

Focus on Fintech

SEC Issues New Cash Management Order

This month, the SEC [approved](#) a new form of “cash management” exemptive order under the Investment Company Act of 1940 (1940 Act). The order allows the company that received the order to hold unlimited amounts of “capital preservation instruments,” and also to invest in limited amounts of other types of investments, without being deemed an investment company under the 1940 Act. This order is the first of its type that the SEC has issued in recent years and

contains certain conditions regarding the company’s investment activities that are expected to be standard for future orders. Wilson Sonsini represented the company in connection with its application for relief, and in that role worked closely with the staff of the SEC on this revised—and we believe more standardized—template. For more information on the cash management order, please see our recent [alert](#).



In This Issue

| | |
|---|---------------------------|
| SEC Issues New Cash Management Order | Page 1 |
| Bank Updates | Pages 1-2 |
| Payments Updates | Page 2 |
| Prudential Regulatory Concern with Crypto Assets | Page 3 |
| Increase in SEC Enforcement Activity Against Crypto Companies | Page 4 |
| UK Updates | Page 5 |
| Additional Fintech Litigation Updates | Pages 6-7 |
| SEC Customer Protection Updates | Page 7 |
| SEC Proposal for New Cybersecurity Requirements | Page 8 |
| Finfluencers and Celebrities | Page 8 |
| SEC 2023 Examination Priorities | Page 9 |
| State Round-Up | Page 9 |
| Select Publications | Page 10 |
| Recent Fintech Practice Highlights | Page 10 |

Bank Updates

Bank Dissolutions

On March 10, 2023, Silicon Valley Bank (SVB) was closed by the California Department of Financial Protection & Innovation, with the Federal Deposit Insurance Corporation (FDIC) appointed as receiver, and on March 12, 2023, Signature Bank was closed by the New York State Department of Financial Services, with the FDIC appointed as receiver. The FDIC established bridge banks in both instances. On March 19, 2023, the FDIC announced that it entered into a purchase and assumption agreement for substantially all deposits and certain loan portfolios of Signature Bridge Bank by Flagstar Bank. On March 26, 2023, the FDIC announced that it entered into a purchase and assumption agreement for all deposits and loans of Silicon Valley Bridge Bank by First-Citizens Bank & Trust Company.

The dissolution of SVB and Signature Bank has caused disruptions in the start-up economy, in particular for

crypto-asset and blockchain companies, as SVB was a leader in providing venture debt and banking services to early-stage companies and Signature Bank was one of the main banks for crypto-asset companies.

For updates on these events and how they may impact your business, please visit our [Silicon Valley Bank Advisory Page](#).

Federal Reserve Board Review of SVB

The Federal Reserve Board (Fed) is [undertaking](#) a review of the supervision and regulation of SVB in light of SVB’s failure. The review will be publicly released on May 1, 2023. In deciding to undertake the review, Chair Jerome H. Powell stated, “[t]he events surrounding Silicon Valley Bank demand a thorough, transparent, and swift review by the Federal Reserve.” Vice Chair Barr emphasized the importance of conducting a careful and thorough review of how the Fed supervised and regulated SVB and what the Fed should learn going forward.

Continued on page 2...

Bank Updates *(Continued from page 1)*

White House Fact Sheet on Supervision for Large Regional Banks

Following the dissolution of SVB and Signature Bank, the White House released a [Fact Sheet](#) on safeguards and supervision for large regional banks. The Fact Sheet highlighted President Biden's commitment to "continuing our efforts to strengthen oversight and regulation of larger banks so that we are not in this position again." In the Fact Sheet, President Biden urged federal banking agencies to consider reforms to reduce the risk of future banking crises. These reforms include:

- reinstating rules for banks with assets between \$100 and \$250 billion such as liquidity requirements and enhanced liquidity stress testing, annual supervisory capital stress tests, comprehensive resolution plans, and strong capital requirements;
- quickly applying certain regulations and safeguards, such as capital stress tests, after a bank reaches \$100 billion in assets;
- strengthening supervisory tools, including stress tests and other tools, to ensure that banks with \$100 billion or more in assets can withstand high interest rates and other stresses;
- expanding long-term debt requirements to a larger swath of banks; and
- ensuring that the cost of replenishing the Deposit Insurance Fund is not borne by community banks.

