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ALERT

NOVEMBER 2025

The OCC Permits Banks to Hold Crypto Assets in Order to Pay "Network Fees"

The Office of the Comptroller of the Currency (the "OCC") has held for the first time that national banks may hold crypto assets as principal on their balance sheet in order to pay reasonably expected amounts of "network fees" or "gas fees" on blockchain networks.

On November 18, 2025, the OCC issued Interpretive Letter #1186 to confirm that national banks may permissibly hold, as principal, sufficient crypto assets to pay blockchain network fees, in anticipation of paying such fees.

The OCC blended legal and practical reasons to support its updated guidance: Certain crypto-asset activities are already deemed permissible, and under 12 U.S.C. 24 (Seventh), national banks may exercise incidental powers to carry on the business of banking. Activities are considered incidental when they are *convenient* or *useful*, such that the activity: (i) facilitates products, (ii) enhances sales ability, (iii) improves efficiency, or (iv) enables a bank to use required capacity to avoid economic waste.

According to the Interpretive Letter, banks have several reasons to hold crypto assets as principal: (i) to pay "network" or "gas" fees, (ii) to receive the same fees when serving as a validator node on a blockchain network, (iii) to facilitate blockchain transactions, and (iv) to test a crypto-asset platform for customers. Although the OCC recognizes that crypto assets pose risks (through volatility and cyber threats), the agency considers such uses appropriately incidental to the business of banking. Additionally, when banks hold crypto assets themselves, as opposed to contracting with third parties for such payments, they reduce operational and counterparty risk. The OCC also considers holding crypto assets to be convenient and useful because such practices:

- Reduce time delays related to acquiring other crypto assets needed for specific network fees;
- Improve efficiencies for banking activities;
- Avoid exposure of bank customers to credit risk from third parties;
- Reduce costs for banks by internalizing payment processing;
- Allow banks to engage in permissible activities, such as serving as a validator node; and
- Ensure overall safety and soundness when testing crypto asset-related platforms by allowing banks to directly assess the platform's operation.

The OCC presented its guidance as a step forward in the long path of banking innovation: Banks are using "new ways of conducting the very old business of banking." In particular, the OCC highlighted that banks have the authority to hold, as principal, stores of foreign exchange to facilitate customer business and provide incidental related services to customers.

National banks interested in providing crypto-asset services should note that the Interpretive Letter was not issued by the OCC on its own initiative, but as a response to a request from a bank that sought the authority to pay network fees, and explained to the OCC how its risk and compliance processes would support safe and sound operations.

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ALERT

NOVEMBER 2025

Securities on a Sliding Scale: Inside "Project Crypto's" New Approach to Digital Assets

On November 12, 2025, Securities and Exchange Commission ("SEC") Chairman Paul S. Atkins spoke at the Federal Reserve Bank of Philadelphia regarding the SEC's "Project Crypto" initiative, which aims to create a clear and robust crypto asset regulatory framework to foster innovation, protect investors, increase capital formation, and bring crypto projects back onshore from foreign jurisdictions.

In his recent speech, Chairman Atkins sought to address the continued uncertainty over whether crypto assets are securities, emphasizing that: (i) most crypto assets are not securities, but some crypto assets are *one part of* investment contracts that are securities; (ii) the longstanding legal analysis under the *Howey* test will be maintained to focus on substance over form; and (iii) the security status of crypto assets may change as the facts and circumstances of the related investment contracts evolve. Chairman Atkins also expressed support for recent legislative efforts for market clarity and shared his perspective on the practical outcome of the SEC's shift in policy.

Chairman Atkins explained that his view on how to categorize various types of crypto assets is based on two principles: (i) securities remain securities, regardless of form, and (ii) "economic reality trumps labels," meaning that issuers of securities cannot masquerade true securities by using other names such as "NFTs." Flowing from these principles, Chairman Atkins identified the following four categories of crypto assets and indicated whether they are securities:

- Digital commodities and network tokens (that are functional and decentralized) are not securities;
- Digital collectibles are not securities;
- Digital tools performing practical functions (such as membership or credentialing) are not securities; and
- Tokenized securities *are* securities.

Chairman Atkins asserted that the key question should not be: "Is the crypto asset itself a security?" but rather: "Does the crypto asset form part of a security based on the promises underlying the related investment contract?" In his view, the promises or representations under an investment contract should be "explicit and unambiguous" (relating to the managerial efforts of the issuer) to constitute a security. He further seeks to avoid rigid application of the *Howey* test—in his view, the status of being a security should not be an "unremovable" stamp on a crypto asset. Crypto assets may move from being considered a security when a crypto project is launched, to not being considered a security upon changes to the project, such as sufficient decentralization.

Chairman Atkins hopes to create clear lines under forthcoming SEC guidance that would implement these characterizations and provide a package of exemptions for potential issuers. Envisioning a

regime where crypto assets considered to be securities could trade on non-SEC regulated platforms, Chairman Atkins has instructed SEC staff to prepare recommendations to permit such activity on or through CFTC- and state-registered intermediaries.

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ALERT

SEPTEMBER 2025

Senators Release Updated Discussion Draft of the "Responsible Financial Innovation Act of 2025"

On September 5, 2025, Senators Tim Scott (R-SC), Cynthia Lummis (R-WY), Bill Hagerty (R-TN), and Bernie Moreno (R-OH) released an updated discussion draft of the "Responsible Financial Innovation Act of 2025" ("RFIA"), which seeks to modernize U.S. digital asset oversight by clarifying asset classifications as well as disclosure, banking, and compliance rules.

This draft bill not only updates a prior discussion draft of the RFIA, but also appears to update bill S.2281, introduced in the 118th Congress, as well as a previous version introduced by the senators in the 117th Congress, both of which were not previously acted upon. The RFIA follows on the heels of the House of Representatives' passage of the Digital Asset Market Clarity Act of 2025 on July 17, 2025.

Key provisions of the updated discussion draft include:

- **Digital Asset Classification and Definitions**. The RFIA defines key terms such as "digital assets," "ancillary assets," and "digital commodities," and establishes tests distinguishing digital asset securities from commodities. "Ancillary assets" meeting the definition of such in the RFIA would not be considered securities. The RFIA also directs the Securities and Exchange Commission ("SEC") to engage in rulemaking to clearly define "investment contracts."

- **Disclosure and Exemption Regimes for Ancillary Assets**. The RFIA establishes initial and periodic disclosure requirements for transactions involving "ancillary assets," with tailored exemptions.

- **Responsible Banking Innovation**. The RFIA authorizes certain banks to engage in a broad range of digital asset activities, provided such activities are otherwise permissible under existing law.

- **Illicit Finance and Compliance**. The RFIA would require new anti-money laundering regulations, the creation of a public-private information sharing pilot program to help identify and address potential illicit finance violations and emerging risks, and an independent working group to study and propose measures to combat illicit finance and terrorism involving digital assets.

- **Software Development and Non-Fungible Tokens ("NFTs") Safe Harbors**. The RFIA shields certain software development activities and NFTs from federal and state securities laws.

- **Joint Rulemaking and Regulatory Harmonization**. The SEC and the Commodity Future Trading Commission ("CFTC") would be charged with jointly promoting a "Micro-Innovation Sandbox" for innovative activity. The RFIA would also create a Joint Advisory Committee on Digital Assets to advise the SEC and the CFTC on regulatory harmonization and dispute

resolution.

Market participants and financial institutions should closely monitor the progress of this bill, which, if enacted, could also affect the regulation of other non-digital asset investments.

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ALERT

SEPTEMBER 2025

Why Can't We Be Friends? The SEC and CFTC Vow More Cooperation

On September 5, 2025, the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC") released a joint statement (the "Statement") outlining a renewed commitment to regulatory cooperation and harmonization, with a particular focus on fostering innovation in digital assets, crypto products, and emerging trading platforms.

Key Initiatives and Areas of Focus

Under the Trump administration, the agencies have seemed to move on from prior "turf wars" over crypto regulation in particular, following the call for greater interagency cooperation and joint rulemaking from the White House's recent digital asset policy report and the pending Digital Asset Market Clarity Act. In the Statement, the SEC and the CFTC announced several joint initiatives and potential regulatory changes, including:

- **A joint roundtable on regulatory harmonization.** A roundtable is scheduled for September 29, 2025, to discuss harmonization priorities and gather input from market participants and stakeholders.

- **Expanding trading hours.** The agencies will consider the feasibility of extending trading hours for certain asset classes to better align U.S. markets with the reality of the global economy, while maintaining investor protections.

- **Event and perpetual contracts.** The statement contemplates providing regulatory clarity for event contracts (prediction markets) and exploring the onshoring of perpetual contracts (derivatives without expiry dates) currently prevalent in offshore crypto markets. The agencies aim to enable these products to trade on U.S. platforms under robust risk management standards. Earlier this year, the CFTC issued a Request for Comment seeking public input on the risk and characteristics of perpetual derivatives, and, in fact, the CFTC raised no objection to the first two perpetual futures contracts (based on ETH and BTC, respectively) to trade in the United States.

- **Portfolio margining.** The SEC and the CFTC are considering a coordinated framework for portfolio margining to reduce capital inefficiencies. Harmonized margin requirements could allow market participants to net exposures across product classes, lowering costs and freeing up balance sheet capacity for both institutional and retail participants.

- **Innovation exemptions and decentralized finance ("DeFi").** Both agencies reaffirm their willingness to consider "innovation exemptions" or safe harbors for peer-to-peer trading of spot crypto assets and derivatives over DeFi protocols. These exemptions would provide regulatory flexibility for new business models while longer-term rulemaking is developed.

Policy Objectives

The Statement underscores the agencies' shared objectives to reduce regulatory uncertainty, promote market competitiveness and investor protection, encourage the return of innovative products and trading activity to U.S. markets (as exemplified by the recent CFTC Advisory described in our *Alert*, "CFTC Issues Advisory to Clarify FBOT Registration Framework for Non-U.S. Crypto Exchanges to Access U.S.-based Participants"), and strengthen U.S. leadership in financial innovation.

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ALERT

SEPTEMBER 2025

CFTC Issues Advisory to Clarify FBOT Registration Framework for Non-U.S. Crypto Exchanges to Access U.S.-based Participants

To promote regulatory clarity, on August 28, 2025, the Commodity Futures Trading Commission ("CFTC")'s Division of Market Oversight issued an advisory to reaffirm its longstanding foreign board of trade ("FBOT") registration framework for non-U.S. exchanges, including non-U.S. crypto exchanges, that seek to offer trading access to U.S.-based participants.

The FBOT registration framework, which has been in place since the 1990s, allows non-U.S. exchanges legally organized and operating outside the United States to offer trading access to U.S.-based participants, provided they register as FBOTs with the CFTC. The advisory reaffirms that the FBOT registration framework applies to all asset classes, including digital assets, and aims to facilitate lawful onshore trading activity under CFTC oversight.

The CFTC's advisory seeks to eliminate ambiguity regarding the registration requirements for non-U.S. exchanges. Recent years had seen increased confusion over whether non-U.S. exchanges should register as designated contract markets ("DCMs") or FBOTs. The advisory clarifies that the longstanding FBOT registration framework remains the appropriate and efficient pathway for non-U.S. exchanges to serve U.S. customers, countering ambiguity from novel legal interpretations advanced in recent enforcement actions. An FBOT must meet certain criteria and qualifications that are potentially more streamlined than those of a DCM.

