

November 2025

Follow us on [LinkedIn](#) 

Crypto Policy Tracker

Federal Government Is Back to Work: Updates on Market Structure Legislation, *Howey* Test Application, ETP Staking, Crypto Spot Trading and Stablecoin Demand

By [Chris Daniel](#), [Eric C. Sibbitt](#), [Dana V. Syracuse](#), [Josh Boehm](#), [Meagan E. Griffin](#), [Mike Spafford](#), [Steve Turanchik](#), [Lisa E. Rubin](#), [Sarah Quattrocchi](#), [Dina Ellis Rochkind](#) and Samantha Ackel

With the government shutdown ending, federal agencies, including the CFTC and SEC, are resuming operations and making further progress on crypto-related policy.

On Capitol Hill, the Senate Agriculture Committee released a discussion draft of market structure legislation that builds off of the CLARITY Act, which would govern the CFTC's authority to regulate digital assets. At the agencies, SEC Chair Paul Atkins delivered remarks outlining various categories of crypto assets, or a "token taxonomy," to provide clarity surrounding the scope of the SEC's regulatory authority, and he also discussed the agency's evolving application of the *Howey* test to digital assets. CFTC Acting Chair Caroline Pham stated that the agency is working to bring legislative clarity to crypto spot markets and expects spot trading on Designated Contract Markets to begin by the end of the year. Federal Reserve Governor Stephen Miran and Treasury Secretary Scott Bessent each gave speeches regarding the impact of increasing demand for stablecoins on the U.S. economy.

Congressional Updates

Senate Agriculture Committee Releases Draft Market Structure Legislation

- On Nov. 10, Senate Agriculture Committee Chair John Boozman (R-AK) and Sen. Cory Booker (D-NJ) [released](#) a [discussion draft](#) of market structure legislation governing the CFTC's authority to regulate digital assets, which builds off of the CLARITY Act ([H.R. 3633](#)), by defining digital commodities, establishing consumer protections and regulating spot trading. Specifically, the bill:
 - Broadly defines digital commodities as "any fungible digital asset that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, and is recorded on a cryptographically secured public distributed ledger." It does not include, among other things, any security or security derivative, permitted payment stablecoin or digital asset that conveys ownership of an underlying commodity. *See Sec. 101, p. 13.*
 - Creates several new CFTC registrants, including:

- Digital commodity exchanges: Trading facilities that offer or seek to offer cash or spot market execution must register with the CFTC as a digital commodity exchange, unless the trading facility only serves customers in a single state, territory or U.S. possession. See *Sec 204, p. 70-71*.
- Digital commodity brokers and dealers: Persons acting as digital commodity brokers or dealers must register with the CFTC, unless they engage in only a de minimis amount of digital activity (as determined by the CFTC) or serve only customers in a single state. See *Sec. 205, p. 110-111*.
- Establishes various consumer protections, including segregating customers' digital commodities (*Sec. 205 l, p. 125*), minimizing conflicts of interest (*Sec. 205 j(4), p. 121*), increasing customer insolvency protections (*Sec. 204 D(4), p. 97*), imposing CFTC disclosure obligations (*Sec. 205 j(2), p. 120*) and prohibiting certain affiliated trading (*Sec. 205 (e), p. 115*).
- Establishes a new office within the CFTC called the Office of the Spot or Cash Market Digital Commodity Retail Advocate, which is tasked with promoting the interests of retail participant in the spot or cash digital commodity markets, including identifying and proposing changes in regulations and rules that may mitigate any problems identified. See *Sec. 211, p. 145-153*.
- Portions of the bill are still being drafted, including sections concerning blockchain developers, decentralized finance and AML laws. The Senate Agriculture Committee has not yet set a date to mark up the legislation.

Regulatory Agency Updates

SEC Chairman Atkins Discusses Token Taxonomy and Evolving Application of Howey Test to Crypto Assets

- On Nov. 12, SEC Chairman Paul Atkins delivered [remarks at the Federal Reserve Bank of Philadelphia](#) on the status of "Project Crypto," the SEC's initiative to modernize digital asset regulations. Chairman Atkins' noted that he anticipates the SEC will consider establishing a "token taxonomy" that is anchored in the *Howey* investment contract securities analysis to provide clarity surrounding the scope of the SEC's regulatory authority. He outlined his current thinking on the various categories of crypto assets by providing the following non-exhaustive list: (1) digital commodities or network tokens, (2) digital collectibles, (3) digital tools and (4) tokenized securities. Atkins noted that only the fourth category, tokenized securities, would be considered securities subject to the SEC's regulation, as such tokens represent the ownership of a financial instrument enumerated in the definition of "security" that is maintained on a crypto network. He noted that while most crypto assets are not themselves securities, crypto assets can still be part of or subject to an investment contract. Chairman Atkins emphasized that even tokens issued via investment contracts may cease to be considered "securities transactions" once the issuer's essential efforts end, noting that "investment contracts can end and networks can stand on their own."
- Atkins also noted he is a strong proponent of "super-apps" in finance that allow for the custody and trading of a variety of asset classes within a single regulatory license. He discussed potential recommendations to allow tokens tied to an investment contract to trade on non-SEC regulated platforms, including those intermediaries registered at the CFTC or through a state regulatory regime. He also noted that capital formation should continue to be overseen by the SEC.

