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WILSON SONSINI

Focus on Fintech

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

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

Proposed Crypto Legislation

In This Issue

Proposed Crypto Legislation ..... Pages 1-2

Securities Law Developments ..... Pages 2-4

Updated SEC Guidance on Crypto-Related Products and Activities ..... Pages 4-5

Other Securities and Commodities Law Developments ..... Page 5

Consumer Protection Developments ..... Page 6

Banking Regulatory Developments ..... Page 7

Crypto-Related Banking Regulatory Developments ..... Page 8

State Payments Developments ..... Pages 8-9

Payments-Related Enforcement Updates ..... Pages 9-10

Other Crypto-Related Enforcement Updates ..... Page 11

Artificial Intelligence (AI) Enforcement Updates ..... Page 12

Select Publications ..... Page 12

Practice Highlights and Speaking Engagements ..... Pages 13-14

Upcoming Events ..... Page 14

GENIUS Act Creating Payment Stablecoin Regulatory Framework Enacted

President Trump signed into law the Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act, which marks the first major federal legislation to establish a regulatory framework in the cryptocurrency space. The law creates a comprehensive federal regulatory framework for issuers of "payment stablecoins," with requirements related to obtaining approvals, reserves, and anti-money laundering, among other areas. The law also imposes requirements on entities that engage in the business of providing custodial or safekeeping services related to payment stablecoins. For a more detailed analysis of the law, please see our client alert.

House Passes CLARITY Act to Define Digital Asset Market Structure; Senate Introduces Digital Asset Market Structure Discussion Draft

The House of Representatives passed the Digital Asset Market Clarity (CLARITY) Act of 2025 (H.R. 3633) on July 17, 2025, by a bipartisan vote of 294 to 134. The bill proposes a functional framework to regulate digital asset markets by delineating

regulatory jurisdiction between the U.S. Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), granting the CFTC primary jurisdiction over "digital commodities" and related intermediaries, including brokers, dealers, and exchanges, and leaving jurisdiction over primary market digital asset transactions with the SEC, subject to a limited exemption from registration requirements under the Securities Act for fundraising. A digital commodity is defined any digital assets whose value is intrinsically linked to the use of blockchain and explicitly excludes securities, derivatives, and certain stablecoins.

Continued on page 2...

Proposed Crypto Legislation *(Continued from page 1)*

The Senate introduced its own discussion draft of digital asset market structure legislation on July 22, 2025, which builds on the CLARITY Act but introduces new definitions to clarify which digital assets are not securities and requires the SEC to promulgate new rules related to digital assets, among other provisions. The Senate Banking Committee is currently soliciting feedback on the draft via a Request for Information through August 5, 2025. The Senate Agriculture Committee is expected to release a companion draft discussion delineating CFTC jurisdiction.

Securities Law Developments

SEC Formally Withdraws Rule Proposals Related to Regulated Financial Entities

The SEC has formally withdrawn six rule proposals focusing on broker-dealers, investment advisers, and/or investment companies:

Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers (originally proposed July 26, 2023) would have required registered broker-dealers and investment advisers to identify conflicts of interests when using predictive data analytics technology in interactions with investors and adopt policies designed to "eliminate or neutralize the effects" of those conflicts. Many commenters opposed the proposed rule, arguing that it would have been overbroad, was unnecessary in light of existing fiduciary duty principles for managing conflicts of interest, imposing unnecessarily costly compliance obligations, and stifling the ability to use innovative technology.

Safeguarding Advisory Client Assets (originally proposed February 15, 2023) would have expanded the scope of the custody rule (Rule 206(4)-2 under the Investment Advisers Act of 1940) to, among others, 1) apply to all client assets rather than just "funds and securities," including some assets that are not able to be held with a qualified custodian, and 2) explicitly include the discretionary authority to trade client assets within the definition of having "custody." The rule would have also required advisers to enter into written agreement and obtain certain reasonable assurances from the qualified custodians they engage. Some commenters criticized the proposed rule for being overly expansive, dramatically increasing compliance costs, and attempting to employ advisers to enforce

the conduct of qualified custodians.

Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies (originally proposed February 9, 2022) would have required investment advisers and registered funds to disclose detailed information about cybersecurity risks and incidents to prospective clients and shareholders, report any significant cybersecurity incidents to the SEC within 48 hours, and adopt certain policies and procedures to address cybersecurity risks. Some opponents commented that the reporting and disclosure requirements would have made it difficult for firms to respond to cybersecurity incidents that were currently occurring and be duplicative to existing fiduciary duties, and that adequate requirements for implementation of cybersecurity policies and procedures were already in place.

Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social and Governance Investment Practices (originally proposed May 25, 2022) would have required registered investment advisers and registered funds to disclose environmental, social, and governance (ESG) strategies in fund prospectuses, annual reports, and adviser brochures, and generally require certain environmentally focused funds to disclose the greenhouse gas emissions associated with their portfolio companies. The withdrawal of this proposed rule comes just after the SEC voted to end its defense of climate disclosure rules for public companies in March 2025.

Outsourcing by Investment Advisers (originally proposed October 25, 2022) would have required investment advisers to, in connection with outsourcing certain covered functions to service providers, conduct due diligence on those third-party service providers and third-party recordkeepers, monitor

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Securities Law Developments *(Continued from page 2)*

service providers' and recordkeepers' performance, keep books and records on the diligence and monitoring of service providers, and report service providers on Form ADV. Critics of this rule noted that the compliance costs would have outweighed any benefit it brought to investors and were duplicative of existing obligations of investment advisers covered under their fiduciary duties.

