

Digital Assets Banking and Capital Markets Regulatory Digest

July 2024

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Introduction

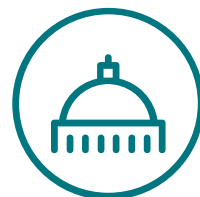
As other jurisdictions implement tailored rules for digital assets,¹ US policymakers are increasingly feeling pressure to respond to maintain US competitiveness. While many of these legislative efforts have yet to be fully enacted, regulators and lawmakers are working towards developing further clarity regarding the status of digital assets and providing a regulatory framework for the industry. As a result of these and other forces, we've updated the themes that are expected to drive the US policy environment in 2024, including:



Market infrastructure under-developed, but evolving: Regulatory clarity regarding digital assets seems to be potentially coming into view. The development earlier this year of the Securities and Exchange Commission's (SEC) approval of the first bitcoin spot exchange-traded product (ETP)² and exchange trading rules to list ether spot ETPs³ are significant milestones towards market development. We expect the digital asset market infrastructure to continue to mature and evolve in the years ahead.



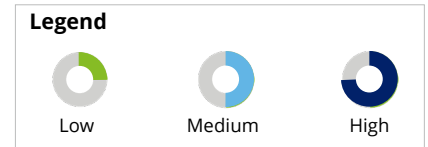
Banks continue to be cautious towards engaging with digital assets: In recent years, regulators have attempted to carefully manage the connection points between the traditional financial system and digital asset ecosystem. International standard-setting bodies have proposed stringent capital treatment measures for digital assets, while federal banking regulators have instituted non-objection processes and special supervisory programs for banks engaging in novel activities. As such, we expect that banks to remain cautious about engaging with digital assets, potentially creating an opportunity for nonbank financial companies (NBFCs) to fill the gap.








The future of digital assets invariably tied to upcoming elections: While recent political momentum surrounding digital assets has featured some bipartisan support, the upcoming presidential and congressional elections will likely have an outsized impact on the future of the industry and the infrastructure surrounding it. This is especially true as it pertains to the classification of digital assets and the development of a potential US central bank digital currency (CBDC). Along with other issues, the future of these issues could hinge on electoral outcomes as lawmaker positions on digital assets continue to fall largely along ideological lines.

Policy primer mark-to-market

In our [Digital Assets Policy Primer](#), we outlined two distinct paths that US regulatory policy could potentially take: with legislation or without legislation. The majority of recent developments are more consistent with our views for a diffused regulatory landscape without tailored legislation, however there's reason to believe that may be changing. Through these changes, we have identified five policy focus areas.



Topic	Current outlook	Recent advances in regulatory clarity
<p>Classification and reporting of digital assets: While the reporting framework for digital assets is becoming clearer, disputes over the classification of specific assets continue as both regulators and the industry remain litigious. We see a broad shift to tokenization of a range of assets, which is raising a new set of regulatory questions on the underlying technology.</p>	<p>Efforts to classify and regulate digital assets remain a focus around the industry. In the absence of federal legislation, individual states (notably, New York and California) are implementing their own reporting and licensing structures.⁴</p>	
<p>Regulating exchanges: Exchanges face increased regulatory pressures that extend beyond the established asset classification debate and could test their business model. SEC and other financial regulators are focused on leveling up consumer and investor protections.</p>	<p>Legislators and regulators have continued to increase scrutiny and enforcement of exchanges in recent months, with a growing focus on decentralized finance (DeFi). Recent proposed legislation would further regulate exchanges, as well as new proposed regulations on brokers and exchanges from the US Department of the Treasury and Internal Revenue Service (IRS).⁵</p>	
<p>Stablecoin issuance: The regulatory treatment of stablecoins appears more muddled than ever. The <i>President's Working Group Report on Stablecoins</i> recommended a bank regulatory framework,⁶ yet enforcement actions and differing legislative proposals may further complicate the regulatory approach.</p>	<p>The fate of stablecoins in the United States will likely be closely tied to bills currently under consideration in Congress with some indicators of growing momentum to pass a regulatory framework. In the meantime, agencies are examining the risks that stablecoins could present in the market.</p>	
<p>Path to a US CBDC: Initiatives to modernize the financial system through a US CBDC are still in the early stages. However, there remains significant political resistance to the idea, particularly for retail CBDC.</p>	<p>Issuance of a CBDC has become an increasingly political issue in recent months, with new bills being introduced to slow or even stop research and development of such an instrument. However, there has still not been a firm decision on the pursuit of a CBDC in the United States.</p>	
<p>Tokenization of real-world assets: As industry participants continue to explore the development of tokenization, regulators and policymakers continue to study the technology's implications, balancing innovation, investor and consumer protection, and financial stability.</p>	<p>Regulators and lawmakers continue to study the technology behind, and implications of, asset tokenization, including hosting congressional hearings and an industry symposium. Meanwhile, industry participants continue to explore use cases and launch applications, such as the cross-industry Regulated Settlement Network (RSN).⁷</p>	

