

Focus on Fintech

Welcome to Wilson Sonsini's *Focus on Fintech* newsletter. This quarterly newsletter provides ongoing analysis and commentary on regulatory developments impacting the fintech industry.

In this issue, we discuss a number of federal banking agency updates, including the long-awaited Final Interagency Guidance on Third-Party Relationships and the Federal Reserve Bank of New York's report on the feasibility of an interoperable network for wholesale payments, among other developments. We also discuss several updates from the SEC, including the reopening release for the proposed rule to amend the definition of "exchange" and the increased focus on investment adviser marketing, and we examine proposed stablecoin and crypto asset legislation. Finally, we wrap up this edition with regulatory updates from the UK, consumer protection updates, and updates on certain fintech litigations, as well as an overview of select legislative developments at the state level.

Federal Banking Agency Updates

Bank-Fintech Partnerships – Final Interagency Guidance

The Board of Governors of the Federal Reserve System (Fed), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the



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Agencies) issued the long-awaited final [Interagency Guidance On Third-Party Relationships: Risk Management](#) (Final Guidance) on June 6, 2023. The Final Guidance replaces the disparate set of guidance and FAQs separately issued by the Agencies over the years, bringing greater consistency to supervisory expectations for banks in managing risks arising from their business relationships with service providers, contract counterparties, and other third parties. The Final Guidance is expansive, broadly defining third-party relationships and encompassing any business arrangement between a banking organization and another entity, whether the arrangement is formalized by contract or otherwise

established. For more information on how the Final Guidance may affect fintech companies looking to partner with banks, please see our recent [client alert](#).

FDIC Insurance Reform Report

Following the bank failures that occurred in March 2023, the FDIC released a report titled "[Options for Deposit Insurance Reforms](#)" on May 1, 2023, which evaluates three options to reform the deposit insurance system. The three options are:

- [Limited Coverage](#), which would maintain the current structure

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of deposit insurance, including insuring depositors up to a specified limit (which the FDIC notes may be increased from the existing \$250,000 limit).

- **Unlimited Coverage**, which, as the name suggests, provides unlimited deposit insurance.
- **Targeted Coverage**, which would allow for different levels of deposit insurance coverage depending on the type of account, with higher coverage for business payment accounts. Under the Targeted Coverage option, some accounts may receive unlimited coverage.

Of the three options set forth in the report, the FDIC recommends the “Targeted Coverage” option, as it would capture many of the financial stability benefits of more expanded coverage in certain instances where it would be particularly useful, while still limiting the potential undesirable consequences of increased deposit insurance limits.

FDIC’s Consumer Compliance Supervisory Highlights

In April, the FDIC released its “[2023 Spring Consumer Compliance Supervisory Highlights](#).” Among others, the most cited violations involved the Truth in Lending Act (TILA) and Regulation Z, the Electronic Fund

Transfers Act and Regulation E, the Truth in Savings Act and Regulation DD, and Section 5 of the FTC Act (prohibiting unfair or deceptive acts or practices). The frequently cited violations serve as a reminder to financial institutions and companies that partner with financial institutions to provide consumer financial services that they must have appropriate risk management, oversight, policies and procedures, and risk assessments in place to maintain compliance with consumer protection laws.

Office of the Comptroller of the Currency Escalation Framework Policy Update

The OCC updated its Policies and Procedures Manual (PPM) 5310-3, “[Bank Enforcement Actions and Related Matters](#),” as of May 25, 2023. A significant update is the addition of Appendix C: Actions Against Banks With Persistent Weaknesses. Appendix C provides that when a bank has persistent weaknesses and “has not made sufficient progress toward correcting the deficiencies,” then the OCC “has a presumption in favor of additional and increasingly severe action(s).”

