

Global Moves, Digital Shifts

July 24, 2025

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Federal Banking Regulators on Crypto-Asset Safekeeping

July 24, 2025



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Just days prior to the passage of the GENIUS Act on stablecoins by Congress, on July 14th, the Federal Reserve, Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation (collectively, the “Agencies”) issued [a joint statement called “Crypto-Asset Safekeeping by Banking Organizations”](#). Safekeeping refers to any service provided by banks that involves “holding an asset on a customer’s behalf” and safekeeping of **crypto-assets** means controlling the keys associated with the crypto-assets. The Agencies distinguish safekeeping from situations where the bank is a full-fledged custodian of assets (i.e., safekeeping services alone may not rise to the level of causing banks to have a fiduciary duty to the customer). This means that the statement applies whether or not the bank has a fiduciary duty to the customer.

First, the Agencies identify general risk management considerations whenever safekeeping of crypto-assets occurs. Specifically, banks should conduct a risk assessment of engaging in safekeeping crypto-assets that addresses all of the following: 1) core financial risks of safekeeping; 2) the bank’s ability to understand the asset class; 3) the bank’s ability to ensure a strong control environment; and 4) contingency plans to address unanticipated challenges in effectively safekeeping.

Of crucial importance is that the bank understands the “technology underlying” crypto-assets. Each individual crypto-asset has different smart contracts associated with it, different redemption policies, different reserves (in the case of stablecoins) and a single crypto-asset can be used in multiple ways – some activities could be classified as engaging in commodity transactions and other activities could be viewed as engaging in securities transactions, for example. This means that banks really should conduct a risk assessment of not just engaging in safekeeping activities, but also of each individual kind of crypto-asset it proposes to safekeep.

Additionally, as the Agencies point out, “[o]ne of the primary risks of crypto-asset safekeeping is the possible compromise or loss of cryptographic keys or other sensitive information that could result in the loss of crypto-assets or the unauthorized transfer of the crypto-assets out of the” bank’s control. This means that the bank must be ready to face the risks of being held liable for its customers’ losses. That liability turns on whether the bank has “control” of the crypto-asset, which the Agencies define as meaning that “no other party – including the customer – has access to information sufficient to unilaterally transfer the crypto-asset”. Note that under Article 12 of the UCC, as contained in the 2022 UCC Amendments, it is possible for control to be achieved even in the case of a shared wallet. But, for now, the Agencies are clearly stating that “control” of a crypto-asset happens when only one party has the ability to cause transfer of the crypto-asset.

Finally, the Agencies underscore the need for careful compliance with anti-money laundering laws and compliance with Office of Foreign Asset Control requirements, to which “[t]he design features of distributed ledger technology may present challenges for achieving or maintaining compliance.”

Federal Reserve Holds Large Bank Capital Framework Conference

July 24, 2025



By Daniel Meade
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On July 22nd, the Federal Reserve Board (“FRB”) hosted the [Integrated Review of the Capital Framework for Large Banks Conference](#). The Conference appears to be a first of its kind for the FRB, and as Chair Jay Powell noted in his [opening remarks](#), was the brain child of Vice Chair of Supervision Michelle Bowman.

In his opening remarks, Chair Powell stated that the conference brought together “industry veterans, academics, and current and former policymakers who are all well-versed in the operations of large banks and the main pillars of the capital framework.” He went on to note that “[a] great benefit of this conference is the chance to consider all elements of the capital framework in concert, rather than look at each in isolation. We need to ensure that all the different pieces of the capital framework work together effectively.”

The conference agenda did indeed cover the four main elements of the capital framework: risk-based capital requirements, leverage requirements, the surcharge for the largest and most complex banks, and the stress tests. Chair Powell noted that the FRB is likely to have proposals on all four elements shortly. As we [noted](#) last month, the three Federal banking agencies have an open rulemaking on proposed revisions to the enhanced Supplementary Leverage Ratio or eSLR.

While the conference included a variety of views on the capital framework generally, there was a general consensus that it would be a mistake for the United States to abandon the Basel III Endgame efforts.

UK Government Announces Programme of Regulatory Reforms

July 24, 2025



By Alix Prentice
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On July 15th, the UK Government published the final version of its **Financial Services Growth and Competitiveness Strategy** (the **Strategy**). The Strategy aims to “[roll] back regulation that had gone too far in seeking to eliminate risk” in order to drive growth in the financial services sector. Backed by appropriate consultation and other documents from regulators, key highlights include:

Capital Framework for Banks;

1. raising the assets threshold requirements for own funds and eligible liabilities (**MREL**) to £25-40 billion;
2. MREL to be no higher than the minimum capital requirements for firms with a transfer resolution strategy (and making it clearer when this or a bail-in resolution strategy is necessary);
3. trading and lending requirements under Basel 3.1 are to be introduced on January 1st 2027;
4. making the ringfencing of retail from wholesale banking business more efficient, and allowing ring-fenced banks to provide more business products and services. In addition, the Government is reviewing proposals to allow banks more flexibility to operate internally across the fence;
5. speeding up approval of banks’ internal credit risk models.