Key summary points

- **Headline:** On May 31, 2024, President Biden vetoed a joint congressional resolution disapproving of the US Securities and Exchange Commission's (SEC) [Staff Accounting Bulletin No. 121](#) (SAB 121). The resolution was pursued under the Congressional Review Act, which allows Congress to overturn federal rules.
- **SAB 121:** SAB 121, issued by the SEC in 2022, provides the SEC staff's view that it would be appropriate for an entity that has an obligation to safeguard digital assets to record a liability and corresponding asset on its balance sheet at the fair value of the crypto-assets.
- **Bipartisan support:** The resolution to disapprove SAB 121 passed with bipartisan support, with the House voting 228-182 and the Senate voting 60-38.
- **SEC's position:** The SEC maintains that SAB 121 is non-binding staff guidance that enhances important disclosure to investors in firms that safeguard digital assets for others.

Considerations

SAB 121 stays put for now

- President Biden's veto keeps SAB 121 in place for now.
- While Congress may override a presidential veto by a two-thirds majority, the congressional resolution failed to reach this threshold on its initial passage. Therefore, it's unlikely the resolution's sponsors would be able to gain additional votes necessary to overturn SAB 121.

Growing bipartisan support for digital asset industry

- The resolution's passage marks the first time both chambers of Congress have passed standalone digital asset legislation, indicating growing legislative attention to the digital asset industry.
- The resolution passed with full Republican support, along with 11 Democratic senators and 21 Democratic representatives.

Key summary points

- **Headline:** On May 23, 2024, the SEC's Division of Trading and Markets approved the listing and trading of several exchange-traded products (ETPs) investing in ether, the native digital asset supporting the Ethereum blockchain.
- **Approvals:** The ETPs were approved as part of a [Form 19b-4](#) filing. 19b-4 filings are made by self-regulatory organizations in advance of any changes to their rules, specifically regarding trading rules.
- **Previous digital asset ETPs:** The approval of ether-ETPs comes approximately four months after the SEC [approved bitcoin spot ETPs](#) in January 2024.
- **No staking:** Prior to approval, each ETP's registration statement was amended to prohibit any staking of ether managed by the ETPs.
- **Ether as a commodity:** In the trading approval for ether spot ETPs, the SEC staff refer to ETP shares as "Commodity Based Trust Shares," suggesting that the agency views spot ether as a commodity and not a security.

Considerations

Ether ETPs will not begin trading immediately

- The approval of the ETP products themselves doesn't provide immediate availability for investors, as the SEC still needs to approved the registration statements for each ETP.
- Unlike the 19b-4 filings, there is no set time limit in which the SEC must decide on the approval of registration statements. However, SEC Chair Gensler recently noted during a [congressional hearing](#) that he envisions those applications being approved "over the course of this summer."

If approved, investors may have more choice at lower cost

- If the registration statements are approved, ether would be available to a broader array of institutional and retail investors, likely at a lower cost compared to existing ether futures ETPs.
- However, the SEC staff's approval thus far has been limited to digital assets with active futures markets, which currently only includes bitcoin and ether.

