



Global Digital Assets Digest: October 2024

15 October 2024

Welcome to this month's Global Digital Assets Digest. In this edition, the ESAs have been busy notifying market participants about future work programmes. A number of delegated acts under MiCA have also been published. In the UK, the regulators have finally announced the next steps in relation to the Digital Securities Sandbox. In the US, legislators have been looking at the oversight of regulators. In Hong Kong, there's [news](#) about the first digitally native bond issued by a Hong Kong corporate issuer.

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1. European Commission: Delegated Regulation on RTS on information exchange between competent authorities under MiCA

On 10 October 2024, the European Commission adopted a [Delegated Regulation](#) on RTS in relation to information to be exchanged between NCAs under MiCA.

MiCA requires competent authorities to cooperate with each other when exercising their supervisory duties

The Delegated Regulation set out:

- information to be exchanged with regards to CASPs;
- the type of information to be exchanged in case of suspicion of market abuse; and
- information to be exchanged in relation to precautionary measures.

EU co-legislators will now review the Delegated Regulation and if neither objects it will enter into force 20 days after being published in the EU Official Journal.

2. IOSCO: Final Report: Investor education on cryptoassets

On 9 October 2024, IOSCO published a [report](#) summarising the results of a survey distributed to members of IOSCO's Committee for Retail Investors concerning retail investor behaviour.

The IOSCO Board identified cryptoassets as a priority in 2019, with cryptoassets remaining an IOSCO priority in 2024.

Notable conclusions

- Fear of missing out is a reason many investors invest in cryptoassets and investors seem to get information on cryptoassets from friends, family, and social media.
- Increasing regulatory activity in many jurisdictions, with some entities undertaking cryptoasset-related activities obtaining the necessary licensing and registration and so ensuring that investors are afforded some protections.
- Relevant regulatory framework, such as IOSCO's [Recommendations on DeFi](#) need to be implemented to encourage consistency and prevent regulatory arbitrage.

3. EBA: MiCA: Final Report: Guidelines on redemption plans under MiCA

On 9 October 2024, the EBA published its [final report](#) on guidelines on the orderly redemption to be developed by issuers of ARTs and EMTs in the event that an issuer is deemed "unable or likely to be unable to fulfil its obligation"

The guidelines contain guidance for issuers in the design of a redemption plan and focus on the following areas:

- proportionality considerations when determining content of the redemption plan and timeframe for its review/update;
- main features and objectives of the redemption plan (e.g. equitable treatment of all token holders; factors to ensure the timely implementation of the plan);
- governance requirements (e.g. processes applicable for the development, update and execution of the redemption plan; and the identification of responsible persons);
- pooled issuance (where the same token is issued by multiple issuers); and
- triggers of the redemption plan.

The Guidelines need to be translated into the official EU languages and published on the EBA website. They will apply from two months after the date of publication on the EBA's website of the Guidelines.

For more on MiCA, please see our briefings [here](#) and [here](#).

4. BIS: Speech by Alessandra Perrazzelli: Technology and regulation - bridging the gap in the collective interest

On 8 October 2024, BIS published a [keynote speech](#) by Alessandra Perrazzelli, Deputy Governor of the Bank of Italy, titled "Technology and regulation: bridging the gap in the collective interest".

Key points

- Global fintech investments increased significantly from 2010 to 2019, peaking at around 217 billion U.S. dollars.
- The pace of technological change and complex interlinkages in the financial system requires regulators to develop rules of engagement that are flexible and dynamic.

- The Bank of Italy has defined a FinTech strategy and made a number of changes to promote the development of the domestic market. This approach is reflected in in the Strategic Plan.

5. ECB: Speech by Piero Cipollone, Member of the Executive Board of the ECB: Towards a digital capital markets union

On 7 October 2024, the ECB published a [speech](#) by Piero Cipollone, Member of the Executive Board, in relation to Capital Markets Union for digital assets. The speech provides an overview of the development of regulatory architecture and existing challenges, notably fragmentation of capital markets. It cites efforts made in relation to integration in the post-trade sector, notably TARGET2-Securities (T2S) platform.