Through its advisory, the CFTC also aims to welcome back onshore American exchanges that opted for foreign jurisdictions due to previous enforcement actions. Such actions, in Acting Chairman Caroline D. Pham's view, often applied stringent out-of-context rules, ignored precedent, or created vague new standards. The current advisory echoes previous remarks by Acting Chairman Pham in the UK House of Lords, in which she noted: "Our current CFTC regulated entities could begin trading crypto on day one, and bring previously offshore activity back onshore to the U.S. with no negative impact to depth of market liquidity."

Both the Securities and Exchange Commission ("SEC") and the CFTC have promptly responded to the White House's call to action in its Digital Asset Report, as described in our *Alert*, "New White House Report Outlines U.S. Policy for Digital Assets." The SEC launched "Project Crypto," while the CFTC has begun policy changes such as the one discussed above under its "Crypto Sprint."

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ALERT

AUGUST 2025

New White House Report Outlines U.S. Policy for Digital Assets

President Trump's "Working Group on Digital Asset Markets" recently released a report with a strategic roadmap to advance American leadership in digital financial technology.

On July 30, 2025, President Trump's Working Group on Digital Asset Markets released a comprehensive policy report titled "Strengthening American Leadership in Digital Financial Technology" (the "Report"). The Report sets forth a pro-innovation agenda for digital assets, blockchain technology, and related financial systems and aims to foster responsible growth, regulatory clarity, and global competitiveness, while addressing risks related to illicit finance and national security.

The Report marks a decisive shift from prior enforcement-driven approaches, emphasizing the need for a clear, technology-neutral regulatory framework to support lawful digital asset activities. The Report calls for Congress to enact legislation affirming individuals' rights to maintain custody of digital assets and to engage in lawful peer-to-peer transactions without financial intermediaries. The Report also recommends lawmakers clarify the application of the Bank Secrecy Act to software providers involved in digital asset activities to ensure that only entities with actual control over assets are subject to money transmission regulations.

The Report also applauds the recent enactment of the Guiding and Establishing National Innovation for U.S. Stablecoins Act, known as the GENIUS Act, and its role in supporting innovative stablecoins to improve payment systems. The Report supports the enactment of the Digital Asset Market Clarity Act, known as the CLARITY Act, discussed in our recent *Alert*, "U.S. House Passes GENIUS and CLARITY Acts, Signaling Bipartisan Support for Digital Assets."

The publication of the Report was followed by a speech by Securities and Exchange Commission ("SEC") Chairman Paul Atkins on July 31, 2025. Chairman Atkins promised that the SEC would provide "clear and simple rules of the road for crypto asset [activities]," noting that "most crypto assets are not securities" and that the SEC should not make categorization as a security an overly burdensome "scarlet letter" to avoid.

By promoting responsible innovation, regulatory clarity, and global engagement, the Report aims to position the United States as the world's leading hub for digital assets and blockchain-based financial services. The recommendations in the Report, if implemented, are intended to foster a robust, competitive, and secure digital-asset ecosystem, aligning with American values and economic interests.

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ALERT

AUGUST 2025

SEC Clarifies Liquid Staking Activities Are Not Securities Transactions Under U.S. Law

On August 5, 2025, the Division of Corporation Finance of the U.S. Securities and Exchange Commission ("SEC") issued a statement ("Statement") providing interpretive clarity on the application of federal securities laws to certain liquid staking activities involving crypto assets.

"Liquid staking" refers to a process in which holders of crypto assets deposit their assets with a third-party protocol staking service provider and receive newly minted crypto assets in return.

Key Regulatory Clarifications

No Securities Transaction. The SEC's view is that "Liquid Staking Activities," as defined in the Statement, do not involve the offer or sale of securities under the Securities Act or the Securities Exchange Act. These activities are characterized as administrative or ministerial, lacking the entrepreneurial or managerial efforts required under the "investment contract" test established in *SEC v. W.J. Howey Co.* ("*Howey* Test").

Staking Receipt Tokens Are Not Securities. The SEC considers that "Staking Receipt Tokens," as defined in the Statement, are not securities. They function as receipts evidencing ownership of the deposited crypto assets, which themselves are not securities. The tokens do not generate rewards independently; rather, rewards are derived from the underlying protocol staking activities.

No Registration Requirement. "Liquid Staking Providers," as defined in the Statement, and participants in the minting, issuing, and redeeming of the "Staking Receipt Tokens" are not required to register these transactions with the SEC, provided the activities remain within the administrative and ministerial scope outlined in the Statement.

Scope Limitations. The Statement does not extend to activities that go beyond administrative or ministerial functions. Similarly, if the underlying crypto assets or the tokens are offered as part of an investment contract, a separate analysis under the *Howey* Test would be required.

Implications

The Statement provides important regulatory clarity as far as "Liquid Staking Activities" and the issuance of "Staking Receipt Tokens" are concerned.

The Statement also echoes a previous statement, through which the SEC clarified that certain crypto-asset staking activities in connection with proof-of-stake networks were not securities transactions, as discussed in our recent *Alert*, "Crypto Staking: SEC Staff Clarifies Non-Security Status for Certain Protocol Activities."

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ALERT

JULY 2025

Banking on Crypto: Regulators Clarify Rules for Digital Asset Safekeeping

Federal banking regulators continue to promote a more "crypto-positive" regulatory environment through recent joint guidance issued to clarify risk management and compliance expectations for banks providing crypto-asset safekeeping services.

On July 14, 2025, the federal banking regulators—the Federal Reserve, the Federal Deposit Insurance Corporation ("FDIC"), and the Office of the Comptroller of the Currency ("OCC")—released a joint statement ("Guidance") clarifying regulatory expectations for U.S. banks holding crypto-assets for customers. The Guidance does not establish a new authority or approval process for banks to safekeep crypto; rather, it encourages banks to engage in crypto safekeeping activities according to the same high standards kept across the banking sector. The agencies treat crypto-asset safekeeping within the same legal framework as other custodial assets.

The Guidance clarifies that banks may hold crypto-assets in both a fiduciary and nonfiduciary capacity. Regulations and other legal requirements impose heightened standards of care on the former, while the latter is governed by client contracts and general risk management standards.

Key requirements in the Guidance instruct banks to maintain exclusive control over cryptographic keys, ensure robust cybersecurity, and conduct thorough due diligence on any third-party custodians. While banks may use third-party sub-custodians, they remain fully responsible for customer assets and the actions of any sub-custodians. A bank's board of directors, officers, and employees are also expected to have knowledge and understanding of crypto-asset safekeeping services.

Although some crypto-assets favor anonymity in certain contexts, banks must strictly comply with anti-money laundering rules and counter-terrorism concerns. Banks operate under a number of legal requirements that require them to verify customers' identities and monitor for suspicious activity. The Guidance further emphasizes the importance of well-structured customer agreements, regular audits, and ongoing staff training to address evolving risks.

The Guidance reflects a continued shift toward regulatory clarity for banks engaging in crypto-asset activities. The statement aligns with recent actions of the FDIC and OCC to allow for greater crypto inclusion in the financial ecosystem, including the rescission of prior guidance suggesting that digital asset activities, although legally permitted, were unlikely to be conducted in a manner consistent with safety and soundness in banking. The Guidance represents another step forward in opening the door to crypto in the banking system.

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WHITE PAPER

July 2025

Stablecoins: Revolutionizing Global Finance?

Following the recent focus on two major regulatory frameworks—the Guiding and Establishing National Innovation for U.S. Stablecoins Act (known as the GENIUS Act) in the United States, and Regulation (EU) 2023/1114 of the European Parliament and of the Council of May 31, 2023, on markets in crypto-assets in the European Union—this *White Paper* delineates the new regulatory landscape for stablecoins in the United States and in the European Union. In addition, it includes a comparative outlook with the United Kingdom, Hong Kong, and the United Arab Emirates, while also assessing the potential impact of such regulation on stablecoins, legal challenges, and market opportunities.

INTRODUCTION

Often described as the new backbone of global finance by industry advocates, stablecoins seem poised to assume a prominent role in online currency exchange across the globe. In 2024, the total global stablecoin transfer volume reached an amount of $27.6 trillion in total, surpassing the combined transaction volumes of Visa and Mastercard.1

Latest data shows that, as of June 2025, the stablecoin total market capitalization reached a new all-time high of $251 billion, marking the 21st consecutive month of growth2 as far as stablecoin market capitalization is concerned.

Stablecoins can be defined as a form of digital currency on a blockchain network that are pegged to a reference asset, typically a fiat currency such as the U.S. dollar, and thereby designed to maintain a "stable" value.

MAJOR CLASSIFICATIONS

Stablecoins can be grouped into five major categories:

Fiat-Backed Stablecoins

Fiat-backed stablecoins are backed by reserves of fiat currency (e.g. the U.S. dollar or euro) and a pool of highly liquid assets held in reserve by a central entity, ensuring that the stablecoin maintains a 1:1 peg with the reference asset, i.e., an official currency like the U.S. dollar or euro. The two largest fiat-backed stablecoins by market capitalization are the USDC and USDT.

A particular sub-category of fiat-backed stablecoins are "e-money tokens," i.e., commercial bank money in the form of electronic money that is issued by a regulated entity fully backed by a reserve pool subject to regulatory requirements, and which grants the holder a statutory claim for redemption at par.

Crypto-Backed Stablecoins

Crypto-backed stablecoins are backed by a reserve of other cryptocurrencies. Smart contracts are used to maintain the stability of the stablecoin by adjusting the supply of the collateralized cryptocurrency based on demand. Examples include BitUSD and WBTC.

Algorithmic Stablecoins

Algorithmic stablecoins do not rely on collateral backing and, instead, use mechanisms such as algorithmic buy and sell orders to stabilize the price. This approach is often referred to as seigniorage-style stabilization, a concept borrowed from traditional monetary policy, where a central authority adjusts the money supply to maintain value. Examples include Pax Dollar (USDP) and DAI.

Commodity-Backed Stablecoins

Commodity-backed stablecoins are supported by reserves of physical commodities, such as gold, silver, oil, or other physical assets. Each stablecoin issued corresponds to a specific amount of the commodity, ensuring that the stablecoin's value is pegged to the real-world market price of the underlying asset. Examples include PAX Gold (PAXG) and Tether Gold (XAUT).

Basket-Pegged Stablecoins

These stablecoins derive their value from a basket of assets rather than a single reserve currency or commodity. A basket-pegged approach can include a combination of fiat currencies, cryptocurrencies, or commodities. Librae is an example.

WHY ARE STABLECOINS POPULAR?

In addition to being attractive to governments because stablecoin issuers are large-volume investors of government bonds, stablecoins deliver multiple valuable advantages to users, including the following.

Stability

As its name suggests, stablecoins are designed to maintain a stable value, providing users with a reliable method for money storage and day-to-day transaction purposes, without the volatility risk traditionally associated with cryptocurrencies.

Fast, Low-Cost Transactions

Given that stablecoins are native blockchain-based instruments like cryptocurrencies, stablecoin transactions can be processed quickly, often within minutes, as compared to traditional banking systems that may take several days to settle, especially for international transactions. These attributes make stablecoins a valuable replacement option for traditional remittance platforms. Transaction fees for stablecoins are also

generally lower than those for credit cards and other traditional payment methods.

