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State of U.S. Crypto Policy H1 2022

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I. Introduction

To say that the first half of 2022 has been busy for the digital assets industry would be an understatement. The industry reached new highs with digital asset exchanges advertising during the Super Bowl and new lows with market events and industry tumult leading to what some have termed a "Crypto Winter."

As asset prices rose and industry expanded, attention from policymakers followed suit. A number of notable and historic policy developments have occurred in recent months. Most notably, the Biden Administration called for a national strategy on digital assets, harkening back to the Framework for Global Electronic Commerce championed by the Clinton Administration. Not to be outdone, Congress is working to assert its authority. A bipartisan pair of Senators introduced the *Responsible Financial Innovation Act* (S. 4356), and the states continue to move ahead to become hubs for blockchain and digital asset innovation. Recent Congressional action has even seen negotiations across the aisle from the chairs and ranking members of the Senate Agriculture Committee and the House Financial Services Committee.

This report summarizes key developments from the first half of 2022 (capturing events from January until the Congressional recess in August), featuring insights and intel from the FS Vector team, and forecasts our outlook on the remainder of the year.

II. Key Takeaways and H2 Forecast

CONGRESS

- This year, legislative proposals have focused primarily on two areas: establishing a comprehensive regulatory landscape for digital assets and creating pathways for stablecoin use in commerce. Lawmakers have also introduced legislation to address concerns regarding the use of digital assets in ransomware attacks, financial privacy, and the efficacy of a retail CBDC - particularly as the debate continues on whether the U.S. needs a CBDC.

- Congress is only in session for two weeks in September and the upcoming midterms, there are limited opportunities to make progress on legislative priorities. Notable exceptions are the Senate Agriculture Committee, which introduced legislation narrowly focused on expanding the CFTC's authority to police digital asset spot markets that *may* gain some traction before the year ends depending on the scope of the bill and the breadth of support. Similarly, the HFSC is working on stablecoin legislation that may be introduced in advance of an early September committee markup.

- For the duration of this session, Congress will focus efforts on high priority items such as the NDAA and government funding while items such as digital assets legislation will be pushed to next year.

- Note that any bills introduced in the next few months are intended to serve as placemarkers that will have to be reintroduced when the next Congress convenes in January 2023.

AGENCIES

- The Biden Administration's much-anticipated EO calls for the development of a coordinated strategy on digital assets and tasks Federal financial regulatory and administrative agencies to study aspects of the digital assets industry, report on their findings, and make recommendations for policy development. The agencies have commenced these efforts, and they will continue through next year. So far, the agencies appear to be on schedule in following the EO's timeline. These reports and RFCs are opportunities to engage policymakers on U.S. digital assets policy development and we strongly recommend commenting so that stakeholder perspectives are included, particularly as the Administration's Ethics office has barred officials who own digital assets from working on digital asset-related policies.

- One area that has been gaining attention in recent years is the intersection of federally chartered and regulated banks and non-bank activities regarding digital assets. At issue is regulatory clarity, the tension between state and federal regulation, custody of digital assets, use of stablecoins, and access to infrastructure needed to support payments, i.e. master accounts with the regional Federal Reserve Banks. Since legislation, such as the RFIA, which seeks to address many of these issues is not expected to move quickly, states are likely to play a more active role by enacting legislation that provides state-chartered banks the ability to custody digital assets, as well as other financial services activities. Meanwhile, the brewing fight between Senate Banking Committee Republicans and the Kansas City Federal Reserve Bank (KC Fed) is expected to continue, coming at a time when the KC Fed is seeking a new President to begin in January 2023 and the FRB is seeking to make the master account application process more transparent. This also comes around the same time as a lawsuit filed by Wyoming-based Custodia Bank regarding its application for a master account against the KC Fed and the FRB, which is expected to extend beyond 2022.

- Additionally, as more banks explore digital asset products and services, banking regulators at the FRB, OCC, FDIC, as well as the CFPB, are expected to increase their focus on digital assets and the risks they pose to the banking system and to consumers.

