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Crypto Policy Tracker

SEC Releases Crypto Asset FAQs, Federal Reserve Proposes Stablecoin Issuer Rules, CFTC Addresses Tokenized Investments and Mention Markets, Prediction Markets Litigation Advances

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The SEC staff released FAQs addressing the classification of crypto assets and when promotional activities and token buyback programs constitute essential managerial efforts under the investment contract analysis. The Federal Reserve Board proposed rules to establish a regulatory framework for Board-supervised payment stablecoin issuers under the GENIUS Act, including requirements for reserves, capital, liquidity and redemption. The CFTC updated its crypto asset FAQs to address investments of customer funds in tokenized forms of permitted investments and the use of blockchain technologies for recordkeeping. The CFTC's Division of Market Oversight issued a staff advisory stating that "mention market" event contracts may be presumptively "readily susceptible to manipulation." Prediction markets litigation continued on multiple fronts, with the 6th Circuit finding that the CFTC does not have exclusive jurisdiction over sports event contracts and New York filing a new lawsuit against a prediction market platform for allegedly operating an unlicensed gambling business and the platform countersuing. SEC Commissioner Hester Peirce announced her resignation, effective Oct. 2.

Regulatory Updates

SEC Releases FAQs on Application of Federal Securities Laws to Certain Types of Crypto Assets

- On Sept. 25, the SEC staff of the Division of Corporation Finance released frequently asked questions regarding the application of the federal securities laws to certain types of crypto assets. The FAQs build on the SEC's March 17 Interpretive Release and address questions relating to the classification of crypto assets and to crypto assets that are subject to an investment contract.

- On classification, the FAQs clarify that each issuer determines its own thresholds for functionality and decentralization for purposes of its representations; address the classification of Staking Receipt Tokens as either a "digital tool" or "digital commodity" depending on the circumstances; and distinguish "receipts" from other financial instruments.

- On investment contracts, the FAQs state that promoting a crypto system's current utility or potential features likely would not constitute essential managerial efforts absent promotion of profit potential, and that once a system is functional, maintenance, improvement and enhancement activities would not constitute essential managerial efforts.

- The FAQs also address token buyback programs, stating that a buyback announcement for a functional crypto system that has no central party would not constitute essential managerial efforts, but could do so for a nonfunctional system if presented as creating yield or return for holders. (Updated by the SEC on Sept. 28, to add "and has no central party.")

Federal Reserve Proposes Stablecoin Issuer Rules Under the GENIUS Act

- On Sept. 24, the Federal Reserve Board requested public comment on two proposals to establish a regulatory framework for Board-supervised payment stablecoin issuers under the GENIUS Act. The first proposal (Docket No. R-1899) proposes requirements for stablecoin reserves, capital, liquidity, redemption, permissible and prohibited activities, risk management as well as examination procedures for Board-supervised permitted payment stablecoin issuers. The proposal seeks to implement the GENIUS Act's anti-tying prohibition that is applicable to all permitted payment stablecoin issuers regardless of their primary regulator. The anti-tying prohibition bars an issuer from providing services to a customer on the condition that the customer obtain an additional paid product or service from the issuer or its subsidiaries, or agree not to obtain a product or service from a competitor.

- A companion proposal would implement application procedures that insured state member banks will need to follow to establish a subsidiary to issue payment stablecoins. Comments will be due 60 days after publication in the Federal Register.

- Board Gov. Michael Barr issued a statement describing the proposals as an "important step" and expressing support for provisions on reserve asset limitations and standardized capital requirements, while raising questions about whether the proposals adequately address interest rate and foreign currency risks and whether the "significant or systemic" standard for anti-money laundering enforcement actions may limit the Board's supervisory effectiveness.

CFTC Updates Crypto FAQs to Address Tokenized Investments and Blockchain Recordkeeping

- On Sept. 24, the CFTC's Market Participants Division, Division of Market Oversight and Division of Clearing and Risk released updates to their FAQs concerning registrant and registered entity activities relating to crypto assets and blockchain technologies, originally published on March 20. The updates add four new questions addressing the investment of customer funds in tokenized forms of permitted investments and the use of blockchain technologies for recordkeeping.

- On tokenized investments, the updated FAQs state that futures commission merchants and derivatives clearing organizations may invest customer funds in tokenized forms of otherwise permitted investments under Commission Regulation 1.25, provided the underlying asset is a permitted investment, the tokenized form grants holders the same legal and economic rights as the traditional form, and all applicable requirements, including liquidity, concentration limits and depository standards, are met.

- On recordkeeping, the updated FAQs confirm that Commission Regulations 1.31 and 45.2 are "technology neutral" and that registrants may use blockchain technologies for recordkeeping without maintaining offchain copies, provided they can retain and produce records under all circumstances, including network disruptions.

CFTC Chairman Selig Keynote at US Treasury Market Conference

- On Sept. 22, CFTC Chairman Michael Selig delivered remarks on tokenization, onchain finance and 24/7 trading, stating the CFTC is "committed to providing clear, principles-based rules" for these innovations and suggesting that "using blockchain technology and tokenized assets could become the foundation of a more efficient financial system."

CFTC Innovation Task Force Announces Frontier Forum Series

- On Sept. 21, the CFTC's Innovation Task Force announced a new series of public roundtables on financial technologies transforming U.S. markets, with the first session focused on AI and agentic finance.

SEC Commissioner Updates

- On Sept. 25, SEC Commissioner Hester Peirce posted on X announcing her resignation as Commissioner, effective Oct. 2.

Additional Updates

Prediction Markets Updates

- On Sept. 16, a prediction market platform was denied a motion to lift an injunction barring its operations in Washington state.

- On Sept. 22, a prediction market platform agreed to cease offering new sports-related event contracts on DCMs in Michigan.

- On Sept. 22, the CFTC's Division of Market Oversight issued an advisory (Staff Letter No. 26-27) addressing event contracts based on whether an individual will say certain words, attend an event or interact with another person, commonly referred to as "mention market" contracts. The advisory states that these contracts present a heightened manipulation risk because their settlement turns on the discrete conduct of a person that may be neither independently generated nor externally verifiable. Participants seeking to self-certify mention market products should be prepared to overcome the staff's presumption that mention markets products are readily susceptible to manipulation.

- On Sept. 24, New York Attorney General Letitia James and Gov. Kathy Hochul announced a lawsuit against a prediction market platform, alleging that the platform's sports prediction markets violate New York laws by operating as an unlicensed gambling business. The action follows similar suits the Attorney General has brought against other prediction market platforms.

- On Sept. 24, a platform filed a lawsuit in the U.S. District Court for the Southern District of New York against New York state officials, arguing that state enforcement of gambling laws against its federally regulated event contracts is preempted by the Commodity Exchange Act's grant of exclusive jurisdiction to the CFTC. The platform also removed the Attorney General's state court action to federal court.

- On Sept. 25, the 6th Circuit became the second circuit court to find that the CFTC does not have exclusive jurisdiction over sports event contracts, stating that the prediction market "has not shown that its sports-event contracts satisfy the statutory definition of a "swap" … [a]nd … that the CEA neither expressly nor impliedly preempts Ohio's or Tennessee's gambling laws."

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