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Research and commentary on regulatory and other financial services topics

# Crypto Compendium and More

# February 6, 2025

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# It’s Been Two Weeks and We Have a 2025 Crypto Compendium

**February 6, 2025**

**By Mercedes Kelley Tunstall**
Partner | Financial Regulation

The volume of news coming out from regulatory Washington, spurred by Executive Orders and new agency heads has been impressive since Trump took office on January 20. But, the amount of movement regarding regulation of crypto and crypto-related activities has truly been substantial. And so, in this week’s *Cabinet News & Views*, we have multiple articles addressing what has transpired, which by my count constitutes a good start on a compendium!

Links to these articles are below, but as someone who has been working on cryptocurrency issues from the very early days, it is breathtaking to see things moving so quickly. (My early bona fides – **see my testimony in 2013 before two Senate banking law subcommittees on virtual currency here** -- at about the 1:01 mark.) My perspective on cryptocurrency has always been from the traditional finance side of things – not from the “crypto bro” side – safety and soundness, first. I have waited a long time for the regulatory environment to be supportive of our banking system being involved in cryptocurrency. And, I think the pieces are beginning to fall into place – not only has this sweeping set of changes been started at the Federal level, but also 25 states and the District of Columbia have adopted Article 12 (Controllable Electronic Records) of the Uniform Commercial Code ("UCC"), which allows perfection of control of cryptocurrency so that parties can be confident using crypto at the base of secured transactions.

Cadwalader has been working with a wide variety of traditional finance companies and fintechs on token-based projects, as well as counseling on regulatory questions related to crypto, but in our experience, to date, many banks have just not been able to move forward with crypto projects.

We think 2025 is going to be the year that many banks can move forward confidently and we look forward to help make that happen!

- **Crypto Capital of the Planet, but Without CBDCs**
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## Crypto Capital of the Planet, but Without CBDCs

**February 6, 2025**

**By Mercedes Kelley Tunstall**
Partner | Financial Regulation

On January 23, President Trump issued an **Executive Order** and accompanying **Fact Sheet** intending to promote "United States leadership in digital assets and financial technology while protecting economic liberty." Entitled "Strengthening American Leadership in Digital Financial Technology," the Executive Order states that the Administration will "support the responsible growth and use of digital assets, blockchain technology, and related technologies across all sectors of the economy" through a variety of means, including by allowing the development of "dollar-backed stablecoins worldwide" and "providing regulatory clarity and certainty [that will support] a vibrant and inclusive digital economy," while also prohibiting the "establishment, issuance, circulation, and use of a [central bank digital currency (CBDC)] within the jurisdiction of the United States."

The Executive Order went on to revoke the Biden-era Executive Order on digital assets, as well as Treasury's "Framework for International Engagement on Digital Assets" and then to establish a working group on digital assets chaired by a Special Advisor for AI and Crypto. Meanwhile, the Treasury, Securities & Exchange Commission ("SEC") and Commodity Futures Trading Commission ("CFTC") were directed to identify all regulations, guidance documents, orders and other items affecting the digital asset sector within 30 days and by 60 days, all such items are to be rescinded, modified or adopted.

Finally, while clearly villainizing CBDCs, the Executive Order nevertheless directs the working group to study creating and maintaining "a national digital asset stockpile and propose criteria for establishing such a stockpile." So, on the one hand, at the moment, it seems that nothing could be worse than the Federal government issuing its own digital currency, but on the other hand, the Federal government should investigate manipulating the digital asset marketplace by stockpiling digital assets issued by others. Certain factions within the Republican party have long opposed CBDCs, as evidenced by laws passed in Florida and North Carolina attempting to restrict the acceptance of retail CBDCs within the state. Of course, almost any abuses that a CBDC could cause could also be caused by the Federal government monopolizing and managing the distribution of a stablecoin, so we will see how long this White House actually continues hating CBDCs.

