CRYPTO IN 2026: THE DEMOCRATIZATION OF DIGITAL ASSETS

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US Asset Management and Investment Funds Alert

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The year 2025 saw significant regulatory activity in the realm of digital assets. The US Congress and financial regulators took steps to create and implement a clear legal framework to facilitate financial transactions using digital assets, and they will continue to do so in 2026. This alert discusses important regulatory developments in relation to digital assets that occurred at the end of 2025 that likely will shape subsequent initiatives in 2026, with a focus on the Securities and Exchange Commission (SEC or Commission) and the Commodity Futures Trading Commission (CFTC).

The key theme leading into 2026 is democratization of digital assets—making digital assets accessible to US persons without the fear of imminent enforcement action. During 2026, we expect the SEC and CFTC to provide further guidance to facilitate access to digital assets. In light of the enactment of the GENIUS Act, we also expect further rulemaking initiatives by the US Department of the Treasury (Treasury Department), the Office of the Comptroller of the Currency (OCC), and other federal agencies to implement this new law. By issuing guidance and proposing rulemakings to clarify how market participants can engage in digital assets, the financial regulators are opening these markets onshore, consistent with President Donald Trump's goal to make the United States the crypto capital of the world.

RECENT REGULATORY ACTIONS AND INITIATIVES LEADING INTO 2026

The SEC Pivots on Custody

One area of regulation that prevented firms from entering the digital asset space for several years is custody. Whereas the Gensler-era SEC made it nearly impossible for advisers to transact in digital assets, the SEC under the Trump administration is enabling greater participation in these markets. During 2025, the SEC formally rescinded Staff Accounting Bulletin 121 and withdrew the proposed Safeguarding rule. In addition, staff of the SEC's Division of Trading and Markets, together with staff of the Office of General Counsel of the Financial Industry Regulatory Authority, Inc. (FINRA), withdrew their 2019 joint staff statement that prevented broker-dealers from custodying digital asset securities.[1] SEC staff has also issued guidance to clarify SEC custody rules by allowing state trust companies to hold digital assets subject to certain conditions and confirming when broker-dealers can hold digital assets.

Custody in Relation to State Trust Companies

On 30 September 2025, the SEC's Division of Investment Management issued a no-action letter permitting the treatment of a state-chartered trust company as a bank for purposes of holding digital assets and effecting transactions in digital assets.[2] To rely on this relief, various conditions must be satisfied. An adviser or 1940 Act

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fund must determine that the state trust company is in the best interest of the client and that it is authorized by the relevant banking authority to provide digital asset custody services. They must provide disclosure about material risks to clients or the board of directors or trustees, as applicable. In addition, they must enter into a written custodial services agreement with the state trust company providing that assets will be segregated and that the state trust company will not, directly or indirectly, lend, pledge, hypothecate, or rehypothecate any digital assets held in custody without prior written consent (and then only for the account of the client or fund).

Broker-Dealer Custody of Digital Asset Securities

Subsequent to providing the state trust company guidance, the SEC's Division of Trading and Markets issued a statement clarifying when broker-dealers themselves may hold digital asset securities pursuant to paragraph (b)(1) of Rule 15c3-3.[3] SEC staff outlined specific circumstances where the Commission would not object to a broker-dealer deeming itself to have physical possession of a digital asset security carried for the account of customers as set forth in paragraph (b)(1) of Rule 15c3-3, provided that the broker-dealer satisfy conditions related to direct access, distributed ledger technology (DLT) assessments, and policies, procedures, and controls. In addition, a broker-dealer may not hold digital asset securities if it is aware of any material security or operational problems or weaknesses with the DLT and associated network used to access and transfer the digital asset security or of other material risks to the broker-dealer's business by custodying the digital asset security.[4]

DTCC Tokenization Relief

On 11 December 2025, the SEC's Division of Trading and Markets staff granted no-action relief to The Depository Trust Company (DTC) in connection with DTC's launch of tokenization services.[5] DTC's request for no-action relief describes various use cases for tokenization, including 24/7 peer-to-peer transfers between approved wallets.

The relief covers: (1) rule filing requirements under Section 19(b) of the Exchange Act and Rule 19b-4;[6] (2) covered clearing agency standards, i.e., Exchange Act Rules 17ad-22(e) and 17ad-25 (i)-(j);[7] and (3) Regulation Systems Compliance and Integrity (Reg SCI).[8] The relief is available for three years following the launch of the tokenization services.[9] The relief is based on the facts and circumstances discussed in the request for relief. Importantly, only certain securities will be eligible for tokenization, including securities in the Russell 1000 Index at the time of the launch, US Treasuries, and Exchange Traded Funds (ETFs) that track major indexes (such as the S&P 500 or Nasdaq 100 indexes). Tokens will not be ascribed collateral or settlement value for DTC risk management purposes or for calculating a participant's “net debit cap” or “collateral monitor.” As a result, tokenized securities would not be used to manage a participant's default on its obligations to DTC. DTC must provide SEC staff with a quarterly report related to tokenization, amongst other notification requirements.

