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Crypto Policy Tracker

OCC Conditionally Approves National Trust Bank Charter Applications and Issues Interpretive Letter 1188, SEC Issues Tokenization No-Action Letter and House Passes INVEST Act

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Last week, federal regulators took several notable steps affecting digital asset markets. The Office of the Comptroller of the Currency (OCC) announced conditional approval of five national trust bank charter applications. It also issued Interpretive Letter 1188, confirming that national banks may engage in riskless principal crypto-asset transactions, intermediary transactions in which a bank purchases an asset from one counterparty for immediate resale to another. The OCC also reiterated its focus on reinvigorating the chartering of *de novo* banks.

On digital asset market structure, a group of Senate Democrats released legislative priorities featuring provisions to strengthen a prohibition on stablecoin yield and greater protections to combat illicit finance. The release follows a Senate Banking Republican proposal circulated the prior week that offered changes to the existing discussion draft in an effort to reach a bipartisan compromise. The House passed the INVEST Act, a comprehensive capital formation package that would expand access to capital for small businesses, increase opportunities for investors, including through revising the definition of “accredited investor,” and streamline disclosure requirements.

At the securities and derivatives agencies, Securities and Exchange Commission (SEC) staff in the Division of Trading and Markets issued a no-action letter relating to the development and launch of a preliminary securities tokenization program. The Commodity Futures Trading Commission (CFTC) also issued no-action letters and announced a digital asset pilot program permitting certain digital assets to be used as collateral in derivatives markets, alongside new tokenized collateral guidance and the withdrawal of select guidance, as part of Acting Chair Caroline Pham’s push to ease regulation of crypto and on-chain market infrastructure.

Congressional Updates

Progress on Market Structure Legislation

- On Dec. 10, [Politico released](#) Senate Democrats' [legislative priorities](#) for market structure legislation, featuring provisions to strengthen a prohibition on stablecoin yield and greater protections to combat illicit finance. On Dec. 4, Senate Banking Committee Republicans sent Democrats a [compromise proposal](#) with over [30 changes](#) to the discussion draft.
- On Dec. 11, Republican and Democratic senators met with bank CEOs on Capitol Hill to discuss key policy priorities for pending market structure legislation. Senators involved in negotiations [touted progress](#) following a closed-door bipartisan meeting in Senate Banking Chair Tim Scott's office, leaving the door open to a committee vote next week.
- Chair Scott and Sen. Cynthia Lummis had publicly stated that their goal was to hold a markup this week before Congress leaves for its holiday break. However, Chair Scott announced that consideration of the legislation will be postponed until January to garner support from the Democrats.

Financial Services Committee's Capital Formation Package Passes House

- On Dec. 11, the [INVEST Act](#) passed the House with a bipartisan vote of 302-123, led by House Committee on Financial Services Chairman French Hill (R-AR), Capital Markets Subcommittee Chairman Ann Wagner (R-MO), Rep. Gregory Meeks (D-NY) and Rep. Josh Gottheimer (D-NJ). The comprehensive capital formation package would expand access to capital for small businesses, revise the definition of "accredited investor" to enable those who pass an exam to be established by the SEC to qualify as accredited investors and streamline applicable disclosure requirements.
- To the extent digital assets fall within the regulatory framework for securities, capital formation legislation will significantly influence how crypto companies raise capital. Legislative reforms designed to streamline capital raising and improve market access could provide clear, more workable pathways for early-stage crypto firms to raise funds domestically and will impact crypto companies who decide to go public during and after the IPO process.
- Of particular note, Title III of the Act would formally codify existing SEC accommodations related to issuers' ability to file a confidential draft registration statement and the SEC rule that enables all issuers to engage in testing-the-waters communications. (Currently, Sections 5(d) and 6(e) of the Securities Act codifies these concepts solely with respect to emerging growth companies.) Furthermore, Title III of the Act would provide additional financial reporting accommodations for emerging growth companies and former emerging growth companies, expand well-known seasoned issuer eligibility by decreasing the requisite public float to \$400 million and require the SEC to adopt rules enhancing disclosure regarding multiclass voting structures. Also, released are the [one-pager](#), [three-pager](#) and [section-by-section](#) documents.

Regulatory Agency Updates

OCC Announces Conditional Approvals for Five National Trust Bank Charter Applications

- On Dec. 12, the OCC [announced its conditional approval](#) of five national trust bank charter applications — two *de novos* and three conversions from state chartered trust companies. Subject to meeting the OCC's conditions of approval, these institutions will join approximately 60 other national trust banks currently supervised by the OCC.
- "New entrants into the federal banking sector are good for consumers, the banking industry and the economy," said Comptroller of the Currency Jonathan V. Gould. "They provide access to new products, services and sources of credit to consumers, and ensure a dynamic, competitive and

diverse banking system. The OCC will continue to provide a path for both traditional and innovative approaches to financial services to ensure the federal banking system keeps pace with the evolution of finance and supports a modern economy.”

OCC Permits Banks to Engage in Riskless Principal Transactions

- On Dec. 9, the OCC issued [Interpretive Letter 1188](#) confirming banks may engage in riskless principal crypto-asset transactions, which are intermediary transactions where the bank buys an asset from one counterparty for immediate resale to another counterparty. The agency clarified that doing so would be recognized as part of a bank's regular brokerage activities.
- The analysis noted that riskless principal transactions in crypto-asset securities are permissible under 12 U.S.C. § 24 (Seventh). The remainder of the letter addressed riskless principal transactions in crypto assets that are not securities.