Payments Updates

FedNow Launch Date and U.S. Treasury Participation

The Fed [announced](#) that the FedNow Service will start operating in July 2023 and the Fed will begin certifying participants for FedNow in April. Importantly, the Fed announced that the U.S. Treasury is among the early adopters that have declared their intent to begin using the service in July. The Fed and certified participants will conduct test activities in June to confirm that they are prepared for the July launch. The FedNow Service will launch with clearing and settlement functionality, with additional features and enhancements added in future releases. Depository institutions that are eligible to hold Reserve Bank accounts will be able to use FedNow.

U.S. Department of Treasury on CBDCs

On March 1, 2023, the U.S. Department of the Treasury's Under Secretary for Domestic Finance Nellie Liang delivered remarks on [Next Steps to the Future of](#)



[Money and Payments](#), focusing on a central bank digital currency (CBDC). According to Liang, "policymakers are continuing to deliberate about whether to have a CBDC, and if so, what form it would take." The Treasury is considering three general policy objectives relating to CBDCs: (i) global financial leadership and whether the CBDC could help "preserve the dollar's global role" and "help reduce undesirable frictions in cross-border payments or other activities"; (ii) national security issues, particularly whether a CBDC

would reduce the effectiveness of federal controls to combat money laundering and sanctions violations, or "deny criminals and other illicit actors' access to the U.S. and international financial system"; and (iii) privacy, illicit finance, and financial inclusion. "In the coming months, leaders from [the U.S. Department of the Treasury], the Federal Reserve, and White House offices..., will begin to meet regularly to discuss a possible CBDC and other payments innovations."

Prudential Regulatory Concern with Crypto Assets



Joint Statement on Liquidity Risks Resulting from Crypto Asset Market Vulnerabilities

The Fed, the OCC, and the FDIC issued a [joint statement](#) (Joint Statement) highlighting the liquidity risks posed by certain crypto asset-related funding sources. The Joint Statement follows the statement issued on January 3, 2023, on Crypto-Asset Risks to Banking Organizations. In the Joint Statement, the agencies focus on liquidity risks from deposits placed by crypto asset-related entities, noting that such deposits may be subject to rapid inflows and outflows when end customers react to crypto asset-sector-related market events, but it does not create any new risk management obligations. The Joint Statement also discusses the risks associated with deposits that are stablecoin-related reserves. The Joint Statement highlights best practices for risk management relating to liquidity risks, including (i) understanding drivers of behavior of deposits from crypto asset-related entities; (ii) assessing interconnectedness across deposits from crypto asset-related entities; (iii) incorporating liquidity risks into contingency funding planning; and (iv) performing robust due diligence and ongoing monitoring of crypto asset-related entities that establish deposit accounts.

Federal Reserve Promotes Level Playing Field

The Fed issued a [policy statement](#) interpreting section 9(13) of the Federal Reserve Act to align the permissibility frameworks for both insured and uninsured state member banks. The policy statement provides that the Fed will exercise its authority to ensure that state member banks supervised by the Fed are subject to the same limitations on activities that are applied to national banks unless such activities are permissible for state banks by federal law. The policy statement is intended to cover any novel and unprecedented activity; however, it specifically discusses the legal permissibility and safety and soundness risks accompanying crypto asset-related activities and the use of distributed ledger technology.

In the statement, the Fed noted that the same banking activity should be subject to the same regulatory framework, regardless of which agency supervises the bank, because a level playing field is important to mitigate the risks of regulatory arbitrage.