Notable points

- Existing framework is characterised by noninteroperable technological ecosystems in each Member State, with differing national regulatory regimes, leading to "siloeed pools of asset liquidity".
- Tokenisation and DLT in capital markets can address inefficiencies and fragmentation of financial infrastructures.
- Both the private sector and public sector are involved in the adoption of financial technology. The use of DLT largely seems to be for primary issuance.
- Leading global financial market infrastructures are considering creating standards to encourage tokenisation across the financial sector. The Eurosystem is testing DLT for the settlement of wholesale transactions in central bank money.
- A European ledger could bring together different digital assets on a shared, programmable platform and would essentially involve see T2S transforming into a DLT-based, single financial market infrastructure for Europe.
- Any plan for a European ledger would need to consider the scope of services, governance structure, operational procedures and impact on existing infrastructure and assets.
- The eligibility of DLT-based assets for use as collateral in Eurosystem credit operations also needs to be looked at.

6. ESMA: Consultation paper: Review of RTS 22 on transaction data reporting

On 3 October 2024, the ESMA published a [consultation paper](#) on the transaction data reporting and order book record keeping requirements introduced by Regulation (EU) 2024/791 ([Updated MiFIR](#)). This is the latest in a series of consultations published by ESMA as it fulfils its various mandates as part of the MIFID Review (see our briefing [here](#)) in light of Updated MiFIR entering into force (see our briefing [here](#)). The consultation covers (among other things) amendments to RTS 22 and follows ESMA's September 2022 report on the DLT Pilot Regime. This recommended the inclusion of a DLT identifier in transaction reports for financial instruments natively issued on a blockchain and for financial instruments that are reissued in a tokenised form.

In the consultation, ESMA seeks views on proposed additional fields to allow for the reporting of the ISO 24165 Digital Token Identifier for DLT financial instruments and underlyings under MiFIR Article 26.

The deadline for comments is 3 January 2025, with ESMA expected to publish a final report in Q1 2025.

7. EBA: Work Programme for 2025

On 2 October 2024, the EBA published its Work Programme, setting out key priorities and initiatives for 2025. The EBA confirms that it will be commencing oversight and supervisory activities under MiCA and will be undertaking a number of tasks in relation to the AML/CFT framework. The Programme refers to work being done in preparation for MiCA including a common single rulebook for issuers of ARTs and EMTs and e-money tokens, and the new Cryptoassets Standing Committee (set up in 2024).

Key output in relation to MiCA includes the following:

- monitoring cryptoasset markets and developments and assisting the European Commission with any follow-up work related to the MiCA review;
- providing Opinions on classification of cryptoassets;
- significance assessment of issuers of ART/EMT and, if applicable, carrying out MiCA supervisory activities;
- monitoring of ARTs and EMTs; and
- tackling AML/CTF risk through prudential supervision – embedding AML/CTF aspects in the prudential framework.

8. European Commission: Delegated Regulation on complaints handling for issuers of ARTs under MiCA adopted

On 30 September 2024, the European Commission adopted a [Delegated Regulation](#) containing RTS on the requirements, templates and procedures for the handling of complaints relating to ARTs under MiCA. MiCA requires issuers of ARTs to provide holders of ARTs with information on the complaints handling procedures and make these available in a harmonised template

Areas covered by the RTS include requirements related to the complaints management policy and function.

The draft RTS were consulted on by the EBA in July 2023 and were published in a March 2024 final report .

For more on MiCA, please see our briefings [here](#) and [here](#).

9. ECB: Speech by Piero Cipollone, Member of the Executive Board of the ECB: Monetary sovereignty in the digital age: the case for a digital euro

On 27 September 2024, the ECB published a [keynote speech](#) by Piero Cipollone, Member of the Executive Board of the ECB, at the Economics of Payments XIII Conference. The speech explores how the digital euro could tackle fragmentation and encourage competition.

- The development of the digital euro has involved working with stakeholders e.g. via the Rulebook Development Group and the Euro Retail Payments Board.
- Several innovations aimed at simplifying payments driven by European payment service providers would struggle to achieve pan-European scale and experience fragmentation along national lines.
- European payment service providers are experiencing difficulties in competing effectively with international card schemes and e-payment solutions.
- The open digital euro standard would allow private retail payment solution providers to launch new products and functionalities on a wider scale.

- Cooperation with private sector will expand in the near future and will centre on the following themes: creating a more competitive environment to encourage innovation and offer consumers more choice; identifying and leveraging synergies to enhance efficiency and create mutually beneficial opportunities across the payments ecosystem; strengthen the business models of all stakeholders so as to thrive in a rapidly evolving landscape.