Regulation Best Execution (originally proposed December 14, 2022) would have established a best execution regulatory framework for brokers and dealers, which would have required additional compliance requirements including but not limited to adoption of additional measures and documentation for certain types of "conflicted" transactions, quarterly review of execution quality, and submission of annual reviews and reports to a broker-dealer's board of directors. Several commenters noted that the proposal was an attempt to overhaul a currently efficient system for little benefit, carried material costs that would have ultimately been borne by investors, and was predicated off problematic economic analyses.

Treasury Postpones Effective Date of Investment Adviser AML Rule, Plans Revisions

The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) has announced that it intends to postpone the effective date of the final rule establishing anti-money laundering (AML) and suspicious activity report (SAR) filing obligations for registered investment advisers (RIAs) and exempt reporting advisers (ERAs) (the IA AML Rule or the Rule) and to revisit its scope at a future date. The Rule's effective date, originally scheduled to be January 1, 2026, is now expected be extended to January 1, 2028.

The IA AML Rule as written would impose significant new regulatory requirements on RIAs and ERAs. The announcement suggests that FinCEN will revisit and possibly narrow those requirements, which FinCEN says must be "effectively tailored to the diverse business models and risk profiles" of investment advisers. The IA AML Rule has been criticized by some in the industry for imposing outsized regulatory obligations in a sector where the associated risks may be relatively low, particularly but not only for ERAs.

FinCEN also stated that it and the SEC plan to revisit a proposed rule that would impose customer identification program requirements on both RIAs and ERAs.

SEC and FINRA Withdraw 2019 Staff Guidance on Broker-Dealer Custody of Digital Asset Securities

The SEC's Division of Trading and Markets and FINRA's Office of General Counsel have jointly withdrawn their 2019 staff statement on broker-dealer custody of digital asset securities. The original statement outlined regulatory considerations for compliance with the SEC's Customer Protection Rule under Rule 15c3-3 under the Exchange Act and highlighted challenges posed by digital asset custody, including risks related to private key control, loss recovery, and books-and-records obligations.

Critics of the statement noted that while it identified numerous risks for broker-dealers who custodied digital asset securities, it failed to suggest any solutions, leaving no legal route for broker-dealers to custody digital asset securities.

The withdrawal signals a shift in the agencies' approach but does not alter existing legal requirements. Broker-dealers seeking to custody digital asset securities must continue to comply with applicable SEC and FINRA rules, including those governing possession or control, financial reporting, and SIPA protections.

SEC Drops Multiple Enforcement Actions Related to Unregistered Dealer Activity

The SEC has filed joint stipulations to dismiss, with prejudice, civil enforcement actions involving alleged unregistered dealer activity by funds and their managers under Section 15(a) of the Securities Exchange Act of 1934.

According to the SEC, the decision to seek dismissal reflects a discretionary policy judgment rather than a view on the merits of the underlying claims. The agency emphasized that the dismissals do not signal a shift in its legal position on unregistered dealer activity in other cases.

Continued on page 4...

Securities Law Developments *(Continued from page 3)*

The actions appeared to be related to a pair of now defunct rules expanding the definition of "dealer" and "government securities dealer" to state, among other things, that they can encapsulate certain trading activity by funds, a departure from prior precedent. Since the original enforcement actions were launched, the U.S. District Court for the Northern District of Texas found that the SEC had exceeded its statutory authority in adopting the rules and vacated the rules in two separate opinions. The SEC appealed the decisions in January 2025, but filed a motion to dismiss its appeal under the new administration shortly thereafter. Thus, the rules are no longer effective.

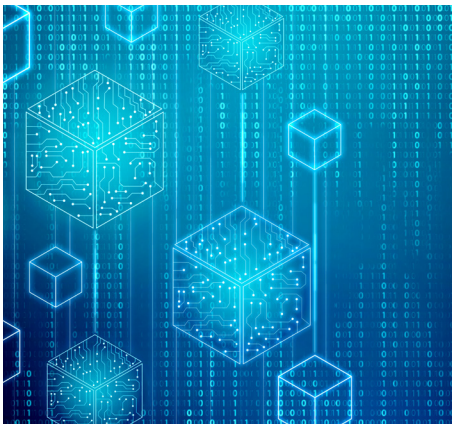
CFTC and SEC Extend Form PF Compliance Deadline and Adopt Technical Amendments

The SEC and CFTC have extended the compliance deadline for amendments to Form PF—originally adopted on February 8, 2024—from June 12, 2025 to October 1, 2025. Form PF is the confidential reporting form used by certain SEC-registered investment advisers to private funds, including those dually registered with the CFTC as commodity pool operators or commodity trading advisers. Amendments to Form PF expanded the scope of information required from private fund advisers and increased disclosure obligations for certain large fund advisers and advisers to complex fund structures. The amendments are intended to enhance the Financial Stability Oversight Council's ability to monitor systemic risk and support the SEC's oversight of private fund advisers.