IRS Releases Tax Guidance on ETP Staking

- On Nov. 11, the IRS released new guidance that permits certain trusts to perform staking activities without having to change their federal income tax status as an investment or grantor trust. Specifically, the guidance allows trusts to stake digital assets if they own only cash and

units of a single type of digital asset on a permissionless proof-of-stake network held by a qualified custodian. Treasury Secretary Scott Bessent [said the guidance](#) “increases investor benefits, boosts innovation, and keeps America the global leader in digital asset and blockchain technology.”

CFTC to Oversee Crypto Spot Trading on Designated Contract Markets

- On Nov. 9, in [a statement to CoinDesk](#), CFTC Acting Chair Caroline Pham said the agency is working to bring legislative clarity to crypto spot markets and expects spot trading on Designated Contract Markets to begin by the end of the year. Acting Chair Pham emphasized that this move is in line with the [President's Working Group on Digital Asset Markets report](#). CoinDesk also reported that the agency plans to introduce a stablecoin tokenized collateral policy early next year. Acting Chair Pham will be replaced by Mike Selig pending Senate confirmation before the end of the year. Selig's next [confirmation hearing](#) is on Nov. 19 before the Senate Agriculture Committee.

Federal Reserve Governor Miran Delivers Stablecoin Speech

- On Nov. 7, Federal Reserve Governor Stephen Miran [discussed the implications](#) of stablecoins on monetary policy at the [BCVC Summit](#). Governor Miran expressed support for the GENIUS Act and said that surging stablecoin adoption may lower the Fed's short-term interest rates, boost the demand for U.S. Treasury bills and increase the dollar's dominance globally. Miran said there are open questions about the impact of stablecoins on U.S. monetary policy and that “since monetary policy must be forward looking,” the Fed should start examining the impact of stablecoin adoption on monetary policy now.

Treasury Secretary Scott Bessent Says Stablecoin Market Growth to Fuel Increased Demand for Treasury Bills

- On Nov. 12, Treasury Secretary Scott Bessent [delivered remarks](#) at the U.S. Treasury Market Conference, hosted at the Federal Reserve Board of New York. Secretary Bessent stated that the stablecoin market, currently valued around \$300 billion, “could grow tenfold by the end of the decade thanks to the innovation made possible by the GENIUS Act.” Such an increase in demand for stablecoins, Bessent noted, will likewise grow the demand for Treasury bills.

✧ ✧ ✧

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

Atlanta

Chris Daniel
+1-404-815-2217
chrisdaniel@paulhastings.com

Meagan E. Griffin
+1-404-815-2240
meagangriffin@paulhastings.com

Sarah A. Quattrocchi
+1-404-815-2302
sarahquattrocchi@paulhastings.com

Los Angeles

Stephen J. Turanchik
+1-213-683-6187
stephenturanchik@paulhastings.com

New York

Josh Boehm
+1-212-318-6033
joshboehm@paulhastings.com

Dana V. Syracuse
+1-212-318-6034
danasyracuse@paulhastings.com

Samantha Ackel
+1-212-318-6385
samanthaackel@paulhastings.com

San Francisco

Eric C. Sibbitt
+1-415-856-7210
ericsibbitt@paulhastings.com

Lisa E. Rubin
+1-415-856-7027
lisarubin@paulhastings.com

Washington, D.C.

Michael L. Spafford
+1-202-551-1988
michaelspafford@paulhastings.com

Dina Ellis Rochkind
+1-202-551-1938
dinaellis@paulhastings.com

Paul Hastings LLP

Stay Current is published solely for the interests of friends and clients of Paul Hastings LLP and should in no way be relied upon or construed as legal advice. The views expressed in this publication reflect those of the authors and not necessarily the views of Paul Hastings. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. These materials may be considered ATTORNEY ADVERTISING in some jurisdictions. Paul Hastings is a limited liability partnership. Copyright © 2025 Paul Hastings LLP.