For more on the digital euro, please see our briefing [here](#).

10. European Commission: Delegated Regulation on template for cooperation agreements between NCAs and third-country countries under MiCA

On 26 September 2024, the European Commission adopted a Delegated Regulation containing RTS concerning a template document for cooperation arrangements between NCAs and supervisory authorities of third countries under MiCA. This follows the final report by ESMA in March 2024.

MiCA requires NCAs to conclude, where necessary, cooperation arrangements with supervisory authorities of third countries concerning the exchange of information and the enforcement of obligations arising under MiCA in third countries.

Delegated Regulation will be published in the Official Journal and will come into force 20 days after publication.

For more on MiCA, please see our briefings [here](#) and [here](#).

11. ECB: Speech by Christine Lagarde, President of the ECB and Chair of the European Systemic Risk Board: Technology as a new frontier for macroprudential policy

On 26 September 2024, the ECB published a [speech](#) by Christine Lagarde, President of the ECB and Chair of the European Systemic Risk Board, titled "Technology as a new frontier for macroprudential policy". The speech calls for authorities to use the opportunities presented by new technologies as a force of good to lessen risks to the financial system and argues that DLT can streamline processes and offer benefits to the financial system.

12. Publications Office of the EU: Implementing Regulation on cooperation and exchange of information under MiCA published in OJ

On 25 September 2024, Commission Implementing Regulation [\(EU\) 2024/2494](#) was published in the Official Journal of the European Union. The Implementing Regulation contains standard forms, templates and procedures for the co-operation and exchange of information between competent authorities and the EBA and ESMA.

The Implementing Regulation was adopted by the European Commission on 24 September 2024 and comes into force on 15 October 2024.

For more on MiCA, please see our briefings [here](#) and [here](#).

13. European Commission: Implementing Regulation on cooperation and exchange of information between competent authorities

On 24 September 2024, the European Commission adopted an Implementing Regulation supplementing MiCA on ITS concerning standard forms, templates and procedures for the cooperation and exchange of information between competent authorities.

The Implementing Regulation is based on the draft ITS developed by ESMA in close co-operation with the EBA and submitted to the Commission. The Implementing Regulation is to be published in the Official Journal of the European Union and will come into force 20 days after publication.

For more on MiCA, please see our briefings [here](#) and [here](#).

14. ECB: Speech by Piero Cipollone, Member of the Executive Board of the ECB: From dependency to autonomy: the role of a digital euro in the European payment landscape

On 23 September 2024, the ECB published a [speech](#) by Piero Cipollone, Member of the Executive Board of the ECB, titled "From dependency to autonomy: the role of a digital euro in the European payment landscape".

The speech calls for action by EU regulators if the EU is to maintain its position as a standard setter and frontrunner.

Key points

- Work is in progress to select potential providers for developing a digital euro platform and infrastructure.
- The digital euro also brings benefits to merchants, many of whom rely on a small number of online or card payment methods (often non-European providers). The digital euro caps the fees merchants pay to banks for processing payments.
- The digital euro brings many potential benefits for banks by allowing them to provide value-added service and to retain their customers.
- Stakeholders have begun process for identifying factors behind the maximum amount of the digital euro a person could hold at any time. The holding limit would be based on three key areas defined in the draft legislation: usability, monetary policy and financial stability
- The ECB's Governing Council is to decide by the end of 2025 whether to move to the next phase. The Governing Council will not make a decision concerning the issuance of a digital euro before the legislative act has been adopted.

For more on the digital euro, please see our briefing [here](#).

15. Exchange of views with Piero Cipollone, Member of the Executive Board of the ECB

On 23 September 2024, Piero Cipollone, Member of the ECB Executive Board delivered an [update](#) on the developments of the digital euro project to the ECON Committee. Mr Cipollone confirms that the digital euro is currently in the "preparation phase", which will last until October 2025. This phase involves finalising the digital euro rulebook and conducting further in-depth analysis and consultation with stakeholders on a variety of topics.

16. ECB: Research Bulletin: Consumer demand for central bank digital currency as a means of payment

On 18 September 2024, the ECB published a [Research Bulletin](#) on consumer demand for a CBDC. The paper seeks to offer a framework for understanding the role of adoption costs and design strategies in affecting demand for CBDC. The paper looks potential drivers for the adoption of CBDC as a means of payment. Using available data, the paper assesses how likely consumers are to use CBDC for payments in daily transactions.