The supervisory and enforcement directives in Appendix C apply to large, complex banks where risks may not be sufficiently minimized through better

management. In January 2023, Acting Comptroller of the Currency Michael J. Hsu expressed concerns about these types of financial institutions that are “too big to manage” and spoke about the OCC’s four-level enforcement “escalation framework” in his remarks, “[Detecting, Preventing, and Addressing Too Big To Manage](#).” The updates to PPM 5310-3 build upon that framework to more effectively target deficiencies at large, complex banks and identify banks that are too big to manage.

CFTC Division Cautions Clearing Agencies to Monitor Digital Asset Risks

The U.S. Commodity Futures Trading Commission’s (CFTC’s) Division of Clearing and Risk has issued a [staff advisory](#) (the Advisory) on the risks associated with the clearing of products related to crypto assets. The Advisory focused on the importance of compliance with the system safeguards requirements, physical settlement procedures, and conflicts of interest policies.

Treasury Releases Illicit Finance Risk Assessment of Decentralized Finance

On April 6, 2023, the U.S. Department of the Treasury (Treasury) published its [Illicit Finance Risk Assessment of Decentralized Finance](#) (Assessment), a comprehensive examination of legal and technological vulnerabilities that, according to Treasury, allow illicit actors to use decentralized finance (DeFi) to engage in illicit finance activities. The vulnerabilities reportedly create a high risk to national security, consumers, and the crypto asset industry because DeFi can be used by illicit actors to steal crypto assets, launder proceeds from illicit activity, and evade sanctions.

The vulnerabilities discussed include: (i) non-compliant DeFi companies misunderstanding the application of

Federal Banking Agency Updates *(Continued from page 2)*

U.S. law to their business model; (ii) “disintermediation,” whereby DeFi companies fall outside the scope of the Bank Secrecy Act’s (BSA’s) definition of “financial institution” and fail to implement adequate anti-money laundering (AML) safeguards; (iii) gaps in global AML compliance standards; and (iv) the lack of cybersecurity protections. The risk assessment is a roadmap for regulators and agencies to more effectively target the vulnerabilities within DeFi services. Please see our [recent alert](#) for more information.

New York Fed Publishes Report on Digital Assets Payments System

The Federal Reserve Bank of New York’s Innovation Center, in collaboration with private-sector institutions, published a [report](#) on the feasibility of an interoperable network for wholesale payments operating on a shared multi-entity distributed ledger. The research project experimented with the concept of a regulated liability network (RLN), a theoretical payment infrastructure designed to support the exchange and

settlement of regulated digital assets. The proof-of-concept included simulated payments in a theoretical wholesale central bank digital currency (wCBDC), i.e., a tokenized record of a central bank deposit liability. A component of the report included a legal analysis of certain regulations and U.S. commercial law rules to the RLN system. It found that the use of shared ledger technology to record and update ownership of wCBDC and commercial bank deposits should not alter the legal treatment of such deposits.

Proposed Legislation

Republican Lawmakers Propose a Comprehensive Crypto Asset Framework

Republican members of the House Financial Services and Agriculture Committees unveiled a new regulatory framework for crypto assets via a [draft bill](#) that was introduced in the House of Representatives on July 20, 2023 (the Proposed Bill). Among other changes, crypto assets that are offered as part of an investment contract would fall under the Securities and Exchange Commission’s (SEC’s) jurisdiction, while crypto assets that are deemed to be commodities would be overseen by the CFTC. The Proposed Bill provides a path for crypto assets that are considered to be securities to become commodities once they are sufficiently decentralized and allows any person to certify that an asset has achieved sufficient decentralization. Platforms would be permitted to register with both the SEC and the CFTC to trade both crypto asset securities and crypto commodities.

Separately, Senators Cynthia Lummis (R-WY) and Kirsten Gillibrand (D-NY) reintroduced the [Lummis-Gillibrand Responsible Financial Innovation Act](#) that aims to create a comprehensive regulatory framework for crypto assets. Among other updates, the reintroduced bill includes increased customer protections and AML provisions, more resources for regulatory agencies to



enforce new regulations, and SEC feedback relating to crypto assets.

