Failures in the Wealth Management Sector

SEC Charges Pair of Wells Fargo Advisory Firms and Merrill Lynch with Compliance Failures Relating to Cash Sweep Programs

The SEC has settled charges with Wells Fargo Clearing Services, LLC (Wells Fargo Clearing Services), Wells Fargo Advisors Financial Network, LLC (Wells Fargo Advisors) and Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch) over failures in their cash sweep programs, resulting in $60 million in total civil penalties. The firms allegedly failed to adopt or implement policies to ensure they acted in clients' best interests when placing cash in advisory accounts into bank deposit sweep programs (BDSPs), rather than higher yield programs or instruments, because the BDSPs generated significant revenue for the firms and their affiliates.

During rising interest rate periods, the yield gap between these BDSPs and higher-yield alternatives reportedly widened to nearly 4 percent. The SEC alleged that neither firm had adequate procedures in place to reassess options or guide advisors in managing client cash according to their investment objectives

in violation of the Investment Advisers Act of 1940 (Advisers Act).

Without admitting or denying the findings, Wells Fargo Clearing Services, Wells Fargo Advisors, and Merrill Lynch agreed to be censured, cease and desist from further violations, and pay penalties of $28 million, $7 million, and $25 million, respectively.

SEC Charges Investment Adviser and Two Officers for Misuse of Fund and Portfolio Company Assets

The SEC has filed settled charges against Momentum Advisors LLC, its former managing partner Allan J. Boomer, and former chief operating officer (COO) Tiffany L. Hawkins for breaching fiduciary duties and misusing fund and portfolio company assets.

According to the SEC, Momentum failed to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act, particularly in its oversight of a private fund it advised. Between 2021 and 2024, the firm's COO allegedly misappropriated over $223,000 from portfolio companies using business debit cards for personal expenses. The orders state that Momentum had no written policies addressing expense reviews or fund operations, which allowed the misappropriation to go undetected for years. Boomer, who directly supervised

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Enforcement Actions for Oversight Failures . . . *(Continued from page 6)*

the COO, allegedly ignored multiple red flags and failed to act on known concerns—including inflated expenses and a prior partial confession of misuse—resulting in a failure to supervise under the Advisers Act. The SEC also found that Momentum allegedly violated the custody rule by failing to obtain and distribute audited financials for four consecutive years and by holding client login credentials, despite claiming compliance with the custody rule's audit option. This allegedly exposed client assets to unauthorized access to their accounts.

Without admitting or denying the findings, all parties consented to cease-and-desist orders. Hawkins will pay a $200,000 civil penalty and face an associational bar, while Boomer will pay an $80,000 penalty and serve a 12-month supervisory suspension. Momentum Advisors will pay a $235,000 civil penalty and receive a censure.

SEC Charges Two Sigma for Failing to Address Known Vulnerabilities in Its Investment Models

The SEC has charged Two Sigma Investments, LP and Two Sigma Advisers, LP (collectively, Two Sigma) with multiple violations tied to alleged long-standing failures in the oversight of their algorithmic trading models and use of restrictive employment agreements. The parties agreed to an aggregate of $90 million in civil penalties.

Between 2019 and 2023, Two Sigma allegedly failed to address known security vulnerabilities in a critical internal database used to store parameters for live-trading models. Despite internal warnings, senior leadership allegedly delayed action until unauthorized changes by an employee allegedly caused over $400 million in overperformance by certain funds and separately managed accounts managed by the advisers and $165 million in underperformance by other managed funds and accounts. The order states that Two Sigma later repaid the negatively impacted funds and accounts.

The firm allegedly committed violations of the Advisers Act by failing to implement policies to detect or prevent these unauthorized changes and by failing to supervise the employee. In addition, for years Two Sigma used employee separation agreements that effectively discouraged whistleblowing.

Without admitting or denying the findings, Two Sigma agreed to a cease-and-desist order, a censure, and the $90 million penalty. The firm has since overhauled its internal controls, repaid harmed investors, and revised its employment agreements to align with whistleblower protections.

Enforcement for Other Violations by Regulated Financial Intermediaries

12 Firms to Pay More Than $63 Million Combined to Settle SEC's Charges for Recordkeeping Failures

The SEC has charged nine investment advisers and three broker-dealers for alleged widespread failures to preserve electronic communications, particularly through the use of unapproved "off-channel" methods like personal messaging apps in violation of federal recordkeeping rules. Collectively, the firms will pay $63.1 million in civil penalties and, according to the relevant orders, have begun overhauling their compliance programs.