The analysis sets out three drivers key to consumer demand: the design of the CBDC; the level of consumer awareness; and the growth of current new payment technologies.

17. ESMA: 2025 Annual Work Programme

On 30 September 2024, ESMA published 2025 [Annual Work Programme](#), which sets out ESMA strategic orientation. ESMA confirms that a large part of its work will be on implementing mandates received from previous legislative cycle and new mandates.

Notable plans

- Opinions on permission of DLT Market Infrastructures.
- Guidelines on suitability and transfer services under MiCA.
- Update on the implementation of the DLT Pilot Regime.
- Interim report on the application of MiCA and report on latest developments in cryptoassets.
- Development of a register of all CASPs, all cryptoasset white papers and a central database of penalties and administrative measures under MiCA.

18. BIS Innovation Hub: Press Release: Private sector partners join Project Agorá

On 16 September 2024, BIS Innovation Hub provided an [update](#) in relation to Project Agorá, a project bringing together a number of central banks exploring how tokenised commercial deposits can be integrated with tokenised wholesale central bank money. The press release confirms that 40 private sector firms will join Project Agorá and confirms that selected firms met certain criteria (e.g. significant involvement in cross-border payments; and innovation expertise).

BIS confirms that it will begin the design phase of the project.

Updates and Guidance: UK

19. BoE: Response to the discussion paper exploring extended RTGS hours

On 3 October 2024, the BoE published a [response](#) to its February 2024 [discussion paper](#) on extending operating hours for RTGS and CHAPS (see Ashurst Global Digital Assets [February 2024 edition](#)). The discussion paper set out BoE's initial views on the use cases, and impact of extending settlement hours, and sought industry feedback to help shape the future operating model of RTGS and CHAPS.

Notable points

- The BoE is minded to extend hours given the public policy benefits (such as enhancing cross-border payments, reducing settlement risk and liquidity costs, and facilitating innovation).
- The BoE's central expectation is to extend RTGS and CHAPS settlement hours and achieve near 24 x 7 operations in the future in a phased transition over several years, with no extension before 2027.
- The BoE envisages a first stage extension of 4.5 hours in the morning, with settlement starting at 1.30am. (this is operationally less challenging than extending settlement hours to later in the day).
- The Bank will work with industry to analyse and inform future RTGS and CHAPS settlement hours.
- A consultation paper is planned for 2025, which will contain the final proposal for extending settlement hours and supporting analysis. The BoE will confirm its decision on future RTGS and CHAPS settlement hours in late 2025 or early 2026. At least one year's notice of a change from the current RTGS and CHAPS settlement hours will be given, meaning an extension will not be implemented any earlier than 2027.

20. BoE: Speech by Sasha Mills, Executive Director, Financial Market Infrastructure: Innovation in Digital Assets in the Financial System and The Bank

On 2 October 2024, the BoE published a [speech](#) by Sasha Mills, Executive Director, Financial Market Infrastructure. The speech assesses the implications of recent innovations in digital assets and payments. The speech also refers to recent BoE publications, such as the Discussion Paper on the BoE approach to innovation in money and payments and the launch of the Digital Securities Sandbox.

Notable points

- Innovations in digital assets and payments bring opportunities and risks in relation to the BoE meeting its objectives.
- The BoE needs an agile approach to keep pace with an adequately respond to developments in the digital assets sector.
- The DSS could result in faster and cheaper ways for securities to be traded, settled, and be used among financial market participants.
- Developing regulation in a sandbox allows the BoE to test and adapt as it learns from innovators. The DSS welcomes start-ups as well as existing financial firms.
- Innovations in wholesale payments planned updates to RTGS and the introduction of Omnibus Accounts (these allow for settlement backed in central bank money for tokenised asset transactions). The BoE is also looking into how central bank money could interact with programmable ledgers via the use of a wholesale CBDC.

21. BoE and FCA: Further details in relation to the Digital Securities Sandbox

On 30 September 2024, the BoE and the FCA published further details in relation to the DSS. The DSS is the first Financial Market Infrastructure (FMI) sandbox created under the FMI sandbox powers introduced by the Financial Services and Markets Act 2023 (see [here](#) for more information) and the Financial Services and Markets Act 2023 (Digital Securities Sandbox) Regulations 2023 ([SI 2023/1398](#)) (see [here](#) for more information) and. FMI sandboxes allow firms to experiment with new or different practices and developing technology in the key functions of FMI.