# FDIC Acting Chair Hill Orders Release of Trove of Crypto-Related Documents

**February 6, 2025**

**By Daniel Meade**
Partner | Financial Regulation

**By Mercedes Kelley Tunstall**
Partner | Financial Regulation

On February 5, the Federal Deposit Insurance Corporation ("FDIC") released **175 documents** related to supervision of banks it oversees that either engaged in or sought to engage in crypto-related activities. Acting Chairman Travis Hill also issued a **statement** related to the release of the documents.

Acting Chair Hill noted that the 175 documents include (1) additional correspondence with the 24 institutions involved in the **previous release** of so-called "pause " letters, and (2) correspondence with additional institutions. The release of documents is related to a review of all supervisory correspondence with banks seeking to offer crypto-related products or services that Mr. Hill directed FDIC staff to conduct. That review "remains underway," but Acting Chair Hill noted that the release of documents on February 5 is in advance of a court-ordered deadline of February 7, and "reflects a commitment to enhance transparency, beyond what is required by the Freedom of Information Act ("FOIA"), while also attempting to fulfill the spirit of the FOIA request." Though not mentioned in the statement, the release also coincides with a Senate Banking Committee hearing entitled "**Investigating the Real Impacts of Debanking in America.**"

Acting Chair Hill noted in his statement his past criticism "of the FDIC's approach to crypto assets and blockchain [that] . . . has contributed to a general perception that the agency was closed for business if institutions are interested in anything related to blockchain or distributed ledger technology." He added that the FDIC is "actively reevaluating our supervisory approach to crypto-related activities." He also noted that he intends to replace Financial Institution Letter **(FIL) 16-2022**, which took a restrictive approach to banks' pursuit of crypto-related activities. Mr. Hill also said that "the FDIC looks forward to engaging with the President's Working Group on Digital Asset Markets established by the President's **January 23, 2025 Executive Order**" and "providing a pathway for institutions to engage in crypto- and blockchain-related activities while still adhering to safety and soundness principles."

Accompanying the release of the 175 documents was also a fourteen-page internal procedure document called the **"Procedures for Reviewing Notifications of Engagement in Crypto-related Activities" issued originally in April 2022** and updated twice, the last time being in February 2024. The procedure provides a series of questions and due diligence requests that supervision staff were directed to obtain responses to, which are particularly useful to review and understand what concerns the FDIC staff will have, even should the FDIC's stance on crypto-related activities be freed up. In particular, there is a list addressing situations when the bank wants to facilitate "customer purchase and sale of crypto-assets" with a third-party, and then there is a list focused upon when the bank want to engage in crypto-asset collateralized lending (i.e., wants to use crypto as the collateral for a loan). Tellingly, however, the procedure ended with a sample response that only denied a bank's request to engage in crypto-related activities, saying, "Upon review of the information provided by the Bank, we have determined that the activity(ies) described by the Bank in its notification fall outside the scope of the review and feedback process described in FIL-16-2022."

## SEC Rescinds Crypto Interpretive Guidance That Has Hamstrung Industry

**February 6, 2025**

**By Mercedes Kelley Tunstall**
Partner | Financial Regulation

Effective January 30, the Securities & Exchange Commission ("SEC") rescinded the Staff Accounting Bulleting ("SAB") that has made engaging in crypto-related activities so perilous over the last couple of years, **SAB-121**, replacing it with a friendlier approach for the time being, as described in **SAB-122**.

The previous guidance, which applied to entities that held crypto-assets on their platform for users, put into place a series of requirements for safeguarding those crypto-assets. Those requirements, which addressed technological, legal and regulatory risks, were effectively untenable to put into practice and so any entity engaged in these activities did so having to accept the possibility that the SEC would have grounds to commence an enforcement action.

The new guidance states that these entities "should determine whether to recognize a liability related to the risk of loss" to its users and duly disclose and account for such risk of loss consistent with the **Financial Account Standards Board Accounting Standards Codification (FASB ASC) Subtopic 450-20**, which is still a "proposed accounting standard" or with the **International Accounting Standard (IAS) 37**. And, of course, such entities should continue to "consider existing requirements to provide disclosures that allow investors to understand" the risks of its crypto-asset safeguarding activities.