Treasury Department and IRS finalize digital asset tax reporting rule



Key summary points

- **Headline:** On June 28, 2024, the US Department of the Treasury and the Internal Revenue Service (IRS) finalized a rule on reporting requirements for brokers of digital assets.
- **Covered digital assets:** Under the final rule, “digital asset” is defined as any non-cash digital representation of value, including qualifying stablecoins and specified nonfungible tokens (NFTs), that is recorded on a cryptographically secured distributed ledger, without regard to whether each individual transaction is actually recorded on that ledger.
- **Covered brokers:** The final rule applies to operators of custodial digital asset trading platforms, digital asset hosted wallet providers, and digital asset kiosks.
- **Form 1099-DA:** Brokers will be required to report details on sales and exchanges of digital assets on a new form titled 1099-DA “Digital Asset Proceeds from Broker Transactions,” a [draft form](#) of which was released on April 19, 2024.
- **Timeline:** Brokers will be required to report gross proceeds on the sale of digital assets beginning in 2026 for all sales in 2025. Beginning in 2027, brokers will be required to also report information on the tax basis for certain digital assets for sales in 2026.

Considerations

Significant number of brokers and customer affected

- The Treasury Department and IRS estimate between 13 million and 16 million customers will be impacted, in addition to upwards of 9,700 digital asset brokers.

Brokers expected to face greater compliance costs

- The Treasury Department and IRS estimate it will take, on average, 9 minutes to complete 1099-DA forms for each customer, with the estimated aggregate, annual monetized burden of \$148.4 million.

Reporting for non-custodial brokers expected later in 2024

- While the final rule primarily addresses reporting requirements for custodial brokers, the Treasury Department and IRS announced they anticipate issuing additional rules later in 2024 to establish reporting requirements for non-custodial brokers (i.e., decentralized finance (DeFi)) as well.

Forthcoming Deloitte publication

- A forthcoming publication from Deloitte will provide in-depth analysis on the final rule and related regulatory developments.

Arkansas approves digital asset mining regulations



Key summary points

- **Headline:** In May 2024, Arkansas Governor Sarah Huckabee Sanders signed into law two bills regulating digital asset mining operations in the State.
- **Permit:** Digital asset mining businesses will require a permit from the Arkansas Oil and Gas Commission, which will promulgate rules on permitting, applications, renewal, and requirements for a permit.
- **Noise reduction:** The new laws require digital asset mining businesses to use noise-reduction techniques, such as liquid or submerged cooling, or fully enclosing noise-producing equipment. Residents within 2,000 feet of mining operations may commence legal actions to enforce required noise-reduction techniques.
- **Foreign control:** The new laws restrict foreign-interest in digital asset mining businesses, prohibiting any citizen, resident, or agent of a country subject to the International Traffic in Arms Regulations or Arms Export Control Act.
- **Effective immediately:** Both laws go into effect immediately, however existing digital asset mining businesses will have 90 days to come into compliance.

Considerations

Continued trend of state-developed licensing frameworks

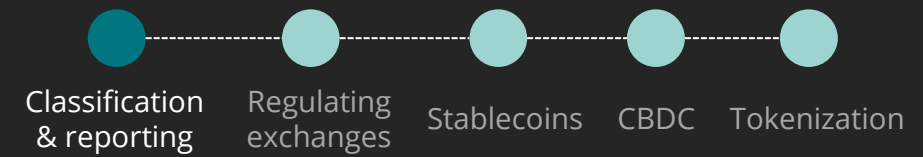
- In the absence of federal legislation, individual states are increasingly implementing their own reporting and licensing structures, of which Arkansas is the latest example.
- State-licensing and reporting legislation initially tended to focus on consumer-facing service providers, however as the industry has matured, more parts of the digital asset ecosystem are being brought into the regulatory perimeter.

Mining businesses may need to spend more on compliance

- The new laws may result in increased compliance costs for digital asset mining businesses operating in the State, including filing and renewing a permit application, conducting due diligence on shareholder bases against relevant legal restrictions, and investing in equipment upgrades to meet noise-canceling requirements.

Sources: Arkansas State Legislature, “SB78 – To amend the Arkansas Data Centers Act of 2023; to prohibit foreign-party-controlled ownership of digital asset mining business; and to declare an emergency,” May 1, 2024; Arkansas State Legislature, “SB79 - To amend the Arkansas Data Centers Act of 2023; to provide for the regulation of digital asset mining businesses; and to declare an emergency,” May 1, 2024.