The regulators confirmed that the DSS is now open for applications. The BoE and the FCA also published a Policy Statement ([PS24/12](#)) in response to their April 2024 [consultation](#) on the operation of the DSS. The approach set out in the consultation paper envisaged a "glidepath" consisting of a series of gates for sandbox entrants to move through (the permitted activity is to increase with each stage) as relevant standards are met.

The Policy Statement covers: the approach to regulating DSS firms; the scope of the DSS; settlement the payment leg; Gate 2 and end-state rules; supervision of the DSS; and other general rules relating to the DSS. Changes made to the proposed policy include those concerning: scope; end-state rules; settlement and approach to innovation in money and payments; limits in the DSS; and minimum capital requirements.

Alongside the Policy Statement, the regulators have also published:

- the joint FCA and BoE application form for [Gate 1](#) (entry into the DSS);
- the Bank's draft Gate 2 [application form](#) for firms seeking to be approved as Digital Securities Depositories (DSDs);
- the [guidance](#) on the operation of the DSS (DSS Guidance); and
- the BoE DSS [Rules instrument](#) outlining rules applicable to DSDs at the go-live stage of the DSS once firms pass Gate 2 (Bank DSS Rules Instrument).

The BoE and the FCA have entered into an MOU under which the regulators cooperate on the operation of the DSS and exchange information

The application window for entrants is to close in March 2027. The DSS is expected to be operational until December 2028.

22. Accelerated Settlement Taskforce, Technical Group: Draft Recommendations Report & Consultation

On 27 September 2024, the Accelerated Settlement Technical Group published [Draft Recommendations Report & Consultation](#). The UK Accelerated Settlement Taskforce was set up to look into the case for shortening the securities settlement cycle from T+2 to T+1. An initial report was published in March 2024 recommending a move to T+1. Areas covered include: Recommendation Zero (scope of instruments that will be covered by the implementation of T+1); Principal Recommendations (covering the critical post-trade activities to be completed for a successful UK transition to T+1); and Additional Recommendations.

The Group plans to publish the final version of the recommendations at the end of 2024.

23. BCAP: New rule restricting broadcast ads for qualifying cryptoassets

On 27 September 2024, BCAP [announced](#) the introduction of a new rule that explicitly bans ads for fungible and transferable cryptoasset products from being broadcast to mainstream, non-specialist audiences on TV and radio. These products were already subject to such a restriction under BCAP Code rule 14.5.4, as they are not regulated by the FCA. In October 2023, the FCA assumed responsibility for the regulation of advertising of fungible and transferable cryptoassets, which are categorised as Restricted Mass Market Investments (for more information, see our briefing [here](#)).

The BCAP considers adding the category to the code will ensure that the products are restricted to appropriate specialised broadcast audiences. BCAP carried out a public consultation on the proposed new rule received no responses.

24. Is a stablecoin property - D'Aloia v Persons Unknown & Ors [2024] EWHC 2342 (Ch)

In D'Aloia v Persons Unknown & Ors [2024] EWHC 2342 (Ch), the High Court considered whether a digital stablecoin could be property for the purposes of the law in England and Wales. The claimant argued that he was a victim of fraud and was induced to hand over cryptocurrency. The cryptocurrency was passed through a number of blockchain wallets and was withdrawn as fiat currency. The decision also looks at the applicability of the tracing regime and whether crypto exchanges can be constructive trustees. The judgment also considered the June 2023 Law Commission Report "Digital Assets: Final Report".

For more on cryptocurrency litigation, see [here](#) and [here](#).

Updates and Guidance: Europe

No new entries.

Updates and Guidance: APAC

25. MAS: Consultation Paper on proposed regulation of Digital Token Service Providers under the Financial Services and Markets Act 2022

The MAS has issued a [consultation paper](#) on a regulatory framework in relation to digital token service providers. The Financial Services and Markets Act 2022 introduced a legislative framework in relation to DTSPs. The consultation sets out a framework for the regulation of: individuals and partnerships who, from a place of business in Singapore, carry on a business of providing a digital token service; and Singapore corporations that carry on a business, whether from Singapore or elsewhere, of providing a digital token service outside Singapore.