Updated SEC Guidance on Crypto-Related Products and Activities

SEC Staff Issues Statement on Certain Protocol Staking Activities

The staff of the SEC's Division of Corporation Finance issued a statement clarifying that certain forms of crypto asset protocol staking do not constitute



securities transactions under federal law. The statement focuses on staking activities within proof-of-stake (PoS) networks involving "Covered Crypto Assets" that are integral to network operations and used to validate transactions. Previously, the SEC had brought several enforcement actions alleging that custodial staking services were investment contracts, and therefore subject to the federal securities laws. All of these actions have since been dismissed or resolved.

The Division stated that three forms of staking—self-staking, self-custodial staking through third parties, and custodial staking by intermediaries—do not meet the "investment contract" criteria under *SEC v. Howey* when they have the features described in the statement, as they involve only administrative or ministerial actions rather than entrepreneurial or managerial efforts. The same reasoning generally applies to ancillary services such as slashing protection, early unbonding, and reward scheduling, provided these services do not involve discretionary decision-making. The analysis is fact-based and subject to change based on the particular facts of a program.

This statement is not a binding SEC action or precedent, but it is part of a significant shift in how the SEC is approaching blockchain and crypto-related activities and offerings.

SEC Staff Issues Statement on Stablecoins

The staff of the SEC's Division of Corporation Finance has issued a statement asserting that the offer and sale of certain fiat-backed stablecoins do not involve the offer and sale of securities under the federal securities laws. The statement addresses "Covered Stablecoins," defined generally as crypto assets pegged 1:1 to the U.S. dollar, backed by low-risk liquid reserves, and redeemable on demand for the U.S. dollar. Prior to this statement, the SEC had not clearly delineated when

Continued on page 5...

Updated SEC Guidance on Crypto-Related Products and Activities *(Continued from page 4)*

stablecoins would or would not be seen as securities, but had generally stated that "stablecoins, or certain parts of stablecoin arrangements, may be securities, commodities and/or derivatives."

The Division states that stablecoins as described in the release are not "notes" or "investment contracts" under the *Reves* or *Howey* tests, citing factors including their payment utility, absence of profit motive, and nonspeculative design. Covered Stablecoins must be marketed strictly for payment, storage, or transmission, not for investment, and must exclude features like yield, ownership rights, or governance. This analysis is fact-dependent and is subject to change depending on the specific characteristics of a specific stablecoin. This statement reflects the Division's view on a narrow class of stablecoins and does not extend to algorithmic or yield-bearing assets.

Since the issuance of this statement, the GENIUS Act has been enacted and will serve as primary law for payment stablecoins. For more information, please see our alert here.

SEC Crypto Task Force Holds Roundtables and Meets with Stakeholders

The SEC's Crypto Task Force has held hundreds of meetings with stakeholders in the digital asset space since February 2025. Participants include companies in the industry, law firms, trade associations, and individuals. The meetings have focused on a range of questions related to the regulation of crypto assets, including but not limited to issues surrounding token offerings, disclosure requirements, staking, custody, transactions involving exchanges and broker-dealers, and token classification.

These meetings form part of the Task Force's broader effort to clarify how federal securities laws apply to emerging digital asset business models and to solicit feedback from market participants. The SEC has not announced formal rulemaking tied to these discussions but continues to signal interest in developing practical approaches to enforcement and compliance in the crypto sector, including through its "Spring Sprint Toward Crypto Clarity" series of five roundtables with industry participants discussing how to define security status, crypto trading regulation, crypto custody considerations, tokenization, and decentralized finance (DeFi).

Members of Wilson Sonsini met with the Crypto Task Force on April 30, 2025. For more information, please see the public memorandum available here.

Other Securities and Commodities Law Developments

SEC Brings in New Leadership

The SEC has sworn in Paul Atkins as its 34th Chairman. Chairman Atkins stated that he intends to prioritize investor protection, with a focus on preventing fraud; fair, orderly, and efficient markets; and capital formation through clear rulemaking. The SEC has named new Division Directors, including Jamie Selway, a former partner at an alternative investment advisory and consulting firm, as Director of the Division of Trading and Markets; Brian Daly, a former global law firm partner specializing in investment management, as Director of the Division of Investment Management; and Natalia Díez Riggin, a former Senate committee staff member, as Director of Legislative and Intergovernmental Affairs.

CFTC Staff Seek Public Comment on Perpetual Derivatives

The staff of the CFTC's Divisions of Market Oversight, Clearing and Risk, and Market Participants has issued a request for comment on the potential uses, benefits, and risks of perpetual contracts in CFTC-regulated derivatives markets. Financial markets, including the crypto markets, have recently seen growing interest in perpetual derivatives, which monitor and settle the price benchmarking between the derivative and underlying spot instrument on a continuous basis such that there is less need for a specific termination date to be associated with a given derivatives contract.

The request, among other topics, seeks comments on the differing characteristics of perpetual derivatives, their risks, and the implications of their use in trading, clearing, and risk management.

Consumer Protection Developments

CFPB Withdraws Guidance Documents and Announces New Priorities

Consumer Financial Protection Bureau (CFPB) Acting Director Russell Vought stated in an announcement in the Federal Register that the CFPB has withdrawn 67 guidance documents, encompassing policy statements, interpretive rules and advisory opinions. Acting Director Vought stated that the withdrawal is "not necessarily final," as the CFPB "intends to continue reviewing all guidance documents to determine whether they should ultimately be retained." However, he stated that in the interim period, the guidance should not be enforced or otherwise relied on by the CFPB.