Stablecoin Bills

House Financial Services Committee Chairman Patrick McHenry (R-NC) and Congresswoman Maxine Waters (D-CA) have been working with various stakeholders to draft legislation regulating payment stablecoins and developments [continue to unfold](#). The bills generally address who is permitted to be a payment stablecoin issuer, as well as the requirements of a payment stablecoin issuer, including the level and types of reserves and limitations on payment stablecoin issuer activities. On July 27, 2023, the McHenry bill passed out of committee by a vote of 34 to 16. The vote was largely along party lines, although five Democratic members supported the legislation, while Ranking Member Maxine Waters remained strongly opposed.

SEC Updates

SEC Issues Supplement to Exchange Proposal (3b-16)

Following a number of comments on its [proposal to amend the definition of an exchange](#) (the Proposed Amendment), requesting clarification on whether the proposal applies to the crypto industry, the SEC reopened the comment period until June 13, 2023, and issued a [Reopening Release](#).

In the Reopening Release, the SEC asserts that the existing framework for regulation of exchanges is technology-neutral, and that the definition of “exchange” applies to all securities exchanges, including exchanges that trade crypto assets that are securities. The SEC also clarifies that it believes that decentralized finance systems already meet the existing definition of an “exchange” to the extent that any crypto assets traded on their platforms are securities.

SEC Risk Alert – Investment Adviser Marketing Rule

The SEC’s [2023 examination priorities](#) identified the Marketing Rule (Rule 206(4)-1 of the Investment Advisers Act of 1940 (Advisers Act)) as a significant area of focus. The SEC’s Division of Examinations has now published a [Risk Alert](#) entitled “Examinations Focused on Additional Areas of the Adviser Marketing Rule” (the Risk Alert). The Risk Alert encourages advisers to review their websites and other marketing materials for compliance with the Marketing Rule and notes that advisers must be able to substantiate statements of fact. The Risk Alert makes clear that the staff will continue to examine whether registered investment advisers have disseminated advertisements that violate the Marketing Rule. The Risk Alert notes that additional areas of focus will include advisers’ use of testimonials

and endorsements, as well as third-party ratings and the accuracy of the advisers’ Form ADV.

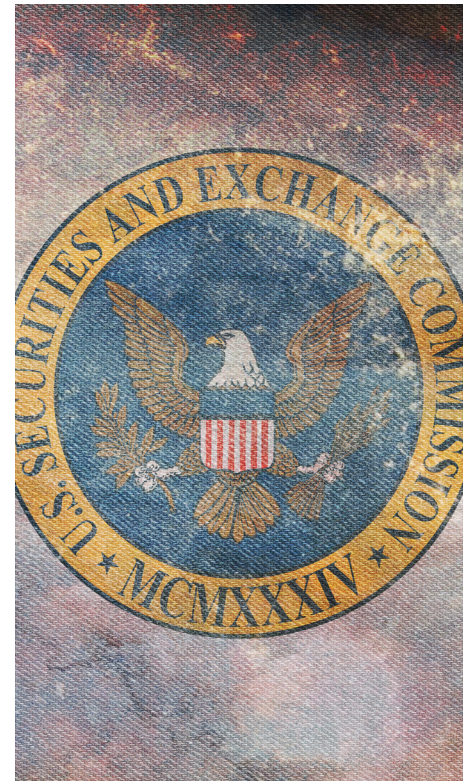
SEC Staff Bulletin on Standards of Conduct for Broker-Dealer and Investment Adviser Duty of Care

The SEC released a [staff bulletin](#) discussing the care obligation for broker-dealers under Regulation Best Interest and the duty of care for investment advisers under the Advisers Act. The bulletin highlights, among other things, that investment advisers and broker-dealers need to understand the investments and investment strategies on which they provide advice and/or recommendations. The bulletin also focused on the need for investment advisers and broker-dealers to understand a retail investor customer’s investment profile and to consider reasonably available alternatives to any recommended investments. The bulletin emphasizes that heightened scrutiny is required when recommending or providing advice about complex and risky products, including crypto asset securities, and recommends that firms tailor procedures for evaluating alternatives to risky products and for monitoring accounts that hold them.