FDIC Issues Cease-and-Desist Letters

The FDIC issued [cease-and-desist letters](#) to CEX.IO Corp. (a crypto asset exchange) and Zera Financial (a non-bank financial service provider), demanding that both stop making false

and misleading statements, including that their deposits are FDIC-insured and that FDIC insurance will protect customers' cryptocurrency. The FDIC also directed two crypto asset-related websites to remove similar false and misleading statements about the FDIC insurance status of CEX.IO. In the accompanying press release, FDIC Chairman Martin Gruenberg noted that there has been an increase in such misrepresentations and their impacts on consumers. These letters follow the [cease-and-desist letters](#) the FDIC issued in August to five crypto asset companies for similar false and misleading statements regarding FDIC insurance status, reflecting the FDIC's vigilance with respect to representations, particularly in website text, by crypto asset firms regarding deposit insurance.

Fed Rejects Custodia Bank's Bid for Membership and Master Account

In January, the Fed [denied](#) Custodia Bank, Inc.'s application to become a member of the Federal Reserve System, citing safety and soundness risks with Custodia's novel business model and proposed focus on crypto assets. Custodia is a special purpose depository institution chartered by the state of Wyoming and does not have federal deposit insurance. On March 24, 2023, the Fed published its [order](#) denying Custodia's application, citing, among other factors, Custodia's risk management framework as insufficient to address concerns regarding risks associated with its proposed crypto asset activities, including its ability to mitigate money laundering and terrorism financing risks. The Federal Reserve Bank of Kansas City also denied Custodia's bid for a master account. If Custodia had been granted its application for a master account, it would have been able to access wholesale payment services and related Fed payment services without requiring a bank to act as an intermediary.

Increase in SEC Enforcement Activity Against Crypto Companies

The SEC issued a [Wells notice](#) to Paxos, a blockchain and tokenization platform, on February 3, 2023, notifying Paxos that the SEC may bring an enforcement action against it for the unregistered issuance of its Binance USD (BUSD) coin, which the SEC alleges is a security. BUSD is a stablecoin issued by Binance in partnership with Paxos that purports to be pegged 1:1 to the U.S. dollar. Paxos publicly responded by “categorically” disagreeing that BUSD is a security, but it did [confirm](#) that it would stop minting new BUSD tokens, at the direction of the New York Department of Financial Services.

The SEC also issued a [Wells notice](#) to Coinbase on March 22, 2023, notifying Coinbase that the SEC is considering bringing an enforcement action regarding several crypto assets listed on Coinbase, its staking service, Coinbase Earn, Coinbase Prime, and Coinbase Wallet. The Wells notice follows the SEC’s [issuance](#) to Coinbase of investigative subpoenas and requests for documents and information about matters including Coinbase’s processes for listing assets and the classification of certain listed assets, its staking programs, and its stablecoin and yield-generating products.

The SEC [charged](#) Terraform Labs PTE Ltd. (Terraform) and its CEO, Do Hyeong Kwon (Kwon), with securities fraud in connection with the unregistered offer and sale of multiple crypto asset securities. In the complaint, the SEC asserted that various assets



issued by Terraform—namely LUNA, wLUNA, UST, and MIR—are all crypto asset securities and that transactions in mAssets (assets that mirrored the price of securities) are security-based swaps. The complaint alleged that in addition to illegally selling these unregistered crypto asset securities, Terraform and Kwon repeatedly misled and deceived investors, telling the public that a popular Korean mobile payment application used the Terraform blockchain to process and settle transactions and touting the stability of UST’s \$1.00 peg. In May 2022, UST, the algorithmic stablecoin, and LUNA, Terraform blockchain’s native token, crashed when UST lost its peg to the dollar.

The SEC is also targeting staking-as-a-service programs, as evidenced by its [settlement](#) with two subsidiaries of Kraken, a crypto asset exchange. In finding that the staking program created an illegally unregistered offer and sale of securities, the SEC pointed to the fact that Kraken marketed its staking program as an investment opportunity, as well as the fact that investors relied on Kraken’s technical, managerial, and entrepreneurial efforts to generate the advertised returns. As part of the settlement, Kraken agreed to discontinue its staking-as-a-service program for U.S. investors. For more information on the Kraken settlement, please see our [alert](#).