- The FRB and Treasury will continue their work on CBDCs, particularly as studies on a potential CBDC are a key component of the EO, and the regional Federal Reserve Banks have been studying how a potential CBDC could work and its impact on the U.S. financial system. Not all regional Federal Reserve Banks support this concept, however.

- Outside of banking, enforcement actions from the SEC and CFTC are expected to increase as each agency has increased enforcement staff for digital asset-related actions and is looking to assert jurisdiction over digital asset markets.

- Expect more activity in the latter half of the year, given that the CFTC did not have a full Commission until Q2, the SEC did not have a full Commission until Q3, and the newly sworn-in SEC Commissioners are still getting settled.

- According to the Biden Administration's rulemaking agenda, the (second) Travel Rule NPRM and NPRM on information returns provided by brokers with respect to digital asset transactions are both expected to be published this year. (Note that Congress is still working on narrowing the definition of "broker" for tax information reporting purposes. For more information on this, see our memo on the infrastructure bill). Both are a priority for Treasury since the Financial Action Task Force (FATF) has called for swifter implementation of the Travel Rule as a measure to reduce illicit financing risk associated with digital assets and the IRS believes digital assets-related tax evasion is significant. The closely watched Unhosted Wallet Rule is expected to be finalized in 2023. Congressional champions of digital assets have been vocal about the proposed rule and have introduced legislation to protect digital asset users' financial privacy.

III. Summary of U.S. Policy Developments

THE WHITE HOUSE

On March 9, the Biden Administration released its Executive Order on Ensuring Responsible Development of Digital Assets. The EO sets out a national strategy to promote digital asset innovation while protecting against the risks associated with digital assets. The strategy focuses on six issue areas:

- consumer and investor protection;
- financial stability;
- illicit finance;
- U.S. leadership in the global financial system and economic competitiveness;
- financial inclusion; and
- responsible innovation.

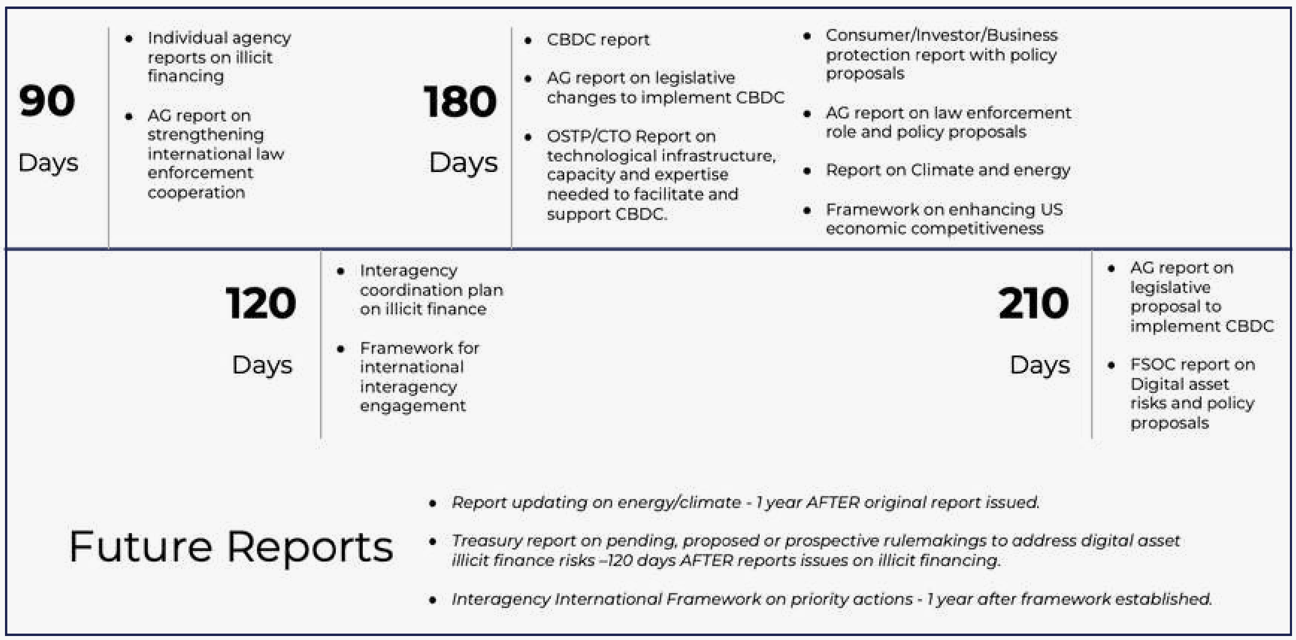
The EO tasks agencies including Treasury, the federal banking regulators (FRB, OCC, and FDIC), the financial market regulators (SEC and CFTC), and the consumer protection regulators (CFPB and FTC), among others, to study aspects of the digital asset industry and report on their findings. (For more information, read our overview and our presentation of the EO).