SEC Chair Gary Gensler Testifies Before the U.S. House of Representatives Committee on Financial Services

On April 18, 2023, Securities and Exchange Commission Chair Gary Gensler [testified](#) before the U.S. House of Representatives Committee on Financial Services. The hearing, “Oversight of the Securities and Exchange Commission,” covered SEC regulatory and policy developments since October 2021 and covered a wide range of topics.

In his [testimony](#), Chair Gensler reiterated his concern that participants in the



crypto asset industry are noncompliant with federal securities laws, stating, “I’ve never seen a field that’s so noncompliant with laws written by Congress and affirmed over and over by the courts.” Responding to questions regarding regulatory clarity in the market, Chair Gensler pointed to the regulatory framework that has been developed over the past 90 years. He emphasized that ensuring compliance is a priority for the SEC because noncompliance may lead to reduced trust in the capital markets overall. Chair Gensler assured the Committee that the SEC has the authority it needs to bring crypto asset companies in compliance with federal securities laws.

For more information on recent SEC actions, please see “Increase in SEC Enforcement Activity Against Crypto Companies” in [Focus on Fintech Q1 2023](#).

SEC Updates *(Continued from page 4)*

Increased SEC Budget Request Signals SEC's Focus on Misconduct in Technology and Investments

SEC Chair Gary Gensler also [testified](#) before Congress to support the SEC's increased budget request for the 2024 fiscal year. Chair Gensler focused on the growth and change in the markets, highlighting electronic trading, artificial intelligence, and predictive data analytics, as well as shifts in communication. Chair Gensler described the crypto asset space as being a "Wild West" and "rife with noncompliance," and noted that rapid technological innovation has led to increased

misconduct, both in the crypto space and other emerging areas. The expanded budget request seeks funding for an additional 170 SEC staff.

SEC Releases Proposal to Revise Regulation S-P

The SEC issued a [proposed rule](#) (the Proposal) to revise Regulation S-P—the regulation protecting privacy of consumer financial information—to expand requirements for the protection of customer records and information by broker-dealers, investment companies, and investment advisers (covered financial institutions). Under the

Proposal, covered financial institutions would be required to notify customers of security breaches and adopt an incident response program as part of their policies and procedures. The Proposal broadens the scope of Regulation S-P, introducing a new defined term, "customer information." The Proposal extends protections relating to the safeguarding and disposal of information to include non-public personal information that a covered institution collects about its own customers, as well as non-public information that a covered institution receives about customers of other financial institutions.

UK Update



New UK Promotion Restrictions for Retail Crypto Services

On July 4, 2023, the UK Financial Conduct Authority (FCA) wrote an [open letter](#) to crypto asset firms about new restrictions on the promotion of qualifying crypto assets to UK

consumers that will come into effect on October 8, 2023. The new rules will apply to financial promotions made in relation to qualifying crypto assets.

With limited exceptions, "qualifying cryptoasset" means any cryptographically secured digital

representation of value or contractual rights that is transferable and fungible.

The definition of "financial promotion," which is very broad and technologically neutral, relates to invitations or inducements to engage in controlled activities. The UK Government has extended the statutory definition of "controlled activities" for these purposes to include dealing (whether as principal or as agent) in investments, arranging deals in investments (i.e., broking), managing investments, and advising on investments, in each case to include those activities carried on in relation to qualifying crypto assets.

The FCA letter reminds firms that communications originating from outside the UK may be financial promotions if they are capable of having an effect in the UK, including if the promotion is not solely targeted at UK consumers. The FCA expects that most if not all crypto asset firms with UK consumer clients will be within the scope of the regime.