24/7 Global Accessibility

Requiring nothing more than a crypto wallet and an internet connection, users can access stablecoins at all times throughout the day without requiring assistance from banks and alternative financial institutions. This also creates new possibilities allowing for payments on financial instruments outside of banking hours. For example, investors could redeem a money market fund investment on a weekend.

Atomic Swaps

With stablecoins running on blockchains, they also enable immediate payment for delivery against other digital assets (including financial instruments) that are on the blockchain using atomic swaps and smart contracts.

Global Financial Inclusion

For users in developing economies or underbanked regions, the use of stablecoins may enhance financial inclusion and boost overseas payments in general and remittances in particular.

Transparency

Blockchain technology ensures that all stablecoin transactions are transparent. Every transaction recorded on a public ledger is traceable and auditable.

WHAT ARE THE RISKS ASSOCIATED WITH STABLECOINS?

Notwithstanding their popularity, stablecoins also pose the following risks.

Counterparty Risks

For stablecoins to remain stable, the issuer of a stablecoin must make an enforceable commitment to buy back the stablecoin at the current value of the asset to which it is pegged. It must also commit to hold sufficient assets as collateral backing the stablecoins in circulation that can be liquidated quickly, so that the stablecoins can be redeemed at any time at the value of the reference assets. The risks stablecoins could pose to consumers or to markets if they are not adequately collateralized is a major concern to regulators.

Technological Risks

Centralized stablecoins face risks associated with the storage or custody of reserves and issuance controls. If the infrastructure of stablecoin issuers or their custodians is compromised, access to reserve funds may be breached and/or unauthorized tokens could be minted. These breaches can undermine public confidence in the stablecoin's backing and potentially trigger market-wide instability.

Regulatory Risk

Despite the increasing adoption of legislation addressing the creation, distribution, and trading of stablecoins around the world, the regulatory environment for stablecoins is still evolving, creating a broad range of different types of stablecoins that may not be easily comparable. Not all governments and financial authorities agree on the best form of crypto asset to preserve global financial stability. Along with fast-growing stablecoins initiatives from the private sector, some central banks are also in the ongoing process of developing policies for stablecoins or other digital currencies.

De-Pegging Risk

Deviation from the pegged value is one of the most significant risks for stablecoins, in particular for algorithmic stablecoins. The de-pegging risk can be triggered in rare situations where stablecoins lose their value relationship due to market disasters or operational breakdowns. Recent history provides examples of how stablecoin vulnerabilities can snowball through the crypto ecosystem. For instance, the collapse of TerraUSD (UST) in May 2022 demonstrated how algorithmic stablecoins can lose their peg during market stress. UST lost its peg due to a sharp drop in demand and external market conditions. The system could not restore the peg, leading to a collapse of both UST and its related cryptocurrency LUNA.

Money-Laundering Risk

This risk arises, in particular, as a consequence of peer-to-peer transactions whereby neither of the parties is subject to anti-money laundering regulations (peer-to-peer transactions involving private individuals being an example).

THE GUIDING AND ESTABLISHING NATIONAL INNOVATION FOR U.S. STABLECOINS ACT ("GENIUS ACT")

Context Surrounding Adoption

In line with President Donald Trump's goal to make the country "the crypto capital of the world," the United States has witnessed intense recent regulatory and economic activity as far as stablecoins are concerned.

On April 4, 2025, the Division of Corporation Finance ("Division") of the U.S. Securities and Exchange Commission ("SEC") issued a statement on stablecoins to clarify that the Division did not consider certain "covered stablecoins" to be securities under the federal securities laws, effectively clarifying that "covered stablecoins" (defined by the SEC as "crypto assets designed and marketed for use as a means of making payments, transmitting money, or storing value") were not subject to securities regulations.

On May 27, 2025, a stablecoin market leader filed for an initial public offering ("IPO") on the New York Stock Exchange ("NYSE"). The expected IPO price was between $24 and $26 per share, and the IPO, which took place on June 5, 2025, was subsequently priced at $31 per share. The IPO vastly outperformed expectations as share prices immediately soared by 168% and have remained significantly higher than the offering price since. The closing price on the NYSE on July 21, 2025, was $210.10 per share.

As of June 2025, it was also estimated that the current supply of stablecoins in the United States was equal to just under 10% of U.S. currency in circulation.3

The sponsors of the GENIUS Act also estimate that by 2030, stablecoin issuers may collectively become the largest holders of U.S. Treasury securities, surpassing foreign central banks.

U.S. Congressional Action

On June 17, 2025, the U.S. Senate passed the GENIUS Act with a bipartisan vote of 68–30, signaling broad political support for stablecoin legislation. This passage followed a successful cloture vote of 66–32 on May 19, 2025.

By a 308–122 vote in the U.S. House of Representatives (the "House"), the GENIUS Act cleared both chambers of Congress and was signed into law by President Trump on July 18, 2025. At around the same time, the House also passed the Digital Asset Market Clarity Act ("CLARITY Act") via a bipartisan vote of 294–134. The CLARITY Act would create a regulatory framework for digital assets, including both digital securities and digital commodities, by clarifying the roles of the SEC and Commodity Futures Trading Commission with respect to such products based not only on how they are originally sold but also on how they function. The Act now moves to the Senate, where significant amendments are possible given that commentators expect high scrutiny.

Key Provisions

Permitted Payment Stablecoin Issuers ("PPSIs"). The GENIUS Act restricts stablecoin issuances to PPSIs, which include subsidiaries of federally insured depository institutions, federally licensed nonbank entities holding a specialized license from the Office of the Comptroller of the Currency, and state-qualified issuers—entities established under state law and approved to issue payment stablecoins by a state payment stablecoin regulator.

A Dual Regulatory Structure. The GENIUS Act introduces a dual-track framework that permits certain smaller issuers—those with less than $10 billion in consolidated outstanding stablecoin issuance—to opt into a state-level regulatory regime, provided that regime is certified as "substantially similar" to the federal framework. Once a state-qualified issuer exceeds the $10 billion cap, it must either transition to the federal regime within 360 days or obtain a waiver from federal regulators to remain under state supervision. This waiver may be granted based on factors such as the issuer's capitalization, regulatory history, and the strength of the state framework.

Reserve and Transparency Requirements. The GENIUS Act provides for stablecoins to be backed by a 1:1 reserve by U.S. dollars, U.S. short-term treasuries, or similarly liquid, high-quality assets. A PPSI must also disclose, on a monthly basis, the total number of its outstanding payment stablecoins and the amount and composition of its reserves, including the average tenor and geographic location of custody of each category of

reserve instruments. Each PPSI is also required, on a monthly basis, to have its previous month-end report examined by a registered public accounting firm. Concurrently, the chief executive officer and chief financial officer of a PPSI will be required, on a monthly basis, to certify the accuracy of its monthly report. PPSIs will also have to demonstrate compliance with anti-money laundering and sanctions requirements.

The GENIUS Act also provides that claims of holders of stablecoin against the reserves backing the stablecoin have priority over all other claims in the event of an insolvency of the stablecoin issuer.

Limitation on Activities. The GENIUS Act provides that PPSIs may only: (i) issue payment stablecoins; (ii) redeem payment stablecoins; (iii) manage related reserves (including purchasing and holding reserve assets); (iv) provide custodial or safekeeping services for payment stablecoins, required reserves, or private keys of payment stablecoins; and (v) undertake other functions that directly support the work of issuing and redeeming payment stablecoins. PPSIs also may not pledge or rehypothecate the required reserves except for very limited purposes.

REGULATION (EU) 2023/1114 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 31 MAY 2023 ON MARKETS IN CRYPTO-ASSETS, AND AMENDING REGULATIONS (EU) NO 1093/2010 AND (EU) NO 1095/2010 AND DIRECTIVES 2013/36/EU AND (EU) 2019/1937 ("MiCAR")

Context Surrounding Adoption

Noting that the European Union was lagging behind its North American counterpart with regard to stablecoin usage, MiCAR was initiated in 2023 to establish one of the first overall frameworks for markets in crypto assets, including stablecoins. The Regulation aims at creating a harmonized and robust regulatory framework for crypto assets across the European Union, thereby ending years of fragmented national regimes.

EU Legislative Action

MiCAR was adopted by the European Parliament and the Council in 2023, and most of its provisions entered into force on December 30, 2024.

The provisions relating to the offering and admission to trading of stablecoins were specifically prioritized and entered into force on June 30, 2024.

Regulations are directly and uniformly applicable to all EU Member States as soon as they enter into force, without needing to be transposed into national law.

Various EU Regulatory Technical Standards ("RTS") have been published since the adoption of MiCAR. These RTS further clarify key novelties in MiCAR such as the white paper and sustainability disclosures (*see below*) and provide a very detailed framework for stablecoins and, in particular, the composition and management of the reserve assets.

Key Provisions

Electronic-Money Tokens and Asset-Referenced Tokens. MiCAR divides stablecoins into two main categories: electronic-money tokens or e-money tokens ("EMTs") and asset-referenced tokens ("ARTs"). EMTs are defined by MiCAR as "a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency," and they are regarded as electronic money. ARTs are defined by MiCAR as "a type of crypto-asset that is not an electronic money token and that purports to maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies." EMTs and ARTs classified by the European Banking Authority ("EBA") as "significant," based on quantitative and qualitative criteria, and they are subject to additional requirements with regard to reserve requirements and liquidity stress-testing than the ones set out below.

New Licensing Requirements. Issuers wishing to issue ARTs have to obtain a specific license. To become authorized, an ART issuer must be have its registered office in the European Union and file an application with the competent supervisory authority of its home Member State. The application must include, among others, information on the issuer's management, its shareholders, and beneficial owners as well as on its program of operations and its business model. The applicant must also submit its policies and procedures including with respect to risk management and the safeguarding of data. The application must include a legal opinion stating that the ARTs do not qualify as crypto assets excluded from the scope of MiCAR or as EMTs, which are separately regulated in MiCAR.

Issuers wishing to issue EMTs, on the other hand, will have to be licensed as a fully regulated credit institution or an electronic money institution, which are the only two actors allowed to issue EMTs under MiCAR. That entails minimum regulatory capital requirements (of at least 2% of the outstanding volume of the EMTs) in order to provide additional protection to EMT holders.

White Paper. Under MiCAR, all issuances of EMTs and ARTs require a white paper. All white papers must include information about the issuer, the crypto asset, underlying risks, and a summary. White papers must also include information about adverse effects on the environment.

Reserve Requirements. Both issuers of EMTs and ARTs are required to maintain a reserve of assets to back outstanding EMTs and ARTs. With regard to ARTs, The reserve must be composed of assets that the issuer receives when issuing the ART (such as deposits with credit institutions or commodities) and certain highly liquid financial instruments that have minimal market, credit, and concentration risk.

In contrast to typical fiat-backed stablecoins, MiCAR upgrades EMTs and clarifies that an EMT is not a stablecoin but qualifies as a euro in the form of "electronic money" under the E-Money Directive. MiCAR also stipulates a statutory claim of the EMT holder against the issuer for redemption of the EMT at par value.