House passes Financial Innovation and Technology for the 21st Century Act



Key summary points

- **Headline:** On May 22, 2024, the US House of Representatives passes the Financial Innovation and Technology for the 21st Century Act (FIT21), which would establish a federal digital asset regulatory framework between the Commodity Futures Trading Commission (CFTC) and the SEC.
- **Commodities:** Under FIT21, the CFTC would regulate a digital asset as a commodity if the blockchain on which it runs is functional and *decentralized* (i.e., no person has unilateral authority to control the blockchain and no issuer or affiliated person has control of 20% or more of the digital asset or the voting power of the digital asset).
- **Spot markets:** Additionally, FIT21 would make the CFTC the exclusive regulatory authority over cash or spot markets for digital commodities.
- **Securities:** Under FIT21, the SEC would regulate a digital asset as a security if its associated blockchain is functional but *not decentralized*. However, the Act would establish certain exceptions to SEC regulation for digital assets that limit annual sales, restrict nonaccredited investor access, and satisfy disclosure and compliance requirements.

Considerations

First major digital asset legislation passed by Congress

- FIT21 represents a major milestone for the development of a federal digital asset regulatory framework, as it's the first major digital asset legislation passed by a chamber of Congress.

Strong bipartisan support

- FIT21 passed by a vote of 279–136, with 71 Democratic representatives in support (approximately one-third of the Democratic House caucus).
- While lawmaker positions on digital assets continue to fall largely along ideological lines, FIT21 demonstrates a sizable bipartisan support for digital asset legislation is present.

White House and SEC Chair Gensler oppose FIT21

- FIT21's path to law remains challenging in its current form.
- The bill's support in the Senate is uncertain. Additionally, both the [White House](#) and [SEC Chair Gary Gensler](#) released statements opposing FIT21 in its current form citing insufficient investor and consumer protections.

Source: US House of Representatives, "HR 4763 – Financial Innovation and Technology for the 21st Century Act," 118th Cong., May 22, 2024.



Key summary points

- **Headline:** On May 14, 2024, the US House of Representatives passed the Consumer Safety Technology Act, which would mandate reports and studies from the US Department of Commerce and Federal Trade Commission (FTC).
- **Blockchain study:** The Act would require the Department of Commerce, in consultation with the FTC, no later than one year after enactment, to complete a study on the possible uses of blockchain technology for consumer protection purposes, including preventing or mitigating fraud and other unfair or deceptive acts or practices (UDAP).
- **UDAP report:** The Act would require the FTC, no later than one year after enactment, to develop a report to Congress on the FTC’s efforts to prevent UDAP relating to digital tokens and provide any legislative recommendations to improve consumer protection in the token marketplace.

Considerations

Changing the narrative of crypto & consumer protections

- Lawmakers are increasingly focused on leveling-up consumer protections within the digital assets industry and this latest legislative development may help in advancing lawmakers understanding of blockchain technology as a tool to advance consumer protections.
- The Act’s blockchains study may be helpful in developing industry leading practices for consumer protections.

Promoting trust within the digital assets industry

- Efforts to prevent UDAP within the industry could help promote greater transparency and trust among consumers and regulators, potentially spurring wider adoption of digital assets and related technologies.
- Additionally, the Act could promote better consumer education and market integrity by improving understanding and awareness of potential scams and bolstering regulatory knowledge.

Source: US House of Representatives, “H.R.4814 - Consumer Safety Technology Act,” 118th Cong., May 14, 2024.



Key summary points

- **Headline:** On May 15, 2024, the US House of Representatives passed the Deploying American Blockchains Act, which would require the Secretary of Commerce to support the deployment, use, application, and competitiveness of blockchain technology.
- **New blockchain program:** The Act would require the establishment of a Blockchain Deployment Program in the Department of Commerce responsible for supporting the Department’s blockchain initiatives.
- **Advisory committee:** The Department of Commerce would also need to establish advisory committees to support the adoption of blockchain technology and facilitate the development of leading practices and applications.
- **Annual report:** The Act would mandate an annual report to Congress detailing the Department’s blockchain-related activities, legislative recommendations, and a description of any emerging blockchain-related risks and long-term trends.