To effect the regime, MAS intends to issue: Financial Services and Markets Regulations; AML/CFT notices under the FSM Act; other notices under the FSM Act; and guidelines. Notable proposals contained in consultation include licensing requirements; technology risk management; and AML/CTF.

The deadline for comments is 4 November 2024.

26. MAS: Guidelines for DPTSPs updated

The MAS has updated the [Guidelines](#) on the Provision of Consumer Protection Safeguards by Digital Payment Token Service Providers. These were first published in April 2024 and now include additional consumer protection measures (including consumer access measures; conflict of interest measures; and other business conduct measures).

27. First HKEx-listed digitally native bond by a private sector issuer in Hong Kong

On 26 September 2024, Hongkong and Shanghai Banking Corporation Limited (**HSBC**) [issued](#) HK\$1 billion Hong Kong dollar-denominated senior unsecured fixed rate digitally native notes as listed on the HKEx. This is the first digitally native bond issued by a Hong Kong corporate issuer, as well as the first English law governed digital bond issuance in Hong Kong. The HKMA Central Moneymarkets Unit (**CMU**) operates HSBC Orion, a distributed ledger technology platform, which supports digitally native bond issuance and settlement via the CMU's infrastructure.

28. HKMA commences Phase 2 of e-HKD Pilot Programme and expands Project e-HKD to explore new forms of digital money

On 23 September 2024, the HKMA [commenced](#) Phase 2 of the e-HKD Pilot Programme to delve deeper into innovative use cases for new forms of digital money, including e-HKD and tokenised deposits, that can potentially be used by individuals and corporates. As Project e-HKD expands its coverage from e-HKD only to a more comprehensive exploration of the digital money ecosystem, the project has been renamed as Project e-HKD+, reflecting the evolving fintech landscape and the HKMA's commitment to unlocking the full potential of digital money.

Updates and Guidance: Australia

29. Treasury/Reserve Bank of Australia: Report on CBDC

On 18 September 2024, the Reserve Bank of Australia and Treasury issued a [report](#) on CBDC. The report summarises the research conducted so far and also contains a three-year plan for future work on digital money. The report also looks at benefits wholesale CBDC could bring to Australia's financial markets.

Key conclusions

- There is no clear public interest case to issue retail CBDC in Australia as yet.
- RBA and Treasury will work on key policy issues related to retail CBDC, and to provide support to the Australian Government in this area.
- The most attractive aspect of CBDCs concerns increasing innovation and efficiency in wholesale markets, particularly "tokenised" asset markets.

Updates and Guidance: North America

30. Financial Services Committee: McHenry, Lummis demand SEC rescind SAB 121

Republicans on the House Financial Services and Senate Banking, Housing, and Urban Affairs Committees, led by Chairman Patrick McHenry and Senator Cynthia Lummis have written a [letter](#) to SEC, Chair Gary Gensler, calling for Staff Accounting Bulletin ([SAB](#)) [121](#) to be rescinded. This follows votes in Senate and the House of Representatives to overturn SAB 121 (see [Global Digital Assets May 2024 edition](#)). The letter argues that SAB 121 was issued without consultation with prudential regulators.

Members of various committees including Chairman of the Oversight and Investigations Subcommittee, Bill Huizenga, have also sent [letters](#) to FDIC, OCC and Federal Reserve expressing concerns about the lack of interagency communication in relation to SAB 121. Reference is also made to the impact of SAB

121 on a planned Interagency Statement and a request for information on cryptoasset custody ancillary activities.

31. Subcommittee on Digital Assets, Financial Technology and Inclusion: Hearing on the regulation of digital assets

On 18 September 2024, the Subcommittee on Digital Assets, Financial Technology and Inclusion of the Committee on Financial Services held a [hearing](#) on the SEC's approach to the regulation of digital assets and the SEC's enforcement and regulatory agenda. The hearing invited a number of witnesses and considered certain pieces of draft legislation, such as H.R.5741 - Uniform Treatment of Custodial Assets Act; the Bridging Regulation and Innovation for Digital Global and Electronic Digital Assets Act; and the Securing Innovation in Financial Regulation Act. Witnesses discussed the SEC's application of the Howey test.

