GBBC US Policy Congressional Recess Recap

As Congress Heads Back Into Session This Week: All of the Legislative/Regulatory Updates During Congressional Recess

This is for educational purposes where we have consolidated all of our knowledge of the bills to date. The below text does not reflect any predictions nor opinions on what bills will/will not pass into law.

This is a living document with information that we know to date, and will update as more information develops. Should you find any inaccuracies, please contact us at info@gbbcouncil.org

Last Updated: Tuesday, September 5th at 5:30PM ET

Congressional Updates

What is it? H.R.4763 - *Financial Innovation and Technology for the 21st Century Act* | advanced Thursday, July 27th

What just happened? The US House Agriculture Committee (in a bipartisan vote) and the US House Financial Services Committee (HFSC) passed the *"Financial Innovation and Technology for the 21st Century Act."*

Where does it go next? The bill will head to the House Floor for a final vote. Should the bill pass, it will head to the Senate for a vote.*

**A bill must pass both bodies (Congress and Senate) in the same form before it can be presented to the President for signature into law (Source: House.gov). Potential scenarios delineated below.*

Description of bill: To provide for a system of regulation of digital assets by the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC), and for other purposes.

- Key Features (Source: Congress.gov):
    - Increased oversight from the CFTC.
    - Exemption from registration for digital assets that meet specific requirements, including sales limits and ownership restrictions.
    - Mandatory registration of intermediaries with the SEC or CFTC.
    - Disclosure requirements similar to securities.
    - Recognition that stablecoins and digital commodities are not securities.
    - Provision for alternative trading systems (ATS) to trade digital assets and disintermediated trading.
    - Establishment of a Joint Advisory Committee on Digital Assets involving both the SEC and CFTC.
- Co-sponsor(s)
    - Rep. French Hill [R-AR-2]
    - Rep. Dusty Johnson [R-SD-At Large]
    - Rep. Warren Davidson [R-OH-8]
    - Rep Tom Emmer [R-MN-6]
    - Rep. Marcus Molinaro [R-NY-19]
- Sponsor: Rep. Glenn Thompson [R-PA-15]
- What this version has[1]:
    - Amendment in the nature of a substitute offered by Chairman Thompson, detailed:
        - Definitions, rulemaking, and provisional registration.
        - Digital asset exemptions at SEC.
        - Registration for digital asset intermediaries at CFTC.
        - Innovation and Technology Improvements, including the codification of the SEC Strategic Hub for Innovation and Financial Technology, the codification of LabCFTC, the modernization of the SEC mission, and studies on decentralized finance, non-fungible digital assets, and financial market infrastructure improvements.
- Votes: (35-15)[2]

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[1] Though it is not officially public record, the amendment has been garnered from the Chairman's press release. The bill language will be updated in real-time once updated to the public record.
[2] The full public record is not yet available, as it is a manual process.

What is it? H.R.4766 - *Clarity for Payment Stablecoins Act of 2023* | advanced Thursday, July 27th

What just happened? HFSC passed stablecoin legislation, "*Clarity for Payment Stablecoins Act of 2023"* amid objections from the White House and HFSC Ranking Member Maxine Waters (D-CA). Both the White House and Rep. Waters believe the bill should provide more authority to the Federal Reserve to oversee state-based issuers.

On Thursday, July 27th, HFSC Ranking Member Maxine Waters expressed the White House's concerns, including:

- the limits the stablecoin bill would impose on the Federal Reserve to oversee state-regulated tokens.
- the federal-state balance of power that would result from giving federal banking regulators explicit authority without leaving a role for state regulators.
- the bill's treatment of custodial wallets.
- the role of the Office of the Comptroller of the Currency.

Waters stated, "It is one thing to have the states wanting to be issuers — to be approved by New York or someone else — but your central bank is responsible for the whole country… That's a real issue — that the Feds have to have real involvement." Waters also added prior to the vote on Thursday that "[t]he fact of the matter is, they should not pass the bill today if they're interested in continuing negotiations", suggesting instead that they use the month of August to work on the bill further. *(Source: PoliticoPro)*

Where does it go next? The bill will head to the House Floor for a final vote. Should the bill pass, it will head to the Senate for a vote.*

**A bill must pass both bodies (Congress and Senate) in the same form before it can be presented to the President for signature into law (Source:House.gov). Potential scenarios delineated below.*

Description of bill: To provide for the regulation of payment stablecoins, and for other purposes.

