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Research and commentary on regulatory and other financial services topics

Regulator Alphabet Soup

December 4, 2025

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FRB, FDIC, OCC and NCUA Testify at Congressional Oversight Hearings

December 4, 2025

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On December 2, 2025 the **House Financial Services Committee** held an oversight hearing with leaders of the Federal Deposit Insurance Corporation ("FDIC"), Federal Reserve Board ("FRB"), the National Credit Union Administration ("NCUA") and the Office of the Comptroller of the Currency ("OCC").

Testimony from the four leaders were substantially similar before both of the committees. The four witnesses were **Michelle Bowman**, Vice Chair for Supervision, FRB; **Travis Hill**, Acting Chairman, FDIC; **Kyle Hauptman**, Chairman, NCUA; and **Jonathan Gould**, Comptroller of the Currency, OCC.

The four prudential leaders reported that their respective depository institutions are generally sound. Vice Chair Bowman pointed to the FRB's **Supervision and Regulation Report** issued earlier in the week, and her testimony reflected much of what was in the report, noting a current focus on "addressing financial risks over process and documentation shortcomings... [and] effectively and efficiently tailoring the supervisory approach to each bank based on its size, complexity, business model, and risk profile." Vice Chair Bowman noted the risks of nonbank financial institutions, noting in her prepared testimony that "nonbank financial institutions continue to increase their share of the total lending market, providing strong competition to regulated banks without facing the same capital, liquidity, and other prudential standards."

Much of the discussion, during the hearing with the prudential regulatory leaders focused on efforts that the agencies have completed with regard to capital adequacy regulations, and forthcoming Basel III Endgame re-proposal. The three banking agency leaders noted the **final rule** adjusting the enhanced supplementary leverage ratio ("eSLR") to make the eSLR a backstop rather than a binding constraint. The pending interagency **proposal** to lower the community bank leverage ratio ("CBLR") was also discussed regarding capital adequacy generally. With regard to the Basel III Endgame re-proposal, the three banking agency representatives stated the hope is to release that proposal early in 2026. While some members of the committee asked about calibration of a Basel III re-proposal and whether it would be capital neutral, Vice Chair Bowman noted that "[m]y approach is to address the calibration of the new framework from the bottom up, rather than reverse engineer changes to achieve pre-determined or preconceived approaches to capital requirements."

In addition to capital requirements, another area of discussion during the hearing was digital assets, and the Agencies' progress with stablecoin regulations called for in the GENIUS Act. Acting FDIC Chair Hill noting that proposed regs on applications for approval to be a stablecoin issuer should come soon. Vice Chair Bowman also mentioned the agencies are working together "to develop capital, liquidity, and diversification regulations for stablecoin issuers."

Supporting Community Banks, Comments From Comptroller Gould

December 4, 2025

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During a speech earlier this week, Comptroller of the Currency, Jonathan V. Gould addressed the House Committee on Financial Services regarding his agency's "work implementing the President' economic agenda by ensuring that America's federal banking system is safe and sound, and remains the world's most trusted, dynamic, and resilient."

With a focus upon community banks, Gould outlined a series of measures being taken to ensure that they are no longer "too small to succeed" in our economy. In particular, Gould emphasized actions that the Office of the Comptroller of the Currency ("OCC") is "cutting away procedural clutter and returning to risk-based supervision rooted in law with an emphasis on examiner judgment, not arbitrary checklists" (see our in-depth discussion **here**) and steps being taken to develop a "simplified strategic plan process for community banks" to comply with the Community Reinvestment Act (read our discussion **here**).

Gould also described actions that "balance innovation with prudence" as being taken by the OCC in preparation to support implementation of the GENIUS Act, the law Congress passed this summer to establish a framework supporting payment stablecoins. (We have written several articles on the GENIUS Act and **have a webinar replay available**, as well. See our overall review of the GENIUS Act **here**, our discussion of the use of payment stablecoins as margin and collateral **here**, and our most recent article discussing the impact of the GENIUS Act on the scope of commodities **here**.)

