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Crypto Policy Tracker

SEC Proposes Crypto Custody Framework, Treasury Issues Interim Final Rule on State Stablecoin Certifications, CFTC Submits Two Rules to the White House

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The SEC proposed a tailored framework for the custody of crypto assets by registered investment advisers and regulated funds. The SEC also requested comment on potential new ways for individuals to qualify as accredited investors. Commissioner Hester Peirce departed the agency, leaving the Commission with two sitting members.

The Department of the Treasury published an interim final rule establishing the forms and procedures for the Stablecoin Certification Review Committee's review of state regulators' certifications under Section 4(c) of the GENIUS Act. Section 4(c) allows state-qualified issuers with \$10 billion or less in outstanding payment stablecoins to opt for state regulation if the Committee approves the state's certification that its regulatory regime is substantially similar to the federal regulatory framework under the GENIUS Act. The rule took effect upon publication, but Treasury will not accept certifications until the related information collection receives Paperwork Reduction Act approval.

The CFTC submitted two rules further defining "swap" to the White House Office of Information and Regulatory Affairs for review: a proposed rule on event contracts and an interim final rule on casino-style gambling products. A prediction market platform sought to dismiss Massachusetts' amended complaint, and two gaming regulator associations filed an amicus brief in New Jersey's petition asking the U.S. Supreme Court to review the 3rd Circuit's preemption ruling.

The California Governor signed Assembly Bill 2409, prohibiting state and local public officers and certain public employees from issuing meme coins and barring digital asset service providers from listing for California residents meme coins issued on or after Jan. 1, 2027, that are offered by or in partnership with a covered federal, state or local official.

Regulatory Updates

SEC Proposes Crypto Custody Framework for Investment Advisers and Regulated Funds

- On Oct. 1, the SEC [proposed new rules and amendments](#) (and a [fact sheet](#)) under the Investment Advisers Act of 1940 and Investment Company Act of 1940 that would provide a tailored framework for the custody of crypto assets for registered investment advisers and “registered funds” (defined as including registered management investment companies and business development companies). The 760-page proposal would:
 - Permit advisers and regulated funds to self-custody crypto assets, subject to numerous conditions. Among other conditions, the adviser would have to determine, before taking self-custody and quarterly after that, that a permitted custodian is not available to maintain the crypto asset.
 - Enable advisers and regulated funds to maintain client or regulated fund crypto assets with a state trust company, in certain circumstances.
 - Modernize the custody rules to reflect current industry practices and feedback.
 - Update the recordkeeping and disclosure requirements for advisers and regulated funds related to the proposed custody rules, including amending Form ADV and Form N-CEN to add required disclosure regarding the custody of crypto assets and tokenized fund shares.
- The proposal would also impose new conditions on registered investment adviser and regulated fund use of state trust companies providing crypto asset custody services such as diligence on the state trust company’s authority to custody crypto assets, diligence on the state trust company’s custody policies and procedures for crypto assets, review of the state trust company’s annual audited financial statements and internal control reports.
- Comments are due 60 days after publication in the Federal Register.
- SEC Chairman Paul Atkins [released a statement](#) noting that the proposed framework is “another element of a comprehensive crypto asset regulatory approach.”
- SEC Commissioner Hester Peirce [highlighted the proposal’s new option](#) allowing advisers, in limited circumstances, to “self-custody” client and regulated fund crypto assets, but noted that the proposal uses the term in a way that does not reflect true self-custody by investors.
- SEC Commissioner Mark Uyeda [stated that](#) asset segregation for paper certificates sitting in bank vaults versus assets recorded on a distributed ledger cannot look the same, even if the underlying principle is identical, and that it was time for a “fresh look.”

SEC Considers New Ways for Individuals to Qualify as Accredited Investors

- On Sept. 30, the SEC requested public comment on potential designations as additional ways for an individual to qualify as an accredited investor.
- Currently, Rule 501(a)(10) of Reg D includes under the definition of “accredited investor” natural persons “holding in good standing one or more professional certifications or designations or credentials from an accredited educational institution that the [SEC] has designated as qualifying as an individual for accredited investor status.” When the rule was adopted, the SEC issued an order designating holders in good standing of Series 7, Series 82 and Series 65 licenses as accredited investors.
- The SEC is requesting comment on designating the following individuals, who would all be required to be in good standing:
 - [Certified public accountants](#)
 - [Chartered financial analysts](#)
 - [Certified financial planners](#)
 - [Those with a Series 79 license](#) (i.e., investment banking representative license)
 - [Those with both a Series 86 and 87 license](#) (i.e., research analyst license)
- In addition, the SEC is requesting comment on designating as accredited investors those who pass [an accredited investor exam](#) to be developed by FINRA.