Given that an EMT is a euro in the form of electronic money, it is subject to very strict and enhanced reserve requirements as to insolvency remoteness, minimum cash, and diversification requirements, as well as counterparty risk restrictions with regard to reserve banks and custodians. According to these rules, at least 30% of EMT funds (and in case of significant EMTs, at least 60% of EMT funds) must be deposited in separate accounts with European credit institutions, with these accounts being protected in case of an insolvency of the EMT issuer.

The rest of the funds received must be invested in secure, low-risk assets that qualify as highly liquid financial instruments with minimal market, credit, and concentration risks (similar to the assets forming part of the assets Capital Requirements Regulation credit institutions must hold as part of their liquidity cover ratio requirements), and which are denominated in the same official currency as the EMT and can be quickly liquidated in order to redeem EMTs. MiCAR also provides that the reserve assets do not form part of the insolvency estate of the EMT issuer in case of an insolvency of the EMT issuer and requires the EMT issuer to set up a redemption and recovery plan in order to ensure orderly redemption of the EMT in a stress scenario.

Transparency and Audits. Like the GENIUS Act, MiCAR requires EMT and ART issuers to publicly disclose details about their reserves on a monthly basis. Issuers also need to undergo regular independent audits.

Anti-Money Laundering. EMT issuers are subject to compliance with anti-money laundering obligations.

Payment Services. Given that EMTs qualify as e-money subject to the Payment Services Directive 2 ("PSD2"), the EBA recently clarified the interplay between MiCAR and PSD2 in a "no action letter" to cover the interim period until that interplay is addressed in the revision of the PSD2, which is currently being consulted. EBA advised Member State competent authorities to regard the transfer, custody, and administration of EMTs in exchange for goods and services as a payment service under PSD2, requiring an authorization under PSD2 through streamlined procedures that make maximum use of information that legal entities have already provided during their crypto asset service provider authorization under MiCAR. Member State competent authorities have been advised to grant applicants a transition period until March 1, 2026, before such authorization becomes compulsory. It should be noted that the authorization requirement is limited to EMTs as payment for goods and services with the intention to carve out transactions where EMTs are exchanged for crypto currencies (which are regulated as MiCAR services). It remains to be seen if the European regulator will perpetuate the (unfortunate) consequence that the transfer of EMTs can be subject to two different regulatory regimes under the revised PSD regime.

A COMPARATIVE STUDY OF STABLECOIN REGULATION

The United Kingdom

In May 2025, the Financial Conduct Authority ("FCA") published its Consultation Paper 25/14 "Stablecoin Issuance and Cryptoasset Custody." While noting that "the Treasury does not

intend to bring stablecoins into the United Kingdom payments regulation at this time," the FCA acknowledges that "stablecoins have the potential to play a significant role in both wholesale and retail payments and [the FCA] stands ready to respond to this as part of wider payments reforms as use-cases and user adoption develops over time." Under the proposed regulatory framework, as described by the FCA, any stablecoin issued in the United Kingdom would be 100% backed by high-quality, liquid, real-world assets.

Hong Kong

On May 21, 2025, Hong Kong passed the Stablecoins Ordinance ("Ordinance"). The Ordinance, taking effect on August 1, 2025, regulates issuers of fiat-referenced stablecoins. The Ordinance applies to stablecoins that keep their value by referencing the Hong Kong dollar and currencies of other major global economies. Anyone issuing such stablecoins in Hong Kong, or offering Hong Kong dollar stablecoins to Hong Kong investors, must obtain a license from the Hong Kong Monetary Authority. To obtain a license, issuers of stablecoins must meet several requirements. These include capital adequacy, segregation of client funds, and anti-money laundering compliance. In addition, licensed issuers must follow the "currency matching" rule, meaning the reserve assets backing each stablecoin must be held in the same currency as the stablecoin itself (with the exception of the Hong Kong dollar stablecoins as, since 1983, the Hong Kong dollar has been officially pegged to the U.S. dollar within a narrow range).

The United Arab Emirates

Effective from August 21, 2024, the Payment Token Services Regulations ("PTSR") aims at regulating "payment tokens" (the local appellation for stablecoins). The PTSR imposes licensing and registration requirements for anyone wishing to provide "payment token services" such as payment token issuing, payment token custody and transfer, and payment token conversion in the United Arab Emirates. Only entities incorporated in the country may apply for a license under the PTSR. The PTSR provides for an explicit ban on algorithmic stablecoins.

While the PTSR regulates the provision of stablecoin services, it does not, however, appear to regulate reserve requirements, a recurrent theme in stablecoin regulation. It is to be noted that in the Emirate of Dubai specifically, stablecoins pegged to a commodity are governed by the general regulatory regime of the Virtual Asset Regulatory Authority. On July 2, 2025, the UAE Securities and Commodities Authority also announced the adoption of the "Security Tokens and Commodity Tokens Contracts" regulation, which ensures that security and commodity tokens (which are not stablecoins but digital representations of assets, such as companies, shares, and bonds, with the same investor protections and regulatory oversight as traditional securities) are accommodated within the existing virtual asset regulatory framework. New stablecoin regulation may follow.

CONCLUSION: "CRYPTOMERCANTILISM VS. MONETARY SOVEREIGNTY?"

The above is the title of a study requested by the European Parliament's Committee on Economic and Monetary Affairs and published in June 2025.

The study notes that the current U.S. administration promotes dollar-backed stablecoins, privately issued and supported by U.S. debt, to reinforce U.S. dollar dominance worldwide and to create additional demand for U.S. Treasury securities (a strategy dubbed as "cryptomercantilism" by the authors of the study). MiCAR, on the other hand, aims at reinforcing the European Union's monetary sovereignty.

This dichotomy is also further reflected in the approaches to regulation adopted by MiCAR and the GENIUS Act. MiCAR appears to be driven by the creation of a comprehensive regulatory framework for a wide range of crypto assets, including stablecoins, prioritizing consumer protection, market stability, and centralized oversight. The approach chosen by the GENIUS Act by itself, however, is exclusively focused on stablecoins, aiming to regulate their issuance and how they integrate into the U.S. financial system. The CLARITY Act, which is still pending in the U.S. Congress, is intended to more broadly address crypto-asset regulation in the United States.

As MiCAR's entry into force has already reshaped the European digital finance landscape by providing for a blockchain-based (commercial bank) euro in the form of EMTs, the GENIUS Act's passage marks a turning point for digital dollar infrastructure. With the regulatory landscape taking shape across the globe, it will now be interesting to see in which areas and sectors stablecoins will start to gain traction over and above the crypto world as a means of payment—cross-border payments, corporate treasury, e-commerce platforms, and retail financial products seem to be destined to adopt a fast and competitively priced stablecoin.

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ALERT

JUNE 2025

Senate Passes GENIUS Act, Clearing Hurdle for Federal Stablecoin Framework

The vote marks the first time the U.S. Senate has passed significant digital asset legislation and puts the industry one step closer to regulatory clarity for certain stablecoins.

On June 17, 2025, the Senate passed the Guiding and Establishing National Innovation for U.S. Stablecoins ("GENIUS") Act with a bipartisan 68–30 vote, marking a significant legislative milestone for the cryptocurrency industry. The bill's passage is a notable turnaround from May when it failed a cloture vote and left the industry uncertain about its prospects.

As discussed in our recent *Commentary*, "Updates on Proposed Stablecoin Legislation: the GENIUS Act and the STABLE Act," the bill, if enacted, will establish the first federal regulatory framework for certain issuers of U.S. dollar-pegged stablecoins that will be classified as "payment stablecoins" and which are neither commodities nor securities. Under the bill's definitions, payment stablecoins are digital assets: (i) designed to be used as a means of payment or settlement; (ii) with issuers who are obligated to (a) convert, redeem, or repurchase them for a fixed monetary value and (b) maintain a stable value relative to a fixed monetary value.

Payment stablecoin issuers, including banks, fintech companies, and major retailers, will be classified as financial institutions for anti-money laundering ("AML") purposes. They will also be subject to specific reserve, transparency, AML, and other compliance requirements. The bill grants the federal bank regulators broad authority to oversee payment stablecoin issuers—a logical result of the bill clarifying that payment stablecoins are not commodities or securities. However, payment stablecoin issuers with less than $10 billion in total issuances will have the option of being regulated by a state-level regulatory regime so long as the U.S. Department of Treasury determines that the state-level regulations are "substantially similar" to the federal framework.

The GENIUS Act now goes to the U.S. House of Representatives, where legislators are also considering the companion STABLE Act and the broader Digital Asset Market Clarity Act. Both pieces of House legislation have passed out of their respective committees—the STABLE Act in April 2025 and the Digital Asset Market Clarity Act in early June—but have not received floor votes.


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ALERT

JUNE 2025

Crypto Staking: SEC Staff Clarifies Non-Security Status for Certain Protocol Activities

A May 29, 2025, U.S. Securities and Exchange Commission ("SEC") Division of Corporation Finance statement explains that "Covered Crypto Assets"—crypto tokens without any inherent rights to passive income, business enterprise interest, or profit distribution—are not offers or sales of securities under federal law and can be staked on proof-of-stake ("PoS") networks without triggering Securities Act or Exchange Act registration requirements.

Covered Crypto Assets and Staking Methods

In its Statement on Certain Protocol Staking Activities, the SEC staff defines "Covered Crypto Assets" as tokens integral to a PoS network's operation but lacking intrinsic economic rights (e.g., no guaranteed yield or profit share), confirming that participating in protocol staking of such assets is not considered a securities offering. Three staking methods are addressed:

- **Self (Solo) Staking** – A node operator stakes crypto assets it owns and controls on its own infrastructure.
- **Self-Custodial Staking With Third-Party Node** – Asset owners delegate validation rights to a third-party node operator but retain ownership and control of the staked assets.
- **Custodial Staking** – A custodian (e.g., an exchange) stakes customers' assets on their behalf, while customers retain ownership of the assets per the user agreement.

Ancillary Services

The staff further noted that providing routine ancillary services in connection with staking does not change this analysis. Services like slashing coverage (compensating users for penalties), early unbonding ("where a Service Provider allows Covered Crypto Assets to be returned to an owner before the end of the protocol's unbonding period"), alternate rewards payment schedules (an "optional convenience afforded to Covered Crypto Asset owners" which allows service providers to "deliver[] earned rewards at a cadence and in an amount that differs from the protocol's set schedule"), or stake aggregation (which allows "Covered Crypto Asset owners to aggregate their Covered Crypto Assets to meet the protocol's staking minimums") are deemed ministerial conveniences. These add-ons alone do not involve the entrepreneurial or managerial efforts that would turn the activity into an investment contract.

Conclusion

The statement's scope is limited. It does not address other forms of staking such as "liquid staking" or "restaking," which may raise different legal issues. The statement reflects only the staff's views and has no binding legal effect. Whether a specific crypto staking arrangement constitutes a securities transaction remains a fact-driven inquiry under the Supreme Court's *Howey* test, which

focuses on the economic realities of the transaction, as noted by Commissioner Crenshaw. Accordingly, those offering staking could still face private lawsuits and state securities law enforcement.


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JONES DAY

ALERT

JUNE 2025

Congress Introduces CLARITY Act to Establish Digital Asset Regulatory Framework

U.S. House lawmakers introduced the bipartisan CLARITY Act of 2025 proposing a comprehensive regulatory framework for digital assets that would delineate agencies' oversight roles, establish a provisional registration regime for crypto intermediaries, create provisions for decentralized finance, and more.