An Increased Focus on Financial Surveillance

Recently, the Commission signaled a greater focus on government surveillance on financial transactions and issues that may arise from this surveillance. In this regard, the SEC's Crypto Task Force (Crypto Task Force) articulated the Commission's regulatory objective of achieving a balance of sufficient protection of individual privacy to guard against government surveillance of financial activity with sufficient transparency for national security considerations.[10] Of particular relevance to the asset management industry, aspects of blockchain technology—such as proof-of-work (PoW) mechanisms, zero-knowledge proofs (ZKP), and multi-party computation (MPC) mechanisms—function well to remove middlemen and enable asset managers to

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demonstrate that their portfolio assets meet fund mandates without compromising competitive edge, proprietary asset allocation strategies, or disclosing the precise securities that funds hold.[11]

Despite highlighting these examples of substantial technological advancement in financial transactions, the Crypto Task Force emphasized that privacy protections must be balanced with the government's need to police fraudulent activity, such as insider trading. As the SEC considers financial surveillance in the crypto markets, the Commission likely will address how it will implement insider trading protections in a market that is significantly different from traditional securities markets.

CFTC Developments

At the end of the year, Michael Selig was confirmed as the chairman of the CFTC.[12] With Chairman Selig's background in working on digital asset initiatives in private practice and his most recent role as chief counsel of the SEC's Crypto Task Force and senior advisor to SEC Chairman Paul Atkins, it is expected that the CFTC will continue to focus on ways to facilitate market participants' access to digital assets and use of tokenized collateral. During the second half of 2025, the CFTC launched various initiatives that Chairman Selig will now be responsible for overseeing, including the year-long “Crypto Sprint” and tokenization pilot program.

CFTC “Crypto Sprint”

Since August 2025, when then-Acting Chairman Caroline Pham launched a 12-month “Crypto Sprint,” the CFTC has focused on various regulatory areas related to digital assets, including the listing of spot digital assets on CFTC-registered designated contract markets (DCMs) and allowing derivatives market participants to use tokenized collateral, including stablecoins.[13] Following through on one of the key goals of the Crypto Sprint, the CFTC announced just last month that spot digital assets were available for trading by a CFTC-registered exchange.[14] In addition, the CFTC established a “CEO Innovation Council,” comprised of 12 members from exchanges.[15] To address ambiguities in regulations and facilitate access to digital asset markets, the CFTC also asked for public comment on the recommendations for the CFTC in the President's Working Group Report.

Tokenization No-Action Relief (Issued on 8 December 2025)

As part of the Crypto Sprint, the CFTC asked for comment specifically on the use of tokenized collateral in derivatives markets. Comments were due in October, and in December CFTC staff issued guidance allowing futures commission merchants (FCMs) and derivatives clearing organizations to accept tokenized collateral.[16] The guidance describes when tokens are eligible to be accepted as collateral and confirms that market participants must ensure that tokens satisfy legal enforceability and segregation requirements and must apply the same risk-based approaches to tokens to determine haircuts and valuations as applied to the underlying forms of assets. However, staff noted that the guidance may be updated in the future with the progress of technological and regulatory developments.

On the same day, staff issued no-action relief to allow FCMs to accept non-securities digital assets (including payment stablecoins) as customer collateral, subject to various conditions.[17] In doing so, the CFTC withdrew CFTC Staff Advisory 20-34, which limited an FCM's ability to accept digital assets as customer collateral.[18] Staff noted that this guidance had become “outdated and no longer relevant.”[19] Under the new no-action relief, FCMs must file a notice of intent to rely on the relief with the CFTC via WinJammer and, for the first three months thereafter, weekly reports of digital assets held in each category of customer segregated accounts. Also, for only the first three months of an FCM's reliance on the relief, the FCM is subject to a notification requirement in the

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event of a significant operation or system issue, disruption, or failure (including a cybersecurity event) that affects the use of digital assets as customer collateral. For the first three months of its reliance on the relief, an FCM may only accept payment stablecoins, Bitcoin, and Ether as margin collateral for customers. Moreover, the relief specifies how FCMs must adhere to rules on value and haircuts and how they may use digital assets to comply with their residual interest requirements.