SEC Issues No-Action Letter on Tokenization Services

- On Dec. 11, the SEC staff of the Division of Trading and Markets issued a [no-action letter](#) relating to The Depository Trust Company's (DTC) launch of the pilot version of a voluntary securities tokenization program on its platform, which would enable the tokenization of certain DTC-custodied assets on pre-approved blockchains for a period of three years. Pursuant to the program, a DTC participant with a registered wallet will be able to transfer its tokenized entitlement directly to the registered wallet of another DTC participant without formally instructing DTC. DTC's off-chain software system will track each transfer to record tokenization entitlements for DTC's official books and records. Throughout this process, DTC's nominee will remain the registered owner of any securities represented by a tokenized entitlement.
- [SEC Commissioner Hester Peirce](#) released a statement, saying that the letter “marks a significant incremental step in moving markets onchain” and that the SEC “[w]elcome[s] and expect[s] other market participants’ continuing efforts to innovate and experiment.”

DOJ and FinCEN Announce Enforcement Action Against Crypto Firm

- On Dec. 10, the Department of Justice (DOJ) [announced an action](#) against a peer-to-peer convertible virtual currency trading platform regarding violations of the Travel Act and other federal criminal charges. The company agreed to plead guilty to a three-count information filed in the Eastern District of California and agreed to pay a criminal penalty of \$4 million based on its ability to pay.
- On Dec. 9, the Financial Crimes Enforcement Network (FinCEN) issued a [press release](#) and [consent order](#) assessing a \$3.5 million civil money penalty against the same company for violations of the Bank Secrecy Act (BSA) and its implementing regulations. The company, a peer-to-peer convertible virtual currency trading platform, facilitated more than \$500 million in suspicious activity involving a host of illicit actors. The company operated for years without a written anti-money laundering (AML) program and failed to maintain an active registration with FinCEN. The company enabled transactions with countries including Iran, North Korea and Venezuela.

OCC Comptroller Gould: Reinvigorating the Chartering of De Novo Banks

- On Dec. 8, OCC Comptroller Gould [delivered remarks](#) at the Blockchain Association Policy Summit discussing the agency's priority to reinvigorate the chartering of *de novo* banks. Gould noted a decrease in new bank charters, stating “from 2011 through 2024, the OCC received, on average, less than four charter applications per year,” due to regulators' signals that applications were not welcome. Gould said the agency is working to reverse this trend, highlighting an increase of 14 *de novo* charter applications just this year.

OCC Releases Preliminary Findings From Review of Large Banks' Debanking Activities

- On Dec. 10, the OCC released a [preliminary findings report](#) detailing debanking practices certain large banks engaged in from 2020-23. The report states the banks restricted customers' access to banking "beyond core financial risks and instead focused on the impacts of the banks' reputation associated with engaging with certain industry sectors."
- Comptroller Gould said in a [news release](#), "[a]lthough our work continues, the OCC is today providing visibility into the debanking actions against customers and lawful businesses taken by the nation's largest banks to ensure public awareness, and to halt these harmful and unfair practices."

CFTC Announces Launch of Digital Assets Pilot Program for Tokenized Collateral in Derivatives Markets

- On Dec. 8, the CFTC [announced a digital asset pilot program](#) to allow digital assets to be used as collateral in derivatives markets, in addition to [new tokenized collateral guidance](#) and the withdrawal of prior guidance superseded by the subsequent passage of the Genius Act.
- The digital asset pilot program, under CFTC [Letter 25-40](#), allows futures commission merchants (FCMs) to accept bitcoin, ethereum and USDC as margin collateral for futures and swaps. The pilot program requires the FCMs to submit weekly disclosure reports for the first three months.
- The tokenized collateral guidance, under CFTC [Letter 25-39](#), clarifies that tokenized assets can be used as collateral for futures and swaps if they meet certain regulatory requirements, such as segregation, custody and control arrangements. The agency also withdrew prior guidance, under CFTC [Letter 25-41](#), that restricted FCMs' ability to accept digital assets as collateral.

CFTC Issues Additional No Action Letter Relief

- Until such time as the CFTC proposes new cross-border rules, the CFTC [will not recommend an enforcement](#) action based solely on a market participant's failure to classify a counterparty as a U.S. person or guarantee (i) under the 2013 cross-border guidance or the Cross-Border Uncleared Margin Rule so long as the counterparty is classified pursuant to the 2020 Cross-Border Rule and (ii) under the 2020 Cross-Border Rule so long as the counterparty was classified pursuant to representations made by the counterparty consistent with either the 2013 Guidance or the 2020 Rule.
- The CFTC will [not recommend an enforcement](#) action for failure to meet certain swap reporting and recordkeeping requirements in connection with binary options based on an event or contingency.

CFTC Acting Chairman Pham Announces Withdrawal of Outdated Digital Assets Guidance

- On Dec. 11, CFTC Acting Chairman Caroline D. Pham announced the CFTC is [withdrawing outdated guidance](#) discussing how "virtual currencies" may satisfy the actual delivery requirement, given the substantial developments in crypto asset markets.

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