Considerations

Potential accelerate for blockchain investment

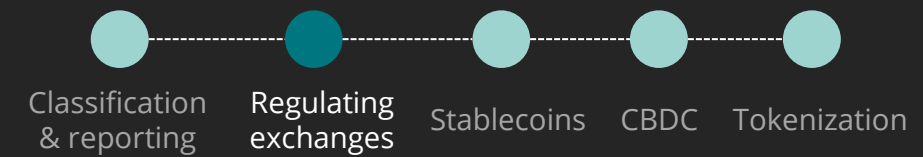
- The Act could serve as a powerful accelerator for supporting education and understanding of blockchain technology at the federal level and potential investment in blockchain development and applications.
- The Act’s congressional reporting requirement, which may include potential legislative recommendations, could help drive blockchain-related regulatory clarity, thereby paving the way for greater industry developments.

Promoting public-private collaboration

- The collaboration between public and private sectors on an advisory committee can offer invaluable benefits by facilitating knowledge exchange between private sector innovators and public sector regulators.
- Due to blockchain’s novel and complex nature, a public-private advisory committee could help provide practical insight into the technology's working and help inform potential regulatory developments.

Source: US House of Representatives, “H.R.6572 - Deploying American Blockchains Act of 2023,” 118th Cong., May 15, 2024.

New York issues guidance on virtual currency customer service requirements



Key summary points

- **Headline:** On May 30, 2024, the New York State Department of Financial Services (NYDFS) issued guidance requiring New York regulated virtual currency entities (VCEs) to implement “effective policies and procedures to promptly address customer service requests and complaints.”
- **Covered entities:** VCEs include entities licensed under 23 NYCRR Part 200 (i.e., BitLicensees), as well as entities chartered as limited purpose trust companies under the New York Banking Law, permitted to engage in virtual currency business activity.
- **Policies and procedures:** VCE’s policies and procedures should, at a minimum, provide for the maintenance and monitoring of a phone number and electronic text communication function for customers to make service requests and complaints.
- **Reporting:** Beginning Q3 2024, VCEs will be required to maintain and report a quarterly tabulation of the number of customer service requests and complaints along with average time taken to reach resolution.

Considerations

VCEs should evaluate their customer service programs

- Virtual currency entities operating in New York should conduct a gap analysis on their current customer service practices and be prepared to remediate any deficiencies before November 1, 2024.
- As per the Guidance, VCEs should have in place communication channels to receive service requests and complaints, as well as policies and procedures to keep the customer informed, and provide for detailed reporting to NYDFS.

VCEs will likely need to invest more into customer support

- Some VCEs who may not currently meet NYDFS expectations, as outlined in the Guidance, may need to invest in more customer support, including staffing and technology upgrades.
- VCEs should have in place management information systems (MIS) necessary to monitor customer service inquiries and be prepared to respond to NYDFS requests in a timely manner.

Sources: New York State Department of Financial Services (NYDFS), “DFS Superintendent Adrienne A. Harris Issues New Guidance Regarding Virtual Currency Customer Service Requirements,” press release, May 30, 2024; NYDFS, “Guidance Regarding Customer Service Requests and Complaints,” May 30, 2024.

Deputy Secretary of the Treasury testifies on illicit finance, terrorism, and sanctions evasion



Key summary points

- **Headline:** On April 9, 2024, Deputy Secretary of the Treasury Wally Adeyemo testified before the US Senate Banking Committee on the misuse of digital assets by terrorist groups and rogue states to bypass traditional financial systems and sanctions.
- **Reforms:** Deputy Secretary Adeyemo discussed three reforms provided to the Committee by the Treasury Department:
 1. Secondary sanctions for foreign digital asset providers aiding illicit finance;
 2. Modernizing existing authorities to explicitly cover key players and core activities of the digital asset ecosystem; and
 3. Addressing jurisdictional risks from offshore digital asset platforms.
- **Ransomware:** Testimony also highlighted the growth in ransomware attacks relying on digital assets. The Financial Crimes Enforcement Network (FinCEN) found that more than \$1 billion of ransomware payments were made exclusively using digital assets in 2023.