Additionally, the NEC and NSC are playing an active role in coordinating digital asset-related policies. This flows from the EO, which tasks the Assistant to the President for Economic Policy, currently Brian Deese, who serves as head of the NEC, and the Assistant to the President for National Security Affairs, currently Jake Sullivan, a member of the NSC, on overseeing the implementation of the EO.

TRACKING THE EO

So far, OSTP (climate implications), Commerce (economic competitiveness), and Treasury (financial market and payment infrastructures) have published RFCs relating to the EO while the DOJ has published a report on strengthening international law enforcement. Treasury has also sent to the Biden Administration its proposed framework for international engagement on digital assets. Also, the FSOC met in July to discuss its report on financial stability risks posed by digital assets and regulatory gaps. These RFCs serve as opportunities to help shape the reports that will be published and the policy recommendations resulting from the agencies' findings. Given the Office of Government Ethics' notice, barring government officials who hold digital assets from working on digital assets-related policy development, it will be important for industry to weigh in on RFCs and share their perspectives.

EO Reports Timeline



AGENCY OVERSIGHT AND COORDINATION

Financial Market Regulators (SEC and CFTC)

The SEC and CFTC each oversee aspects of digital asset markets. The SEC has policed markets with respect to the offer and sale of digital tokens that may constitute investment contracts which are subject to SEC regulation. Meanwhile, the CFTC has increasingly used its anti-fraud and market manipulation authority to bring enforcement actions against digital asset companies. Both regulators are vying for increased authority to supervise these markets, and any expansion of their role to cover digital asset spot markets will require Congressional approval. Efforts to provide this authority are underway, such as through the RFIA and the DCEA (H.R. 7614).

The CFTC is also reviewing a proposal from exchange FTX.US to modify its derivatives clearing organization license to clear non-intermediated margined products for retail investors, which would allow participants to clear directly, rather than through a futures commission merchant. If approved, this proposal would impact digital-asset derivatives trading at a time when more firms are entering this space.

Expect more activity from both of these agencies now that SEC Commissioners Jaime Lizárraga and Mark Uyeda have been sworn in and CFTC Commissioners Kristin Johnson, Christy Goldsmith Romero, Summer Mersinger, and Caroline Pham were sworn in back in April. Once the Commissioners' offices have filled staff roles, they will be more active in the digital assets space. In the meantime, both agencies have increased the number of enforcement staff that are focused on digital asset-related matters. Notably, the SEC asserted in a case involving insider trading that nine digital tokens are securities. This drew criticism from CFTC Commissioner Caroline Pham and Senate Banking Committee Ranking Member Pat Toomey (R-PA) who both referred to the assertion as "regulation by enforcement."

Bank Regulators (FRB, OCC, FDIC)

Bank regulators have been focused on mitigating the risks associated with digital assets, with the OCC dedicating a portion of the Spring 2022 Semiannual Risk Perspective to digital assets in the banking sector and restating its position that national banks should notify their supervisors and obtain the OCC's permission before engaging in certain digital assets-related activities. The FDIC sent out a letter to the institutions it supervises in April to that same effect, requesting that they notify the FDIC of any activity involving digital assets.

Following the departure of former FDIC Chair Jelena McWilliams in February, the work of the interagency Crypto-Asset Policy Sprint Initiative has appeared to halt, as the agencies have not released guidance for banks on engaging in certain digital asset-related activities, as is discussed in their November 2021 joint statement on the crypto-asset policy sprint initiative and next steps.