UK Updates



UK to Regulate Buy-Now-Pay-Later Lending

The UK Government published [proposals](#) on February 13, 2023, to bring the largely unregulated buy-now-pay-later (BNPL) lending sector within the scope of financial regulation. The new regime would apply in respect of sub-12-month, fixed-sum, interest-free credit offered by third-party lenders to individuals and certain other types of protected borrowers.

Key features of the regime include:

- BNPL lenders will be required to obtain a license from the UK Financial Conduct Authority (FCA) and to ensure that promotions concerning their loans comply with UK rules on the promotion of financial products.
- Relevant lenders will also become subject to the FCA's rules regarding the assessment of borrowers' creditworthiness and the affordability of their loans, although the FCA will be mandated to design a proportionate application of its regulations to these products.
- Lenders will also be required to comply with the FCA's rules on ensuring appropriate outcomes for consumers. This is a relatively new and far-reaching regulatory duty that requires licensed firms to design their products and services with

their customers' interests at heart at every stage.

- BNPL products will be within the scope of the UK's extensive consumer lending-specific protections, including the jurisdiction of the Financial Ombudsman Service, which determines out-of-court disputes between lenders and borrowers.

The proposals are currently out for consultation. However, the UK Government anticipates bringing the regime into effect during the course of 2023, and expects to introduce a transitional licensing regime to enable BNPL lenders to continue to operate while obtaining full regulatory licenses.

UK Open Banking Update

On April 17, 2023, the UK Joint Regulatory Oversight Committee (JROC) published a [report](#) setting out its recommendations on the future of Open Banking in the UK. JROC, comprising the Financial Conduct Authority, the Payment Systems Regulator, HM Treasury, and the Competition and Markets Authority, was created in March 2022 to design and oversee the development of Open Banking in the UK.

The report sets out three priorities. The first priority is to establish a sustainable and competitive footing for the UK Open Banking ecosystem. This will involve

improving data sharing and collection between participants (e.g., data holders, such as payment account providers, and data users, such as account information service providers) in relation to the availability and performance of APIs and data that can be used to identify and mitigate the risk of financial crime being committed through Open Banking services.

The second priority is to unlock the potential for future growth in Open Banking payments. JROC argues that such growth should be supported by providing better choice and services to customers (e.g., improving customer journeys and lowering costs), and by enabling Open Banking transactions in retail to be a widespread alternative to card-based payments. In this regard, the report highlights the need to develop additional services such as premium, paid-for APIs—account providers are currently not paid for API access. The report also suggests that the Open Banking industry continue to develop new use cases, such as the ability for a service user to give permission for third parties to take variable recurring payments from the service user's payment account (so-called "non-sweeping VRPs"), as an alternative to Bacs direct debit and card-on-file payments.

The third priority is to adopt a scalable model for future data sharing models within Open Banking. This will involve enhanced data sharing for the purposes of managing financial crime risks and testing use cases with service users, particularly those with vulnerable characteristics.

The report's priorities are supported by 29 actions due to take place by the end of 2024, including several regulatory and industry-led consultations and working groups. JROC anticipates publishing an update on progress toward its priorities in Q4 2023.

Additional Fintech Litigation Updates

CFTC Sues Binance

The CFTC [sued](#) Binance Holdings Ltd. in the U.S. District Court for the Northern District of Illinois, alleging that Binance violated the CEA and CFTC regulations by offering and executing commodity derivatives transactions, that Binance failed to implement appropriate compliance controls, including lack of adequate AML and KYC procedures, and that Binance willfully evaded U.S. laws and regulations. The CFTC's lawsuit also charged Changpeng Zhao, the founder of Binance, with liability for Binance's violations as a control person and Samuel Lim, Binance's first chief compliance officer, with aiding and abetting Binance's violations. In its suit, the CFTC seeks disgorgement, civil monetary penalties, permanent trading and registration bans, and a permanent injunction against further violations of the CEA and CFTC regulations.