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Starting October 8, 2023, there will be four routes to lawfully make financial promotions concerning qualifying crypto assets to UK consumers: (i) the promotion is communicated by a UK-licensed firm; (ii) the promotion is made by an unlicensed person, but approved by a licensed person; (iii) the promotion is communicated by a crypto asset business registered with the FCA under the UK money laundering regime; and (iv) the promotion otherwise complies with a relevant exemption from the regime. Breach of the restrictions is a criminal offense punishable by up to two years of imprisonment, an unlimited fine, or both. The FCA has said that it will take a robust approach to enforcement.

Making financial promotions through routes (i) to (iii) will require compliance with additional FCA rules. Those rules include requirements to use clear risk warnings and positive frictions, a prohibition on incentives to invest, a requirement to categorize clients according to certain regulatory criteria, and a requirement to assess the appropriateness of the relevant product or service for the customer. Any promotions made must also comply with the FCA's overarching requirement that financial promotions are clear, fair, and not misleading.

On June 8, 2023, the FCA set out its final rules on this matter in a [Policy Statement](#) and issued a [consultation](#) regarding non-binding guidance on the “clear, fair and not misleading” requirement.

EU Financial Data Access and Payments Package

On June 28, 2023, the European Commission published a package of proposals to update the EU payment services framework and to create new rules on financial data access and use. The proposals will improve anti-fraud measures (so-called “Strong Customer Authentication”), improve transparency regarding costs and charges for payments, and, among other things, support non-bank fintechs through permitting them direct access to EU payment systems and streamline regulatory regimes (i.e., the merger of the e-money and payment services regimes). The final legislation and its effective date are some way off. However, based on the typical EU legislative process, we expect it to go live in mid-to-late 2026.

Please see our recent client alert, [“European Commission Proposes New Rules on Financial Data Access and Use,”](#) for a discussion of the European Commission's financial data proposals.

UK Financial Services and Markets Act 2023

The [Financial Services and Markets Act 2023](#) (the Act), which became law on June 29, 2023, will make major reforms to the law of the UK financial services sector.

The Act will, among other things, give HM Treasury the power to designate providers of services to financial institutions and market infrastructure as “critical.” This will typically be where the firm provides services to a large number of financial institutions,

which are difficult to substitute, and which, if disrupted, could pose systemic risks. The Bank of England, the Prudential Regulation Authority, and the FCA will have examination and rule-making powers of critical third parties (e.g., in relation to minimum resilience standards). UK regulators have previously stated that certain major information and communications technology providers could be in scope of designation, as could data, artificial intelligence, and machine learning models. Over the coming months, the regulators are expected to publish a consultation paper on their proposed rules and guidance relating to operational resilience requirements.

The Act will also establish a regulatory authorization and supervision regime for digital settlement assets. The Act defines “digitized settlement asset” as a digital representation of value or rights, whether or not cryptographically secured, that satisfies the following conditions: (i) it can be used for the settlement of payment obligations; (ii) it can be transferred, stored, or traded electronically; and (iii) it uses technology supporting the recording or storage of data. The regime will, among other things, bring operators of digital settlement asset schemes within the scope of the regulatory regime that currently applies to other payment systems (e.g., FCA authorization and supervision, HM Treasury recognition of systemically important payment systems and service providers, and the application of the financial market infrastructure special administration regime to HM Treasury-recognized operators).

Consumer Protection Updates

CFPB's Spotlight on Consumer Funds in Payment Apps

As part of federal regulators' continued focus on deposit insurance coverage, the Consumer Financial Protection Bureau



(CFPB) released an [Issue Spotlight](#) and [Consumer Advisory](#) on June 1, 2023, cautioning consumers against holding funds in nonbank payment apps. In the Issue Spotlight and the Consumer Advisory, the CFPB highlighted the growth in the use of person-to-person (P2P) payment apps, noting that consumers store billions of dollars with these nonbank platforms that, at least in some cases, may not be covered by deposit insurance. The Issue Spotlight focuses on the extent to which the P2P payment platforms “claim” to provide federal deposit insurance coverage and the potential effects on consumers.