Stablecoin Developments Under the GENIUS Act

On 18 July 2025, the “Guiding and Establishing National Innovation for US Stablecoins Act” or the “GENIUS Act” was enacted. The GENIUS Act was the first major piece of digital assets legislation passed by Congress. The GENIUS Act defines and regulates the issuance of payment stablecoins and sets forth a licensing and supervision regime for issuers of payment stablecoins. The GENIUS Act establishes reserve and redemption requirements for payment stablecoins. Under the law, payment stablecoins may be issued only by authorized subsidiaries of banks or by entities licensed to do so by the OCC. Issuers of payment stablecoins are subject to a bank-like regulatory regime, including safety and soundness requirements and anti-money laundering (AML) compliance. Numerous rules must be issued to implement the GENIUS Act by federal and state regulators, including the Treasury Department, the OCC, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), and the Financial Crimes Enforcement Network.

Since the law's enactment, a handful of regulatory developments have occurred. On 19 September 2025, the Treasury Department issued a proposed rulemaking soliciting public input on potential regulations to be issued by the Treasury Department pursuant to the GENIUS Act, including regarding regulatory clarity, prohibitions on certain issuances and marketing, Bank Secrecy Act(BSA) AML and sanctions obligations, the balance of state-level oversight with federal oversight, comparable foreign regulatory and supervisory regimes, and tax issues.

On 11 December 2025, the FDIC board approved a proposed rule to establish the application process for FDIC-supervised state-chartered banks seeking to issue payment stablecoins through a subsidiary pursuant to the GENIUS Act.

Passage of the GENIUS Act sparked a number of applications to the OCC for new national bank charters, particularly for applicants seeking nondepository national trust bank charters to engage in custody and other activities related to stablecoins and digital assets more generally. These national trust banks would be permitted to issue payment stablecoins under the GENIUS Act. On 12 December 2025, the OCC issued conditional approvals of five such national trust bank charter applications.

Although the GENIUS Act prohibits the payment of interest or other remuneration on payment stablecoins by payment stablecoin issuers, there are various potential work arounds for payments of rewards by affiliates or others with respect to payment stablecoins. The banking industry is vigorously lobbying for additional prohibition on the payment of rewards with respect to payment stablecoins, including through amendments to the CLARITY Act. This is something that we likely will see play out during 2026 in legislative and rulemaking efforts.

The CLARITY Act In 2026

In 2025, Congress made significant strides toward establishing a regulatory framework and market structure for digital assets, though it fell short of passing legislation before year-end. These efforts set the stage for potential action in 2026.

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In July, the House approved the Digital Asset Clarity Act of 2025 (CLARITY Act), a bill seeking to provide structure to the regulation of digital assets. Importantly, the CLARITY Act aims to resolve regulatory friction between the SEC and the CFTC by defining the boundaries of the agencies' respective jurisdictions regarding digital assets. Meanwhile, the Senate Banking Committee (SBC) and Senate Agriculture Committee worked on similar—but not identical—drafts through December. In the final weeks, SBC Republicans and Democrats exchanged compromise proposals, and Chairman Tim Scott (R-SC) aimed to advance a bill out of committee before 2026. While that goal was not met, Chairman Scott emphasized that negotiations made meaningful progress before the holiday recess and promised that SBC will resume work on market structure legislation early in the new year.

WHAT TO LOOK FORWARD TO IN 2026

If the second part of 2025 demonstrates anything, it is that the digital asset environment in 2026 promises to be dynamic and fast-moving. Digital asset issuers, exchanges, and other participants in this ecosystem will be able to innovate and potentially seek guidance from the regulators when necessary. We expect the SEC to make progress on two main fronts: further guidance to facilitate access to digital assets and no-action relief to issuers of digital asset tokens. The Commission probably will continue to provide regulatory clarity for digital asset markets to further define the regulatory landscape and to distinguish digital asset regulation from traditional security regulation. SEC staff may continue providing no-action relief to issuers of digital asset tokens, clarifying that certain tokens are not securities. For example, the SEC staff recently provided no-action relief from securities registration to digital asset issuers Fuse Crypto Limited[20] and DoubleZero.[21] Other digital asset issuers may seek similar assurances before issuing a digital asset, and the SEC staff appears to be amenable to offering these assurances.

We also expect further rulemaking initiatives by the Treasury Department, the OCC, and other federal agencies to implement the provisions of the GENIUS Act. These rulemaking efforts are expected to occur during the first half of 2026. The CLARITY Act is also expected to make additional progress through the Senate. Even though the CLARITY Act is still pending in Congress, we nonetheless expect the CFTC to continue to work with the SEC to delineate their respective jurisdictions regarding digital assets.

As the new chairman of the CFTC takes the helm, one area of focus for the CFTC likely will be increased harmonization with the SEC, particularly given the new chairman's role of working with Chairman Atkins and on the Crypto Task Force. If the CLARITY Act is enacted into law, we expect Chairman Selig to swiftly introduce regulatory proposals to implement the new legal framework. As the industry awaits Congressional action, we expect staff of the SEC and CFTC to continue providing guidance on regulatory grey areas or that otherwise facilitates the adoption of digital assets and tokenization.