Finally, Gould reinforced the message that the OCC is committed to supporting the nation's smaller banks by making sure that these banks can "conduct the very old business of banking and embrace new technologies like AI."

CFTC Authorizes Spot Crypto Trading on DCMs

December 4, 2025

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On December 4, 2025 Commodity Futures Trading Commission ("CFTC") Acting Chairman Caroline D. Pham **announced** that, for the first time, CFTC-regulated commodity exchanges (also known as designated contract markets ("DCMs")) have been authorized to list and facilitate trading in "spot" cryptocurrency contracts.

"Spot" contracts are generally understood to be contracts that settle within two business days, but in some illiquid markets these contracts may not settle for a period of 28 days and still remain "spot." At this time, it is expected that at least one DCM has been authorized by the CFTC to list these contracts on a leveraged basis and clear them through a CFTC-registered derivatives clearing organization ("DCO") for retail participants. This authorization comes shortly after the CFTC finished collecting **comments** in relation to its Crypto Spring project which launched on August 1, 2025, and in response to the President's Working Group on Digital Asset Markets consultation.

It is expected that several other DCMs will follow suit, however, the CFTC will most likely have to follow up with a set of guidance and possible rule amendments to ensure that this new type of traded contracts fits within its regulations as well as the existing procedures of futures commission merchants and introducing brokers, and the rules promulgated by the National Futures Association.

CFPB Examiner Humility Pledge and Funds Woes

December 4, 2025

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The Consumer Financial Protection Bureau ("CFPB"), which has seen the scope of its activities, funding and staffing dramatically impacted since January of this year, has introduced a "**Humility Pledge**" that must be read at the beginning of a supervision exam by the CFPB examiners.

Skipping over 2025 examinations entirely (i.e., because there have been so very few this year), the pledge recites that 2026 examinations will "be on identified priority markets and the resulting findings will focus on pattern and practice violations of law where there is tangible and identifiable consumer harm." The pledge promises that "expansive data sets" will not be necessary and that exam times will be reduced from 8 weeks to a time period "commensurate with the defined scope of exams."

This shift from the CFPB is certainly welcome news to any financial institution that has been subject to CFPB examinations, particularly since the pledge states that the CFPB's "goal is to work collaboratively with the entities" to review their compliance processes and existing problems, as well as to encourage "self-reporting and resolving issues in Supervision, where feasible, instead of via Enforcement." The capitalization of these terms, by the way, is a reference to the Division of Supervision within the CFPB resolving issues and refraining from referring problems for resolution to the Division of Enforcement. This kind of separation between supervisory activities and enforcement activities is more consistent with how federal banking agencies have traditionally managed problems occurring with supervised institutions. So, again, this shift is welcome news to such institutions.

Interestingly, however, while the publication of the Humility Pledge seems to indicate that the CFPB will be actively supervising in 2026, the funding for the CFPB has been hobbled even further by **a filing telling the D.C. Circuit Court in the CFPB employee worker's union case against Director Vought, NTEU v. Vought, that the CFPB "may not legally request funds" from the Federal Reserve** to support its statutory functions because the Federal Reserve does not have any "combined earnings", as required by the Dodd-Frank Act.

Finally, just this week, the CFPB issued its mandated **annual report** to Congress regarding its activities in 2024 to enforce the Fair Debt Collection Practices Act ("FDCPA"). This report has been provided to Congress in the first quarter of the year, every year, since the CFPB has been in existence, so it is anomalous for this late publication. The CFPB's activities in 2024 were described over 31 pages, describing its analysis of related consumer complaints (207,800 complaints), seven main areas of findings during supervision examinations, the filing of three amicus briefs, the issuance of an advisory opinion, outreach to veterans, seniors and students regarding debt-specific concerns of those populations, as well as the FTC's enforcement actions regarding the FDCPA.