The guidance documents date back to the CFPB's founding and interpret most consumer financial protection laws, including the Fair Credit Reporting Act (FCRA), Truth in Lending Act, the Electronic Funds Transfer Act (EFTA), and the Consumer Financial Protection Act's prohibition on Unfair Deceptive and Abusive Acts and Practices (UDAAP). Specific guidance documents withdrawn include:

- Consumer Financial Protection Circular 2024-03, which stated that unlawful or unenforceable terms and conditions in contracts for consumer financial products and services may violate the prohibition on deceptive acts or practices in the Consumer Financial Protection Act (CFPA).
- The CFPB's interpretive rule addressing the applicability of Regulation Z to Buy Now, Pay Later (BNPL) products.
- Consumer Financial Protection Circular 2024-02, which stated that remittance transfer providers may be liable under the CFPA for deceptive marketing about the speed or cost of sending a remittance transfer.
- Consumer Financial Protection Circular 2023-01, which addressed when negative option marketing practices may violate the CFPA's prohibition on UDAAP.
- Consumer Financial Protection Circular 2024-05, which stated that a financial institution can be in violation of the EFTA and Regulation E if there is no proof that it obtained affirmative consent to enrollment in covered overdraft services.

Acting Director Vought noted that, going forward, it will be the CFPB's policy to "avoid issuing guidance except where necessary and where compliance burdens would be reduced rather than increased."

CFPB Plans to Revamp Open Banking Rule

A federal judge in the Eastern District of Kentucky has paused a lawsuit challenging the CFPB's Personal Financial Data Rights Rule, commonly known as the Section 1033 or open banking rule, after the CFPB stated in a court filing that it plans to "engage in an accelerated rulemaking process" to rewrite the rule. The development is the CFPB's second change of position on the lawsuit, which was brought by a coalition of banks that have argued that the rule exceeds the CFPB's statutory authority. While the CFPB initially defended the rule, it reversed course in May, stating then that it believed the rule is "unlawful and should be set aside." The judge overseeing the case then permitted the Financial Technology Association (FTA) to step in to defend

the rule. The FTA and other trade associations additionally wrote a joint letter to President Trump urging his administration to preserve the rule.

The CFPB stated in its latest court filing that its plan to rewrite the rule, rather than scrap it, is due to "recent events in the marketplace," and that it plans to issue an advanced notice of proposed rulemaking serving as a starting point for a rewritten rule in August 2025. The CFPB said that the rewritten rule will "substantially revise" the current rule.

California DFPI 2024 Report Highlights Expanded Rulemaking, Consumer Complaints

The California Department of Financial Protection and Innovation (DFPI) has released its fourth annual report highlighting increases in investigations, public actions, and consumer outreach under the California Consumer Financial Protection Law. Key results from the report that the DFPI highlighted include a 12 percent increase in investigations from 2023, a six percent increase in consumer complaints to the agency, with almost half of complaints involving crypto assets, and a doubled number of page views to DFPI's Crypto Scam Tracker.

Banking Regulatory Developments

Request for Information on Potential Actions to Address Payments Fraud.

The OCC, the Federal Reserve, and the Federal Deposit Insurance Corporation (FDIC) have issued a Request for Information seeking public input on potential actions to address payments fraud. This initiative aims to gather insights from stakeholders on mitigating fraud in check, automated clearing house, wire, and instant payments. The agencies note that payment fraud, and particularly check fraud, have risen in recent years and are seeking comments on five potential areas for improvement and collaboration to help mitigate fraud. These five areas are: 1) external collaboration; 2) consumer, business, and industry education; 3) regulation and supervision; 4) payments fraud data collection and information sharing; and 5) Reserve Banks' operator tools and services. In each of these areas, the agencies provide specific questions for commenters to respond to.

OCC Reaffirms Preemption Regulations

In response to a request from the Conference of State Bank Supervisors (CSBS) for the OCC to rescind its preemption regulations, the OCC has reaffirmed the regulations, asserting their consistency with federal law, Supreme Court precedent, and recent Executive Orders. The CSBS had argued that the OCC's preemption regulations exceeded the agency's authority under the Dodd-Frank Act, which provides that a state consumer financial law is preempted only if discriminatory towards national banks or if it "prevents or significantly interferes with the exercise by the national bank of its powers."

In the OCC's response, Acting Comptroller of the Currency Rodney Hood emphasized that federal preemption is essential for the efficient and competitive operation of federally chartered banks, enabling them to operate under a uniform set of rules and contribute to national economic growth.

Federal Reserve Removes Reputational Risk from Examinations

The Federal Reserve has announced that it plans to remove reputational risk as a component of its examination programs in its supervision of banks. The change follows both the OCC and FDIC announcing similar moves, which remove as a factor from examinations the risk of negative public opinion arising from banks conducting a given activity. The Federal Reserve noted that the change does not alter its "expectation that banks maintain strong risk management to ensure safety and soundness and compliance with law and regulation," nor does it impact the ability of banks that the Federal Reserve supervises to use reputational risk in their own risk management practices.

Vice Chair for Supervision Bowman Discusses Role of Guidance in Supervision

Federal Reserve Vice Chair for Supervision Michelle Bowman discussed her views on the role of guidance in banking supervision as part of broader remarks at Georgetown University. In her remarks, Vice Chair Bowman stated that guidance can be an effective tool "to promote transparency in supervisory expectations, to provide clarity to regulated institutions on the permissibility of new activities and their associated risks, and to provide firms some perspective on how they may comply with statutory and regulatory requirements." Vice Chair Bowman stated that where guidance does not further these objectives, it should be revisited. Vice Chair Bowman indicated that she supported revisiting guidance that addresses issues that may adversely affect innovation, including guidance bearing on third-party risk management by banks.