Neither the Issue Spotlight nor the Consumer Advisory explicitly states that nonbank P2P payment apps are engaging in deceptive practices with

respect to any representations regarding deposit insurance. However, this is not the first time the CFPB has focused on deposit insurance issues. In May 2022, in connection with the FDIC's adoption of [12 CFR Part 328 Subpart B](#), the CFPB issued a [Consumer Financial Protection Circular](#) (the Circular) providing guidance stating that covered firms likely violate the Consumer Financial Protection Act's (CFPA's) prohibition on engaging in deceptive practices if they misuse the name or logo of the FDIC, engage in false advertising, or make material misrepresentations to the public about deposit insurance. The Circular also notes that while Subpart B prohibits knowing misrepresentations, under the CFPA, misrepresentations to consumers may violate the CFPA regardless of whether or not they are made knowingly.

Litigation

On-Exchange Sales of Crypto Assets – Mixed Messages from the SDNY

In response to cross-motions for summary judgement in *SEC v. Ripple Labs*, Judge Torres of the U.S. District Court for the Southern District of New York (SDNY) [ruled](#) that three of the four transactions by Ripple at issue did not constitute securities. First, Judge Torres found that Ripple's sales of XRP to various hedge funds and other institutional buyers did involve offerings and sales of securities, because (among other factors) Ripple's efforts in marketing XRP and touting its investment potential likely led these investors to expect that Ripple would promote XRP and protect its position in the market. In contrast, Judge Torres found that three other types of transactions in XRP did not involve

offerings and sales of securities—most notably, that “blind bid-ask” transactions in which purchasers bought XRP on crypto exchanges did not constitute securities because these purchasers did not know they were purchasing from Ripple and were too unsophisticated to have parsed through Ripple's marketing efforts.

Weeks later, Judge Rakoff, also in the SDNY, [denied](#) a motion to dismiss by crypto asset issuer Terraform Labs Pte. Ltd. and its CEO, Do Hyeong Kwon. That motion relied on, among other things, the *Ripple* ruling to claim that Terraform's stablecoins and tokens were not securities. In his denial, Judge Rakoff explicitly rejected Judge Torres' approach in *Ripple*, noting instead that the securities laws do not distinguish between primary and secondary purchasers.

SEC Actions Against Three Major Crypto Asset Exchanges

The *Ripple* and *Terraform* rulings may have a significant impact on the SEC's ongoing enforcement actions against crypto asset exchanges [Binance](#) and [Coinbase](#). On June 5, 2023, the SEC filed 13 charges against Binance, including for failing to register as an exchange, clearing agency, and broker-dealer, and for selling unregistered securities. Binance and its CEO, Changpeng Zhao, also face charges for misleading investors regarding the company's ability to detect market manipulation on its platform, diverting customer funds, and concealing the fact that it was commingling investor assets and sending them to a third party that Zhao also owned.

Binance and the SEC have now reached

Litigation *(Continued from page 7)*

an [agreement](#) in which Binance has agreed, among other things, to repatriate to the United States assets held for the benefit of customers of the Binance U.S. crypto asset trading platform and to keep such assets in the United States for the duration of the litigation. The agreement also prevents Binance from spending corporate assets other than for ordinary business expenses and gives the SEC oversight of company spending.

The SEC also brought some similar charges against Coinbase, alleging that it was operating as an unregistered securities exchange, broker, and clearing agency, as well as conducting an unregistered offer and sale of securities in connection with its staking program. The SEC further alleged that Coinbase offered brokerage services through its Coinbase Prime and Coinbase Wallet products. Both complaints allege that several major crypto assets traded on Coinbase are securities (although no charges appear to have been filed against the issuers).

Coinbase filed its [response](#) to the SEC's charges, denying them. Coinbase claimed that the SEC has gone beyond its statutory authority and requested that the court dismiss the case.