Considerations

More digital asset-related sanctions could be coming

- Senate Banking Committee Chairman Sherrod Brown issued a [statement in support](#) of strengthening tools to crack down on illicit finance and sanctions evasions, highlighting the gaps discussed by Deputy Secretary Adeyemo.
- Should Congress adopt the reforms advocated by the Treasury Department, it may signal potential additional sanctions targeted at illicit foreign digital asset operators.

AML/CFT remains top of mind for regulators

- The Senate's hearing highlighted the scrutiny regulators and policymakers alike apply to anti-money laundering and countering the financing of terrorism (AML/CFT) risks.
- To help maintain good relationships with regulatory supervisors, digital asset firms should regularly assess their internal controls and incorporate lessons learned into their AML/CFT programs to better provide for leading practices.

Sources: US Senate, "[Hearing entitled 'An Update from the Treasury Department: Countering Illicit Finance, Terrorism and Sanctions Evasion,'](#)" Committee on Banking, Housing and Urban Affairs, April 9, 2024; US Department of the Treasury, "[Testimony of Deputy Secretary of the Treasury Wally Adeyemo Before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate,](#)" press release, April 9, 2024.

Lummis-Gillibrand Payment Stablecoin Act introduced in the Senate



Key summary points

- **Headline:** On April 17, 2024, the Lummis-Gillibrand Payment Stablecoin Act was introduced in the US Senate, which would create a regulatory framework for US dollar-pegged payment stablecoins.
- **Legal entities:** The Act would authorize non-depository state trust companies to create and issue stablecoins up to \$10 billion, with federal or state depository institutions authorized to issue up to any amount.
- **Consumer protections:** Stablecoin issuers would be required to hold one-to-one backing of all outstanding stablecoins and segregate stablecoin-related reserves from the proprietary assets of the issuer. Issuers would also be prohibited from rehypothecating reserves.
- **Reserves:** The Act would limit stablecoin reserves to US cash, bank deposits (up to deposit insurance limits), Federal Reserve balances, US Treasury bills, and repurchase (repo) agreements with a maturity of 7 days or less.
- **Federal Reserve's role:** Stablecoin issuers would be required to be registered with or authorized by the Federal Reserve Board of Governors (FRB) and subject to the FRB's supervision and enforcement authority.

Source: US Senate, "[S.4155 - Lummis-Gillibrand Payment Stablecoin Act](#)," 118th Cong., April 17, 2024.

Considerations

Consumer protections are top-of-mind for regulators

- Consumer protections are key provisions within the Act, highlighting the importance and focus of policymakers on stablecoin risks to consumers.
- Some common consumer protection themes are beginning to emerge across regulators. For example, similar to NYDFS guidance on [stablecoins](#) and [custodial structures](#), the Act would require segregation of customer and proprietary assets, reserves held at depository institutions, and public disclosure of reserve compositions.

Preservation of a state pathway to becoming an issuer

- The Act codifies the states' current authority over non-depository trust companies by allowing stablecoin issuers to be chartered at either the state or federal level.
- As discussed in the [October 2023 edition](#) of *Digital Assets Banking and Capital Markets Regulatory Digest*, the balance of state and federal oversight has been a hurdle in developing a national regulatory framework, with recent developments evolving towards a similar structure as the dual banking system.

Key summary points

- **Headline:** On May 23, 2024, the US House of Representatives passed the CBDC Anti-Surveillance State Act, mostly along party lines, which would prohibit the Federal Reserve from developing or issuing a central bank digital currency (CBDC) without congressional authorization.
- **Retail prohibitions:** The Act would prohibit general retail products or services from being offered by the Federal Reserve, specifically issuing a CBDC to individuals, using a CBDC to implement monetary policy, and otherwise providing or maintaining accounts on behalf of an individual.
- **Limits on Treasury Department:** The Act would also prohibit the US Department of the Treasury from directing the Federal Reserve to issue a CBDC.
- **Senate companion:** In February 2024, Senator Ted Cruz of Texas introduced a similar bill in the US Senate that would similarly prohibit the Federal Reserve from issuing a CBDC directly to individuals and bar the use of a CBDC to implement monetary policy.