Acting Comptroller of the Currency Hood Emphasizes Support for Innovation

Acting Comptroller of the Currency Rodney Hood delivered remarks at the U.S. Chamber of Commerce Capital Markets Forum, where he emphasized the OCC's commitment to fostering a resilient and innovative financial system. Acting Comptroller Hood highlighted the OCC's efforts to accelerate bank-fintech partnerships with tools like regulatory sandboxes and virtual office hours and highlighted the agency's recent conditional approval of a national bank's transformation into a technology-driven small business lender. Acting Comptroller Hood also stated that the OCC continues to focus on providing clarity for banks seeking to engage with digital assets and AI-related technologies.

Crypto-Related Banking Regulatory Developments

OCC Clarifies Bank Authority Regarding Crypto-Asset Custody Services

The Office of the Comptroller of the Currency (OCC) has confirmed in Interpretive Letter 1184 that national banks and federal savings associations may provide and outsource cryptocurrency custody and execution services on behalf of customers, including buying and selling assets held in custody at the customer's direction. Interpretive Letter 1184 reaffirms the authority outlined in Interpretive Letters 1170 and 1183, which state that banks may engage in crypto-asset custody services in both fiduciary and non-fiduciary capacities. Banks may also use sub-custodians for these services, provided they adhere to appropriate third-party risk management practices.

Agencies Withdraw Joint Statements on Crypto-Assets

The FDIC and Federal Reserve have withdrawn two joint statements regarding banking organizations' crypto-asset-related activities. The withdrawn joint statements, which were issued on January 3, 2023, and February 23, 2023, addressed crypto-asset risks and liquidity risks to banking organizations resulting from crypto-asset market vulnerabilities. In the withdrawn statements, the agencies had indicated that they were taking "a careful and cautious approach" to crypto-related activities and that they believed issuing or holding as principal crypto assets was "highly likely to be inconsistent with safe and sound banking practices."

In the agencies' press release announcing the withdrawal, they note that they, along with the OCC, are "exploring issuing additional clarity with respect to banking organizations' crypto-asset and related activities in the coming weeks and months."

State Payments Developments

States Update Money Transmission Laws

A pair of states have announced updates to their money transmission laws. Colorado will adopt the Money Transmission Modernization Act (MTMA) in part, effective August 6, 2025. The act will replace the state's previous money transmission law and will result in changes for Colorado-licensed money transmitters including adding a rebuttable presumption of control when a person holds the power to vote at least 10 percent of the outstanding voting shares of a licensee or person in control of a licensee, enabling Colorado's participation in multistate licensing initiatives, codifying an agent-of-the payee exemption to licensure, and raising minimum net worth requirements for licensees.

Meanwhile, Massachusetts will transition existing Foreign Transmittal Agency and Check Seller licensees to its new Money Transmitter license during the 2025 licensure renewal cycle. The transition comes as Massachusetts adopts the MTMA in part, with the state set to regulate domestic money transmitters for the first time. Notably, the new law defines "money transmission" as only encompassing "transactions engaged in by a person for personal, family or household purposes," excluding entities that solely facilitate business-to-business payments from licensure.

According to an FAQ from the Massachusetts Division of Banks, existing licensees must file a licensing transition request through the National Multistate Licensing System during the renewal period beginning November 1, 2025. Entities who had not previously been required to be licensed must file an application for licensure by July 1, 2026, and may continue conducting business while their application remains pending.

Pennsylvania to Include Virtual Currency in Scope of Money Transmission

Pennsylvania Governor Josh Shapiro has signed into law legislation amending Pennsylvania's Money Transmitter Act to extend the same requirements to transmitters of virtual currency as those that currently apply to transmitters of traditional money or credit. Under the amended law, entities that engage in the business of transmitting virtual currency for a fee or other consideration will be required to obtain a money

Continued on page 9...

State Payments Developments *(Continued from page 8)*

transmission license and meet associated requirements, including posting a surety bond and maintaining a minimum tangible net worth. The law carves out from its scope most transactions involving self-hosted wallets and business-to-business payments.

The law's new provisions take effect August 26, 2025. Once the provisions are effective, Pennsylvania will join numerous other states that regulate the transmission of virtual currency as money transmission, including Connecticut, Minnesota, and North Carolina.

CSBS Releases Guidance on Virtual Currency for Money Transmission Licensees

The CSBS has released non-binding guidance detailing how licensees should factor in virtual currency when calculating minimum required tangible net worth under the MTMA. The guidance states that licensees should generally consider virtual currency assets held on their balance sheets to be intangible assets for purposes of this calculation, except where the licensee holds corresponding customer liabilities for virtual currency assets in the ordinary course of business. For more information on this guidance, please see our client alert.

New York Enacts BNPL Legislation

New York Governor Kathy Hochul has signed into law legislation establishing a licensing and regulatory framework for Buy Now, Pay Later (BNPL) providers. The NY BNPL Act is the first state law creating specific licensing obligations for BNPL providers and applies to BNPL loans made to individuals who are New York residents.