D.C. Circuit Court – PayPal Fee Disclosure

The D.C. Circuit [reversed](#) a ruling in favor of PayPal Inc., one of the largest digital wallet providers, holding that the CFPB's Prepaid Rule, which governs disclosure requirements for prepaid accounts, does not require providers to use specific language in their disclosures and, therefore, does not mandate a "model clause" in violation of the Electronic Fund Transfer Act (EFTA). The court remanded the case to the district court to address PayPal's administrative and constitutional challenges to the rule.

The Prepaid Rule requires financial institutions to make certain disclosures by using model language or other "substantially similar" wording. PayPal argued that the CFPB overstepped its authority by making fee disclosures mandatory, not optional. The court held that the CFPB has not mandated a model clause in contravention of the EFTA because the Prepaid Rule does not require the use of specific language.

Constitutionality of CFPB's Funding

Approximately three years after [Seila Law v. Consumer Financial Protection Bureau](#), the Supreme Court granted certiorari to hear arguments on the constitutionality of the CFPB's funding structure in [Community Financial Services Association of America v. Consumer Financial Protection Bureau](#). Towards the end of 2022, the Fifth Circuit held that the CFPB's funding structure violated the Constitution's Appropriations Clause and the separation of powers. In [Community Financial Services Association](#), the plaintiffs challenged the 2017 Payday Lending Rule as arbitrary and capricious, and argued that the CFPB exceeded its statutory authority and that the CFPB was unconstitutionally structured.

The court considered two provisions relating to the Payday Lending Rule: (i) the Underwriting Provisions and (ii) the Payment Provisions. The Underwriting Provisions made it an unfair and abusive practice for a lender to make certain short- and long-term loans with balloon payments without performing an ability-to-repay analysis. The Payment Provisions make it an unfair and abusive practice for a lender to make attempts to withdraw funds from a consumer account after two consecutive failed attempts unless the lender receives a new and specific authorization. The Underwriting Provisions were rescinded in 2020, but the Payment Provisions are at issue here. The Fifth Circuit held that the Payment Provisions of the Payday

Lending Rule were not arbitrary and capricious, but that "Congress's decision to abdicate its appropriations power under the Constitution, i.e., to cede its power of the pursue to the [CFPB], violates the Constitution's structural separation of powers."

The CFPB generally relies on funding "outside the annual appropriations process from the Federal Reserve, which is itself funded outside the appropriations process through bank assessments." "According to the [Fifth Circuit], Congress ceded both 'direct control over the [CFPB's] budget by insulating it from annual or other time limited appropriation' and 'indirect control' by drawing [CFPB] funding from Federal Reserve earnings, which are themselves 'outside the appropriations process.'" In addition, the Fifth Circuit reasoned that the CFPB's funding was "'off the books' because it is allegedly not a 'Treasury account.'"

While the Fifth Circuit's decision is set for review by the Supreme Court, on March 23, 2023, the Second Circuit held that the CFPB's funding structure is constitutional in [Consumer Financial Protection Bureau v. Law Offices of Crystal Moroney PC](#).

Securities Class Actions Relating to NFTs

In February 2023, a New York judge [denied](#) Dapper Labs' motion to dismiss a class action in [Friel v. Dapper Labs, Inc.](#), in which the plaintiffs claimed that Dapper Labs' NBA Top Shot Moments (NFTs) are securities within the meaning of federal securities laws. In denying the motion to dismiss, the judge ruled that the NFTs were not analogous to rare collectibles and that the NFTs are "plausibly" securities. In arriving at his decision, the judge noted, among other things, that the NFTs could only be sold in a secondary market on a private blockchain (Flow) controlled by

Additional Fintech Litigation Updates *(Continued from page 6)*

Dapper Labs. The court also highlighted Dapper Labs' public statements and marketing materials, which it noted objectively led purchasers to expect profits. Following this decision, Dapper Labs filed an [answer](#) to the plaintiffs' amended complaint, characterizing the Flow blockchain as a "permissionless, open-source, public digital ledger" rather

than a private blockchain, and arguing that its NFTs are consumer goods whose value is not correlated with Dapper Labs' profitability.

On March 9, 2023, a class action was [filed](#) against DraftKings Inc. in the U.S. District Court for the District of Massachusetts. The action alleges that

DraftKings' NFTs, which are minted on Polygon, a public, Ethereum-based blockchain, are investment contracts issued and sold in violation of the federal securities laws.