Considerations

CBDC raises privacy concerns among lawmakers

- The passage of the Act reflects ongoing concerns among some legislators, particularly Republicans, about potential privacy infringement and surveillance associated with the development and implementation of CBDCs.

Path to US CBDC remains uncertain

- While the Act is not expected to become law in the remaining months of this Congress, it illustrates the increasingly political nature of CBDCs in the US.
- In January 2022, the Federal Reserve released a [report](#) on CBDCs wherein it noted “The Federal Reserve does not intend to proceed with issuance of a CBDC without clear support from the executive branch and from Congress, ideally in the form of a specific authorizing law.”
- Furthermore, [Chair Jerome Powell testified](#) earlier this year that a CBDC is not “remotely close to happening anytime soon.”

House Financial Services Subcommittee holds hearing on tokenization



Key summary points

- **Headline:** On June 5, 2024, the US House of Representatives Subcommittee on Digital Assets, Financial Technology and Inclusion held a hearing discussing the current and future landscape for real-world asset tokenization.
- **Applications:** The hearing discussed the potential benefits and challenges of tokenizing real-world assets, including potential improvements in settlement speed, security, and costs for deposits, securities, and, even, real estate.
- **Benefits:** Witnesses in favor of tokenization cited its ability to increase efficiency, reduce risk, enhance distribution, provide greater liquidity, and offer programmability.
- **Legal recognition:** The state of legal recognition of tokenization was discussed, including the recent advancements through amendments to the Uniform Commercial Code (UCC) Article 12.
- **AML/KYC:** There was widespread agreement on the need for current AML and Know Your Customer (KYC) identity standards of the traditional financial system to be brought into the digital assets industry.

Considerations

Growing interest in tokenization from regulators

- The hearing illustrated the growing interest of lawmakers in modernizing the regulatory environment surrounding tokenized assets, including two legislative proposals focused on developing tokenization use cases for traditional financial assets.
- In February 2024, the Office of the Comptroller of the Currency (OCC) hosted a [symposium on the tokenization of real-world assets and liabilities](#) where many similar topics were discussed.

UCC Article 12 offers promise for legal recognition

- While the current legal framework is generally insufficient for assigning property rights to tokens, amendments to the UCC in 2022 introduced the concept of a “controllable electronic record” (CER), which would enable negotiability for electronic tokens, akin to checks.
- While still relatively limited to payment rights, the UCC amendments are a promising step forward for the legal recognition of tokenized real-world assets.

Sources: US House of Representatives, “[Hearing Entitled: Next Generation Infrastructure: How Tokenization of Real-World Assets Will Facilitate Efficient Markets](#),” Subcommittee on Digital Assets, Financial Technology and Inclusion, June 5, 2024.

Endnotes

¹ For example, European Union, [Regulation \(EU\) 2023/1114](#) (Markets in Crypto-Assets Regulation [MiCA]), May 31, 2023.

² Securities and Exchange Commission (SEC), [“Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units,”](#) January 10, 2024.

³ SEC, [“Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products,”](#) archived May 23, 2024.

⁴ 23 NYCRR Part 200 under the New York Financial Services Law; Office of the Governor of California, AB39 signing message, October 13, 2023; California Assembly, [Assembly Bill No. 39](#), October 13, 2023 (“Digital Financial Assets Law”).

⁵ US Department of the Treasury and Internal Revenue Service (IRS), [“Treasury and IRS issue proposed regulations on reporting by brokers for sales or exchanges of digital assets; new steps designed to end confusion, help taxpayers, aid high-income compliance work,”](#) press release, August 25, 2023.

⁶ US Department of the Treasury, [“President’s Working Group on Financial Markets releases report and recommendations on stablecoins,”](#) press release, November 1, 2021.

⁷ Deloitte, [“Members of the U.S. Financial Sector to Explore Multi-Asset Settlement Using Shared Ledger Technology,”](#) press release, May 8, 2024.

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