Under the law, most BNPL providers will be required to obtain a license to offer BNPL loans, while certain banking organizations may obtain approval through a streamlined authorization process. National banks and federal thrifts are generally exempt from the

licensing and registration requirement. BNPL providers will not be permitted to charge interests or fees exceeding an amount to be set by New York State Department of Financial Services (NY DFS), and they must disclose the key terms of BNPL loans clearly and conspicuously, in a manner that complies with forthcoming regulations from NY DFS. Additional requirements govern required policies and procedures, resolution of consumer disputes, and data sharing. The law will take effect 180 days after NY DFS publishes rules to implement it.

Payments-Related Enforcement Updates

FDIC Announces Enforcement Action for Credit Card Misclassification

The FDIC has issued three enforcement orders against a large bank, consisting of a cease and desist order, a civil money penalty, and a restitution order. These actions address violations related to the bank's practices in marketing and servicing credit card accounts, including deceptive practices and unfair billing practices. The FDIC stated in the press release accompanying the orders that the bank misclassified millions of consumer credit cards as commercial cards, resulting in merchants being overcharged over $1 billion in interchange fees when accepting payments with the misclassified credit cards.

NY DFS Fines Payments Company $40 Million for BSA/AML Compliance Failures

NY DFS Superintendent Harris has announced that a company that operates a peer-to-peer payments service will pay a $40 million penalty for significant failures in its Bank Secrecy Act/ Anti-Money Laundering (BSA/AML) compliance program, which violated

Continued on page 10...

Payments-Related Enforcement Updates *(Continued from page 9)*

NY DFS's money transmitter and virtual currency regulations. NY DFS's investigation revealed critical gaps in the company's BSA/AML program, including inadequate customer due diligence, insufficient risk-based controls, and failure to monitor transactions effectively. The company's treatment of high-risk Bitcoin transactions and a transaction alert backlog allegedly exacerbated these issues. Under the consent order, an independent monitor will ensure that the company develops a successful compliance program to prevent future illicit activity.

Money Transfer Provider Settles with NY Attorney General for Consumer Protection Violations

New York Attorney General Letitia James has announced that a money transfer service provider agreed to a $250,000 settlement to resolve allegations that the company violated federal and state consumer protection laws. The lawsuit alleged that the company failed to timely transfer funds, provide refunds, and investigate and resolve errors. It also alleged that the company failed to provide accurate disclosures to customers and failed to develop and maintain policies and procedures to ensure compliance with consumer protection laws. The CFPB was initially a party to the lawsuit but ultimately ended its participation. The settlement requires the company to transfer funds and process refunds on time, properly investigate errors, and provide accurate disclosures, among other requirements.

Retailer Settles with FTC for Failing to Detect and Prevent Its Money Transfer Services from Being Used for Fraud

The Federal Trade Commission (FTC) has announced that a large retailer agreed to a $10 million settlement to resolve allegations that the company allowed scammers to use its in-store money transfer services. The FTC alleged that the company knew its money transfer services were used to perpetrate fraud, yet failed to take steps to detect and prevent fraud-induced transfers. Among other violations, the FTC alleged that the company failed to adopt policies and provide employee training to adequately detect and mitigate fraud. The proposed settlement prohibits the company from providing money transfer services without taking action to effectively detect and prevent fraud-induced transfers or sending or paying out transfers it knows or consciously avoids knowing are fraud-induced.

Online Cash Advance Company Settles FTC Allegations for $17 Million

An online cash advance company has agreed to pay $17 million to settle FTC allegations that it deceived consumers about the amount and speed of cash advances that it provided. The complaint charges that the company's ads promised consumers access to hundreds of dollars in cash advances, but that almost no consumers received the advertised amounts. Additionally, the complaint alleged that when consumers paid extra fees for same-day delivery, they often had to wait until the next day for their money. Finally, the complaint alleged that the company made it challenging for consumers to cancel subscriptions, with some being charged monthly fees despite repeated cancellation requests.

The proposed settlement order prohibits the company from misleading consumers about any material terms of its advances, requires clear disclosure of subscription terms, mandates obtaining consumers' express consent before charging for subscriptions, and requires providing a simple way for consumers to cancel. The $17 million payment will be used to provide refunds to consumers harmed by the company's practices.

Other Crypto-Related Enforcement Updates

DOJ Files Forfeiture Complaint over $225M in Crypto Linked to Fraud Schemes

The U.S. Department of Justice (DOJ) announced that it has filed a civil forfeiture complaint in the U.S. District Court for the District of Columbia targeting over $225 million in cryptocurrency. The funds are allegedly tied to "cryptocurrency confidence scams," in which victims were misled into fraudulent digital asset investments.

According to the complaint, the seized assets were traced through blockchain analysis to a complex laundering network that executed hundreds of thousands of transactions in an effort to obscure the origin of the illicit proceeds. The forfeiture represents the largest crypto seizure in U.S. Secret Service history and involved collaboration between the FBI and Secret Service field offices in San Francisco.

Investigators identified over 400 suspected victims and cited more than $5.8 billion in related investment fraud losses reported in 2024. Prosecutors from the Criminal Division's Computer Crime & Intellectual Property Section and the U.S. Attorney's Office for the District of Columbia are overseeing the case.

DOJ Sentences Individual for SIM Swap Attack on SEC Social Media Account

The DOJ announced a 14-month prison sentence and three years of supervised release for Eric Council Jr., who pleaded guilty to conspiracy charges stemming from the unauthorized takeover of the SEC's X (formerly Twitter) account.