## Hester Peirce's Journey and Crypto Task Force

**February 6, 2025**

**By Mercedes Kelley Tunstall**
Partner | Financial Regulation

While some of the crypto developments we have reported on in this edition of *Cabinet News & Views* have had a distinctively partisan bent to them, the departure of Gary Gensler from the Securities & Exchange Commission ("SEC"), the Chairman of the SEC during the Biden administration, has objectively allowed the SEC to take immediate steps to put itself on a more responsible and responsive footing vis a vis the crypto industry. Acting Chairman Mark T. Uyeda **announced the creation of a Crypto Task Force** on January 21, the day after the Inauguration, appointing Commission Hester Peirce to lead it. Commissioner Peirce, who has been affectionately called "Crypto Mom" over the years, has had a clear-eyed and supportive view of the crypto industry and was consistently critical of many SEC enforcement actions that were taken against companies engaged in various crypto-related activities over the last four years. The focus of the Crypto Task Force "will be to help the Commission draw clear regulatory lines, provide realistic paths to registration, craft sensible disclosure frameworks, and deploy enforcement resources judiciously."

On February 4, Commissioner Peirce posted a statement called "**The Journey Begins**" that explained her vision for the Crypto Task Force, as well as provided a clear roadmap of its priorities. Stating that she is "hopeful that we will arrive at a place that is better than we could have imagined" compared to where things are after the last four years, noting that during that time, "the Commission's handling of crypto has been marked by legal imprecision and commercial impracticality. Consequently, many cases remain in litigation, many rules remain in the proposal stage, and many market participants remain in limbo." After balancing her optimism for crypto by observing that "spinning up coins and tokens is easy", she reminded that figuring out whether to invest in or use such coins and tokens will still be a situation where folks could lose value. In terms of priorities, Peirce said the first important step was rescinding SAB-121, but then described these next items as part of a list that is intended to be neither exhaustive nor to reflect an order of priority:

1. The **security status of crypto assets** under the securities laws need to be resolved.
2. **Scoping out areas that fall outside of the SEC's jurisdiction** will also be useful to the industry, as will the issuance of **no-action letters** "addressing specific circumstances . . under which the staff will not recommend enforcement action."
3. Providing a framework by which **certain coin or token offerings** that are not intended to be investments (e.g., like many non-fungible token (NFT) offerings) could be provided temporary prospective or retroactive relief from registration requirements, as long as they accepted SEC jurisdiction in the case of fraud allegations with the purchase or sale of the asset.
4. Introducing a **viable path for registering token offerings**.
5. **Amending the special-purpose broker dealer no-action statement** to cover those that custody crypto asset securities alongside crypto assets that are not securities.
6. Addressing **crypto custody solutions** for investment advisers.
7. Providing **clarity regarding crypto-lending and staking programs** and whether those are covered by securities laws, or otherwise.
8. In terms of **crypto exchange-traded products**, the task force will work on SRO proposed rule changes to facilitate the approval or disapproval of related applications.
9. Providing clear guidance and direction to the intersection of crypto and **clearing agency and transfer agent rules**.
10. Introducing a **cross-border sandbox** that could allow international experimentation with various crypto projects.

The end of Commissioner Peirce's mission statement encourages interested parties to submit written input on issues the Crypto Task Force should be considering and to request a meeting with the Crypto Task Force to discuss approached related to addressing regulation of crypto assets.