SEC Customer Protection Updates



SEC Rule Proposal to Enhance Protections of Customer Assets

The SEC proposed [rule changes](#) (Proposal) to enhance protections of customer assets managed by registered investment advisers (RIAs). If adopted, the changes would amend and redesignate the SEC's custody rule under the Investment Advisers Act of 1940. While the existing custody rule requires RIAs to safeguard client funds and securities with a qualified custodian, the Proposal would require RIAs to maintain with a qualified custodian all client assets of which an RIA has custody (which would include all crypto assets). Among other things, the Proposal would:

- require RIAs to enter into a written agreement with and obtain certain reasonable assurances from qualified custodians regarding the custody of their assets;

- require foreign financial institutions to meet certain conditions in order to be eligible to serve as qualified custodians;
- specify the manner in which qualified custodian banks and savings associations must hold client assets;
- permit RIAs to self-custody only privately offered securities and physical assets that cannot be maintained by a qualified custodian; and
- retain the current requirement for RIAs with custody of client assets to obtain a surprise examination from an independent public accountant to verify such assets, but would expand the current custody rule's audit provision as a means of satisfying the surprise examination requirement.

The comment period for the Proposal will be open until May 8, 2023.

Reg BI Risk Alert

In January 2023, the SEC Division of Examinations released the [Risk Alert](#), "Observations from Broker-Dealer Examinations Related to Regulation Best

Interest," which discussed a number of deficiencies and weaknesses observed by the Division of Examinations. These included deficiencies in:

- policies and procedures relating to Reg BI's compliance and care obligations;
- policies and procedures related to training and periodic reviews and testing;
- written procedures regarding conflicts of interest;
- identification of and failure to mitigate conflicts of interest;
- provision of the requisite disclosures in website postings; and
- registered representatives acting in multiple roles.

The Risk Alert, along with the inclusion of Reg BI in the SEC's Examination Priorities, may presage additional enforcement actions for violations of Reg BI in the coming year.

SEC Proposal for New Cybersecurity Requirements

The SEC proposed cybersecurity requirements for broker-dealers, clearing agencies, major security-based swap participants, the Municipal Securities Rulemaking Board, national securities associations, national securities exchanges, security-based swap data repositories, security-based swap dealers, and transfer agents (Market Entities) under the Securities Exchange Act of 1934. Proposed Rule 10 would require all Market Entities to:

- establish, maintain, and enforce written policies and procedures that are reasonably designed to address their cybersecurity risks;
- review and assess the design and effectiveness of their cybersecurity

policies and procedures at least annually; and

- provide the SEC with immediate written electronic notice of a significant cybersecurity incident upon having a reasonable basis to conclude that the significant cybersecurity incident had occurred or is occurring.

The comment period for the proposal will remain open until 60 days after the date of publication of the proposing release in the Federal Register. Additionally, the SEC [reopened](#) the comment period for [proposed rules and amendments](#) related to cybersecurity risk management and cybersecurity-related



disclosure for registered investment advisers, registered investment companies, and business development companies that were proposed by the SEC on February 9, 2022.

Finfluencers and Celebrities

FINRA Releases Best Practices for Social Media Influencers

Following FINRA's investigation in 2021 of broker-dealers' social media practices, FINRA has [released](#) a list of best practices that broker-dealers should consider when engaging social media financial influencers (finfluencers). These practices include:

- maintaining written supervisory procedures for social media influencer and referral programs;
- evaluating a social media influencer's prior public social media activities for compliance and reputational risks;
- providing training and defining permitted and prohibited conduct for social media influencers;
- maintaining records of social media influencer and referral program



communications with the public, consistent with broker-dealer record keeping obligations; and

- addressing compliance concerns and reputational risks related to such programs.

The best practices also noted that firms must comply with their obligations

pursuant to Regulation S-P and other applicable laws for protecting customer nonpublic information.