The misconduct spanned personnel across ranks, including senior managers, and involved violations of the Advisers Act and the Exchange Act. Each firm admitted to the violations, agreed to be censured, and accepted a cease-and-desist order. Notably, PJT Partners LP, which self-reported its violations, received a significantly reduced penalty of $600,000—which the SEC pointed to as showing that proactive cooperation can lessen enforcement consequences.

Top penalties included $12 million from Blackstone entities, $11 million from Kohlberg Kravis Roberts & Co. L.P., $10 million from Charles Schwab & Co., Inc., and $8.5 million each from Apollo Capital Management L.P. and

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Enforcement for Other Violations by Regulated Financial Intermediaries *(Continued from page 7)*

TPG Capital Advisors LLC. The SEC emphasized that proper recordkeeping is fundamental to market transparency and regulatory oversight.

Two Robinhood Broker-Dealers to Pay $45 Million in Combined Penalties for Violating More Than 10 Separate Securities Law Provisions

The SEC has charged Robinhood Financial LLC and Robinhood Securities LLC (collectively, Robinhood) for a broad range of alleged regulatory failures—spanning recordkeeping, short selling, identity theft prevention, and data security—resulting in a combined $45 million in civil penalties.

Between 2018 and 2024, Robinhood Securities allegedly filed more than 11,000 inaccurate electronic blue sheet submissions, misreporting data on at least 392 million transactions due to coding errors and insufficient controls. The firm also allegedly mismarked millions of fractional share trades as "long" or "short exempt" and failed to perform required closeouts or locate actions—errors that, according to the order, went unremedied for years.

Both entities also allegedly failed to timely review and file suspicious activity reports (SARs) during a surge in trading activity and account growth, with average SAR filing delays reaching over four months. According to the SEC, Robinhood also lacked a compliant identity theft prevention program, even amid rising account takeover incidents, and suffered a 2021 data breach after failing to act on known system vulnerabilities, exposing the personal information of millions of users.

Additionally, the SEC alleged that Robinhood personnel routinely used off-channel communications, like texts and messaging apps, for business

purposes. These messages were allegedly improperly preserved as required under the applicable recordkeeping rules.

Robinhood admitted to several of the violations, consented to cease-and-desist orders, and was censured. The firm has since undertaken remedial efforts, including enhanced compliance systems, revised supervisory policies, and expanded employee training.

SEC Charges LPL Financial with AML Violations

The SEC has issued a settlement order against LPL Financial LLC (LPL) for allegedly failing to follow its own AML policies, particularly regarding the Customer Identification Program (CIP) and ongoing customer due diligence (CDD) obligations between May 2019 and December 2023.

LPL allegedly failed to verify new customer accounts properly, delayed or neglected closing accounts that did not pass CIP checks, and maintained high-risk accounts such as those tied to cannabis businesses or foreign jurisdictions, even though its own policies prohibited them. These lapses persisted despite repeated internal audit warnings and were exacerbated by poor employee training, inadequate oversight, and inconsistent recordkeeping.

The SEC found that LPL willfully violated the provisions under the Exchange Act which require broker-dealers to comply with AML recordkeeping and reporting rules under the Bank Secrecy Act. Although LPL had begun implementing corrective actions, such as hiring a third-party compliance consultant, revamping leadership, and increasing compliance resources, it has agreed to further undertakings, including ongoing oversight by the compliance consultant, mandatory adoption of all recommended AML improvements, and a multi-stage evaluation of its CIP and CDD programs over the next year.

Without admitting or denying the findings, LPL has agreed to be censured and will pay an $18 million civil penalty.

This case comes ahead of new AML obligations set to take effect in 2026 for SEC-registered investment advisers (RIAs), which will, for the first time, require RIAs to implement formal AML programs and file SARs.

CFTC Regulatory Updates

CFTC Releases Enforcement Advisory on Self-Reporting, Cooperation, and Remediation

The Commodity Futures Trading Commission's (CFTC) Division of Enforcement has released a new advisory outlining how it will assess self-reporting, cooperation, and remediation in enforcement cases—introducing, for the first time, a Mitigation Credit Matrix to guide penalty reductions in these cases. The advisory aims to bring the CFTC in line with the DOJ and other regulators and incentivize faster resolutions by setting clear expectations for entities that choose to self-report misconduct, cooperate with investigations, and implement remedial actions. Self-reporting is graded on a three-tier scale (No, Satisfactory, Exemplary), while cooperation is assessed on a four-tier scale (No Cooperation, Satisfactory Cooperation, Excellent Cooperation, and Exemplary Cooperation), with remediation considered as part of that evaluation. Full credit requires timely, complete, and voluntary disclosures.