# New and Improved Stablecoin Legislation

**February 6, 2025**

**By Mercedes Kelley Tunstall**
**Partner | Financial Regulation**

We have reported on stablecoin regulation and legislation several times over the last few years, including on the most recent stablecoin legislation that appeared to have traction on a bi-partisan basis, **the Lummis-Gillibrand 2.0 bill that was introduced in July 2023**. So, now we are reporting on NEW new legislation, in the form of the so-called **GENIUS Act** that is being introduced by not only Lummis and Gillibrand, but also Chairman of the Senate Committee on Banking, Housing and Urban Affairs, Tim Scott and Senate Banking Committee member Bill Hagerty. In the February 4 **press release** announcing the bill, called the Guiding and Establishing National Innovation for U.S. Stablecoins ("GENIUS") Act, Chairman Scott observed that "this legislation will expand financial inclusion and provide much-needed clarity to ensure the industry can innovate and grow here in the United States, while protecting consumers and promoting the U.S. dollar's global position."

Meanwhile Senator Gillibrand stated that the GENIUS Act was designed to protect "consumers by requiring stablecoin issuers to maintain one-to-one reserves; prohibiting algorithmic stablecoins; and requiring issuers to comply with U.S. anti-money-laundering and sanctions rules. Importantly, it will empower responsible innovation, maintain U.S. leadership in digital assets and blockchain technology, and keep crypto companies and jobs onshore." The press release also provided a **one-pager summarizing the bill**.

While we are still parsing through the bill, we have a few observations – the legislation sets out definitions that clearly differentiate stablecoins from other kinds of digital assets and it also allocates the regulation of stablecoins firmly to prudential banking regulators. Should a bank or credit union issue stablecoins, then that financial institution will work with its own prudential bank regulator on that project, with oversight from the Office of the Comptroller of the Currency ("OCC") and if a nonbank issues stablecoins, then that nonbank works directly with the OCC. These two points alone set up a framework that seems reasonable, right-sized and appropriate. We will see how the legislation fares.

## Turn Signal?

**February 6, 2025**

**By Andrew Karp**
**Partner | Financial Regulation**

What is the direction of bank supervision and regulation under the Trump administration? As one would expect in these early days, the picture is evolving. A little over two weeks ago, the FDIC's Acting Chairman, Travis Hill, published a list of his goals for the FDIC. In part, these goals amount to a rejection of the prior Chairman's policies of tighter regulation and wariness toward innovation, which you can read more about **here**.

Now comes the turn of Federal Reserve Governor Michelle Bowman. Her remarks of February 5, before the Kansas Bankers Association Government Relations Conference, addressed "*Bank Regulation in 2025 and Beyond.*" Immediately following opening pleasantries, Governor Bowman noted that bankers are "cautiously optimistic that we will see meaningful reform that right-sizes regulation and supervisory approach, reforms that—if executed appropriately—should help the banking system promote economic growth in a safe and sound manner" While her formulation is indirect – putting the observation in the mouths of bankers – there is no mistaking that she shares the broad sentiment. All public remarks by a Governor of the Federal Reserve are important. These are especially important because Governor Bowman has been the Federal Reserve's principal contrarian in bank regulatory and supervisory matters over the term of the last administration, and she is thought to be a prime candidate to succeed to Governor Barr as the Federal Reserve's Vice Chair for Supervision.

Governor Bowman focused primarily on three areas of regulation: tailoring, using a "problem-focused" approach to regulation and supervision, and the "imperative of innovation in the banking system." Turning first to tailoring, Governor Bowman defines it as "calibrating the requirements and expectations imposed on a firm based on its size, business model, risk profile, and complexity." She notes significantly that the Economic Growth, Regulatory Relief, and Consumer Protection Act requires the Federal Reserve to incorporate tailoring in certain regulatory and supervisory circumstances. Then, she states the underlying rationale for tailoring. Applying a system meant to oversee a $2 trillion asset-size bank to a $2 billion asset-size bank can, for example, impede efficiency and effectiveness of both supervision and business operations in the smaller, generally less-complex bank. This leads her to "question the wisdom of applying the same . . . standards to banks within such a broad range" and to conclude that "it is imperative that we keep the benefits of tailoring in focus as the bank regulatory framework evolves."