On May 29, 2025, the U.S. House Committees on Financial Services and Agriculture introduced the newly named Digital Asset Market Clarity (CLARITY) Act of 2025 ("Bill"), an updated version of the market structure framework previewed in a discussion draft from earlier in May. The Bill builds on the previously introduced FIT21 bill and maintains the discussion draft's approach of dividing oversight of digital assets between the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC"), but also incorporates key changes to regulatory scope, definitions, and implementation mechanics.

Key Takeaways

Provisional Registration. The Bill establishes a provisional registration regime for digital commodity exchanges, brokers, and dealers, replacing the draft's "notice of intent" model. Provisionally registered firms must comply with disclosure, recordkeeping, and membership requirements until full CFTC registration is implemented.

Updated Definitions. The Bill pivots away from generic affiliate/relationship terminology and instead uses definitions tailored to the digital-commodity context (such as "digital commodity affiliated person" and "digital commodity related person").

Restrictions on Insiders. Treatment of insiders is further defined: Graduated restrictions on token sales now apply to affiliated and related persons, with rules tapering off after a blockchain system is deemed mature.

Decentralized Finance ("DeFi"). DeFi safe harbor provisions are expanded. The Bill exempts non-custodial protocol participants—such as developers and validators—from registration.

Investment Contract Assets. The Bill affirms that digital assets sold via investment contracts are not securities, codifying this distinction more explicitly than the discussion draft. It also preempts conflicting state securities laws for qualifying digital commodities.

Custody. In a move consistent with the SEC's SAB 122 (and the recission of SAB 121), the Bill clarifies that regulators may not require financial institutions to include customers' assets as liabilities in most circumstances.

Intergovernmental Collaboration. The Bill directs the SEC and CFTC to collaborate with foreign regulators and allow cross-border information sharing.

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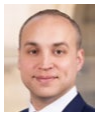

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JONES DAY

ALERT

MAY 2025

Regulating Digital Assets: New Market Structure Bill Builds on FIT21 Framework

The House Committees on Financial Services and Agriculture have unveiled a discussion draft for a new comprehensive U.S. crypto market structure bill, aiming to establish clear regulatory boundaries between the U.S. Securities and Exchange Commission ("SEC") and Commodity Futures Trading Commission ("CFTC"), protect consumers, and position the United States as a global leader in digital assets.

On May 5, 2025, the House Committees on Financial Services and Agriculture released a discussion draft of legislation that would establish a regulatory framework for digital assets. Drawing from last session's Financial Innovation and Technology for the 21st Century Act ("FIT21"), the draft introduces changes aimed at better regulatory coherence.

Key Provisions

- **Jurisdictional Clarity.** The draft reaffirms that FIT21's categories of "digital commodities" (digital assets regulated by the CFTC) and "permitted payment stablecoins" are not "securities." This draft also tightens affiliate sale rules, encourages joint SEC-CFTC rulemaking, and introduces optional early registration for issuers.

- **Disclosure and Capital Raising.** Registration requirements for digital commodity exchanges, brokers, and dealers with the CFTC, and securities intermediaries with the SEC, are established. This draft extends further than FIT21 by establishing procedures for notice of intent to register and ongoing disclosure obligations.

- **Consumer Protection.** This draft toughens up disclosure requirements for digital asset developers, emphasizing consumer protections, transparency, and state-level rulemaking.

- **Decentralized Finance ("DeFi").** While FIT21 did not explicitly address DeFi exemptions, this draft excludes certain DeFi activities from registration or regulation, including exemptions for non-custodial DeFi protocols without discretionary control over funds. The agencies' respective anti-fraud and anti-manipulation enforcement authority is preserved.

- **Decentralization Test.** This draft simplifies the decentralization test, requiring no single entity to have unilateral control and mandating disclosures for holders of over 10% of tokens in centralized projects. It replaces SEC certification of decentralization with an ongoing "mature blockchain" concept.

- **Market Access.** The draft exempts secondary market transactions from securities laws if those transactions do not represent claims on an issuer or associated enterprise. Permitted payment stablecoins may be brokered, traded, or custodied by a broker, dealer, or through an alternative trading system or the national securities exchange. Also, this draft removes FIT21's income and wealth limits and accredited investor checks to broaden market participation for retail investors.

Next Steps

If enacted, the draft legislation would require joint rulemaking by the CFTC and SEC on several matters, including defining the process to delist an asset for trading and permitting the SEC to issue rules applicable to mixed digital asset transactions. The new law would take effect within a year of enactment or 60 days after publication of final rules in the *Federal Register*.

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ALERT

APRIL 2025

Federal Reserve Withdraws Crypto-Related Guidance Including Notification Requirements for Banking Organizations

The Federal Reserve Board ("Board") softened its stance on regulation of crypto activity by banking organizations by rescinding supervisory letters that created hurdles for crypto-asset activities and by joining the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") in withdrawing from two 2023 interagency statements warning against bank crypto activities.

On April 24, 2025, the Board followed recent supervisory actions by the OCC and the FDIC that ease restrictions on bank involvement in crypto-related activities.

The Board withdrew from two key pieces of crypto-asset guidance: (i) its 2022 supervisory letter that required state member banks to give the Board advance notice of any crypto-asset activity; and (ii) its 2023 supervisory letter that required all banking organizations supervised by the Board ("banking organizations"), including state member banks and bank holding companies, to obtain a formal "supervisory non-objection" before engaging in activities involving dollar-denominated tokens. Effective immediately, banking organizations no longer need to submit separate notices or seek prior approval for permissible crypto-asset or dollar-token activities. Instead, the Board will monitor the bank organizations' crypto-asset activities through the "normal supervisory process."

The Board also issued a joint statement with the FDIC, on April 24, 2025, formally withdrawing both agencies from two interagency statements issued in January 2023 and February 2023. While the OCC withdrew from the joint statements on March 7, and the FDIC publicly stated on March 28 that it planned to follow suit, this is the first public step the Board has taken to change its position on safety and soundness concerns surrounding permissible crypto-related activities.

The Board, along with the OCC and FDIC, will consider additional guidance to support innovation. Further bank regulatory developments are likely, as Congress will require rulemaking by the three regulators under pending legislation that would establish a federal regulatory structure for many stablecoins.

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ALERT

APRIL 2025

Developments in Crypto Regulation: DeFi Tax Reporting Repeal and SEC Disclosure Guidance

The Trump administration continues its efforts to relax digital asset regulation, including most recently by exempting decentralized finance ("DeFi") apps and wallets from tax reporting and through Securities and Exchange Commission ("SEC") staff interpretations, such as the Division of Corporation Finance's recent statement on disclosure requirements for digital asset offerings.

DeFi Tax Reporting Relief

On April 10, 2025, President Trump signed H.J.Res.25 (the "Bill") overturning Treasury regulations promulgated in December 2024 that would have extended IRS Form 1099 reporting requirements to certain DeFi participants by treating them as "brokers" under section 6045 of the Internal Revenue Code (the "DeFi Reporting Rules").

Effective immediately upon the Bill's signing, the DeFi Reporting Rules became void—meaning these DeFi participants are no longer considered brokers under section 6045 and therefore are not subject to the tax reporting obligations otherwise applicable to brokers. Further, under the Congressional Review Act, Treasury and the IRS are precluded from issuing any substantively similar rules without express Congressional authorization—providing certainty to DeFi participants going forward.

The Bill is limited to DeFi and does not universally relieve digital asset industry participants from tax reporting obligations, however, as digital asset exchanges continue to be considered brokers under section 6045.

SEC Staff Guidance on Digital Asset Offering Disclosures

On the same day that the DeFi Reporting Rules were repealed, the SEC's Division of Corporation Finance (the "Division") issued a statement with guidelines for tailored disclosures for digital asset securities offerings and registrations. This guidance covers a wide array of disclosure topics, such as descriptions of the business (including current and proposed business plans and network and application development), risk factors, descriptions of the securities (including rights, obligations, and preferences of holders; technical specifications, such as whether and how the underlying code for the crypto asset can be modified and how ownership of the securities is recorded; and limitations on the supply of the subject security), and financial statements.

Importantly, the Division notes that, because issuers are required to file as exhibits to their registration statements any instrument defining the rights, preferences, and obligations of security holders, crypto asset issuers may need to include as an exhibit to their filings the code of the smart contract(s) and/or the network or application that reflect those rights and obligations and update the exhibit when the code changes. Issuers are invited to contact the Division with questions about the application of the SEC's disclosure rules to crypto offerings and registrations.


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COMMENTARY

April 2025

SEC Division of Corporation Finance: Certain U.S. Dollar-Backed Stablecoins Are Not Securities

IN SHORT

The Situation: As the Trump administration and Congress seek to establish clear digital asset regulation, uncertainty remains on whether federal agencies consider stablecoins to be "securities" under federal law.

The Answer: On April 4, 2025, the Division of Corporation Finance ("Division") of the U.S. Securities and Exchange Commission ("SEC" or "Commission") issued a statement on stablecoins to clarify that the Division does not consider certain stablecoins to be securities under the federal securities laws ("Statement").

Looking Ahead: Because the Division's Statement does not address all types of stablecoins, further clarity may be needed going forward. Congress or regulation from the SEC could preempt the Division's Statement.

The Trump administration has moved quickly to try to "provide regulatory certainty for dollar-backed stablecoins" to promote the "development and growth of lawful and legitimate dollar-backed stablecoins." Congress also recently introduced legislation to set standards for stablecoin issuance and to exempt stablecoins from the application of securities law. The White House and Congress seek to enact this legislation before August.

In light of these developments, and as part of the SEC's review of its past crypto-related guidance to align with current administration priorities, the Division issued a Statement indicating that the federal securities laws do not apply to the offer and sale of certain stablecoins. A stablecoin is a type of crypto asset designed to maintain a stable value relative to a reference asset, such as the U.S. dollar.

Applicability of the Statement: Covered Stablecoins

The Division limited the applicability of its Statement to stablecoins with certain characteristics and under certain circumstances, and the Division refers to these instruments as "Covered Stablecoins."

The Division outlined several characteristics defining Covered Stablecoins. The Division focuses on stablecoins that are backed by U.S. dollars ("USD") and the Statement only addresses stablecoins that: (i) maintain a stable value relative to the USD on a one-for-one basis (i.e., one stablecoin to one USD); (ii) can be redeemed one-for-one for USD; and (iii) are backed by assets held in a reserve that are considered low risk and readily liquid with a USD-value that meets or exceeds the redemption value of the stablecoins in circulation. The Division's Statement does not cover algorithmic stablecoins—those that use algorithms to adjust the supply of stablecoins to maintain stability.

The Division also limits the applicability of its Statement to specified circumstances of stablecoin issuance. The Statement applies to stablecoins issued under the following circumstances: (i) the stablecoins are designed and marketed for use in commerce, as a means of making payments, transmitting money, and/or storing value, and *not* as investments; (ii) the stablecoin issuer's

assets are properly held in a sufficient reserve to cover circulated stablecoins; and (iii) the stablecoin issuer has the ability to honor redemptions on demand.

The Division highlights the ability for the secondary market to determine the price of a stablecoin. The Division explains that intermediaries can stabilize prices through arbitrage; that is, they can purchase stablecoins from the issuer and sell in the market if the price rises above the redemption value, or purchase in the market and redeem with the issuer if the price is below redemption value.