SEC Enforcement Action

The SEC recently brought [charges](#) against crypto asset entrepreneur Justin Sun and three of his wholly owned companies for the unregistered offer and sale of crypto asset securities Tronix (TRX) and BitTorrent (BTT). The SEC also charged Sun and his companies with fraudulently manipulating the secondary market for TRX through extensive wash trading and for orchestrating a scheme to pay celebrities to tout TRX and BTT without disclosing their compensation. The SEC simultaneously charged eight celebrities for illegally touting TRX and/or BTT without disclosing that they were compensated for such touting.

SEC 2023 Examination Priorities

The SEC Division of Examinations released its [examination priorities](#) for 2023, highlighting key areas of focus for examinations of registered investment advisers and broker-dealers. In 2023, the Division of Examinations plans to focus on the following, among others:

- the new marketing rule and whether registered investment advisers have adopted and implemented sufficient written policies and procedures;
- private fund advisers' portfolio strategies, risk management, and investment recommendations and allocations;
- Reg BI and investment advisers' fiduciary duty;
- ESG-related investments and whether such products are appropriately labeled and recommendations for such products are in a customer's best interest;
- cybersecurity and practices to protect investor information, records, and assets; and
- crypto assets, emerging financial technologies, and new practices, including mobile apps, robo-advisers, and digital engagement practices.

Notably, the Division highlighted the disruptions caused by recent events in crypto asset markets and stated that it would "continue to monitor and, when



appropriate, conduct examinations of potentially impacted or affected registrants," focusing on the offer, sale, recommendation of, advice regarding, and trading in crypto or crypto-related assets.

State Round-Up

NYDFS Releases Virtual Currency Custody Guidance

The New York Department of Financial Services released [Guidance on Custodial Structures for Customer Protection in the Event of Insolvency](#) (Guidance), directed to New York Limited Purpose Trust Companies and Virtual Currency Business Licensees. The Guidance reiterates the importance for companies conducting a regulated crypto asset business to have "sound custody and disclosure practices to better protect customers in the event of an insolvency or similar proceeding." The Guidance focuses on four points:

- segregating and maintaining separate accounting for customer virtual currency;
- maintaining a limited interest in customer crypto assets and only providing custody and safekeeping services, as opposed to creating a debtor-creditor relationship;
- performing appropriate due diligence on sub-custodians that safekeep customer virtual currency; and
- clearly disclosing terms and conditions and obtaining acknowledgment of the customer's receipt of the disclosures.

New Jersey Proposes Crypto Asset Bill

Similar to New York's BitLicense, New Jersey is poised to adopt similar legislation that will change New Jersey's regulatory landscape for crypto asset-focused businesses. If signed into law, [New Jersey's Digital Asset and Blockchain Technology Act](#) will require companies that "engage in a digital asset business activity, or hold [themselves] out as being able to engage in a digital asset business activity, with or on behalf of a [New Jersey resident]" to be licensed or have filed a pending license with the New Jersey Department of Banking and Insurance.

The bill defines "digital asset business activity" as "a business that engages in receiving a digital asset for transmission or transmitting a digital asset..., storing,

holding, or maintaining custody of a digital asset on behalf of others..., buying and selling digital assets as a customer business, performing exchange services of digital assets as a customer business, issuing a digital asset, or borrowing or lending of, or facilitating the borrowing or lending of, customer digital assets." Interestingly, the current bill carves out digital asset securities from the definition of "digital asset." The bill will also require licensees to disclose particular terms and conditions, such as:

- that investments in digital assets are volatile and subject to market loss;
- how liability for an unauthorized, mistaken, or accidental transfer shall be apportioned; and
- material investment risks.

While this New Jersey bill has not been signed into law, companies engaged in a crypto asset business should closely monitor the bill's progress and be ready to apply for licensure and meet other regulatory obligations.