- Key Features (Source: Congress.gov)

- This bill would provide for the regulation of payment stablecoins.
- Would make it illegal for anyone other than a permitted payment stablecoin issuer to issue a payment stablecoin for use by individuals within the U.S.
- Set requirements for issuing payment stablecoins.
- Set parameters for the approval of subsidiaries of insured depository institutions and Federal qualified nonbank entities for stablecoin issuance.
- Set rules for supervision and enforcement with respect to subsidiaries of insured depository institutions and nonbank stablecoin issuers.
- State payment stablecoin regulators will have supervisory, examination, and enforcement authority over State qualified payment stablecoin issuers.
- Set rules for customer protection:
    - Set guidelines for whether a person may only provide custodial or safekeeping services for permitted stablecoins or private keys for such stablecoins.
    - Persons described above are required to keep customer funds separate from those of the person and protect property of the customer from the claims of creditors of the person.
    - Prohibits the commingling of funds, except in very specific scenarios.
- Discussed interoperability standards
    - The primary Federal payment stablecoin regulators, in consultation with NIST, other standards bodies, and State governments shall assess, and may prescribe, standards for issuers to promote interoperability.
- Clarified that payment stablecoins are not securities or commodities.

- Sponsor[3]: Rep. Patrick McHenry [R-NC-10]
- Votes: (34-16)[4]

HFSC Advanced Three Bills Post-Markup Session to the House Floor for a Vote.

Where does it go next? *Once released by the House committee, the bill is put on a calendar to be voted on, debated, or amended in the House. If the bill passes by simple majority (218 of 435),*

[3] No co-sponsors for the bill were listed.
[4] The full public record is not yet available, as it is a manual process.

the bill moves to the Senate. In the Senate, the bill is assigned to another committee and, if released, debated and voted on. A simple majority (51 of 100) in the House passes the bill. (Source: House.gov)

A conference committee made of House and Senate members works out differences between the House and Senate versions of the bill. The resulting bill returns to the House and Senate for final approval. Once approved in both chambers, the revised bill is sent to the President to sign; the President has 10 days to sign or veto the enrolled bill. (Source: House.gov) Potential scenarios delineated below.

What is it? H.R.4841 - *Keep Your Coins Act of 2023* | advanced Thursday, July 27th

What just happened? HFSC passed the *"Keep Your Coins Act of 2023."*

***Description of bill*:** This bill would protect the right to self-custody by prohibiting federal agencies from restricting a person's ability to use crypto assets to buy goods and services, conduct transactions through a self-hosted wallet, or hold crypto assets in a self-hosted wallet.

- Sponsor[5]: Rep. Warren Davidson [R-OH-8]
- Votes (29-21)[6]

What is it? H.R.2969 - *Financial Technology Protection Act of 2023* | advanced Wednesday, July 26th

What just happened? HFSC passed the *"Financial Technology Protection Act of 2023."*

***Description of bill*:** This would establish a financial technology working group to study and develop recommendations for Congress and regulators to combat the use of new financial technologies, including digital assets, for illicit activity.

[5] No co-sponsors for the bill were listed.
[6] The full public record is not yet available, as it is a manual process.

- Sponsor: Rep. Zachary Nunn [R-IA-3]
- Co-sponsors:
    - Rep. Jim Himes [D-CT-4]
    - Rep. Warren Davidson [R-OH-4]
    - Rep. Michael Lawler [R-NY-17]
    - Rep. William Timmons [R-SC-4]
- Votes (50-0)[7]

What is it? H.R.1747 - *Blockchain Regulatory Certainty Act* | advanced Wednesday, July 26th

What just happened? HFSC passed the *"Blockchain Regulatory Certainty Act."*

Description of bill: This bill would clarify that blockchain developers and service providers who do not take control of customers' funds—for example, miners and wallet software providers—are not subject to certain registration and reporting requirements applied to money transmitters and financial institutions.