Next, Governor Bowman describes a "problem-focused" approach to supervision and regulation as a means of determining regulatory and supervisory priorities. This approach "requires [supervisors] to identify the problem we are trying to solve, determine whether we are the appropriate regulator to address the problem based on our statutory mandates and authorities, and explore options for addressing the identified issue." Her statement of the methodology responds to two recent criticisms of the Federal Reserve's, and the other US banking agencies', recent supervision experiences. The criticisms are that supervisors' focus on the wrong risks, when the real risks were clear, contributed to the spate of bank failures in the Spring of 2023, and, similarly, the consistent expansion of supervisory scope can defeat supervision efforts to address true, material risks. As a solution, Governor Bowman suggests emphasizing the identification and enforcement of concepts of responsibility and accountability for supervisory conduct, while acknowledging those tasks can be complex in our system of multiple, often overlapping, bank supervisory regimes. She concludes that "[o]ur goal should be to develop a better filter to promote appropriate and effective prioritization." One expects that such a filter would involve tailoring, among other considerations.

Just as Acting Chairman Hill's goals for FDIC highlighted the importance of innovation in the market for financial services, so do Governor Bowman's remarks. She states quite clearly that "[r]egulators must be open to innovation in the banking system." Toward that end, regulators "must promote innovation through transparency and open communication, including demonstrating a willingness to engage during the development process . . " and "[f]inancial institutions should know what activities are permitted, and the supervisory and regulatory expectations that will accompany their activities." This may require substantial changes in the current supervisory approach. As she puts it, "[t]he natural posture of a regulator may be to emphasize safety and soundness above all other objectives, but doing so will ultimately stifle innovation and threaten the long-term health and utility of the banking system." It will not be lost on readers that Governor Bowman delivered these remarks on the same day as the Senate Committee on Banking, Housing and Urban Affairs held a hearing covering, among other topics, supervisory discouragement of digital innovation, and that the FDIC released previously confidential documents purporting to show that the FDIC consistently declined to engage substantively with banks in digital innovation matters.

Governor Bowman also spoke about three other matters of the moment. With respect to the operation of the Treasury market, she noted that an erosion in liquidity is in part an unintended result of  ‘the growth of “safe” assets in the banking system [as a result of recent liquidity rules], and  . . . "the increase in leverage-based capital requirements becoming the binding capital constraint on some large banks.”  She suggested a cure could involve amending the leverage ratio and G-SIB surcharge regulations for the largest U.S. banks. Focusing then on stress testing, Governor Bowman emphasized her support for the Federal Reserve’s recent announcement “that it would soon seek public comment on significant changes to the stress testing process designed to improve transparency of the tests and reduce volatility of the resulting stress capital buffers that apply to large financial institutions.” Finally, Governor Bowman expressed some frustration with supervisors’ failure to prioritize addressing fraud, particularly check fraud. She observed that “[f]raud is perhaps the most consistent issue raised when I speak with bankers” and said that supervisors “are overdue for more assertive action to protect bank customers and the financial system.”

# Trump’s Executive Orders Reshape Federal Rulemaking and Regulation

**February 6, 2025**

**By Peter Y. Malyshev**
Partner | Financial Regulation

President Donald Trump recently addressed the new administration’s policies on financial regulations, artificial intelligence (“AI”), and digital assets (i.e., cryptocurrency). Through a series of executive orders (“EO”), President Trump followed through on campaign trail promises to overhaul the framework of federal rulemaking. These new orders depart from the previous administration’s regulatory framework and prioritize creating more industry-friendly initiatives toward digital assets and financial innovation generally. Within each new order, there are several key takeaways:

### Strengthening American Leadership in Digital Financial Technology

On January 23, 2025, President Trump signed an EO to reshape US digital asset and financial sovereignty policies. The order revokes Biden-era EOs and regulations, ensures individuals can transact digital assets without government interference, and explicitly prohibits the creation of a US Central Bank Digital Currency (“CBDC”). It also calls for a review of existing financial regulations to promote transparent, technology-neutral guidelines that support blockchain innovation while securing the US’s position as a global economic leader in digital finance.

