Crypto Policy Tracker

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Cloture Filed on Clarity Act Motion to Proceed, CFTC to Advance Crypto Rules Either Way, FDIC Approves Digital Asset Bank and Court Rules for Utah on Event Contracts

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Senate Majority Leader John Thune (R-S.D.) filed cloture on the motion to proceed to H.R. 3633, the Digital Asset Market Clarity Act, in the early morning hours of Aug. 8, before the chamber adjourned for the August recess. Under a reported agreement, the Senate is scheduled to vote on cloture on the motion to proceed on Sept. 15. Invoking cloture requires 60 votes and does not pass the bill. Outstanding issues include ethics language, developer protection provisions and the commodities portion of the bill, and changes to the crypto rewards program provisions sought by banking industry groups. Under the chamber's 2026 calendar, the Senate is scheduled to be out of session for nearly all of October ahead of the Nov. 3 midterm elections, leaving a narrow window for floor action.

On the regulatory side, CFTC Chairman Michael Selig said the agency has digital asset rule proposals prepared and will proceed with rulemaking whether or not the Clarity Act is enacted, with the goal of finalizing rules before the end of the current administration. The SEC established a Financial Reporting and Accounting Unit within its Division of Enforcement. The FDIC approved the deposit insurance application of a newly chartered national bank to be headquartered in Dallas, and two firms filed national trust bank charter applications with the OCC.

In the courts, the U.S. District Court for the District of Utah granted summary judgment to Utah, holding that the Commodity Exchange Act does not preempt Utah's enforcement of its anti-gambling laws; the exchange has appealed to the 10th Circuit. Federal prosecutors in New York announced securities and wire fraud charges against the founder of an NFT marketplace, and a crypto market-making firm founder was sentenced for his role in a market manipulation conspiracy.

Congressional Updates

Senate Majority Leader Files Cloture on Clarity Act Motion to Proceed, Setting Up Sept. 15 Procedural Vote

- On Aug. 8, at the close of an overnight session, Senate Majority Leader John Thune (R-S.D.) filed cloture on the motion to proceed to H.R. 3633, the Digital Asset Market Clarity Act, which if passed would have the effect of ending debate on the motion to proceed and allowing the Senate to move on to a vote on the bill. Invoking cloture on the motion to proceed requires 60 votes and does not pass the bill. The Senate Press Gallery floor log records the filing at 4:52 a.m., before the chamber adjourned for the August recess. Under a reported agreement, the Senate is scheduled to vote on cloture on the motion to proceed at 2:15 p.m. ET on Sept. 15.

- Outstanding issues remain, including ethics language, developer protection provisions and the commodities portion of the bill. Additionally, banking industry groups continue to press for changes to the bill's crypto rewards program provisions, citing concerns about potential deposit flight.

- The Senate reconvenes for legislative business on Sept. 14 and, under the chamber's 2026 calendar, is scheduled to be out of session for nearly all of October and the first week of November, with the midterm elections falling on Nov. 3. This leaves a narrow window for further action in the Senate before the elections.

Senators Press CFTC on Wildfire Event Contracts

- On Aug. 3, nine Senate Democrats sent a letter to CFTC Chairman Michael Selig urging the agency to restrict event contracts referencing wildfires. The letter states that prediction markets have been enabled to expand rapidly, increasingly inviting speculation on war, political violence, disasters and public emergencies that raise ethical and public policy concerns.

- The letter asked whether the CFTC will address wildfire contracts in its pending event contracts rulemaking and whether it has guidance or enforcement planned. The senators requested a response by Aug. 14.

Regulatory Updates

FDIC Approves Deposit Insurance for National Bank Serving Digital Asset Clients

- On Aug. 4, the FDIC announced approval of the deposit insurance application of a newly chartered national bank to be headquartered in Dallas, Texas. The OCC granted the bank preliminary conditional approval of its national bank charter on May 8.

- The bank's proposed business model focuses on deposit and lending products for digital asset companies, artificial intelligence and technology companies, high-net-worth individuals and international financial institutions, along with virtual currency, payment and treasury services. The bank also plans to issue a stablecoin through a subsidiary, if the subsidiary is approved as a permitted payment stablecoin issuer under the GENIUS Act.