- Key Features: This bill exempts from certain financial reporting and licensing requirements blockchain developers and providers of blockchain services that do not take control of consumer funds.
- Co-sponsor: Rep. Darren Soto [D-FL-9]
- Sponsor: Rep. Tom Emmer [R-MN-6]
- Votes (29-21)[8]

What is it? No Bill Number (so new!) - *Digital Asset Anti-Money Laundering Act 2023* | introduced Friday, July 28th

[7] The full public record is not yet available, as it is a manual process.
[8] Ibid.

What just happened? Sen. Warren (D-MA) introduced legislation, the *"Digital Asset Anti-Money Laundering Act 2023"* as a follow-up to a proposal in 2022 introduced by Sen. Warren and Sen. Roger Marshall (R-KS). Notably, the Bank Policy Institute and AARP support the plan.

Description of bill: To require the Financial Crimes Enforcement Network to issue guidance on digital assets, and for other purposes.

- Key Features (Source: Senate.gov):
    - Extends Bank Secrecy Act (BSA) responsibilities, including KYC requirements, to digital asset wallet providers, miners, validators, and other network participants that may act to validate, secure, or facilitate digital asset transactions.
    - Addresses a gap with respect to unhosted digital wallets by directing FinCEN to finalize and implement its December 2020 proposed rule requiring banks and money service businesses to verify customer and counterparty identities, keep records, and file reports on certain transactions involving unhosted wallets or wallets hosted in non-BSA compliant jurisdictions.
    - Directs FinCEN to issue guidance to financial institutions on mitigating the risks of handling, using, or transacting with digital assets that have been anonymized using digital asset mixers or other anonymity-enhancing technologies.
    - Directs Treasury to establish an AML/CFT examination and review process for entities with BSA obligations and directs the SEC and CFTC to establish compliance examination and review processes for entities under their purview.
    - Requires U.S. persons engaged in a transaction with a value greater than $10,000 in digital assets through one or more offshore accounts to file a Report of Foreign Bank and Financial Accounts with the IRS.
    - Directs FinCEN to ensure that digital asset ATM owners and administrators regularly submit and update the physical addresses of the kiosks they own and operate and verify customer and counterparty identity to mitigate illicit finance risks.
- Co-sponsors:
    - Sen. Roger Marshall [R-KS]
    - Sen. Joe Manchin [D-WV]
    - Sen. Lindsey Graham [R-SC]

- Sponsor: Sen. Elizabeth Warren [D-MA]

What Could Happen Now?

All of the above bills - with the exception of Senator Warren's introduced bill - have passed the US House Financial Services Committee on the last day of this Congressional session. When Congress begins the next congressional session in September, the congressional calendar will schedule votes for each of the HFSC bills on the House floor.

Once put to a vote on the House floor, the bills will either pass with a simple majority to the Senate, or will fail. We have provided the following scenarios possible in due process below:

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1. After a bill passes the House floor vote and goes to the Senate for consideration (most likely to the Senate committee counterpart of the House), the bill could pass with a vote on the Senate floor*. The bill must pass both bodies in the same form before it can be presented to the President for signature into law or veto, in which the President has 10 days to either sign or veto. (Source: House.gov)

**Do note that the Senate schedule is always full, and the time in which it takes for the bill to reach the Senate floor for a vote will vary.*

2. After a bill passes the House floor and goes to the Senate for consideration, the Senate could produce a draft bill reflecting any changes, send it to the Senate floor for a vote, and send the revised and voted-through bill to the House to vote. (Source: House.gov)

3. If the Senate changes the language of the measure, it must return to the House for concurrence or additional changes. This back-and-forth negotiation may occur on the House floor, with the House accepting or rejecting Senate amendments or complete Senate text. Often, a conference committee will be appointed with both House and Senate

members. This group will resolve the differences in committee and report the identical measure back to both bodies for a vote. Conference committees also issue reports outlining the final version of the bill. (Source: House.gov)

When a bill is introduced in the Senate:

- In the Senate, bills are typically referred to the Committee in a similar process, though in almost all cases, the bill is referred to only the committee with jurisdiction over the issue that predominates in the bill. In a limited number of cases, a bill might not be referred to committee, but instead be placed directly on the Senate Calendar of Business through a series of procedural steps on the floor. (Source: Congress.gov)

What is it? *Senate Finance Committee Leaders Address Open Letter Seeking Input on Taxation of Digital Assets* | Tuesday, July 11th

What just happened? Senate Finance Committee Chairman Ron Wyden (D-Ore.) and Finance Committee Ranking Member Mike Crapo (R-Idaho) launched an effort to address uncertainties surrounding the tax treatment of digital assets with an open letter seeking input from experts, stakeholders, and interested parties within the digital assets ecosystem. Prior to doing so, Chair Wyden and Ranking Member Crapo asked the Joint Committee on Taxation to compile a report on the taxation of digital assets.

