Crypto Policy Tracker

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Clarity Act Fails Senate Vote, SEC Issues Tokenized Stock Innovation Exemption, CFTC Issues No-Action Relief for Passive Software Providers, Prediction Markets Litigation Advances

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The Senate failed to advance the Clarity Act after a 49–50 vote against invoking cloture on the motion to proceed on Sept. 15, falling short of the 60 votes required, with SEC Chairman Paul Atkins and CFTC Chairman Michael Selig each pledging to deliver crypto rules under existing statutory authority. On Sept. 17, the SEC issued a five-year conditional exemptive order permitting “Tokenized Securities Venues” to trade tokenized versions of publicly listed U.S. stocks on blockchain-based pools without registering as traditional stock exchanges, a step Chairman Atkins described as bringing U.S. capital markets into the digital age.

The CFTC’s Market Participants Division broadened its earlier no-action relief to all qualifying passive software providers, stating it will not recommend enforcement for failure to register as an introducing broker solely in connection with providing software that passively enables users to trade on registered intermediaries. The CFTC submitted a proposed rule titled “Regulation Crypto Asset Transactions and Regulation Crypto Asset Markets” to the Office of Information and Regulatory Affairs. The text of the proposal is not yet public. The House Ways and Means Committee voted 38–5 to approve H.R. 10357, the Digital Asset Tax Certainty Act, which would establish a comprehensive federal income tax framework for digital assets. The SEC held a roundtable on preparations for 24-hour trading.

Federal banking regulators proposed new principles-based third-party risk management guidance to replace the 2023 interagency guidance and issued a joint statement on community bank engagement with core service providers. Litigation relating to prediction markets continued on multiple fronts, with two platforms petitioning the U.S. Supreme Court to resolve a circuit split on whether sports-event contracts are swaps subject to exclusive CFTC jurisdiction, and federal courts issuing rulings in cases involving tribal gaming claims.

Congressional Updates

Senate Fails to Advance the Clarity Act

- On Sept. 15, the Senate voted 49–50 against invoking cloture on the motion to proceed to H.R. 3633, the Digital Asset Market Clarity Act, falling short of the 60 required. Democrats and Independents present voted against the motion, citing concerns over ethics, conflicts of interest, consumer protection and national security. Four Republicans also voted "no." Sen. Tillis filed a motion to reconsider, preserving a path to revisit the vote. One senator did not vote. Afterward, Sen. Tillis wrote: "This is not the end for the Clarity Act. We've made substantial bipartisan progress in large part because of the White House. This procedural motion allows us to continue working towards a positive outcome." Seven Senate Democrats issued a statement that they are "committed to working in a bipartisan fashion" to pass the bill, amid efforts to restart negotiations.
- On Sept. 16, SEC Chairman Paul Atkins stated: "[w]ith or without legislation, we will act decisively within the SEC's statutory authority to deliver certainty for American investors and for the entrepreneurs shaping our technological future." CFTC Chairman Michael Selig separately stated that the agency would use existing statutory authorities to advance crypto rules, adding: "The CFTC is locked in and ready to ship its rules for the new frontier of finance."
- On Sept. 17, the CFTC submitted a proposed rule titled "Regulation Crypto Asset Transactions and Regulation Crypto Asset Markets" to the Office of Information and Regulatory Affairs. The text of the proposal is not yet public.

House Ways and Means Committee Advances Digital Asset Tax Framework

- On Sept. 16, the House Ways and Means Committee voted 38–5 to approve H.R. 10357, the Digital Asset Tax Certainty Act, a bipartisan bill introduced by Chairman Jason Smith (R-MO) that would establish a federal income tax framework for digital assets. A fact sheet is also available. The bill would exempt from gain or loss recognition digital asset dispositions to pay network or transaction fees of $10 or less; establish simplified accounting for gain and loss on widely traded digital assets; provide rules for qualified U.S. dollar stablecoin transactions; and extend wash-sale and constructive-sale rules to digital assets. Chairman Smith stated that the legislation would establish "the first-ever tax framework for digital assets." A Joint Committee on Taxation description and revenue estimate are available.

Regulatory Updates

SEC Issues 'Innovation Exemption' for Trading of Tokenized Stock

- On Sept. 17, the SEC issued an order granting five-year, conditional exemptive relief to "Tokenized Securities Venues" or TSVs to trade tokenized versions of publicly listed U.S. stocks on blockchain-based, permissioned automated trading pools without registering as a traditional stock exchange. The order also allows certain firms providing liquidity to those pools to forgo dealer registration. A fact sheet is also available.
- Tokenized stock includes stock tokenized by the issuer or an unaffiliated third party, but excludes securities providing only synthetic exposure, such as tokenized linked securities or tokenized security-based swaps. Before a TSV can list stock tokenized by someone other than the issuer, it must give the issuer 30 days' written notice; the issuer can object and block the listing. The TSV must verify that the tokenized stock provides holders the same rights and privileges as traditional stock of an equivalent class, including dividend, voting and liquidation rights. TSVs themselves must be U.S. persons and comply with symbol and volume caps, public notice requirements and transaction transparency obligations. Furthermore, they must coordinate trading-halts with primary listing exchanges, are prohibited from taking on leverage and must adhere to books and records requirements, among other things. Primary issuances of securities or initial offerings are

not allowed on a TSV under the exemption. Smart contracts used by a TSV must be auditable, public and deployed on a public, permissionless blockchain.
- The order solicits public comment on all aspects of the exemptive relief, including whether to make it permanent and extend it to other types of securities. SEC Chairman Paul Atkins issued a statement describing the exemption as a step toward bringing U.S. capital markets into the digital age. Commissioner Hester Peirce issued a separate statement calling the order an interim step toward permanent rules. Commissioner Mark Uyeda stated that the exemption follows a tradition of the Commission using scoped relief to experiment responsibly and inform data-driven rulemaking, and encouraged detailed, data-supported public comment.