According to court filings, Council executed a SIM swap to seize control of the SEC's account, enabling co-conspirators to post a false announcement that the SEC had approved Bitcoin ETFs. The announcement caused a rapid price spike in Bitcoin, followed by a sharp drop after the correction. Council used a forged ID containing a victim's stolen personal information to facilitate the fraud and was paid in Bitcoin for his role.

Federal officials emphasized the case as part of broader efforts to safeguard digital platforms, prevent market manipulation, and prosecute cyber-enabled financial crimes.

SEC Announces Dismissal of Actions Against More Crypto Companies

The SEC has entered into joint stipulations to dismiss, with prejudice, civil enforcement actions with several additional crypto companies. These actions involved claims that the entities engaged as unregistered exchanges and broker-dealers and in other allegedly illegal activities.

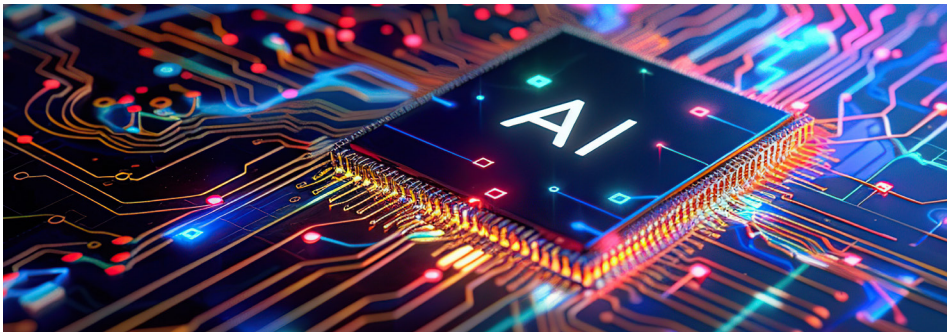
The SEC stated that it has determined the dismissal of these actions are appropriate in light of potential policy changes at the SEC, though it clarified that the dismissal of these matters do not necessarily reflect the SEC's position on any other litigation or proceeding.

Artificial Intelligence (AI) Enforcement Updates

FTC Order Requires Workado to Back Up AI Detection Claims

The FTC has issued a proposed order against Workado, LLC, alleging the company falsely advertised its AI Content Detector as 98 percent accurate at identifying whether text was written by a human or by generative AI tools. According to the FTC's administrative complaint, independent testing showed the tool was only 53 percent accurate when evaluating non-academic text and had been trained using a large dataset of academic text, consisting of human-written research abstracts and ChatGPT-generated research abstracts, despite claims of broader applicability.

The proposed settlement bars Workado from making effectiveness claims about any product without "competent and reliable" evidence and requires it to retain substantiation for such claims. The company must also notify eligible consumers of the FTC's action, submit compliance reports annually for three years, create and retain records in areas including accounting, personnel, and marketing for up to 15 years, and respond



to written compliance monitoring requests from the FTC within 10 days of receipt. The agreement is subject to public comment before becoming final.

SEC Charges Founder of and Former CEO of AI Start-Up for Misleading Investors About AI Capabilities

The SEC has filed a complaint in the Southern District of New York against the founder and former CEO of an e-commerce company, for allegedly fraudulently raising over $42 million by misrepresenting the functionality of the company's online shopping app.

The SEC alleges that the former CEO falsely claimed the app used AI) to automate purchases when, in fact, transactions were manually processed by overseas contractors. The alleged misrepresentations occurred during both seed and Series A fundraising rounds between 2019 and 2021. The former CEO also staged product demonstrations and maintained allegedly deceptive communications with investors, despite knowing that the company had not developed working AI technology.

The company ceased operations in January 2023 after a media investigation raised questions about its claims. The SEC seeks injunctive relief, disgorgement, civil penalties, and a permanent officer-and-director bar against the former CEO.

Select Publications

***Law360* Article**
3 Action Items for Innovators Amid Fintech Regulatory Pivot

Wilson Sonsini Alert
SEC's Division of Corporation Finance Issues Views on Disclosure for Securities in Crypto Asset Markets

Wilson Sonsini Alert
Navigating the Future of Stablecoins: Highlights from the Proposed GENIUS Act

Wilson Sonsini White Paper
The AI in Wealthtech Field Guide

Wilson Sonsini Alert
A GENIUS Act Gameplan: Strategic Paths for Payment Stablecoin Issuers

Wilson Sonsini Client Advisory
Payments Playbook Series: Agentic Payments Playbook

Wilson Sonsini Client Advisory
Fintech in Brief: Treasury Postpones Effective Date of Investment Adviser AML Rule, Plans Revisions

Investment Adviser Association's *IAA Today* Article
AI in Wealthtech: Navigating the Next Era of Wealth Management

Practice Highlights and Speaking Engagements

Wilson Sonsini Partner Jess Cheng Inducted as ACCFL Fellow

Fintech and Financial Services partner Jess Cheng has been inducted as a Fellow of the American College of Commercial Finance Lawyers (ACCFL). Membership to the ACCFL is limited to commercial finance lawyers, jurists, and academics who have not only achieved preeminence in the field of commercial finance law, but who also have contributed significantly to the education of others in commercial finance law through teaching, lecturing, or published writings. This honor acknowledges Jess's contributions to the commercial law of payments and her reputation as a prolific writer, speaker, and renowned expert in electronic payment systems.