FOOTNOTES

[1] *See SEC, Withdrawal of Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities*, (May 15, 2025), https://www.sec.gov/newsroom/speeches-statements/withdrawal-joint-staff-statement-broker-dealer-custody-digital-asset-securities.

[2] *See* SEC Staff No-Action Letter (Sept. 30, 2025), https://www.sec.gov/rules-regulations/no-action-interpretive-

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exemptive-letters/division-investment-management-staff-no-action-interpretive-letters/simpsonthacherbartlett093025.

[3] *See* SEC, *Statement on the Custody of Crypto Asset Securities by Broker-Dealers,* (Dec. 17, 2025), https://www.sec.gov/newsroom/speeches-statements/trading-markets-121725-statement-custody-crypto-asset-securities-broker-dealers.

[4] *See id.*

[5] *See* DTCC, SEC Staff No-Action Letter (Dec. 11, 2025), https://www.sec.gov/files/tm/no-action/dtc-nal-121125.pdf.

[6] 15 U.S.C. § 78s(b); 17 C.F.R. § 240.19b-4.

[7] 17 C.F.R. § 240.17ad-22(e); 17 C.F.R. § 240.17ad-25(i)–(j).

[8] 17 C.F.R. § 242.1000–1007.

[9] *See* DTCC, SEC Staff No-Action Letter (Dec. 11, 2025) at 7, https://www.sec.gov/files/tm/no-action/dtc-nal-121125.pdf.

[10] *See* SEC, *Crypto Task Force Roundtable on Financial Surveillance and Privacy*, (Dec. 15, 2025), https://www.sec.gov/newsroom/meetings-events/crypto-task-force-roundtable-financial-surveillance-privacy.

[11] PoW, ZKP, and MPC can each serve a distinct purpose in ameliorating the landscape for asset managers:

- PoW: Generally, PoW is a decentralized system that ensures the security and integrity of a blockchain network through computational actions to validate transactions. This allows individuals and entities to operate without third parties, such as a bank or another financial institution, to validate transactions.
- ZKP: A ZKP is a cryptographic method used to prove knowledge about a piece of data, without revealing the data itself. In other words, a ZKP enables a party to prove to another party that a statement is true without revealing any information beyond the validity of the statement itself, helping to ensure, for instance, that a person's wallet balance and transaction history are accurate without revealing the actual balance and transaction history.
- MPC: A MPC (also known as a secure multi-party computation (SMPC)) is a cryptographic method that enables multiple parties to compute a function and to view a public output all while using private inputs without ever revealing their inputs to other parties. This method is useful for financial transactions because it enables users to protect their private information while still participating in shared systems.

[12] CFTC, Press Release No. 9164-25, *Michael Selig Sworn In as 16th CFTC Chairman* (Dec. 22, 2025) (on file with the CFTC), https://www.cftc.gov/PressRoom/PressReleases/9164-25.

[13] CFTC, Press Release No. 9104-25, *Acting Chairman Pham Announces Crypto Sprint* (Aug. 1, 2025) (on file with the CFTC), https://www.cftc.gov/PressRoom/PressReleases/9104-25; CFTC, Press Release No. 9109-25, *Acting Chairman Pham Announces Next Crypto Sprint Initiative* (Aug. 21, 2025) (on file with the CFTC), https://www.cftc.gov/PressRoom/PressReleases/9109-25; CFTC, Press Release No. 9150-25, *Acting Chairman Pham Announces CEO Innovation Council Participants* (Dec. 10, 2025) (on file with the CFTC), https://www.cftc.gov/PressRoom/PressReleases/9150-25.

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[14] CFTC, Press Release No. 9145-25, *Acting Chairman Pham Announces First-Ever Listed Spot Crypto Trading on U.S. Regulated Exchanges* (Dec. 4, 2025) (on file with the CFTC), https://www.cftc.gov/PressRoom/PressReleases/9145-25.

[15] CFTC, Press Release No. 9142-25, *Acting Chairman Caroline D. Pham Seeks Nominations for CFTC CEO Innovation Council by December 8* (Nov. 25, 2025) (on file with the CFTC), https://www.cftc.gov/PressRoom/PressReleases/9142-25.

[16] CFTC Advisory No. 25-39 (Dec. 8, 2025).

[17] CFTC No-Action Letter No. 25-40 (Dec. 8, 2025).

[18] *Id.*

[19] CFTC Advisory No. 25-41 (Dec. 8, 2025).

[20] *See* Fuse Crypto Ltd., SEC Staff No-Action Letter, (Nov. 24, 2025), https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/fuse-crypto-limited-112425.

[21] *See* DoubleZero, SEC Staff No-Action Letter, (Sept. 29, 2025), https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/doublezero-092925.

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