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CABINET NEWS

Research and commentary on regulatory and other financial services topics

New Regulatory Priorities Spring Into Focus

April 3, 2025

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The UK Regulator Sets Out Its Supervisory Priorities for the Asset Management and Alternatives Sector

April 3, 2025

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On February 26, the UK's Financial Conduct Authority (**FCA**) **wrote to Chief Executives in the asset management and alternatives sector** to set out their current supervision priorities (the **Portfolio Letter**).

Against a backdrop of both growth (firms in this sector manage and advise assets totalling £14.3 trillion and the UK is the largest centre for asset management in Europe) and volatility, the FCA is focusing on the following in the Portfolio Letter, with an overarching emphasis on governance, senior accountability for managing risks, oversight and appropriate management information that facilitates decision making germane to relevant risks:

1. Private Markets

In contrast to more liquid markets, frequent trading and regular price discovery are necessarily not a feature in private markets, which instead must use judgement-based processes when conducting valuations. This leads to the risk of inappropriate valuations driven, for example, by conflicts of interest or a lack of expertise. The FCA has recently published the results of its review on valuations of private market assets (see **here** for our note on this) and the Portfolio Letter emphasises the importance of its findings. In particular, governance, effective oversight, audit trails and the identification and management of conflicts of interest are key. With regard to conflicts of interest, the Portfolio Letter flags a multi-firm review later this year that will look at whether or not firms' management of these, and oversight of that management, remain fit for purpose.

2. Market Integrity and Disruption

This supervisory priority is informed by the System Wide Exploratory Scenario exercise (**SWES**) undertaken by the FCA and the Prudential Regulation Authority. SWES identified a number of areas of structural vulnerability including around risk management, liquidity management and operational resilience as well as margin preparedness. These will inform the FCA's supervisory priorities in this area.

3. Consumer Outcomes

Here, the FCA is concentrating on consumer outcomes in the context of the Consumer Duty, and will be looking at price and value across the value chain for unit-linked funds and how model portfolio services are being delivered in a way that means consumers get good outcomes.

4. Targeted Work

- Sustainable finance: - the FCA will work with firms to engage on how labelling, naming and market rules are being followed.
- Financial crime and market abuse: - the FCA will be looking for appropriate and proportionate systems and controls with effective oversight.

5. Key Takeaways

- firms should conduct a thorough audit of policies and procedures around valuation, conflicts of interest and independent oversight;
- is the valuation function independent and sufficiently expert?;
- governance is a key focus – is it independent and robust, is decision making and rationale documented and are decisions constructively challenged?;
- management information and its flow is also crucial;
- conflicts of interest, their identification, management and documentation is clearly a focus.

Stablecoin Bills Moving to the Floor of the Senate and the House

April 3, 2025

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As of yesterday, stablecoin bills in the House and the Senate have been voted out of committee and moved onto the floor of each house for a full vote. The Senate voted their bill, the Guiding and Establishing National Innovation for US Stablecoins (**the GENIUS Act**) out of committee in mid-March, after updating it to reflect bipartisan concerns. Similarly, the House's bill, the Stablecoin Transparency and Accountability for a Better Ledger Economy (**the STABLE Act**), enjoys bipartisan support.

Both bills set up a structure such that all issuers of stablecoins pursuant to the bill will be regulated by the Federal banking agencies. In the STABLE Act, if the issuer is a bank or credit union, then their primary prudential regulator will be the "Primary Federal Payment Stablecoin Regulator", and if the issuer is a non-bank, then the Office of the Comptroller of the Currency (OCC) will be the regulator. However, in the GENIUS Act, the Federal Deposit Insurance Corporation (FDIC) is not contemplated as being a stablecoin regulator – only the Federal Reserve, the OCC, and the National Credit Union Association (NCUA) would be stablecoin regulators. At the state level, both bills contemplate state banking regulators to also be stablecoin regulators.

Some other important differences between the bills that will need to be worked out –

- The STABLE Act definition for a "payment stablecoin" exempts from the definition deposits "regardless of the technology used to record such deposit", which is a position consistent with the approach taken by the 2022 Amendments to the Uniform Commercial Code. The GENIUS Act does not include such an exemption.
- The STABLE Act also provides for a two-year "wind-down" period (dating from the passage of the bill) during which pre-existing stablecoins (i.e., those issued before the bills are passed) may continue to be offered or sold by "custodial intermediaries" and a process for such stablecoins to be deemed "comparable" to "payment stablecoins". The STABLE Act also makes it unlawful, at the expiration of the two years, for any stablecoin to be issued that is not a "payment stablecoin". The GENIUS Act does not provide a method for pre-existing stablecoins to be considered "payment stablecoins", and does not provide for a wind-down period, suggesting that "custodial intermediaries" could continue to offer and sell pre-existing stablecoins.
- The GENIUS Act includes provisions addressing how to manage an "insolvent" payment stablecoin issuer. The STABLE Act does not address this situation.