Two Firms File National Trust Bank Charter Applications With the OCC

- On Aug. 3, it was reported that a stablecoin infrastructure firm had filed an application with the OCC to charter its National Trust Bank. According to the application, the proposed New York-based entity would provide digital asset custody, issue U.S. dollar-denominated stablecoins and support customer-directed transactions.

- On Aug. 5, a company announced an application to charter its National Trust Bank, a special purpose national bank that would limit its activities to the operations of a trust company and related activities. The proposed bank would provide corporate trustee services for asset-backed securities and collateralized loan obligations, agency services for syndicated and bilateral credit facilities, loan servicing and collateral management, and backup servicing across traditional and digital asset markets.

CFTC Chairman Says Digital Asset Rulemakings Will Proceed With or Without Legislation

- On Aug. 4, CFTC Chairman Michael Selig addressed the Flyover Fintech conference in Lincoln, Nebraska, hosted by Rep. Mike Flood (R-NE). Selig said the agency has developed a set of digital asset rule proposals in parallel with the Clarity Act negotiations and is prepared to issue them if the legislation is enacted.

- Selig said the CFTC will proceed with those rulemakings even if the Clarity Act does not pass, and that his objective is to have the agency's digital asset rules finalized and implemented before the end of the current administration. Selig also said he and SEC Chairman Paul Atkins are prepared to develop joint rules addressing the boundary between the two agencies' jurisdictions, consistent with the harmonization work under Project Crypto.

SEC Establishes Financial Reporting and Accounting Unit in Enforcement Division

- On Aug. 5, the SEC announced the creation of a Financial Reporting and Accounting Unit within the Division of Enforcement. The unit will pursue accounting and financial reporting fraud, as well as accounting and auditor misconduct more generally. It will be staffed by attorneys and accountants with specialized expertise in financial reporting, accounting and auditing in the securities context.

- Digital asset issuers and intermediaries with public reporting obligations, including firms that have recently completed or are pursuing public listings, should expect continued attention to internal control over financial reporting, valuation of digital asset holdings and related disclosure.

<u>Additional Updates</u>

Prediction Markets Updates

- On Aug. 3, the parties in Washington's King County Superior Court action against a prediction markets exchange filed a joint submission implementing the preliminary injunction entered July 20. The exchange agreed to block Washington-based users by Aug. 10 and to implement third-party geofencing by Aug. 26 while the parties continue to dispute the scope of the injunction.

- On Aug. 4, the U.S. District Court for the District of Utah granted summary judgment to Utah, holding that the Commodity Exchange Act does not preempt Utah's enforcement of its anti-gambling laws. It is a ruling on the merits in the nationwide preemption dispute. The exchange filed a notice of appeal to the 10th Circuit, and the Utah Attorney General's office issued a statement following the ruling.

- On Aug. 5, a sports prediction markets operator sued New York state officials in the U.S. District Court for the Southern District of New York, one day after launching its sports event contract platform nationwide, seeking a declaration that state gambling laws are preempted as applied to its contracts and an injunction against enforcement.

Crypto Market-Making Firm Founder Sentenced for Market Manipulation

- On Aug. 6, the founder of a cryptocurrency market maker was sentenced in federal court for his role in a wide-ranging conspiracy to manipulate cryptocurrency markets on behalf of client cryptocurrency companies.

- The statement said that services included the wash trading of client crypto assets across multiple exchanges. Wash trading occurs when a single trader, or a number of traders working in coordination, buy and sell the same asset repeatedly in order to mislead the market by artificially inflating the trading volume or price of the asset via trades that have no lawful commercial purpose.

SDNY Charges Founder of NFT Marketplace With Securities and Wire Fraud

- On Aug. 5, the U.S. Attorney's Office for the Southern District of New York announced the indictment of the founder of an NFT marketplace for securities and wire fraud for defrauding investors of the crypto startup he founded by making false and misleading statements regarding the use of investor funds and subsequently misappropriating those funds.

- The charges are a reminder that a token pre-sale structured as a simple agreement for future tokens and offered under Regulation D remains subject to the antifraud provisions of the federal securities laws regardless of how the underlying token is ultimately classified.

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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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