The Division's Analysis

The Division does not regard a Covered Stablecoin to be a "security" under either the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act"). The Division's analysis focuses on the qualities, marketing, and use of Covered Stablecoins, the motivations and expectations of stablecoin holders, and the reserves of stablecoin issuers.

As discussed in more detail below, the Division first applies the Supreme Court's *Reves* test to determine whether the Covered Stablecoins are "notes," and therefore securities, because those instruments share some characteristics with notes or debt instruments. If the Covered Stablecoins are determined not to be notes or debt instruments, the Division then applies the Supreme Court's broader *Howey* test, in the alternative, to determine whether the Covered Stablecoins are "investment contracts," and therefore securities. Under both tests, the Division concludes that a Covered Stablecoin is not a "security."

The *Reves* Test: Under the Supreme Court's "family resemblance" test set forth in *Reves v. Ernst & Young*, 494 U.S. 56 (1990), a note is presumed to be a security unless the note strongly resembles any one of several identified types of commercial notes. This test uses four factors: the motivations of buyers and sellers, whether the instruments are commonly traded for speculation or investment, the reasonable expectations of the investing public, and any risk-reducing features.

The Division concludes that Covered Stablecoins are not securities under *Reves* because: (i) sellers use the proceeds to fund a reserve and buyers are not motivated by an expected return on their funds; (ii) Covered Stablecoins are distributed in a manner that does not encourage trading for speculation or investment; (iii) a reasonable buyer would likely expect that Covered Stablecoins are not investments; and (iv) the availability of a reserve adequately funded to fully satisfy redemptions on demand is a risk-reducing feature of Covered Stablecoins.

The *Howey* Test: Under the Supreme Court's test in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), a Covered Stablecoin would be a security if it constituted an "investment contract" based on the economic realities of the arrangement or instrument. *Howey* essentially asks whether there is an investment of money in a common enterprise premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.

In its Statement, the Division finds that buyers purchase Covered Stablecoins as an equivalent to U.S. dollars. These "digital dollars" do not create a reasonable expectation of profit derived from the entrepreneurial or managerial efforts of others because the stablecoins are not marketed as investments and not expected by the public to create profit. Therefore, the Division finds that Covered Stablecoins are not securities under *Howey*.

Because Covered Stablecoins will not be deemed to be securities under the Securities Act or Exchange Act, the Division concludes that persons involved in minting and redeeming Covered Stablecoins—e.g., stablecoin issuers—will not be required to register those transactions with the SEC.

Implications and Limitations

The current Statement's *Reves* and *Howey* analyses for Covered Stablecoins and the Division's conclusion that they are not securities is straightforward and clear. This guidance stands in stark contrast to the more complex analysis set forth in the Division's recently withdrawn 2019 Framework for "Investment Contract" Analysis of Digital Assets, which included an extensive but non-exhaustive list of factors that market participants should consider when assessing whether a particular digital asset is offered or sold as an investment contract. Because of its breadth and

open-endedness, digital asset industry participants did not find that prior guidance to be particularly helpful. The current Statement's clarity as to the regulatory status of Covered Stablecoins should provide more certainty for industry participants, and particularly stablecoin issuers.

However, while the Division's Statement provides clarity on the regulatory status of a common type of stablecoin that is widely used for commercial transactions, the Statement does not apply to all stablecoins in the market. Nor does the Statement bind the Commission itself. The Statement could also be withdrawn or modified at any time. In addition, although the Statement applies to the status of Covered Stablecoins as securities under the Securities Act and the Exchange Act, it does not address whether they would be "securities" for purposes of either the Investment Advisers Act of 1940 or the Investment Company Act of 1940. It is possible that the SEC's Division of Investment Management could follow with a similar statement with respect to the acts that it administers for the Commission.

Congress's proposed stablecoin legislation, however, could, if enacted, moot the need for the Division's Statement by making clear that stablecoins are exempt from the definition of a security in all of the federal securities laws.

THREE KEY TAKEAWAYS

1. The Statement from the SEC's Division of Corporation Finance provides clarity on the status of Covered Stablecoins, confirming that they are not considered securities under the Securities Act and the Exchange Act. As a result, issuers of these instruments do not need to register their Covered Stablecoin offerings with the SEC.
2. The Statement only applies to Covered Stablecoins and does not address other types of stablecoins, which may still be subject to the securities laws. Further, the Statement does not preclude the possible application of other federal or state laws to Covered Stablecoins.
3. The Statement could represent how the SEC and its staff intend to approach defining what is or is not a "security" in the context of cryptocurrency and other digital assets, absent further legislation or regulation.


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ALERT

APRIL 2025

FDIC Rescinds Prior Notification Requirement for Banks' Permissible Crypto Activities

The FDIC has rescinded an earlier Financial Institution Letter establishing a prior notification requirement for FDIC-supervised institutions that wish to engage in specified crypto-related activities and has clarified that such institutions may engage in permissible crypto-related activities without receiving prior FDIC approval.

Following the OCC's recent move to ease some restrictions on bank digital asset activities, the FDIC's latest Financial Institution Letter (FIL-7-2025) ("FIL") rescinds the prior notification requirement that the FDIC had established in a previous letter (FIL-16-2022). The FIL also indicates that the FDIC will work with other agencies, including the Office of the Comptroller of the Currency ("OCC"), to replace 2023 joint statements in which the agencies indicated that crypto-related activities—even permissible ones—were unlikely to be consistent with bank safety and soundness.

In issuing this guidance, the FDIC is signaling a significant shift toward openness to its supervised banks engaging in bank-permissible crypto-related activities. FDIC-supervised banks should take increased confidence that the FDIC will not discourage (or, in effect, reject) through the supervisory process efforts by banks to engage in such activities. That said, the FIL does caution supervised institutions to conduct permissible crypto-related activities in a safe and sound manner, consistent with existing risk management principles and examination policies.

In the OCC's recent related guidance (discussed further in our recent *Commentary*, "OCC Eases Some Restrictions on Bank Digital Asset Activities"), it eased prior notification restrictions and withdrew from the 2023 joint statements on crypto-related risks, while here, the FDIC only stated its intent to work with other agencies on replacing such statements. But the direction the FDIC is signaling is clear: more openness to bank-permissible crypto-related activities.

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ALERT

MARCH 2025

Updates on Proposed Stablecoin Legislation: the GENIUS Act and the STABLE Act

As Congress moves to enact comprehensive stablecoin legislation under the Trump administration, both the Senate and the House of Representatives have updated their respective payment stablecoin bills. Our recent Commentary discusses the prior versions of the bills.

GENIUS Act Updates

Recent revisions to the Senate's GENIUS Act signal several new areas of focus, including more cooperation between state and federal regulators and heightened compliance requirements to avoid risk. The bill also updates the definition of a "payment stablecoin" to exclude any such coins backed by other digital assets.

The bill creates a dual framework for stablecoin issuers that issue more than $10 billion in payment stablecoins: (i) joint regulation of depository institution issuers by state and federal regulators; or (ii) state regulation of other issuers where state regulators administer the federal framework.

Notably, the bill now categorizes permitted stablecoin issuers as financial institutions for anti-money laundering purposes under the Bank Secrecy Act, which would require them to establish compliance programs and conduct diligence on certain transactions. But the bill also loosens some restrictions on the use of required reserves.

Moreover, the bill requires the Secretary of the Treasury to: (i) seek to avoid conflicts between foreign and domestic regulation; (ii) facilitate international transactions and interoperability; and (iii) ensure that issuers can effectively comply with lawful orders to block a foreign person's digital assets.

The bill also clarifies that payment stablecoins are neither securities nor commodities, clarifies that payment stablecoin issuers are not investment companies, increases protections for stablecoin holders during insolvency proceedings, and requires relevant regulators to coordinate on issuing implementing regulations within a year of the bill's enactment.

STABLE Act Updates

Discussed during a recent hearing by the House Financial Services Committee, the revised STABLE Act no longer suggests that state regulators issue capital, liquidity, or risk management standards applicable to state stablecoin issuers. However, federal regulators would be required to promulgate cybersecurity requirements and approve foreign depository institutions holding issuers' demand deposits.

The updated bill also details the Treasury-supervised process by which a state regulatory framework could be certified as meeting or exceeding federal regulatory standards. Lastly, the bill permits state regulators to appeal—directly to the U.S. Court of Appeals for the District of Columbia Circuit—determinations by the Secretary of the Treasury that state regulatory regimes do not meet minimum federal standards.

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COMMENTARY

MARCH 2025

OCC Eases Some Restrictions on Bank Digital Asset Activities

IN SHORT

The Situation: In recent years, U.S. federal bank regulators significantly limited banks' authority to engage in crypto-asset activities, including participating in public blockchains, owning digital assets as principal, and even providing traditional banking services to digital asset companies.

The Change: In the recent Interpretative Letter 1183, the Office of the Comptroller of the Currency (the "OCC") signaled increased support for crypto assets by rescinding some prior limitations to banks' crypto-asset activities and by withdrawing participation in restrictive joint statements made previously with other federal bank regulators.

Looking Ahead: The OCC's pivot could encourage more crypto-asset activities by national banks, and create inconsistencies with federal regulation of crypto activities of state-chartered banks. On the other hand, other federal bank regulators may follow the OCC's lead and ease prior crypto-related restrictions.

On March 7, 2025, the OCC issued Interpretive Letter 1183, which rescinded the Biden-era OCC Interpretive Letter 1179 and withdrew the OCC from participation in two joint statements issued with the Federal Reserve and the FDIC: (i) the "Joint Statement on Crypto-Asset Risks to Banking Organizations," issued on January 3, 2023 ("Risks Joint Statement"); and (ii) the "Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities," issued on February 23, 2023 ("Liquidity Joint Statement"). Interpretive Letter 1183 may signal a significant change for bank regulation regarding crypto assets.

OCC Interpretive Letter 1179 Rescinded

Previously, the OCC required banks to seek and receive "supervisory non-objection" before engaging in specified permissible crypto activities: (i) digital asset custody; (ii) holding dollar "reserves" that back stablecoins; and (iii) validating, storing, and recording payment transactions by serving as a node on a distributed ledger.

The OCC permitted each of these activities prior to Interpretive Letter 1179, and each has technically remained permissible since. But Interpretive Letter 1179 established a supervisory hurdle that slowed—and in many cases stopped entirely—the ability of national banks to conduct these activities.

By rescinding Interpretive Letter 1179, the OCC now signals a more flexible approach to national bank digital asset activities.

Status of the Risks Joint Statement

Originally issued by the OCC, Federal Reserve, and FDIC, the Risks Joint Statement flagged several crypto-asset risks and limited the ability of banks to engage in digital asset activities, including many activities on public blockchains. To that point, the Risks Joint Statement provides that "issuing or holding as principal crypto-assets that are issued, stored, or transferred on an open, public, and/or decentralized network, or similar system is highly likely to be inconsistent with safe and sound banking practices." In the language of bank regulators, this statement is tantamount to a prohibition without using the word.

Additionally, the Risks Joint Statement cautions banks even with respect to providing traditional

banking services to digital asset companies, if the bank's business model becomes too concentrated in, or too exposed to, the digital asset industry.

The restriction on activities involving digital assets on public blockchains has significantly limited bank entry into digital asset projects generally; some banks have even built infrastructure on private blockchains (which have major commercial limitations).