Both bills presently require 1-to-1 reserves to be held against the stablecoins that are issued and prohibit rehypothecation of those reserves (i.e., if the reserves are deposits, then those deposits may not be deployed back into the marketplace to support loans or other activities of banks). While the reserves may be held in a variety of forms, not just deposits, if payment stablecoins begin to take off, it is reasonable to anticipate that there could be some deleterious effects upon deposit markets, which would then impact credit markets. At present, neither bill contemplates relaxing the prohibition on rehypothecation, which means that it would require an act of Congress to change it. Accordingly, we think the bills could be improved by providing a method for either the Federal Reserve or the OCC to engage in rulemaking to relax the prohibition, should it be necessary to balance the marketplace.

Fed, FDIC and OCC Move to Rescind 2023 CRA Rule

April 3, 2025

By Daniel Meade
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Last week, the Federal Deposit Insurance Corporation (“FDIC"), Federal Reserve Board (“FRB”), and the Office of the Comptroller of the Currency (“OCC”) (collectively, “the Agencies”) announced, that they intend to issue a proposal to both rescind the Community Reinvestment Act (“CRA”) final rule issued in October 2023 and reinstate the CRA framework that existed prior to the October 2023 final rule. The Agencies also noted that they “will continue to work together to promote a consistent regulatory approach on their implementation of the CRA.”

While the Agencies pledging to continue to work together on an interagency or at least consistent basis is usually not very newsworthy – they act on an interagency basis for many rulemakings and guidance. It is noteworthy in the CRA space as the OCC had acted alone in revising its CRA rule in 2020. We discussed this when the Agencies came together to issue a revised interagency CRA rule in 2023. The 2023 CRA rule has faced criticism and litigation. Current acting FDIC Chair Travis Hill (and then FDIC Director Jonathan McKernan) had dissented in the FDIC’s votes to adopt the 2023 rule. Similarly, FRB Governor Michelle Bowman (now the nominee to be FRB Vice Chair of Supervision) had dissented on the FRB’s vote to adopt the 2023 CRA rule.

A number of banking industry trade associations, including the American Bankers Association, Independent Community Bankers Association and the U.S. Chamber of Commerce filed a lawsuit in February 2024 arguing the 2023 rule exceeded the Agencies’ statutory authority under both the CRA and the Administrative Procedure Act. In March 2024, the U.S. District Court for the Northern District of Texas enjoined the Agencies from enforcing the 2023 rule while the litigation was pending. The Agencies noted the pending litigation in the announcement that they intend to rescind the 2023 CRA rule and return to the previous CRA rule in place. This action by the Agencies would appear to bring the litigation (and the decade-long efforts to revise the CRA rule) to an end.

Business As Usual for Digital Asset Derivatives – CFTC Advisories Withdrawn

April 3, 2025

By Peter Y. Malyshev
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Last Friday, March 27, 2025, the US Commodity Futures Trading Commission (CFTC) formally withdrew two crypto-related staff advisories, Staff Advisory No. 18-14 (advisory with respect to virtual currency derivative product listings) and Staff Advisory No. 23-07 (enhanced risks with expansion of digital asset clearing). The rescinded advisories previously imposed enhanced regulatory expectations on digital asset derivatives, including guidance on the listing of virtual currency derivative products on exchanges, *i.e.,* designated contract markets ("DCMs") and swap execution facilities ("SEFs") and the risks associated with a more robust digital asset clearing by derivatives clearing organizations ("DCOs"). The withdrawals highlight several regulatory shifts:

- Under Acting CFTC Chairman Caroline Pham's "back to basics initiative," the CFTC is simplifying its regulatory and enforcement frameworks by eliminating unnecessary staff advisories and consolidating enforcement teams. The truncating approach to CFTC operations aligns with the federal initiatives to shrink regulators, including the introduction of the Department of Government Efficiencies ("DOGE") and the Securities and Exchange Commission's ("SEC") recent efforts to downsize its cryptocurrency enforcement unit and scale back investigations into digital asset companies.
- The withdrawals reflect the growing maturity of the digital asset industry and the CFTC's confidence that exchanges and clearinghouses have developed the necessary expertise and risk management frameworks to effectively oversee crypto derivatives. As a result, the agency no longer needs the specialized guidance initially introduced to address the challenges posed by the emerging digital asset market.
- The CFTC emphasizes that digital asset derivatives should be subject to the same regulatory standards as traditional derivatives. By rescinding both documents, the CFTC takes back language that previously implied heightened regulatory concern tied to the digital nature of certain assets, bringing parity to review and risk protocols attached to virtual currency derivatives, oil futures and other commodities alike.
- This withdrawal gives a preview of what CFTC's likely future regulatory regime for digital asset derivatives will be – i.e., treat digital asset derivatives like any other CFTC jurisdictional asset. However, if the CFTC were to receive exclusive spot jurisdiction over digital asset commodities under legislation proposed in Congress, the CFTC would have to establish an entirely new regulatory regime for digital assets because currently the CFTC does not have exclusive regulatory jurisdiction over any commodity traded in spot markets (except, to a certain extent, retail forex).