Wilson Sonsini Partners Amy Caiazza and Scott McKinney Present on AI in Wealthtech

Fintech and Financial Services partner Amy Caiazza and Technology Transactions partner Scott McKinney hosted the webinar "AI-volution | Expect the Unexpected! Issues Wealthtechs Confront in Using AI" on July 17, 2025. The webinar explored unexpected legal and regulatory questions wealthtech companies may face when using AI and addressed issues for registered investment advisers, broker-dealers, and the technology companies that partner with them.

Amy Caiazza and Scott McKinney presented on "The Intersection of AI Use and Unexpected Regulatory Requirements" to more than 500 members of the Securities Industry and Financial Markets Association (SIFMA) on June 25, 2025. The interactive presentation was targeted towards strategy officers, legal and compliance officers, and general counsels, and covered, among many other topics, the less obvious issues that the regulated financial firms would need to consider in conjunction with novel AI usage.

Jess Cheng Speaks at Federal Reserve Board Conference

Jess Cheng joined Gordon Liao (Circle) and Harish Natarajan (World Bank) for a panel titled, "Cross-Border Payments Innovations: Tackling the Last Mile Problem," organized by the Federal Reserve Board at the "Unleashing a Financially Inclusive Future" Conference on July 15, 2025. The panel explored innovative approaches to solving the "last mile" problem in international transactions and distilled how emerging technologies and policy initiatives are working to make cross-border payments more accessible, affordable, and efficient for all.

Jess Cheng Speaks on Panel Hosted by the Boston Blockchain Association

Jess Cheng joined Ryan Louvar (WisdomTree), Jason Ward (Fidelity Center for Applied Technology), and Richard Johnson (Texture Capital) on a panel titled, "Digital Asset Tokenization," organized by the Boston Blockchain Association, held in Boston on July 8, 2025. The panel featured leading voices from the institutional blockchain ecosystem, exploring how tokenization is evolving across financial markets, and how forward-thinking firms are navigating innovation in a compliant manner.

Jess Cheng Speaks at Transfer by Modern Treasury

Jess Cheng joined Elizabeth Dobbs (Alegeus), Isabelle Meyer Stapf (Realpage), and Bob Sneed (Conservice) on a panel titled, "Redefining Trust: Leading Through Ledgers," at Transfer by Modern Treasury, held in San Francisco on May 15, 2025. The panelists discussed how modern ledger infrastructure is transforming financial operations.

Amy Caiazza Speaks at KPMG's Fintech Share Forum

Amy Caiazza joined Amy Matsuo (KPMG LLP) for a panel discussion on policy and regulatory changes under the new administration at KPMG's Fintech Share Forum on May 7, 2025. The panel delved into industry insights, regulatory updates, and tax and accounting changes that would impact the fintech landscape.

Jess Cheng Speaks at Smarter Faster Payments Conference

Jess Cheng joined Nuveen Dhingra (Stripe), Megan Lindgren (Federal Reserve Bank of New York), and Joseph Torregrossa (Federal Reserve Financial Services) for a panel titled, "Crypto Summer: Developments and Impact of the Payments Landscape," at the Smarter Faster Payments Conference, held in New Orleans on April 28, 2025. The panel explored the key developments in cryptocurrency and distributed ledger technology, with a focus on how they are impacting the payments landscape. The panelists discussed the integration of digital currencies into mainstream financial systems, the impact of new regulatory frameworks, and the adoption of crypto by major corporations and financial institutions, along with the challenges and opportunities arising from these changes.

Jess Cheng Speaks at ABA Business Law Section Spring Meeting

Jess Cheng again joined Nuveen Dhingra (Stripe) and Megan Lindgren (Federal Reserve Bank of New York) for a meeting of the ABA Tokenized Payment Instruments Task Force at the ABA Business Law Section Spring Meeting, held in New Orleans on April 24, 2025. The meeting explored the key market

Continued on page 14...

Practice Highlights and Speaking Engagements *(Continued from page 13)*

developments in crypto and blockchain/DLT, with a focus on how they are impacting the payments landscape, their integration into financial services, and major regulatory and policy changes.

Amy Caiazza Speaks at Fintech Builders & Buyers Conference

Amy Caiazza spoke on a panel on regulatory changes in fintech at the KBW & Stifel Ventures Fintech Builders & Buyers Conference on April 23, 2025.

Jess Cheng Speaks at New York Fed Innovation Conference

Jess Cheng joined Robbie Mitchnick (Blackrock), Leo Mizuhara (Circle), and moderator Megan Lindgren (Federal Reserve Bank of New York) for a panel titled, "Approaches to Regulatory Compliance and Challenges in Tokenization," at the New York Fed Innovation Conference, held in New York City on April 4, 2025. The conference explored topics related to the role of banks in the evolving technological landscape, macroeconomic resiliency and risks in the age of AI, and the tokenization of traditional financial assets.

Upcoming Events

Members from Wilson Sonsini's Fintech and Financial Services practice are planning to be at the following events in Fall 2025; we welcome you to reach out if you or your company will also be in attendance.

Future Proof Festival
September 7-10, 2025, in Huntington Beach, Calif.

SIFMA Women's Leadership Forum
September 16, 2025, in New York

DC Fintech Week
October 14-17, 2025, in Washington, D.C.

National Society of Compliance Professionals National Conference
October 26-29, 2025, in Orlando, Fla.

Fintech NerdCon
November 18-20, 2025, in Miami, Fla.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