Notably, Acting Comptroller Michael Hsu has called for more guardrails and for more vigilance, particularly with respect to stablecoins. In April, he delivered extensive remarks on policy development concerning stablecoins and the financial system, need for interoperability among dollar-denominated stablecoins, and increased consumer protection. (See our summary for more information.) Most recently, Acting Comptroller Hsu spoke at the public meeting of the Financial Literacy and Education Commission (FLEC) to discuss advancing digital asset literacy and stressing "a careful and cautious approach" when it comes to the digital assets space.

Following recent market events and prompted by consumer protection concerns, the FRB and FDIC issued a letter to exchange Voyager Digital, demanding that it cease and desist from making false or misleading representations regarding deposit insurance status and to take immediate action to correct prior statements. The FDIC also published a fact sheet on what consumers should know about FDIC deposit insurance and cryptocurrency companies.

The FRB also requested public input on the potential development of a CBDC in late January, with comments due in late May. Chair Jerome Powell has stated that the FRB will need Congressional approval before developing and issuing a CBDC. It has been conducting research, however, in coordination with the regional Federal Reserve Banks. Minneapolis Federal Reserve Bank President Neel Kashkari has expressed skepticism regarding this concept, however, citing financial privacy concerns.

The FRB has also been focused on decentralized finance (DeFi). In July, FRB Vice Chair Lael Brainard discussed in a speech recent events in digital asset markets and how stronger regulatory guardrails could help build a resilient digitally-native financial infrastructure. She observed in her speech that:

- digital asset markets, like traditional financial markets, are sensitive to market events and are vulnerable to similar risks;
- new technology and financial engineering cannot by themselves convert risky assets into safe ones; and
- decentralized lending, which relies on over-collateralization to substitute for intermediation, can serve as a stress amplifier by creating waves of liquidations as prices fall.

To increase consumer and investor protections, Vice Chair Brainard called for ensuring that the regulatory perimeter encompasses financial digital assets and reflects the principle of s*ame risk, same disclosure, same regulatory outcome*. She also called for international coordination due to the cross-sectoral and cross-border scope of digital asset platforms, exchanges, and activities.

Consumer Protection (CFPB + FTC)

The CFPB has signaled that it plans to play a larger role with respect to digital assets. In October 2021, a few weeks after Rohit Chopra began as Director of the CFPB, he launched an investigation of large technology companies in the payments space, which include companies offering access to digital assets, and issued a statement in support of the FSOC's Report on Stablecoins. The CFPB has also hired staff to focus on digital assets and CFPB staff presented on this topic in April to the CFPB's Consumer Advisory Board, where members discussed plans for increased supervision of companies in the digital assets space. One area where the CFPB may assert its authority is consolidation in the digital assets industry, particularly as mergers and acquisitions increase during market tumult and banks seek to acquire digital asset companies. It is also keeping a watchful eye on how companies advertise their products as services, particularly with respect to potential misrepresentations regarding the application of FDIC insurance to consumer funds held by companies that could be considered "deceptive" under the agency's Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) authority. Additionally, the CFPB is paying more attention to real time payments, including the use of digital assets such as stablecoins to facilitate payments, and how Regulation E applies.

The FTC has not been as active with respect to digital assets and policy, focusing instead on alerting consumers to be wary of fraudulent schemes and scams.

FSOC and PWG

The FSOC and PWG have not been publicly active with respect to digital assets in the first half of 2022, however, as directed by the EO, a report on financial stability risks from the FSOC is due in October 2022.

Both groups have focused primarily on the risks associated with stablecoins and the PWG met in June to discuss how legislation could help support the existing regulatory framework as a follow up to its Report on Stablecoins published in Fall 2021. The Treasury, which leads both of these bodies, has called for interagency coordination on digital assets and sent to the Biden Administration in mid-July its proposed Framework for International Engagement on Digital Assets. Note that while Treasury announced that it sent the Framework, the actual document has not been made available to the public.