The order establishes the President’s Working Group on Digital Asset Markets to oversee these regulatory changes, which will operate under the National Economic Council. Chaired by the Special Advisor for AI and Crypto, David Sacks, the group includes top officials from the Treasury, DOJ, SEC, CFTC and other agencies. The group’s objectives include reviewing current regulations, proposing a Federal regulatory framework for digital assets, and assessing the feasibility of a national digital asset stockpile derived from lawfully seized cryptocurrencies. The group has been placed on a tight schedule with 180 days to submit recommendations, marking the first step toward a broader digital asset policy overhaul.

### Removing Barriers to American Leadership in Artificial Intelligence

President Trump signed another EO to strengthen US leadership in AI by rolling back regulations that could hinder AI innovation. The order revokes **Executive Order 14110**, which President Biden signed to regulate AI development, and calls for a new AI action plan within 180 days. This plan will focus on removing government-imposed obstacles to growth, ensuring AI systems remain free from ideological bias, and enhancing economic competitiveness and national security. The administration’s departure from previous oversight draws support from industry leaders for its prioritization of innovation.

### The Impacts on Federal Rulemaking

The Trump administration’s orders reflect a broader effort to reshape federal rulemaking by rolling back prior regulatory frameworks and limiting government intervention in emerging technological industries. By revoking key policies on AI and digital assets, the administration has shifted away from the Biden administration’s stricter oversight and has taken a ‘less regulation and more innovation approach.’ Federal agencies—such as the SEC, DOJ, and CFTC—will be forced to reassess their enforcement priorities with clear replacement policies still pending. The administration’s emphasis on halting regulations and reducing federal oversight may also lead to greater reliance on state-level regulation, creating potential inconsistencies in compliance and enforcement.

As agencies await future directives, the long-term regulatory landscape remains uncertain, although some agencies, such as CFTC, have already commenced implementing President Trump’s directives in a series of actions, such as relating to **prediction markets**, refocusing enforcement priorities away from regulation by **enforcement** and changing CFTC’s **leadership.**

## Cadwalader Strengthens Financial Regulation Team With the Return of Partner Dan Meade

**February 6, 2025**

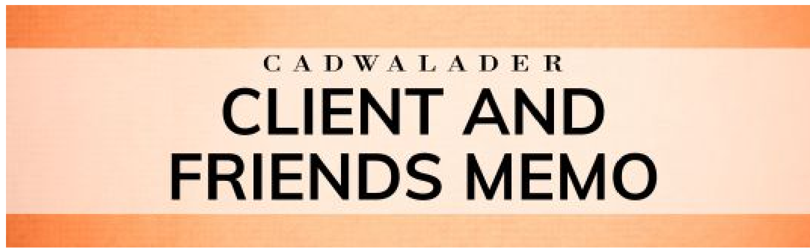
Cadwalader is pleased to announce the return of **Dan Meade**, a highly respected bank regulatory lawyer with over two decades of experience, as partner in the firm's Washington, D.C. office.

"We are thrilled to welcome Dan back to Cadwalader," said Managing Partner Pat Quinn. "Dan's expertise and deep familiarity with the bank regulatory landscape further solidify our ability to deliver the high-caliber guidance our clients rely on, especially as we continue to enhance our leadership in financial services."

**Read the official release.**

## Clients & Friends Memos

**February 6, 2025**




**Corporate Transparency Act Remains on Hold Despite SCOTUS Stay of Injunction**

On January 23, 2024, the Supreme Court overturned a nationwide injunction enjoining enforcement of the Corporate Transparency Act ("CTA"). However, the implementing regulations of the CTA remain unenforceable due to a district court order still in effect in a separate case.

Read more **here**.

**Trusts Holding Loans Need Licensing, Says Maryland Office of Financial Regulation**

On January 10, 2025, the Maryland Office of Financial Regulation issued emergency regulations revised to clarify that "passive trusts" holding residential mortgage loans must obtain a Mortgage Lender License and if the trusts hold installment loans (described below), then they may also need to obtain an Installment Lender License.

Read more **here**.