Select Publications

Wilson Sonsini Alert

[Investment Company Act Relief for Tech Companies: SEC Issues New Cash Management Order](#)

April 6, 2023

Wilson Sonsini Alert

[Innovations in Payments: Regulation, Infrastructure, and Opportunities](#)

April 4, 2023

Wilson Sonsini Alert

[UK Regulator Targets Client Money Protections in Priorities for Payments Firms](#)

March 17, 2023

Coindesk Opinion Piece

[U.S. Banking Collapse Doesn't Necessarily Make Crypto Trustworthy](#)

March 16, 2023

Wilson Sonsini Alert

[SVB Is Now a Full-Service "Bridge Bank": Key Legal Considerations for Companies Considering Whether to Transfer Funds from SVB](#)

March 13, 2023

Wilson Sonsini Alert

[Extraordinary Announcement from the Treasury, Fed, and FDIC Following the Silicon Valley Bank Closure](#)

March 12, 2023

Wilson Sonsini Alert

[Addressing Legal Issues Related to the Silicon Valley Bank Closure](#)

March 11, 2023

Wilson Sonsini Alert

[Financial Infrastructure as a Service: Top Legal Considerations for Innovators](#)

February 21, 2023

Business Law Today Article

[Demystifying the Banking Regulators' Recent Crypto Actions: Key Takeaways for Fintech Companies](#)

February 21, 2023

Wilson Sonsini Alert

[SEC Goes After Staking-as-a-Service: Crypto Exchange Kraken Shuts Down Its U.S. Staking Program](#)

February 13, 2023

Wilson Sonsini Alert

[FinCEN Issues 'First-of-its-Kind' Order Against Crypto Asset Exchange Linked to Illicit Russian Activity](#)

January 31, 2023

American Bar Association – Business Law Today: January 2023

[Money in 2023: What Tech Companies Need to Know About Instant Payments and FedNow](#)

January 13, 2023

Recent Fintech Practice Highlights

Wilson Sonsini at Consensus

On Thursday, April 27, 2023, Wilson Sonsini will be hosting a panel on legal issues associated with the crypto and blockchain space at Consensus in Austin, Texas. The discussion will include topics such as regulatory risk, structuring financings, and navigating the current environment. Wilson Sonsini panelists include Washington, D.C., Fintech and Financial Services partner and practice group leader Amy Caiazza; Washington, D.C., Fintech and Financial Services partner Neel Maitra; SOMA Technology Transactions partner Adam Shevell; and Palo Alto Emerging Companies partner Jonathan Chan.

Partner Neel Maitra featured in *Wall Street Journal* article

The *Wall Street Journal* article "[Crypto Faces Legal Reckoning as SEC Prepares Action Against Coinbase](#)" features

insights from Washington, D.C., Fintech and Financial Services partner Neel Maitra, who discusses the implications of the SEC's planned action on crypto businesses.

Stafford CLE Webinar – Complying with Money Transmission Laws

On March 29, 2023, Washington, D.C., associate Troy Jenkins was a co-panelist for a [Stafford CLE webinar](#), "Complying With Money Transmission Laws: FBO Accounts and Other Exemptions, Federal and State Regulatory Framework." The webinar examined current legal requirements for money transmission and the licensing exemptions available to money transmitters at both the federal and state levels, as well as the advantages and potential pitfalls of For Benefit Of (FBO) accounts for banks and the money transmitters that partner with them.

Wilson Sonsini at TechGC FinTech Executive Offsite

On March 3, 2023, Washington, D.C., Fintech and Financial Services partner and practice group leader Amy Caiazza chaired a panel discussion on the topic of "B2B, Fintechs serving Fintechs" at the TechGC 2023 FinTech Executive Offsite in Vail, Colorado. New York Fintech and Financial Services partner Jess Cheng also co-chaired a roundtable discussion on digital banking.

San Francisco Payments Dinner

On February 28, 2023, Fintech and Financial Services partners Amy Caiazza and Jess Cheng hosted an evening of networking and conversation about the latest developments and trends in the payments industry in San Francisco, California. The event featured a discussion of insights on regulatory change on the horizon and the Federal Reserve's agenda for the future of money and payments.

The following attorneys have editorial oversight of Wilson Sonsini's *Focus on Fintech*. They would like to take this opportunity to thank Tanner Long and Eric Quang, who contributed to this edition.



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