IV. Congress

Congress has increasingly focused on introducing legislation to regulate the digital asset industry, particularly stablecoin use, for retail payments. Many of the proposals appear to be aligned with the PWG's recommendations in its Report on Stablecoins (see our summary) that calls for Congress to enact legislation that would limit stablecoin issuance to subsidiaries or affiliates of insured depository institutions or to non-bank issuers who register with the FRB, requiring federal oversight of custodial wallet providers, and requiring stablecoin issuers to comply with restrictions that limit their affiliation with commercial entities.

The HFSC Democrats has focused on key consumer and investor protection issues with respect to digital assets, featuring speakers such as CFPB Director Rohit Chopra and SEC Chair Gary Gensler at their policy retreat in February. Note that the HFSC Democrats and Republicans each have their own digital asset working groups. The Democrat working group is focused on establishing principles for digital assets, but as of August 2022 they have not been published. Following his announcement at Consensus 2022 that he is working on bipartisan stablecoin legislation, HFSC Ranking Member Patrick McHenry (R-NC), who is anticipated to become the Chair of the Committee if the House flips in November, has been working with Chair Maxine Waters (D-CA) on stablecoin legislation. Though they had hoped to release it prior to August recess, the bill may be introduced in early September, with the potential to be marked up in early September.

KEY LEGISLATION

Digital Commodities Consumer Protection Act of 2022

On August 3, Senate Agriculture Committee Chair Debbie Stabenow (D-MI), Sen. Cory Booker (D-NJ), Senate Agriculture Committee Ranking Member John Boozman (R-AR), and Sen. John Thune (R-SD) introduced a bipartisan bill, the *Digital Commodities Consumer Protection Act of 2022*.

The bill would expand the CFTC's authority to regulate digital asset spot markets. Since the scope of the legislation is limited, this bill may have a chance to move.

Infrastructure Bill Digital Asset Reporting Requirements Legislation

On August 3, Sen. Mark Warner (D-VA), Sen. Kyrsten Sinema (D-AZ), Senate Banking Committee Ranking Member Pat Toomey (R-PA), Sen. Cynthia Lummis (R-WY), and Sen. Rob Portman (R-OH) introduced legislation to exclude from the term "broker" in the Infrastructure Investment and Jobs Act, enacted in November 2021, businesses such as miners and wallet providers that do not custody digital assets on customers' behalves.This would mean these types of businesses would be exempt from the digital asset-related tax information reporting requirements that were included in the law.

Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022

On August 2, the CHIPS Act (H.R. 4346) was was presented to President Joseph R. Biden, Jr., for signing. The legislation, introduced by Rep. Tim Ryan (D-OH), included an amendment from Congressional Blockchain Caucus co-Chair Darren Soto (D-FL) to establish a blockchain and cryptocurrency specialist position within the OSTP.

Responsible Financial Innovation Act

On June 7, Senators Kirsten Gillibrand (D-NY) and Cynthia Lummis (R-WY) introduced the RFIA. The bill focuses on issues at the intersection of traditional financial regulation and digital asset innovation across taxation, securities, banking, and consumer protection. See our joint summary with DLx Law.

Digital Commodity Exchange Act

On April 28, Congressional Blockchain Caucus co-Chair Darren Soto (D-FL), Blockchain Caucus member Rep. Ro Khanna (D-CA), House Agriculture Committee Ranking Member Glenn Thompson (R-PA), and Congressional Blockchain Caucus co-Chair Rep. Tom Emmer (R-MN) introduced the DCEA. The bill seeks to establish a regulatory framework through CFTC registration that allows exchanges, stablecoin issuers, and others, such as custodians, to operate nationally while enabling digital asset issuance and trading. See the bill sponsor's summary here.

Stablecoin Transparency of Reserves and Uniform Safe Transactions (TRUST) Act

On April 6, Senate Banking Committee Ranking Member Pat Toomey (R-PA) introduced a discussion draft of the Stablecoin TRUST Act. The bill authorizes the OCC to create a new license specific to stablecoin issuers. Stablecoin issuers would have to choose between securing the OCC license, a state money transmitter or similar license, or a traditional bank charter.

Insured depository institutions would be able to issue payment stablecoins. Issuers would be subjected to a disclosure regime requiring regular attestations and redemption policies. OCC-licensed issuers would have access to the Federal Reserve's master account system, allowing more liquidity in transacting.