- Accredited investor status allows individuals to participate in certain capital raising transactions that are exempt from SEC registration, including especially Rule 506(c) offerings of tokenized securities, so the potential designations could expand the pool of individuals eligible to invest in crypto-related private offerings. It also allows issuers to avoid going public under Exchange Act § 12(g), which requires issuers with 500 or more equity investors who are not accredited investors or 2,000 investors of any kind to register their securities with the SEC and engage in regular reporting.
- potential designations are subject to a 60-day comment period after their publication in the Federal Register.

SEC Commissioner Peirce Departs SEC

- On Oct. 2, SEC Commissioner Hester Peirce completed her last day at the agency, as announced in her [resignation letter](#), leaving the Commission with two sitting members, Chairman Paul Atkins and Commissioner Mark Uyeda. Peirce had [served since 2018](#) and led the SEC's Crypto Task Force. The White House has not named a successor to Peirce or nominated replacements for the two seats left vacant by the departures of former Commissioners Caroline Crenshaw and Jaime Lizárraga.

Treasury Issues Interim Final Rule on State Stablecoin Certifications

- On Sept. 30, the Department of the Treasury published an [interim final rule](#) on behalf of the Stablecoin Certification Review Committee establishing the forms and procedures for the Committee's review of state payment stablecoin regulators' certifications under Section 4(c) of the GENIUS Act. Under that section, state-qualified issuers with not more than \$10 billion in outstanding payment stablecoins may opt for state regulation if the Committee approves the state's certification that its regulatory regime is substantially similar to the federal regulatory framework under the GENIUS Act. Under Section 4(d) of the GENIUS Act, state-qualified issuers with more than \$10 billion in outstanding payment stablecoins must obtain a waiver from the applicable federal payment stablecoin regulator to opt for state regulation
- The rule took effect upon publication, although certifications will not be accepted until the related information collection receives Paperwork Reduction Act approval. Treasury will post a notification on its website as to when certifications will be accepted.
- Notably, the Committee stated its view that a state would satisfy the GENIUS Act's one-year filing deadline by submitting any form of certification by Jan. 18, 2028, even one that is conditional or incomplete, although such a certification would not be considered submitted for purposes of Committee review until it is completed. Comments on the interim final rule are due Nov. 30.
- This is important because the GENIUS Act takes effect on Jan. 18, 2027, after which time it will generally be unlawful to issue payment stablecoins in the United States without licensure or approval as a permitted payment stablecoin issuer. By making the Committee's forms and procedures effective immediately, the Committee sought to avoid "significant market uncertainty" that could have resulted from "failing to have procedures in place to process State certifications by the effective date of the GENIUS Act."

Additional Updates

Prediction Markets Updates

- On Sept. 24, a [prediction market platform](#) filed its August [motion to dismiss](#) Massachusetts' amended complaint seeking to bar the platform's sports-related event contracts, together with the state's [September opposition](#), in Suffolk County Superior Court. The platform argues that recent CFTC actions, including lawsuits against nine states, a proposed event contracts rule and two orders addressing the platform's ability to comply with state law, reinforce its position that federal law preempts the state's claims.

- On Sept. 28, the CFTC submitted two rules to the White House Office of Information and Regulatory Affairs for review: a proposed rule titled “Further Definition of ‘Swap’ to Include Event Contracts” ([3038-AF82](#)) and an interim final rule titled “Further Definition of ‘Swap’ to Exclude Casino-Style Gambling Products” ([3038-AF81](#)). The text of the rules is not yet public. The submissions come as courts remain divided on whether sports-related event contracts are swaps subject to the CFTC’s exclusive jurisdiction.
- On Oct. 2, the International Association of Gaming Regulators and the North American Gaming Regulators Association [submitted](#) an [amicus brief](#) in New Jersey’s pending petition asking the Supreme Court to review the 3rd Circuit’s decision that federal law preempts the state’s gambling laws as applied to a prediction market platform’s sports-related event contracts.

State Updates

- On Sept. 27, California Gov. Gavin Newsom signed [Assembly Bill 2409](#) into law, prohibiting state and local public officers, and state and local government employees with authority over bids and contracts, from issuing meme coins and barring digital asset service providers from listing for California residents meme coins issued on or after Jan. 1, 2027, that are offered by or in partnership with a covered federal, state or local official.

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