Where does it go next? The Senate Finance Committee will collect answers to the questions included in its letter - aimed to better understand how Congress can address the tax challenges and opportunities presented by digital assets - on a rolling basis until September 8, 2023.

Other Important Topics

Monday, July 31st

What is it? In February 2023 in *SEC v Terraform Labs*, the SEC filed a complaint in New York federal court alleging that defendants Terraform Labs and its founder and CEO Do Kwon orchestrated a multi-billion-dollar securities fraud involving the development, marketing, and sale of various cryptocurrencies. Central to the SEC's complaint is the allegation that Terra USD (the "UST coin") and a "companion" cryptocurrency called "LUNA" are securities.

What just happened? On July 31, well-respected, veteran judge Jed Rakoff denied the *Terraform* defendants' motions to dismiss the SEC's complaint after full briefing by the parties and oral argument on June 14.

The part of Judge Rakoff's ruling capturing most attention is his declining to follow a recent ruling from a different New York federal judge (Analisa Torres) in *SEC v Ripple*. Judge Torres had recently granted in part and denied in part cross-motions for summary judgment, finding that the token XRP was not in itself a security, but was and was not part of a security in the form of an investment contract depending on how XRP was sold.

By contrast, Judge Rakoff held, "the Court declines to draw a distinction between these coins based on their manner of sale, such that coins sold directly to institutional investors are considered securities and those sold through secondary market transactions to retail investors are not. In doing so, the Court rejects the approach recently adopted by another judge of this District in a similar case, *SEC v. Ripple Labs*."

Instead, Judge Rakoff further held, "That a purchaser bought the coins directly from the defendants or, instead, in a secondary re-sale transaction has no impact on whether a reasonable individual would objectively view the defendants' actions and statements as evincing a promise of profits based on their efforts. Indeed, if the Amended Complaint's allegations are taken as true -- as, again, they must be at this stage -- the defendants' embarked on a public campaign to encourage both retail and institutional investors to buy their crypto-assets by touting the profitability of the crypto-assets and the managerial and technical skills that would allow the defendants to maximize returns on the investors' coins."

What this means: Due to the years-long lack of clarity regarding the limits of the SEC's jurisdiction over digital assets that may or may not be securities when part of an "investment contract," Judge Rakoff's ruling has been met with relief by the SEC and consternation by those arguing for more limited SEC jurisdiction in the space.

Some words of caution about reading too much into Judge Rakoff's decision.

First, on a motion to dismiss a complaint, a judge sitting in Judge Rakoff's position must accept as true the SEC's allegations for purposes of ruling on the motion. Judge Torres's decision came at a much later stage in *Ripple* than Judge Rakoff's decision. In ruling on cross-motions for summary judgment, Judge Torres was not required to accept the SEC's allegations as true, made factual findings based on extensive discovery conducted by the parties, and reached conclusions of law based on those factual findings. The parties in Terraform will now either settle (defendants often do after losing motions to dismiss in SEC cases) or proceed to conduct discovery in the form of depositions and an exchange of documents and information. At any time during or after discovery is complete over the next year or more, the parties may bring motions for summary judgment as the parties did in *Ripple*. Nothing prevents Judge Rakoff from coming to a different conclusion at that time, although such a result would be unusual. Judge Rakoff has not been shy about ruling against the SEC in other (non-crypto) cases – sometimes harshly.