As of March 7, 2025, the OCC no longer applies this guidance to entities it charters and supervises, including national banks and federal savings associations. The Federal Reserve and FDIC have not announced their withdrawals from the joint statement—or at least have not yet—so the Risks Joint Statement remains in effect for state-chartered banks, which the two agencies supervise and regulate at the federal level. But the OCC's withdrawal has weakened the unified impact of the Risks Joint Statement on the U.S. banking system in general.

Status of the Liquidity Joint Statement

The Liquidity Joint Statement raises the agencies' concerns surrounding liquidity risk arising from "sources of funding from crypto-asset-related entities." Examples include deposits that constitute stablecoin-related reserves and deposits from digital asset firms that are placed on behalf of, and for the benefit of, end-user customers of the digital asset firm. The OCC's withdrawal from this joint statement also undercuts the consistency of supervision across federal bank regulators.

Implications

The OCC's pivot suggests a softening stance, potentially opening doors for national banks to explore legally permissible crypto services—such as custody or specified stablecoin operations—more freely, provided they maintain robust risk management. However, state-chartered banks still face cautions from the FDIC and Federal Reserve in both joint statements, including restrictions on public blockchain use and restrictions on bank business models concentrated in or exposed to the digital asset industry, through deposits or otherwise.

This split between national banks and state-chartered banks, if it prevails, could create uneven opportunities across the banking sector. However, in the context of the new administration, which has taken a generally positive policy stance toward digital assets (including issuing an executive order for the United States to build a strategic reserve of digital assets), the Federal Reserve and the FDIC may take concrete steps to move in a similarly favorable direction in the short to medium term.

TWO KEY TAKEAWAYS

1. The OCC, currently headed by a new Acting Comptroller, has eased restrictions for banks under the new administration. Interpretative Letter 1183 rescinds the OCC's Biden-era guidance requiring supervisory non-objection before engaging in crypto-asset activities, and withdrew the OCC from guidance that strongly cautioned banks regarding the safety and soundness of many crypto-asset activities.
2. The change in the OCC's stance on crypto regulation for banks could lead to inconsistent treatment of digital assets at banks (at least temporarily), or signal a broader shift in policy across the bank regulators.


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COMMENTARY

FEBRUARY 2025

Stablecoin Legislation: A Stroke of GENIUS?

IN SHORT

The Situation: President Trump's recent executive order "Strengthening American Leadership in Digital Financial Technology" promoted the development of dollar-backed stablecoins as official U.S. policy. To facilitate this policy, Congress needs to provide regulatory clarity to stablecoin issuers.

The Solution: The Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025 ("GENIUS Act"), introduced in the Senate, and the Stablecoin Transparency and Accountability for a Better Ledger Economy Act of 2025 ("STABLE Act"), circulated as a discussion draft in the House, respectively, aim to create a regulatory structure for payment stablecoins. These legislative efforts seek to balance federal oversight with state-level flexibility, ensuring that payment stablecoin issuers operate under predictable, but "light touch," rules.

Looking Ahead: While Congress is moving ahead quickly on stablecoin regulation, it will need to reconcile provisions that vary between the two alternative bills to finalize the law. As part of this effort, Congress might also want to consider addressing lingering concerns about whether the bills will attract payment stablecoin issuers to the United States.

State of the Legislation

Introduced in the Senate on February 4, 2025, by Senator Bill Hagerty and other lawmakers, the GENIUS Act represents a comprehensive effort to regulate payment stablecoins in a manner that preserves financial innovation while ensuring market stability. The GENIUS Act defines "payment stablecoins" as digital assets pegged to a fixed amount of monetary value.

White House Crypto & AI Czar David Sacks and several congressional committee chairmen described the GENIUS Act as a top priority during the current Congress and said that they intend to move quickly to enact it. Another bill, the STABLE Act, was discussed during the House Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence hearing on February 11, 2025.

Many industry participants have called on Congress and the new administration to provide a clear legal pathway for payment stablecoin issuance and use. The GENIUS Act would integrate digital assets that are payment stablecoins into existing legal frameworks. Both the GENIUS Act and the STABLE Act seek to establish a federal regulatory framework that acknowledges "substantially similar" state-level regulatory regimes.

What Does the Proposed Legislation Do?

The GENIUS Act lays out a licensing framework for payment stablecoin issuers. Payment stablecoin issuers must be either federally approved or regulated by state authorities, provided that the state's regulatory framework meets federally-defined standards.

Under the federal regime, the "primary federal payment stablecoin regulator" for most types of entities will be the entity's preexisting primary federal regulator (either the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, as applicable). But nonbank entities without a preexisting primary federal regulator will be regulated by the Office of the Comptroller of the Currency ("OCC").

The GENIUS Act sets out several baseline requirements for payment stablecoin issuers: (i) to maintain 1:1 reserves and to publicly disclose their composition; (ii) to publicly disclose redemption policies; (iii) to submit monthly certifications from a public accounting firm to its regulator; and (iv) to maintain specified standards around capital, liquidity, risk management, operations, and information technology. Both the GENIUS Act and the STABLE Act specify high-quality liquid assets that qualify to be used as reserves, but they differ slightly in categories of assets that qualify.

The acts further temporarily ban algorithmic stablecoins by requiring studies on algorithmic stablecoins to be complete before they can be issued in compliance with the statute. Algorithmic stablecoins are instruments which seek to maintain a stable price through automated algorithms and smart contracts without being backed by traditional assets.

In addition to the monthly public disclosures of reserve compositions and third-party audits discussed above, the STABLE Act gives broad discretion to federal and state regulators to set capital, liquidity, and risk management requirements.

The GENIUS Act also presents stablecoin issuers with an alternative path to regulation via the states. Any entity issuing more than $10 billion in payment stablecoins will have a federal regulator: for most issuers that are banks or credit unions, their preexisting primary federal regulator; and for nonbank issuers, the OCC. But smaller issuers may opt for state regulation if their state-level regulatory framework is substantially similar to federal standards—a determination that will be made by the Department of Treasury. If the Treasury determines that a state's regulatory framework is inadequate, it can require state-regulated payment stablecoin issuers to move to federal oversight. In contrast, the STABLE Act does not mandate federal oversight at any particular market capitalization, but rather permits all approved payment stablecoin issuers to be state-regulated, so long as the state-regulatory framework aligns with federal standards.

In addition to financial-stability measures, the GENIUS Act includes consumer protection provisions which align with federal prudential and market regulators' requirements. For instance, payment stablecoin issuers must segregate customer assets from proprietary assets for protection in case of insolvency. The GENIUS Act also restricts issuers from engaging in lending or other high-risk financial activities using reserves. These provisions in the bill reinforce the role of payment stablecoins as instruments for payments rather than investments.

The GENIUS Act also gives payment stablecoin holders "first priority over any other claim against the debtor" in the event of the payment stablecoin issuer filing for bankruptcy. The STABLE Act, however, is silent on bankruptcy.

Additionally, the GENIUS Act requires agencies to develop standards of interoperability for the market generally. In this regard, the GENIUS Act directs regulators to confer with experts to improve standards of compatibility across different payment stablecoins.

Finally, the GENIUS Act clarifies that payment stablecoins are not securities by updating key federal securities laws to exempt "payment stablecoin" from their respective definitions of a "security." However, it is less clear, as drafted, that payment stablecoins are not commodities. The STABLE Act likewise provides that payment stablecoins are not securities but is silent on whether payment stablecoins are commodities.

Reactions to the Proposed Legislation

Although there is growing bipartisan recognition of the need for payment stablecoin legislation, some lawmakers and economists remain concerned about the potential risks payment stablecoins pose to monetary policy, financial stability, and illicit finance.

Industry reaction to the GENIUS Act has been mixed. Some analysts view the GENIUS Act as a positive step toward regulatory clarity, which could encourage broader adoption of payment stablecoins and reduce legal uncertainty. By providing a clear pathway for both state and federal oversight, the GENIUS Act acknowledges the role that existing state regulators have played in supervising digital asset firms while also ensuring mandatory federal regulation for larger issuers. Furthermore, the act's focus on interoperability and improving standards of compatibility could

bolster U.S. payment stablecoins in competitive digital asset markets globally.

On the other hand, some commentators have expressed concerns that the licensing and reserve requirements under the GENIUS Act could impose undue regulatory burdens on some issuers, particularly issuers of some already existing and widely used stablecoins.

All said, if implemented effectively, the GENIUS Act could reinforce the U.S. dollar's role as the dominant global reserve currency by promoting demand for payment stablecoins which are backed by U.S.-dollar-denominated assets.

FOUR KEY TAKEAWAYS

1. **Both the GENIUS Act and STABLE Act mark a significant step forward in payment stablecoin regulation.** By establishing a clear licensing framework, strict reserve and disclosure requirements, and consumer protections, the proposed legislation would provide long-awaited regulatory clarity for payment stablecoin issuers and users.

2. **Both the GENIUS Act and STABLE Act preserve a role for state regulators, and the GENIUS Act introduces federal oversight for certain large issuers.** This dual-framework approach balances innovation with risk mitigation but could lead to challenges in ensuring consistency between state and federal regulations. Challenges surrounding consistency would arise under both acts, even though the STABLE Act does not mandate federal regulation.

3. **The legislation could reinforce the U.S. dollar's importance in digital finance.** By providing a regulatory foundation for payment stablecoins backed by U.S.-dollar-denominated assets, both acts could enhance global trust in digital dollars, benefiting the broader U.S. financial system and encouraging payment stablecoin issuers to remain in the United States.

4. **Potential challenges remain.** Concerns remain regarding regulatory burdens under the GENIUS Act and STABLE Act. Discussions about whether the bills do enough to keep payment stablecoin issuers in the United States will continue to shape debates as the bills progress through the Congress.


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JONES DAY

COMMENTARY

FEBRUARY 2025

Regulating Digital Assets: FIT21 Seems to Fit the Bill

IN SHORT

The Situation: The United States lacks a regulatory framework geared toward digital assets. This raises consumer protection concerns, causes regulatory turf battles and duplicative enforcement actions, impedes innovation, and puts the United States at a disadvantage compared to markets like the European Union, which have already implemented regulatory measures.

The Solution: Recently proposed (and likely soon to be re-proposed) legislation would split regulation of digital assets between the Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC") and impose clear disclosure, registration, and compliance requirements. This should better protect market participants, reduce or eliminate ostensibly duplicative regulatory burdens, and foster innovation by providing clarity as to the applicable regulatory structure for digital assets.

Looking Ahead: Though passed by the U.S. House of Representatives in the last Congress, this legislation—the Financial Innovation and Technology for the 21st Century Act ("FIT21" or the "Bill")—is still several steps from becoming law. Nevertheless, given the upswell of support for it in the new administration and Congress, FIT21 seems poised to become the framework for regulation of digital assets.

State of the Legislation

In May 2024, the House of Representatives passed FIT21. The Bill—which was received in the Senate, read twice, and then referred to the Committee on Banking, Housing, and Urban Affairs, but which was not enacted in the last Congress—is Congress's latest effort to regulate digital assets as a class.

In 2025, FIT21 is more relevant than ever as President Trump aims to make the United States "the crypto capital of the planet." His efforts include signing an executive order forming an executive branch working group on digital asset markets, nominating crypto-friendly Paul Atkins to replace former SEC Chairman Gary Gensler (a crypto skeptic), nominating former CFTC Commissioner Brian Quintenz—who has held multiple crypto roles—as CFTC Chairman, exploring the feasibility of a "Bitcoin Reserve," and appointing former PayPal executive David Sacks as the White House crypto and AI czar.