The SEC also filed a similar [complaint](#) against crypto asset trading platform Bittrex, Inc. (Bittrex) and its affiliates, alleging that (i) the entities operated an unregistered national securities exchange using a shared order book and (ii) Bittrex failed to register as a securities broker and clearing agency. The complaint notes that, in an apparent effort to avoid regulatory scrutiny, Bittrex and its CEO instructed issuers of crypto assets seeking to have their assets listed for trading on Bittrex's platform to remove certain public statements and information about their assets that would increase the likelihood of regulators concluding that such assets were securities under U.S. law.



Fed Master Account Access

PayServices Bank, a private banking corporation incorporated under the Idaho Bank Act, filed a [suit](#) against the Federal Reserve Bank of San Francisco (the FRBSF) in the United States District Court for the District of Idaho. The complaint alleges that the FRBSF unlawfully denied PayServices' application for a master account. According to the complaint, PayServices, which focuses on trade finance, has met and exceeds the requirements to qualify for a master account approval at the FRBSF and PayServices' business model is not novel.

In a separate case brought by Custodia Bank in relation to its application for a master account, the United States District Court for the District of Wyoming recently [denied](#) the Fed's motion to dismiss the case.

FTC Complaint Against Celsius Network

On July 13, 2023, the Federal Trade Commission (FTC) filed a [complaint](#) against cryptocurrency company Celsius Network and three former executives alleging violations of the FTC Act, 15 U.S.C. § 45(a), and Section 521 of the Gramm-Leach-Bliley Act. According to the complaint, Celsius

marketed and sold crypto-based financial services to consumers with product offerings including interest-bearing cryptocurrency accounts, cryptocurrency-secured loans, and over-the-counter cryptocurrency sales. The complaint alleges that defendants made misleading statements that (i) Celsius did not make unsecured loans; (ii) Celsius maintained sufficient liquid crypto assets to satisfy its consumer obligations; (iii) consumers could withdraw the cryptocurrency they deposited at any time; (iv) Celsius maintained a \$750 million insurance policy for consumer deposits; and (v) consumers could earn "up to 17% APY" and "up to 18.63% APY."

The FTC's [settlement](#) with Celsius included monetary relief and various injunctive relief. The injunctive relief granted was wide-ranging, and most notably included a permanent ban on Celsius' "advertising, marketing, promoting, offering or distributing... of any product or service that can be used to deposit, exchange, invest, or withdraw assets." As to monetary relief, the FTC has not had the authority to seek consumer redress for FTC Act violations since the Supreme Court's decision in *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (2021). This may explain why the FTC alleged a violation of a little-used provision under the Gramm-Leach-Bliley Act that authorizes the FTC to seek monetary remedies for pretexting in the financial services context. By alleging a violation of this GLB provision, the FTC was able to get the company to agree to a \$4.72 billion suspended judgment. Three former executives of Celsius did not agree to the proposed settlement, and the FTC's case against them will proceed to New York federal court, where the FTC will be seeking injunctive and monetary relief.

State Legislation

New York's Landmark Crypto Regulation, Protection, Transparency, and Oversight Act

In May 2023, New York Attorney General Letitia James [announced](#) a proposed bill called the Crypto Regulation, Protection, Transparency and Oversight Act (CRPTO Act). The purpose of the CRPTO Act is to “protect customers and investors in crypto assets from fraudulent practices, eliminate conflicts of interest and increase transparency.” The CRPTO Act would require “every digital asset broker, digital asset marketplace, digital asset investment adviser, and digital asset issuer” to register with the state “prior to engaging in business within or from New York,” and prohibits common ownership of “stacked services” (i.e., no person or affiliate may act in more than one regulated capacity). A few notable provisions from the proposed bill include the following:

- crypto asset issuers, brokers, marketplaces, and investment advisers must publicly post audited financial statements;
- crypto asset brokers and investment advisers must implement and maintain an AML program;
- crypto asset issuers are prohibited from issuing investors any note or debt instrument that offers interest or that is payable on demand;
- crypto asset marketplaces must disclose fees received from any source;
- crypto asset brokers would be subject to specified net capital requirements; and
- “unauthorized digital asset transfers” would be provided similar consumer protections as under the

Electronic Fund Transfers Act and Regulation E.