Insurance and Reinsurance Markets;

1. consulting on a more flexible regime for risk transformation, including reforming the insurance linked securities market;
2. developing the framework for captive insurance to make it appropriately tailored;
3. in addition, on July 24th the Prudential Regulation Authority (**PRA**) published its final policy on changes to the **insurance special purpose vehicle regulatory framework**. This includes structural changes and an accelerated approval process for ISPVs meeting certain criteria.

Shorter Deadlines for Determining Regulatory Applications;

1. statutory deadlines for decisions by the Financial Conduct Authority (**FCA**) and PRA will be shortened to four months for complete applications for new firm authorisations and 10 months for incomplete applications (down from six and 12 months);
2. applications for new appointments to Senior Manager roles will be decided within two months rather than three;
3. a swift regime to allow innovative start-ups to conduct limited regulated activities quickly.

Significant Changes to the Senior Managers and Certification Regime;

1. consulting on removing the Certification Regime (under which certain, non-Senior Manager functions, are internally certified annually);
2. a reduction in the number of Senior Management Functions, which the Strategy estimates will lead to a 40% cut in these for banks and insurers (these functions require the prior approval of the FCA).

Application of the Consumer Duty to Wholesale Business

1. The Government has asked the FCA to report back on how it plans to deal with concerns raised by wholesale firms (including asset managers) around the broad application of the Duty to wholesale firms engaged in distribution chains that have an impact on retail customers, and on the categorisation of “professional clients.”

CFTC Relief for Event Contracts

July 24, 2025



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In addition to everything relating to cryptos, event contracts are one of the hottest topics in Washington at the Commodity Futures Trading Commission (“**CFTC**”). Hopefully, when former CFTC commissioner Brian Quintenz is confirmed in the U.S. Senate for CFTC chairmanship, there will be greater certainty for event contracts, which are derivative contracts typically structured as binary options based on certain outcomes of events, such as political elections or sports games. These outcomes are recognized as “commodities.”

Most, if not all, volume in trading in leveraged event contracts is driven by retail participants, *i.e.*, persons who are not institutional investors or professional traders, and retail participants can only trade derivative contracts, such as swaps or futures, on registered commodity exchanges, also known as designated contract markets (“**DCMs**”).

Chicago Mercantile Exchange (“**CME**”), as DCM, filed a no-action letter (“**NAL**”) request with the CFTC in anticipation of listing certain margined event contracts. The NAL explains that binary option event contracts qualify as “swaps” as defined under § 1a(47) of the Commodity Exchange Act, and as such, must be reported to a swap data repository (“**SDR**”) under Part 43 and Part 45 of CFTC Regulations as required under the Dodd-Frank Act of 2010. CME explained that as DCM-listed contracts, it will be duplicative and unnecessary to report these swap contracts to the DCM because all relevant information will be already disclosed through the DCM. The CFTC granted this relief on July 22, 2025 (CFTC Letter No. 25-23) under certain conditions, including that these events contracts will be cleared through CME’s derivatives clearing organization (*i.e.*, the clearing house); all relevant economic terms will be published on CME’s website; the CME will provide the CFTC with all relevant transactions information; CME shall continue complying with all other reporting requirements; and make its records available to the CFTC.

This relief is indicative of the trend at the CFTC to rationalize and to streamline its reporting rules, which have been subject to much criticism by market participants. Lastly, this NAL demonstrates that the CFTC is open to recognizing event contracts as a valuable financial contract suitable to retail participants and CFTC’s willingness to accommodate new business models driven by retail customer demand.

Fed, FDIC and OCC Issue Proposed Rulemaking to Rescind 2023 CRA Rule

July 24, 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”) issued a **proposed rulemaking** 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.

As we noted in **April**, when the Agencies announced their intent to issue the proposed rulemaking, the Agencies also noted that they “will continue to work together to promote a consistent regulatory approach on their implementation of the CRA.”

The main reason for the rescission of the 2023 CRA rule is due to litigation brought by a number of banking industry trade associations, including the American Bankers Association, Independent Community Bankers Association and the U.S. Chamber of Commerce 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.

Comments on the proposed rulemaking are due August 18, 2025. The Agencies noted that the litigation possibly caused confusion among banks, and that by rescinding the 2023 CRA rule, the Agencies would be providing certainty to banks subject to the CRA by reverting to the 1995 CRA rules.

GENIUS Act Creates 'Commodity' Uncertainty For Stablecoins

July 24, 2025

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FEATURED IN *Law360*

Cadwalader partner [Peter Malyshev](#) recently authored an article in *Law360* titled "GENIUS Act Creates 'Commodity' Uncertainty For Stablecoins."

In the article, Peter analyzes the recently passed GENIUS Act's provisions that carve out payment stablecoins from the definition of "commodity" in Section 1a(9) of the Commodity Exchange Act of 1936. He compares the effect that this will have on payment stablecoins to past examples, such as the Onion Futures Act in 1958, which similarly excluded onions from the definition of commodity.

Read the full article [here](#).