Stablecoin Transparency Act + Categorization of Investments Named Stablecoins Act

On March 31, Sen. Bill Hagerty (R-TN) and Rep. Trey Hollingsworth (R-IN) introduced in each chamber of Congress the Stablecoin Transparency Act. The bill requires stablecoins to be backed by government securities with maturities less than 12 months or with domestic dollars. It also requires stablecoin issuers to publicly release audited reports of reserves executed by third-party auditors. The Members of Congress each introduced a follow-up to the Stablecoin Transparency Act in July, the Categorization of Investments Named Stablecoins (COINS) Act, that accounts for recent market events and states that "fiat-currency backed stablecoins are not a security nor a commodity," to provide clarity regarding their characterization and enable their use in payments.

Stablecoin Innovation and Protection Act

On January 13, Rep. Josh Gottheimer (D-NJ) released a discussion draft of the Stablecoin Innovation and Protection Act which provides that a qualified stablecoin is not a security or a commodity for purposes of State and Federal securities and commodities laws and tasks the OCC with oversight over stablecoin issuers. The legislation also enables qualified stablecoins to be issued by a federally-regulated bank or a nonbank that agrees to maintain at least 100% reserve assets approved by the OCC.

The following hearings focusing on digital assets were also held this year:

- **January**
  - The House Energy and Commerce Committee held a hearing on the energy impacts of blockchains. Read our hearing summary.
- **February**
  - The HFSC and Senate Banking Committee each held a hearing on stablecoins to consider their impact on the financial system and discuss potential regulation. Read our HFSC hearing summary and our Senate Banking Committee summary.
  - The Senate Committee on Agriculture, Nutrition, and Forestry held a hearing entitled "Examining Digital Assets: Risks, Regulation, and Innovation." Read our hearing summary.
- **March**
  - The Senate Banking Committee held a hybrid hearing discussing the potential role of digital assets in illicit activity, specifically sanctions evasion. Read our hearing summary.
  - In March, Rep. Jim Himes, who has been a proponent of CBDC, participated in a Washington Post Live event on "The Evolution of Money: Cryptocurrency with Rep. Jim Himes (D-CT) and Leah Wald." Read our hearing summary.

- **April**
  - The HFSC held a hearing on the international financial system featuring Secretary Yellen in which digital assets was a discussion topic. Read our hearing summary.
  - The HFSC Fintech Task Force held a hearing on digital wallets. Read our hearing summary.

- **June**
  - The House Agriculture Committee held a hearing on the future of digital assets regulation. Read our hearing summary.
  - The HFSC and Senate Banking Committees each discussed digital assets in their semiannual hearings on monetary policy. Read our hearing summary.

- **July**
  - The Senate Banking Committee held a hearing on consumer protection and digital assets. Read our hearing summary.

V. State Efforts

State legislatures, led by Wyoming, have spearheaded the charge to enact innovative legislation to support digital asset companies for years, and despite the increased attention on federal activity, states have continued to forge a path forward by introducing bills to seize the opportunities and address the potential risks associated with the industry. Many proposals seek to enable the growth of the industry by allowing for basic services such as custody of digital assets while others go so far as trying to make digital assets legal tender to build themselves up as hubs for digital assets innovation and attract more companies to their state.

The approach across the states has been inconsistent, however. While some states have been successful in consistently enacting legislation, others have created task forces, often a first step to developing digital asset-friendly policies, to assess the state's needs. So far, forty states have introduced legislation and nine states - Colorado, Florida, Hawaii, Massachusetts, New Hampshire, New York, Pennsylvania, Texas, and Wyoming have proposed or established task forces. Both strategies show that state governments are on the front lines of developing laws and policies to support and regulate this new technology and its applications.

STATE ENFORCEMENT ACTIONS

States have also led in enforcement actions related to digital assets, independently and through the North American Securities Administrators Association (NASAA). For example, prior to the SEC's enforcement actions regarding lending products, in September 2021, securities regulators in Kentucky, New Jersey, and Texas concluded that interest-bearing products provided by digital asset lending platforms should be registered as a security.