On February 4, 2025, Mr. Sacks held a joint press conference with several Congressional committee chairmen to discuss their goal of providing clear regulation of digital assets. French Hill, chairman of the House Financial Services Committee, stated his intent to present FIT21 for President Trump's signature with only "modest changes"; he also emphasized the bill's momentum because of its broad bipartisan support in the prior Congress. Senator Tim Scott, chairman of the Senate Committee on Banking, Housing, and Urban Affairs, stated that his goal is for the Senate to pass FIT21 in the first 100 days of the new Administration. Senator John Boozman, chairman of the Senate Agriculture, Nutrition, and Forestry Committee, highlighted the importance of collaborating across committees in their bicameral working group to advance FIT21. Mr. Sacks emphasized that clear rules of the road for digital assets would stop the flow of crypto startups out of U.S. markets. He criticized the SEC and other agencies for arbitrarily prosecuting companies without providing guidelines for their conduct.

Like prior bills, FIT21 outlines a regulatory framework based on a separation of responsibilities between the SEC and the CFTC, mandates joint rulemakings in certain areas of shared jurisdiction and permits other rulemakings to flesh out certain aspects of FIT21, and imposes enhanced disclosure, registration, and compliance requirements tailored to digital assets. FIT21 aims to remedy the existing confusion by using "clear definitions for digital assets, assign[ing] regulatory oversight, and establish[ing] fair compliance requirements."

What Does the Proposed Legislation Do?

Among other things, FIT21 is meant to reduce duplicative enforcement actions by providing regulatory clarity, combat fraud, and protect market participants by strengthening transparency and accountability. The Bill came at a time where, in the absence of clear statutory guidelines, both the SEC and the CFTC had claimed jurisdiction over some of the same digital asset activity. FIT21 would require the SEC and the CFTC to collaborate in discussing decentralization, creation, ownership, functionality, and other characteristics of a digital asset.

FIT21 would distinguish, through a thorough categorization process, between *restricted digital assets*, which would be regulated by the SEC, and *digital commodities*, which would be regulated by the CFTC. Further, FIT21 allows for a digital asset to initially be deemed a *restricted digital asset* and then later reclassified as a *digital commodity* if and when the digital asset becomes sufficiently functional and decentralized. FIT21 would also create a third category, *permitted payment stablecoins*, which would be excluded from the foregoing categories but subject to CFTC and SEC regulatory jurisdiction and SEC anti-fraud and anti-manipulation jurisdiction in certain cases.

Upon classification or re-classification of a digital asset, the digital asset framework would be regulated by the SEC as a restricted digital asset or by the CFTC as a digital commodity, respectively, each with its own set of disclosure, registration, and compliance requirements. In various situations, the underlying source code and technology of the digital asset, development plan(s) for the digital asset, and risks of owning the digital asset—among other things—must be disclosed, regardless of the asset's classification as a digital commodity or a restricted digital asset. FIT21 also introduces new registration categories and would require digital asset trading systems, digital asset brokers, and digital asset dealers transacting in restricted digital assets to register with the SEC, and digital commodity brokers, digital commodity dealers, and digital commodity exchanges transacting in digital commodities to register with the CFTC. Entities transacting in both restricted digital assets and digital commodities must register with both agencies, though the Bill requires the CFTC and SEC to seek to eliminate duplicative regulation in these circumstances.

FIT21 excludes DeFi activity from SEC and CFTC regulatory jurisdiction and establishes a process for classifying a system as decentralized, rebutting that classification, and appealing the rebuttal or withdrawing a decentralized certification.

FIT21 would also require the:

- CFTC and SEC to jointly establish a "Joint Advisory Committee on Digital Assets" to, among other things, harmonize digital asset policy between the commissions;
- SEC and CFTC to jointly carry out: (i) a DeFi study that analyzes 12 different issues, including the risks and benefits of DeFi; and (ii) a study on whether additional guidance or rules are needed to facilitate the development of tokenized securities and derivatives and related regulatory considerations (e.g., whether tokenization is consistent with investor protection); and
- Comptroller General to conduct: (i) its own separate study on those same 12 issues; and (ii) a study on non-fungible digital assets that analyzes 12 issues that overlap to some extent with the 12 issues to be considered in the DeFi study.

Reactions to the Proposed Legislation

Reactions to the Bill have been varied. Notably, FIT21 excludes investment contract assets

(defined at its core as a fungible digital asset recorded on a public blockchain sold pursuant to an investment contract) from the definition of "security" under the federal securities laws.

This departure from longstanding precedent drew criticism by the SEC under former Chairman Gensler, who maintained that this aspect of FIT21 would "create new regulatory gaps and undermine decades of precedent regarding the oversight of investment contracts, putting investors and capital markets at immeasurable risk."

By contrast, many leading voices in the digital assets industry have publicly voiced their support for FIT21. Crypto lobbyists also pushed heavily for enactment of FIT21, and almost half of all corporate donations during the 2024 presidential elections at one point originated from crypto companies. Senior Democratic legislators have expressed support for the Bill, with Nancy Pelosi calling it "a first step to establish a regulatory framework for digital assets." Despite a few contrarians, FIT21 will likely progress toward enactment, propelled by encouragement from both Congress and the new administration.

FIVE KEY TAKEAWAYS

1. **FIT21 would change the regulatory landscape of digital assets.** The Bill would create new legal categories of digital assets and divide jurisdiction between the CFTC and SEC, effectively reducing overlapping authority.

2. **FIT21 is more "hands on" with market regulators.** The Bill includes a mechanism to force the CFTC and SEC to characterize digital assets as CFTC- or SEC-jurisdictional and thereby clarifies which regulator is to have oversight. This legal certainty will make digital asset issuers, intermediaries, and other market participants comfortable doing business in the United States rather than only in foreign jurisdictions (which a number of companies have done due to the current uncertainty).

3. **FIT21 now enjoys more support.** The new administration's crypto-friendly actions suggest that the White House will support it becoming law; Congressional leadership has also expressed that the Bill is a top priority.

4. **FIT21 imposes new registration requirements.** The Bill is touted as a boon to innovation, but requires registration for various activities, although it also commands the SEC and CFTC to reduce compliance burdens in situations where new registrants are registered with the CFTC or SEC in similar capacities.

5. **FIT21 requires or permits rulemaking by the CFTC and SEC on a number of issues.** The agencies historically have not been quick to reach agreement on jurisdictional issues, although it would seem the desire at the highest levels of government for a U.S. crypto regime will speed negotiations. Nevertheless, assigning rulemaking duties to the SEC and CFTC may mean that the complete digital assets oversight regime will not in place for at least a year, if not two.


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JONES DAY

COMMENTARY

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Enforcement to Endorsement: Digital Asset Executive Order and SAB 121 Rescission

IN SHORT

The Situation: President Trump signed an executive order ("EO") titled "Strengthening American Leadership in Digital Financial Technology" that signals a radical shift in the federal government's posture towards digital assets and the crypto sector. That same day, the Securities and Exchange Commission ("SEC") staff rescinded Staff Accounting Bulletin ("SAB") 121, accounting guidance related to crypto assets that SEC staff had issued in 2022.

The Result: Under the EO, relevant agencies will be required to evaluate existing regulations and provide recommendations on whether to rescind or modify those regulations. With the rescission of SAB 121, companies will no longer be required to automatically book digital assets they hold on behalf of others as liabilities or make certain disclosures about those assets.

Looking Ahead: These moves, coupled with the SEC's announcement of its new crypto asset task force, signal a rapid, pro-digital asset shift under the Trump administration. While many details remain to be determined, companies in the space should evaluate how they can position themselves to adapt under expected regulatory changes as well as how they may be able to expand or adjust their operations in light of the shifting regulatory landscape.

On January 23, 2025, President Trump signed an executive order "to promote United States leadership in digital assets and financial technology while protecting economic liberty." The EO revokes President Biden's EO on *Ensuring Responsible Development of Digital Assets*. It also articulates the United States' significant interest in promoting the development of vibrant and secure digital asset technologies and markets and therefore establishes a Working Group on Digital Asset Markets, within the National Economic Council to develop and oversee government policy related to the crypto sector.

That same day, the SEC staff rescinded SAB 121, issued by the SEC under the Biden administration, a bulletin that required financial companies custodying crypto on behalf of customers to book the assets as liabilities. Since its adoption, SAB 121 had been criticized by supporters of the digital asset economy.

The EO sets forth as official policy: (i) the protection of access to public blockchain networks, mining and validating projects, and self-custody; (ii) the promotion of the sovereignty of the U.S. dollar through the development of dollar-backed stable coins; (iii) protection of open access to banking services; (iv) the provision of clear and technology-neutral regulations; and (v) prohibiting development of Central Bank Digital Currencies ("CBDCs") in the U.S. and abroad.

The Working Group will be chaired by a "Special Advisor for AI and Crypto" and will include key federal agencies such as the SEC, the Commodity Futures Trading Commission, the Treasury Department, and the Justice Department. However, the Working Group notably omits the Federal Reserve, which may signal the Trump administration's desire to ensure it has policy control and to emphasize its opposition to a CBDC. The group is tasked with making regulatory and legislative proposals to advance the order's policies within 180 days, as well as considering the creation of a national digital asset stockpile "potentially derived from cryptocurrencies lawfully seized by the Federal Government."

Notably, the EO requires relevant agencies to identify all regulations, guidance documents, orders, or other materials that impact digital assets within 30 days. It then requires the agencies to, within 60 days, recommend whether they should be rescinded or modified—culminating in a final report.

The rescission of SAB 121 by the SEC staff follows a legislative attempt in 2024, which received bipartisan support in passing the U.S. House and Senate, but was vetoed by President Biden. Rescinding SAB 121, together with establishing a new digital asset task force to study its regulation of digital assets, is an early indication that the SEC, in particular, may use the EO's mandate to swiftly change course on digital assets. By requiring firms that took custody of customer digital assets to account for those assets as if they were owned by the custodian and not by the customer, SAB 121 had a chilling effect on the uptake and use of digital assets. Among other reasons, this is because digital asset custodians were required to disclose to customers that the customer's digital assets could be treated as part of the custodian's bankruptcy estate in the event of the custodian's failure.

Taking the place of SAB 121's requirements, the SEC staff now instructs digital asset custodians in new SAB 122 to "consider existing requirements to provide disclosures that allow investors to understand an entity's obligation to safeguard crypto-assets held for others." In practice, this may allow companies to utilize accounting standards such as GAAP contingency rules and IFRS guidelines.

THREE KEY TAKEAWAYS

1. Together, the EO and SAB 121's rescission are early signals of the Trump administration's interest in fostering U.S.-based developments in the digital asset industry and a clear change in direction from the Biden administration by promising to provide clear rules of the road for crypto sector participants.
2. SAB 121's rescission means financial services companies may be more willing to custody digital assets since they may not need to automatically book such assets as their own liabilities.
3. Industry participants should closely watch what regulatory changes the Working Group recommends, consider ways that they can be involved in this new regulatory process, and evaluate ways in which new, less restrictive regulations may impact their operations and provide new opportunities for expansion.


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