Wyoming Pushing for a Stablecoin

Wyoming recently adopted the [Wyoming Stable Token Act](#), which creates a Wyoming Stable Token Commission and tasks the Commission with issuing a Wyoming stablecoin pegged to the U.S. dollar by the end of 2023. This would be the first government-issued stablecoin in the United States.



Select Publications

Wilson Sonsini Alert

[Insights into Central Bank Payments Innovation: Tokenized Money, DLT-based Infrastructures, and Public-Private Sector Collaboration](#)

June 26, 2023

Wilson Sonsini Alert

[Guardrails for Bank-Fintech Partnerships: The Federal Banking Agencies Finalize Third-Party Risk Management Expectations](#)

June 21, 2023

Wilson Sonsini Alert

[Considerations for M&A Transactions Involving Fintech Companies](#)

June 15, 2023

Wilson Sonsini Alert

[Beware: Increasingly Aggressive Enforcement Actions in the Crypto Asset Industry Puts Companies on Notice](#)

June 13, 2023

American Bar Association – *Business Law Today*: June 2023

[Building a Payment Rail: Key Legal Considerations for Technology Platforms and Online Marketplaces](#)

June 12, 2023

Wilson Sonsini Alert

[FINRA Finally Approves a Special Purpose Broker-Dealer to Custody Crypto Asset Securities—What's Next?](#)

May 22, 2023

Wilson Sonsini Alert

[OFAC Penalizes Another Crypto Asset Company for Sanctions Violations](#)

May 11, 2023

Wilson Sonsini Alert

[Treasury Risk Assessment Emphasizes That Decentralized Crypto Companies Have AML and Sanctions Compliance Obligations](#)

April 25, 2023

Recent Fintech Practice Highlights

Webinar – Beyond the Internet of Value: AI and the New Digital Economy

On June 22, 2023, fintech and financial services partner Jess Cheng hosted a [webinar](#) discussing AI and how it will transform the digital economy with Stefan Thomas, founder and CEO of Coil and former CTO at Ripple. The webinar examined the potential changes AI could bring to existing business models and how it can transform how the world innovates around the transfer of money.

ABA/Wilson Sonsini Webinar – A Discussion on Bank Regulation and Guardrails for Innovation

On June 15, 2023, fintech and financial services partner Jess Cheng hosted a [webinar](#) discussing the regulatory outlook for tech innovation in the banking sector with Asad Kudiya, the Assistant General Counsel at the Federal Reserve Board. The webinar

examined the current legal framework for bank regulation and the impacts of innovations in technology, as well as the evolving regulatory landscape.

LSTA Webinar – After the Failures: What’s Next for the Banking Sector and Venture Lending?

On June 8, 2023, fintech and financial services partner Jess Cheng was a panelist for a [webinar](#) hosted by the LSTA discussing supervisory considerations following the recent bank failures. The webinar focused on bank supervision and regulation and what regulation may look like in light of the recent bank failures.

New York ABA Business Law Section Innovation at the Central Bank Dinner

On June 7, 2023, fintech and financial services partner Jess Cheng hosted an evening of networking and conversation in connection with the American Bar

Association focused on innovation at the central bank. The event featured a [conversation](#) with Per von Zelowitz, Director of the Federal Reserve’s New York Innovation Center, about the latest legal developments on tokenized money.

Wilson Sonsini at Consensus

On April 27, 2023, Wilson Sonsini hosted a [panel](#) on legal issues associated with the crypto and blockchain space at Consensus in Austin, Texas. The discussion included topics such as regulatory risk, structuring financings, and navigating the current environment. Wilson Sonsini panelists included 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.

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



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