32. FinCEN: Statement to Subcommittee on National Security, Illicit Finance, and International Financial Institutions U.S. House of Representatives

On 18 September 2024, [FinCEN](#) published the Statement of Dara Daniels, Associate Director of FinCEN's Research and Analysis Division, before the House Committee on Financial Services, Subcommittee on National Security, Illicit Finance, and International Financial Institutions. The statement provides a summary of FinCEN initiatives, publications and products used to tackle financial crime (in particular, Pig Butchering). The Statement argues that the publications serve objectives such as: increasing public awareness about criminal activity; educating financial institutions to better detect, prevent, and report on illicit financial activity; and supporting law enforcement.

Daniels refers to FinCEN's September 2023 Alert (see Ashurst Global Digital Assets Digest [November 2023 edition](#)), which set out red flag indicators to identify and report related suspicious activity. The Statement confirms that FinCEN has received over 8,600 filings that referencing the September 2023 Alert since it was issued, with the majority submitted by depository institutions and cryptocurrency exchanges.

33. SEC: Remarks by SEC's Chief Accountant Paul Munter before the 2024 AICPA & CIMA Conference on Banks & Savings

The SEC published [remarks](#) made by the SEC's Chief Accountant, Paul Munter, before the 2024 AICPA & CIMA Conference on Banks & Savings Institutions. The speech focuses on Staff Accounting Bulletin No. 121 ([SAB 121](#)), which set out how entities in scope should account for their obligations to safeguard cryptoassets held for platform users (arguing that an entity should record a liability on its balance sheet to reflect its obligation to safeguard cryptoassets held for others).

Mr Munter states that despite feedback from stakeholders, the staff views set out in SAB 121 remain unchanged in relation to the accounting treatment to be pursued by entities with the same fact pattern as that set out in SAB 121.

The speech sets out some fact patterns involving various entities and cryptoassets that were not contemplated by SAB 121 where they could potentially undertake cryptoassets safeguarding activities without needing to follow SAB 121.

34. CFTC: Partnership with Federal and private groups to distribute cryptocurrency relationship investment scam information

The CFTC's Office of Customer Outreach and Education has [announced](#) two partnerships to inform consumers about "pig butchering" fraud. The OCEO is partnering with the American Bankers Association Foundation and other federal agencies and a private regulator to on an infographic. OCEO is also partnering with SEC's Office of Investor Education and Advocacy, the Financial Industry Regulatory Authority, and the North American Securities Administrators Association on an investor alert.

35. House of Representatives: Financial Services Committee - McHenry, Emmer Call for Clarity on Digital Asset Airdrops

In September 2024, Chairman of the House Financial Services Committee, Patrick McHenry, and Tom Emmer sent a [letter](#) to SEC Chair, Gary Gensler, calling for clarity on the regulatory treatment of digital asset airdrops (that is, the distribution of digital assets to early users of blockchain protocol designed to encourage participation on blockchain-based applications). The letter seeks the SEC's views on whether giving away non-security digital assets for free implicates the Howey Test; how the SEC differentiates rewards given by companies to customers for free (e.g. air miles, credit card points) and digital assets airdropped to an individual; and likely market impact in the event that digital assets are classified as securities.

36. House Financial Services Subcommittee on Digital Assets, Financial Technology and Inclusion: Hearing on DeFi

In September 2024, the Subcommittee on Digital Assets, Financial Technology and Inclusion of the Committee on Financial Services held a [hearing](#) entitled "Decoding DeFi: Breaking Down the Future of Decentralized Finance". Chairman French Hill delivered remarks at the hearing, noting that the passing of FIT21 provided an opportunity to explore emerging topics, such as tokenisation and DeFi. Hill notes that the existing regulatory and legal framework was designed for a financial structure involving centralised intermediaries, adding that other jurisdictions had chosen to explicitly carve out DeFi from their regulatory framework pending a full analysis of the workings of DeFi.

The hearing featured a number of witnesses and considered potential benefits and risks of DeFi, as well as the legal and regulatory implications.

37. House Financial Services Committee: Hearing - Oversight of the SEC

The House Financial Services Committee held a hearing on oversight of SEC. The hearing included [testimony](#) from all five Commissioners for the first time since 2019. The hearing considered the evolving role of the SEC amidst new challenges and changes to the financial system.

The SEC published its [testimony](#) before the Committee.

Updates and Guidance: Middle East

No new entries.

Press/Articles

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