CFTC Staff Issues No-Action Position to Providers of Passive Software

- On Sept. 17, the CFTC's Market Participants Division (MPD) issued a no-action position (Staff Letter No. 26-25) for passive software providers. Subject to specified conditions, MPD will not recommend enforcement against any such provider or relevant personnel for failure to register as an introducing broker or associated person of an introducing broker, solely for provision and marketing of software to facilitate trading by the provider's users with registered futures commission merchants, introducing brokers and designated contract markets.
- The position broadens no-action relief MPD first provided in March in Staff Letter No. 26-09 (press release) in response to a request from a developer of self-custodial crypto asset wallet software.

SEC Holds Roundtable on Preparations for 24-Hour Trading

- On Sept. 17, the SEC held a roundtable on expanding 24-hour trading in U.S. equities markets. In his remarks, Chairman Paul Atkins called it a "new day — and night" for capital markets, noting that longer exchange hours could improve investor protection, global access and liquidity, while tokenization could enable real-time inventory management, thereby reducing settlement failures. Commissioner Hester Peirce noted some market participants' concerns regarding the shift to extended hours trading and urged stakeholders to identify areas where rulemaking is needed. Jamie Selway, Director of the Division of Trading and Markets, provided historical context and noted that market-data infrastructure is planned to expand to 23-by-5 on Dec. 6, allowing approved exchanges to offer trading on a 23-hour, five-day trading week. Commissioner Mark Uyeda noted that while technology is no longer the limiting factor on trading hours, questions remain about the readiness of clearing, settlement and default management systems for overnight sessions and whether expanded trading may redistribute or dilute liquidity across different securities.

Federal Banking Regulators Propose New Third-Party Risk Management Guidance

- On Sept. 11, the OCC, the Board of Governors of the Federal Reserve System, the FDIC and the NCUA proposed interagency guidance that when adopted will rescind and replace the 2023 *Interagency Guidance on Third-Party Relationships: Risk Management* with new, nonbinding, principles-based guidance to help banks and credit unions tailor third-party risk management to the risks of individual relationships. The proposed guidance reflects the agencies' supervisory experience and lessons learned and responds to feedback that the 2023 guidance was often interpreted in an "overly broad manner and with an insufficient focus on tailoring risk management principles." Comments are due on or before Nov. 16. For more information, please read here.

Federal Banking Agencies Issue Joint Statement on Community Bank Engagement With Core Service Providers

- On Sept. 11, the OCC, FRB and FDIC issued a "Joint Statement on Community Banks' Engagement with Core Service Providers" clarifying the agencies' risk-based supervision of certain services that core providers deliver to community banking organizations. The statement identifies factors for supervisory allocation decisions on core provider examinations, including the core provider's transparency with community banks; contract features such as opaque pricing, excessive deconversion fees and limits on integration with other service providers; and the adequacy of its technology investments and operational resilience. The Joint Statement also notes that core providers may qualify as "institution-affiliated parties" under the Federal Deposit Insurance Act and can be held liable for a community bank's practices or violations given their integral role in carrying out the business of banking and functions of community banking organizations.

Additional Updates

Prediction Markets Updates

- On Sept. 10, the Connecticut Department of Consumer Protection (DCP)) issued cease-and-desist orders to prediction market operators in the state. The DCP's press release asserted that prediction markets offering sports wagers in Connecticut violate the state's gaming and unfair trade practices laws.
- On Sept. 10 and 11, two prediction market platforms filed separate petitions for writs of certiorari (No. 26-338; No. 26-344) challenging the 9th Circuit's Aug. 28 decision holding that sports-event contracts traded on CFTC-regulated designated contract markets are not "swaps" under the Commodity Exchange Act and therefore are not shielded from state gaming laws. The petitions ask the U.S. Supreme Court to resolve the circuit split with the 3rd Circuit, which held in April 2026 that such contracts are swaps subject to exclusive CFTC jurisdiction preempting state gambling regulation.
- On Sept. 11, the U.S. District Court for the Western District of Wisconsin certified for interlocutory appeal its prior order allowing an Indian tribe's claims under the Indian Gaming Regulatory Act to proceed against prediction market platforms offering sports-event contracts on tribal land. The court found novel legal questions on which courts nationwide have reached mixed conclusions and that the issues will likely reach the U.S. Supreme Court. It stayed all proceedings pending the 7th Circuit's resolution of the certified questions.
- On Sept. 14, the U.S. District Court for the Southern District of New York held a preliminary injunction hearing in the CFTC's action to enjoin New York from enforcing state gambling laws against CFTC-regulated designated contract markets and futures commission merchants offering event contracts.
- On Sept. 16, the U.S. Court of Appeals for the 9th Circuit reversed in part the Northern District of California's denial of a preliminary injunction sought by two federally recognized California tribes under the Indian Gaming Regulatory Act. The unanimous three-judge panel held that the tribes are likely to succeed on their claims.
- On Sept. 16, a prediction market platform filed a federal lawsuit against Connecticut officials seeking declaratory and injunctive relief to block Connecticut's enforcement of cease-and-desist orders targeting sports-event contracts.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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