Regional Banks Advised To Build Investor Confidence in CRT Deals

April 3, 2025

Cadwalader's recent webinar, "Capital Relief Trades on Commercial Real Estate," was covered by *Structured Credit Investor* in an article published on March 28. The webinar was moderated by partner **Stuart Goldstein**, with partners **Jed Miller** and **Kahn Hobbs** participating as panelists.

In the article, Jed and Kahn were quoted about the challenges that US regional banks executing CRT transactions face in managing regulatory expectations and navigating complex servicing arrangements. They explained how banks can maximize the benefits of CRT transactions with a good balance between control and compliance.

Learn more **here**.

FinCEN Releases New Corporate Transparency Act Rule Exempting U.S. Entities and U.S. Beneficial Owners

April 3, 2025

On March 21st 2025, the Financial Crimes Enforcement Network ("FinCEN") released a new interim final rule that exempts U.S. entities and U.S. beneficial owners from the reporting requirements of the Corporate Transparency Act ("CTA").[1] Under the interim final rule, which was published in the Federal Register on March 26, 2025, only foreign reporting companies, their non-U.S. beneficial owners, and company applicants are subject to the CTA's reporting requirements.[2]

FinCEN's new interim final rule redefines the term "reporting company" to include only entities that are both "formed under the law of a foreign country" and "[r]egistered to do business in any State or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe."[3] A "State" is defined as "any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other commonwealth, territory, or possession of the United States."[4] The new rule also specifically exempts "domestic entities," which include each "corporation, limited liability company, or other entity" that is "[c]reated by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe."[5]

Foreign reporting companies are not required to report beneficial ownership information ("BOI") for any U.S. persons who are beneficial owners, and U.S. persons are exempt from the requirement to provide BOI "with respect to any reporting company for which they are a beneficial owner."[6] Foreign reporting companies with only U.S. beneficial owners are exempt from the requirement to report beneficial owners, but continue to be required to submit BOI reports to FinCEN that include information, such as the entity's full legal name, tax identification number, and company applicants.[7]

Notably, the new rule does not exempt U.S. persons from the requirement for reporting companies to provide the identifying information of company applicants. Thus, U.S. persons who are involved in a non-U.S. entity's filing of a registration to do business in a U.S. state or tribal jurisdiction may still be required to provide their name, address, and a unique identifying number from an identification document, such as a driver's license.[8]

The deadline for a foreign reporting company to file an initial BOI report, or to update or correct a previously filed BOI report, is April 25, 2025 or 30 days after the reporting company's first registration to do business in the United States, whichever comes later.[9]

This is likely not the last significant development regarding the CTA, even for domestic reporting companies and U.S. citizens. FinCEN is accepting comments on the interim final rule through May 27, 2025. While the interim final rule focuses on foreign reporting companies, a U.S. citizen who is a company applicant for a foreign reporting company must still provide identifying information on the entity's BOI report. Court proceedings contesting the constitutionality of the CTA are still pending in several courts, and the Fifth Circuit has requested briefing from the parties in one of the cases in light of the new rule.[10] Legislation is pending in Congress that would postpone the reporting deadline to January 1, 2026.[11] And the Treasury Department's March 2 announcement and FinCEN's corresponding new rule may strengthen efforts in Congress to repeal the CTA outright. Moreover, the Treasury Department's decision not to enforce the CTA against domestic reporting companies could be challenged in court, or could be reversed by a future presidential administration.

We will continue to monitor developments regarding the CTA as they occur.

Appendix available **here**.

1 *FinCEN Removes Beneficial Ownership Reporting Requirements for U.S. Companies and U.S. Persons, Sets New Deadlines for Foreign Companies*, FinCEN, *available at* ***https://fincen.gov/news/news-releases/fincen-removes-***

beneficial-ownership-reporting-requirements-us-companies-and-us (last accessed Mar. 26, 2025).

2 Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension, 90 Fed. Reg. 13688 (Mar. 26, 2025) [hereinafter Interim Final Rule], *available at* **https://www.federalregister.gov/documents/2025/03/26/2025-05199/beneficial-ownership-information-reporting-requirement-revision-and-deadline-extension** (last accessed Mar. 26, 2025). Appended to this publication is a redlined version of FinCEN's announced changes to 31 C.F.R. § 1010.380. All citations to this redlined document are referred to as "Redlined 31 C.F.R. § 1010.380."

3 Redlined 31 C.F.R. § 1010.380(c)(1)(ii).

4 *Id.* at (f)(9).

5 *Id.* at (c)(2)(xxiv).

6 *Id.* at (d)(4)(i) and (ii).

7 *Id.* at (d)(4)(i); *see also* Interim Final Rule, *supra* note 2, at 13690.

8 *See* Redlined 31 C.F.R. § 1010.380(e)(2) and (3).

9 Interim Final Rule, *supra* note 2, at 13690.

10 Court Directive, *Texas Top Cop Shop, Inc. v. Bondi*, No. 24-40792 (5th Cir. Mar. 24, 2025), ECF No. 344.

11 The U.S. House of Representatives passed the *Protect Small Businesses from Excessive Paperwork Act of 2025* (H.R. 736) unanimously on February 10, 2025. A companion bill, S.505, is still pending in the U.S. Senate.