Second, neither Judge Rakoff's decision in *Terraform* nor Judge Torres's decision in *Ripple* is binding on other courts. An appeal from the decision in *Ripple* (because it comes later in the case) is more likely than an appeal from the decision in *Terraform*. In the event either case is appealed, the 2nd Circuit Court of Appeal would render a decision, which would have precedential effect on courts within the 2nd Circuit (and persuasive for courts outside the circuit). That said, the SEC and crypto advocates will certainly urge other courts to follow whichever reasoning furthers their agenda.

Third, even Judge Rakoff provided some crumbs helpful to crypto advocates. After noting that UST could "in theory" be analogized to the oranges in *Howey* "when considered in isolation," Judge Rakoff reasoned that (as plausibly alleged) UST were never "standalone tokens." This is because UST allegedly conferred rights that *made the token itself* an investment contract. In *Ripple*, by contrast, Judge Torres concluded that "XRP, as a digital token, is not in and itself" an investment contract – before proceeding to analyze the XRP sales on a transaction-specific basis. Thus, Judge Rakoff did not completely rule out the possible validity of Torres's dynamic approach to analyzing the existence of an investment contract depending on the type of transaction. Also, Judge Rakoff declined to give the SEC any comfort on stable coins: "And where a stablecoin is designed exclusively to maintain a one to- one peg with another asset, there is no reasonable basis for expecting that the tokens -- if used as stable stores of value or mirrored shares traded on public stock exchanges -- would generate profits through a common enterprise. So, in theory, the tokens, if taken by themselves, might not qualify as investment contracts."

Monday, July 31st

What is it? The IRS in Revenue Ruling 2023-14 ruled that rewards earned from staking is considered compensation for services. As such the rewards are taxed upon receipt based upon the fair market of the rewards.

What just happened? The Revenue Ruling represents the considered position of the IRS and is directly contrary to the taxpayer's position in Jarrett v. United States. In Jarrett, rather than litigating the case, the IRS issued a refund to the taxpayers in order to moot the case.

What this means: Taxpayers are now on notice that the IRS considers staking rewards to be taxable on receipt. Of course, this position has yet to be tested in litigation.

Friday, August 25th

What is it? The Department of the Treasury and the Internal Revenue Service issued proposed regulations that would require brokers to report sales and exchanges of digital assets by customers.

What just happened? The U.S. Internal Revenue Service (IRS) has released proposed regulations regarding the sale and exchange of digital assets by brokers, including requiring the use of a new reporting form, 1099-DA, to simplify tax filing, curb tax cheating, and bring digital asset reporting in line with reporting for other asset types.

What this means: According to the Department of the Treasury, this new form will "help taxpayers determine if they owe taxes" and help taxpayers "avoid having to make complicated calculations or pay digital asset tax preparation services in order to file their tax returns." Currently, "taxpayers owe tax on gains and may be entitled to deduct losses on digital assets when sold, but for many taxpayers it is difficult and costly to calculate their gains." Feedback on the proposed regulation must be submitted by October 30th, with the rules tentatively set to take effect in 2026. Public hearings will be held on November 7th and 8th.

Tuesday, August 29th

What is it? The D.C. Circuit Court of Appeals Ruled in Favor of Grayscale Investments in *Grayscale Investments v. SEC.*

What just happened? The D.C. Circuit Court of Appeals has ruled that the U.S. Securities and Exchange Commission (SEC) must review its rejection of Grayscale Investments' attempt to convert the Grayscale Bitcoin Trust into an exchange-traded fund (ETF).

What this means: This opens the door for a spot bitcoin ETF in the U.S., a proposition that advocates have argued will allow for the general public to more easily invest in bitcoin without having to buy it directly. To date, the SEC has rejected all ETF applications which it has reviewed.

According to Circuit Judge Neomi Rao, "[the SEC] recently approved the trading of two bitcoin futures funds on national exchanges but denied approval of Grayscale's bitcoin fund. Petitioning for review of the Commission's denial order, Grayscale maintains its proposed bitcoin exchange-traded product is materially similar to bitcoin futures exchange-traded products and should have been approved to trade on NYSE Arca. We agree." Additionally, Judge Rao added that the SEC failing to explain the reasoning behind the different treatment made the denial of Grayscale "arbitrary and capricious."

The court did not order the SEC to approve Grayscale's application, but to review the application again, adding that "[i]n the absence of a coherent explanation, this unlike regulatory treatment of like products is unlawful."