The new Mitigation Credit Matrix aims to establish a transparent framework for applying penalty reductions. Credit can range from 0 percent (no self-report or cooperation) to 55 percent (exemplary in both areas). The matrix is intended to provide consistency, encourage transparency, and conserve agency resources, though the CFTC may adjust credit based on case-specific facts.

CFTC Division of Enforcement to Refocus on Fraud and Helping Victims, Stop Regulation by Enforcement

The CFTC chair has announced a reorganization of its Division of Enforcement, consolidating its existing task forces into two streamlined units aimed at enhancing fraud prevention

and restoring fairness in enforcement practices. According to the agency, the move is designed to sharpen focus on victim protection and end the controversial practice of "regulation by enforcement," a strategy previously used by the Division of Enforcement, particularly within the crypto industry.

The newly created Complex Fraud Task Force, led by Deputy Director Paul Hayeck, will handle all matters involving sophisticated fraud and market manipulation across asset classes. Meanwhile, the Retail Fraud and General Enforcement Task Force, headed by Deputy Director Charles Marvine, will address retail-focused misconduct and general Commodity Exchange Act violations.

Acting Chairman Caroline D. Pham stated that the simplified structure will allow the CFTC to pursue enforcement against fraud without penalizing compliant market participants, while ensuring consistent and fair application of the law. Enforcement Director Brian Young added that the restructuring aims to empower staff to focus their expertise on cases that secure justice for victims and safeguard market integrity. This restructuring reflects a shift away from crypto-centric enforcement, signaling a broader, more balanced approach by the Division of Enforcement.

CFTC Division Withdraws Advisory on Review of Risks Related to Clearing Digital Assets

The CFTC Division of Clearing and Risk has withdrawn CFTC Staff Advisory 23-07, which had previously highlighted the risks associated with the expansion of Digital Asset Clearing Organizations clearing digital assets. The advisory had emphasized concerns related to system safeguards, physical settlement procedures, and conflicts of interest in the clearing of digital assets. The withdrawal states that its intent is in part to ensure that the CFTC's regulatory treatment of digital asset derivatives will remain consistent with its approach to other commodities.

CFTC Divisions Withdraw Advisory on Virtual Currency Derivative Product Listings

The CFTC Division of Market Oversight and Division of Clearing and Risk have withdrawn CFTC Staff Advisory No. 18-14 related to the listing of virtual currency derivative products. The prior advisory had provided guidance on the CFTC's expectations and priorities regarding new virtual currency derivatives to be listed on designated contract markets or swap execution facilities. The Divisions emphasized that the CFTC's regulatory framework under the Commodity Exchange Act and CFTC regulations for the listing and clearing of digital asset derivatives remains unchanged.

Consumer Protection Developments

States Step Up Enforcement

As the Consumer Financial Protection Bureau (CFPB) shifts its supervisory efforts back to depository institutions, nonbank entities subject to CFPB oversight should note that other regulators retain the ability to enforce federal consumer protection laws. In an article published in January 2025, then-CFPB Commissioner Rohit Chopra provided a blueprint for state authorities looking to step into the CFPB's shoes, noting that section 1042 of the Consumer Financial Protection Act (CFPA) empowers states to enforce federal consumer financial protections against entities covered by the CFPA, and section 1044 of the CFPA safeguards state efforts to build on federal protections. State authorities may enforce the Act's provisions, including its prohibition against unfair, deceptive, and abusive acts or practices, against nonbank companies that provide consumer financial products or services, including payment companies, lenders, and debt collectors.

CFPB Plans to Rescind BNPL Interpretive Rule

The CFPB stated in a court filing that it plans to revoke an interpretive rule that classifies Buy Now Pay Later (BNPL) providers as credit card issuers under Regulation Z. The interpretive rule, issued May 2024, requires BNPL providers to offer consumers disclosures on interest rates, billing statements, and refunds for unauthorized use, among other protections. The CFPB's filing comes as a reversal to the agency's prior position defending the interpretive rule in a lawsuit filed by the Financial Technology Association challenging it.

CFPB Approves Application to Set Open Banking Standards

The CFPB issued an order recognizing The Financial Data Exchange, Inc. (FDX) as a standard-setting body under its Section 1033 open banking rule, which was finalized in October. In its order, issued in the last month of the Biden Administration, the CFPB recognized FDX's application programming interface (API) standard as compliant with the rule's requirement that banks and other financial services providers use approved APIs to share customer data with third parties. Enforcement of this requirement, along with the rule's other data-sharing obligations, are set to begin on a tiered schedule, with compliance for the largest financial institutions required beginning April 1, 2026. Currently litigation by a bank trade group challenging the rule is pending in the Eastern District of Kentucky.