CFTC Provides CPO-Registration Relief for Certain Credit Risk Transfer SPVs

December 4, 2025

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On November 21, 2025 the CFTC's Market Participants Division ("MPD") issued Letter No. 25-37, a no-action letter providing CPO-registration relief to operators of certain credit risk transfer ("CRT") transactions structured through special purpose vehicles ("SPVs"). The letter responds to a request submitted by the Structured Finance Association ("SFA") on behalf of prudentially regulated financial institutions that use CRTs to manage balance-sheet risk by transferring the risk to sophisticated investors via SPVs. It states that, subject to specified conditions, MPD will not recommend enforcement against U.S.-regulated banks, their affiliates, or any other person involved in setting up or operating such SPVs for failure to register as commodity pool operators ("CPOs").

The question addressed by the letter has lingered since the Dodd–Frank Act expanded the Commodity Exchange Act's ("CEA) definition of "commodity pool" to include vehicles entering into swaps. A bank that manages risk with a CRT may do so by designating a reference pool of balance-sheet assets and establishing an SPV that issues credit-linked notes referencing exposure to those assets; sophisticated institutional investors purchase these notes and assume some of the assets' credit risk, but receive a stated rate of return and repayment of principal to the extent the reference pool performs as expected. In connection with this issuance, the SPV enters into a credit default swap ("CDS") or similar risk-sharing agreement with the bank that functions as the payment mechanism between the bank, the SPV, and the noteholders. Because the SPV is a vehicle entering into a swap, SFA's request letter notes that such SPVs could possibly be considered "commodity pools" under prior interpretations, and asks whether the operators may nonetheless rely on the exemption in CFTC Rule 4.13(a)(3).

CFTC Rule 4.13(a)(3) exempts the operator of a pool from CPO registration if four requirements are met: (i) interests are offered in exempt securities transactions; (ii) the pool satisfies specified *de minimis* limits on commodity-interest positions; (iii) participants are sophisticated investors; and (iv) the pool is not marketed as a vehicle for trading in commodity interests. SFA's request letter represents that, based on the planned structure of the CRT transactions, the SPVs would easily meet the first three requirements; the marketing prong requires more analysis. SFA explained that disclosures will describe the CDS in detail but will focus on the fact that the notes are debt securities with a stated rate of return that create exposure to the credit risk of a pool of reference assets, and will not describe the SPVs as vehicles for trading in swaps or other commodity interests. MPD concluded that, on those facts, it is appropriate to provide a no-action position permitting CRT operators to claim the Rule 4.13(a)(3) exemption.

The CPO-registration relief provided by Letter No. 25-37 is fact-specific. It is contingent on CRT SPVs meeting, among others, the following requirements:

- The operator of the CRT SPV must qualify for and rely on the CFTC Rule 4.13(a)(3) CPO-registration exemption.
- The operator must file a notice of exemption under Rule 4.13(a)(3) with the National Futures Association for each CRT SPV.
- If the operator becomes aware that the SPV no longer satisfies the requirements of Rule 4.13(a)(3), it must promptly notify MPD and the SPV's investors, and must not issue additional notes or enter additional CRTs until compliance is restored.
- For each CRT SPV, the only commodity-interest transaction may be the CDS necessary to effect the CRT.
- The SPV must not engage in active management of its assets or liabilities (but may increase existing assets or designate additional assets according to parameters set forth in the transaction documentation during defined "replenishment periods").
- The SPV's collateral must consist only of cash or highly liquid, cash-equivalent assets.

- The SPV must be established as a bankruptcy-remote entity with specified separateness, governance, and creditor-rights protections.
- The SPV must be used only to hedge credit risk associated with assets owned by the bank, and only to the extent needed to transfer that risk for prudential regulatory-capital purposes.

In light of the fact-specific nature of this relief and its status as a staff no-action position (not binding on the CFTC itself), banks considering CRT structures should treat Letter No. 25-37 as a carefully circumscribed safe harbor and ensure that contemplated CRT transactions align closely with its conditions. As long as these conditions are met, however, this letter should provide welcome clarity and relief to financial institutions and investors operating in this space. To the extent some of the facts or circumstances for a specific entity or transaction are not fully aligned with the four corners of the relief, however, the letter will not be eligible for reliance.