Additionally, in its January 2022 report on top investor threats, NASAA identified investments related to digital assets as its top investor threat and emphasized using caution when investing in digital assets.

KEY DEVELOPMENTS IN LEADING STATES

New York

Under the new leadership at the NY Department of Financial Service (DFS), Superintendent Adrienne Harris has called for a "21st century framework" for digital assets, and she has focused her efforts on evaluating the effectiveness of the BitLicense program, including by speeding up the application process since its implementation almost 10 years ago In June 2022. In June, the DFS released guidance for U.S. dollar-backed stablecoins issued by DFS-regulated entities. The requirements in the guidance concern redeemability, reserves, and attestation. They state that a stablecoin must be fully backed by reserves as of the end of every business day and the issuer must have a redemption policy approved in advance in writing by the DFS that gives the holder the right to redeem the stablecoin for U.S. dollars.

Additionally, the New York State Legislature passed a bill in May 2022 that would impose a two-year moratorium on issuing and renewing air permit renewals for energy plants that use carbon-based fuel and provide behind-the-meter electricity to proof-of-work mining operations. New York requires industrial facilities and power plants to register and obtain permits from the state as a measure to reduce air pollution. The legislation would adversely impact any mining companies that are operating energy plants using carbon-based fuel and any carbon-based energy plants selling electricity privately "behind-the-meter" to proof-of-work miners. The proposal has been controversial because this would lead to an increase in the cost of mining based on decreased supply of electricity. Since carbon-based energy plants would not want to risk their air permits to sell electricity to proof-of-work miners, the moratorium, if enacted, would decrease the amount of sources from where miners can purchase electricity directly and behind-the-meter rates are negotiated privately and are cheaper in comparison to purchasing electricity through the energy grid. Despite passing the NY Assembly and Senate, the legislation has not been formally delivered to Governor Hochul as she is still weighing whether to sign the legislation into law. Per the legislative process, once the bill is delivered to her desk she will have 10 days to veto the legislation before it is enacted via "pocket approval."

California

In February, Democratic Senator Sydney Kamlager introduced a bill that would allow the state to accept digital asset payments for state services that include permits, DMV licenses, certificates, and state taxes.

In May, Governor Gavin Newsom signed an EO to foster responsible innovation, bolster California's innovation economy, and protect consumers. The EO aims to create a transparent regulatory and business environment for web3 companies "which harmonizes federal and California approaches, balances the benefits and risks to consumers, and incorporates California values such as equity, inclusivity, and environmental protection."

Under this EO, and pursuant to the California Consumer Financial Protection Law passed by the Legislature in 2020, California will begin the process of creating a regulatory approach to spur responsible innovation while protecting California consumers, assess how to deploy blockchain technology for state and public institutions, and build research and workforce development pathways to prepare Californians for success in this industry.

The EO builds on the Biden Administration's recent actions to bring regulatory clarity to these emerging products and services and sets California on a path to clearly identify the rules businesses must follow to protect consumers. Under the EO, the state highlighted seven priorities:

1. Create a transparent and consistent business environment for companies operating in blockchain.
2. Collect feedback from a broad range of stakeholders, create a regulatory approach.
3. Collect feedback from a broad range of stakeholders for potential blockchain applications and ventures.
4. Engage in a public process and exercise statutory authority to develop a comprehensive regulatory approach.
5. Engage in and encourage regulatory clarity.
6. Explore opportunities to deploy blockchain technologies to address public-serving and emerging need.
7. Identify opportunities to create a research and workforce environment to power innovation in blockchain technology, including crypto assets.

CONFERENCE OF STATE BANK SUPERVISORS (CSBS)

Although it has not been as active in 2022 as past years with respect to digital assets, the organization of state banking regulators, in the last year, has shown its support for activity-based regulation with regards to digital assets regulation and has explicitly encouraged Congress and federal regulators to focus on the activities at issue and making clarifications in existing laws, regulations, and interpretations. Last September, CSBS released its model legislation for money transmission, the Money Transmission Modernization Act, for state adoption. The framework would make money transmitter laws uniform across all states, including their application to digital asset transactions.