CFPB Orders Two Nonbank Payment Companies to Pay Penalties

In a pair of orders issued under former Commissioner Rohit Chopra, the CFPB ordered two nonbank payment companies to pay penalties for failing to accurately disclose fees to consumers and for failing to resolve disputes regarding unauthorized transactions. The enforcement comes on the heels of the CFPB finalizing a rule that gives it supervisory authority over nonbank payment companies. The future of that rule is now in question, as the Senate and House have voted to overturn it via the Congressional Review Act.

Other Banking Regulatory Updates

OCC Ceases Examinations for Reputational Risk

The OCC announced that it had removed references to reputational risk from its examination handbook. Previously, the OCC had taken into account such risk to banks' finances from negative public opinion resulting from engaging in certain activities when it conducted exams. In testimony before the Senate Banking Committee, Federal Reserve chairman Jerome Powell similarly committed to working with President Trump's nominee for Vice Chair for Supervision, Michelle Bowman, once confirmed, to remove reputational risk as a factor in the Supervision Manuals the Federal Reserve uses to conduct examinations of its member banks.

Federal Government to Phase Out Its Use of Paper Checks

The Federal Government will largely phase out its use of paper checks by September 30, 2025, based on an executive order signed by President Trump titled, "Modernizing Payments To and From America's Bank Account." Under the executive order, the Treasury Department will largely switch to issuing disbursements, including tax refunds, intergovernmental payments, and entitlement benefits, electronically. The order directs the Treasury Department to support agencies by granting them access through its centralized payment system to electronic payment methods including direct deposit, debit and credit cards, and digital wallets. It contains limited exemptions for payments to individuals who do not have access to electronic payments, certain emergency payments, and payments for national security and law-enforcement activities.

State Regulators Penalize Failed Money Transmitter

The California DFPI announced that it has reached an agreement with a California-based money transmitter requiring the company to refund consumers for its failure to meet outstanding liabilities of over $2 million following its collapse in 2024. The agreement follows a prior DFPI order revoking the company's California money transmission license. Separately, regulators in 34 states and Washington, D.C., announced a consent order with the company revoking its money transmission licenses in their states and requiring the company to pay a penalty of $1 million.

Q1 Wilson Sonsini Publications on Fintech-Related Developments

Client Advisory
Fintech in Brief: CFPB Takes Aim at Crypto Wallets and Gaming Platforms with Proposed "Interpretive Guidance" to Expand EFTA's Scope
January 14, 2025

Client Advisory
Payments Playbook Series: Crypto Payments Playbook
January 29, 2025

Wilson Sonsini Alert
The New SEC Crypto Task Force: A Journey into Uncharted Waters
February 12, 2025

Wilson Sonsini Alert
No Commission Without Permission: SEC Reinforces Focus on Sales Activities and Transaction-Based Compensation as Hallmarks of Broker-Dealer Status in Recent Settlements
March 3, 2025

Wilson Sonsini Alert
A Crypto-Friendly Pivot in Bank Supervision: Three Practical Action Items for Innovators
March 18, 2025

Wilson Sonsini Alert
Corporation Finance Issues Two Unusual Statements Regarding Regulation of Digital Assets
March 25, 2025

Practice Highlights and Speaking Engagements

Wilson Sonsini Partner Amy Caiazza Speaks at First Annual Eve Wealth Summit

Fintech and financial services partner Amy Caiazza recently joined Sarah Shtylman (Perkins Coie) and Lee Schneider (Ava Labs) during the "Code of Law: A Blockchain Debate" panel at the first annual Eve Wealth Summit, held in Dana Point, California from March 12 to 13, 2025. The summit was dedicated to broadening the investor base in digital assets by offering extensive education and fostering a robust community. During the panel, Amy discussed a wish list for crypto regulation.

Wilson Sonsini Partner Jess Cheng Hosts "College for Clients" Webinar on Crypto

Fintech and financial services partner Jess Cheng recently hosted the webinar "Fundamentals of Crypto in Payments and Banking" on March 20, 2025, as part of Wilson Sonsini's 2025 College for Clients series. Among other topics, Jess discussed the evolving role of crypto in financial assets, recent regulatory and policy developments and their impact on banks and fintech companies, and proposed laws affecting crypto and financial institutions.

Wilson Sonsini Partners Attend Several Spring Conferences

Fintech and financial services partners recently attended several conferences in Q1 2025, including the 2025 Investment Adviser Compliance Conference held in Washington, D.C. from March 5 to 7, Fintech Meetup 2025 held in Las Vegas from March 10 to 13, and Future Proof Citywide held in Miami Beach from March 16 to 19. Wilson Sonsini looks forward to connecting with other fintech and financial services industry leaders at future conferences.

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