UNIFORM LAW COMMISSION (ULC)

The ULC's Uniform Commercial Code (UCC) Emerging Technologies Drafting Committee, a joint effort of the American Law Institute (ALI) and the ULC, has been drafting proposed amendments to the UCC to address emerging technologies such as digital assets through model state legislation. The ULC and the ALI's mission behind the changes is to ensure the continued uniformity of state commercial laws by updating UCC provisions to address digital assets, seeking to prevent inconsistencies in state UCC provisions that may lead to a patchwork of legislation across the states. The amendments both revise existing UCC Articles to address the emergence of digital assets, and introduce Article 12, which defines and governs digital assets specifically.

VI. Spotlight on Emerging Areas of Focus and Themes

NFTS

NFTs have become more mainstream in the past year and are beginning to attract the attention of policymakers, who have begun to use them for campaign fundraising, and financial regulators, who are studying their potential financial applications. For example, some arrangements, excluding digital collectibles that do not trade on secondary markets, to fractionalize NFTs and split ownership may constitute investment contracts, thereby drawing the attention of the SEC. NFTs, similar to high-value art and other unique goods, may also be used in illicit financing, according to a Treasury study on the facilitation of money laundering and terrorism financing through high-value art. NFTs' use in protecting content creators' and artists' rights are also gaining traction. In June, Senators Thom Tillis (R-NC) and Patrick Leahy (D-VT) wrote a letter to the Directors of the U.S. Patent and Trademark Office (USPTO) and U.S. Copyright Office, asking that the agencies study how NFTs could be used to support intellectual property (IP) rights.

Sanctions Evasion and Fundraising

Paradoxically, digital assets have been criticized for their potential use in evading sanctions against Russian elites and praised for their ability to help raise relief funds in Ukraine. In March, Senator Elizabeth Warren (D-MA), Senate Armed Services Committee Chairman Jack Reed (D-RI), Senate Intelligence Committee Chairman Mark Warner (D-VA), Senate Foreign Relations Committee Chairman Robert Menendez (D-NJ), Senate Defense Appropriations Subcommittee Chair Jon Tester (D-MT) and others introduced the Digital Asset Sanctions Compliance Enhancement Act (S. 3867), following Russia's invasion of Ukraine to "ensure that Vladimir Putin and Russian elites don't use digital assets to undermine the international community's economic sanctions against Russia following its invasion of Ukraine."

Meanwhile, as FS Vector Principals Kate Flocken and Rachael McWhirter pointed out in their op-ed, "[w]ithin hours of the Russian invasion, numerous nonprofit organizations and funding efforts began providing humanitarian aid to Ukraine," and "[i]t became increasingly clear that sending donations via traditional banking methods is difficult given the high cost of moving money across borders." Enter digital assets. As Flocken and McWhirter report, "[t]he Ukrainian government quickly realized that crypto was the surest way to support its fundraising efforts, and started accepting direct crypto donations." And "[w]ithin days, Ukraine had raised nearly $100 million in direct aid." For our coverage on sanctions, see our Sanctions Watch series.

VI. Conclusion

For the latest insights, you can access our weekly newsletter archive here.

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Please reach out to the Advocacy team at FS Vector here if you have any questions or are interested in our intel monitoring services.

Glossary

TERM	DEFINITION
CBDC	Central Bank Digital Currency
CFPB	Consumer Financial Protection Bureau
CFTC	Commodity Futures Trading Commission
Commerce	Department of Commerce
EO	Executive Order
FDIC	Federal Deposit Insurance Corporation
FRB	Board of Governors of the Federal Reserve System
FSOC	Financial Stability Oversight Council
FTC	Federal Trade Commission
HFSC	House Financial Services Committee
NDAA	National Defense Authorization Act
NEC	National Economic Council
NFT	Non-fungible Token
NSC	National Security Council
OCC	Office of the Comptroller of the Currency
OSTP	Office of Science and Technology Policy
PWG	President's Working Group on Financial Markets
RFC	Request for Comment
SEC	Securities and Exchange Commission
Treasury	Department of the Treasury