HAYNES BOONE

FINANCIAL SERVICES

REGULATORY ROUNDUP | MAY 2025

TABLE OF CONTENTS:

“These withdrawals fit within the current administration’s policy of encouraging engagement in the crypto-asset space and align with the agencies’ other recent actions, such as the OCC’s rescission of Interpretive Letter #1179.”

The Federal Reserve and FDIC Smoothen the Pathway to Crypto – Leel Sinai, Neil Issar, Dustin Leenhout

On April 24, 2025, the Board of Governors of the Federal Reserve (Federal Reserve) announced that it was withdrawing two of its supervisory letters as well as withdrawing, jointly with the Federal Deposit Insurance Corporation (FDIC), two joint statements relating to crypto assets.

In particular, the Federal Reserve withdrew Supervision and Regulation Letter 22-6 (Aug. 16, 2022) (SR Letter 22-6) and Supervision and Regulation Letter 23-8 (Aug. 8, 2023) (SR Letter 23-8). Both letters laid out the Federal Reserve’s prior position that crypto assets posed risks to the safety and soundness of financial institutions, consumer protection and financial stability. SR Letter 22-6 previously required any Federal Reserve-supervised banking organization engaging or seeking to engage in crypto asset-related activities to notify its lead supervisory point of contact at the Federal Reserve.

Likewise, SR Letter 23-8 previously required any state member banks seeking to engage in activities permitted for national banks under Interpretive Letter #1174 issued by the Office of the Comptroller of the Currency (OCC), including issuing, holding or transacting in dollar tokens to facilitate payments, to demonstrate that the bank had controls in place to conduct the activity in a safe and sound manner by obtaining a written notification of supervisory nonobjection from the Federal Reserve.

Additionally, the Federal Reserve and the FDIC withdrew their Joint Statement on Crypto Asset Risks to Banking Operations and their Joint Statement on Liquidity Risks to Banking Organization Resulting from Crypto-Asset Market Vulnerabilities. The joint statements listed risks the agencies believed were associated with crypto assets, crypto asset sector participants, and crypto asset-related deposit activities, including but not limited to fraud, misrepresentation, legal uncertainty, volatility, liquidity risk, run risk, contagion risk and lack of governance.

These withdrawals fit within the current administration's policy of encouraging engagement in the crypto-asset space and align with the agencies' other recent actions, such as the OCC's rescission of Interpretive Letter #1179 (as discussed in the April issue of this publication). We may only be seeing the tip of the regulatory iceberg, as the agencies' announcements indicated they will be considering "whether additional guidance to support innovation, including crypto asset activities, is appropriate" and are "exploring issuing additional clarity with respect to banking organizations' crypto asset and related activities in the coming weeks and months."

Read the Press Release **here**.

Read the Joint Withdrawal **here**.

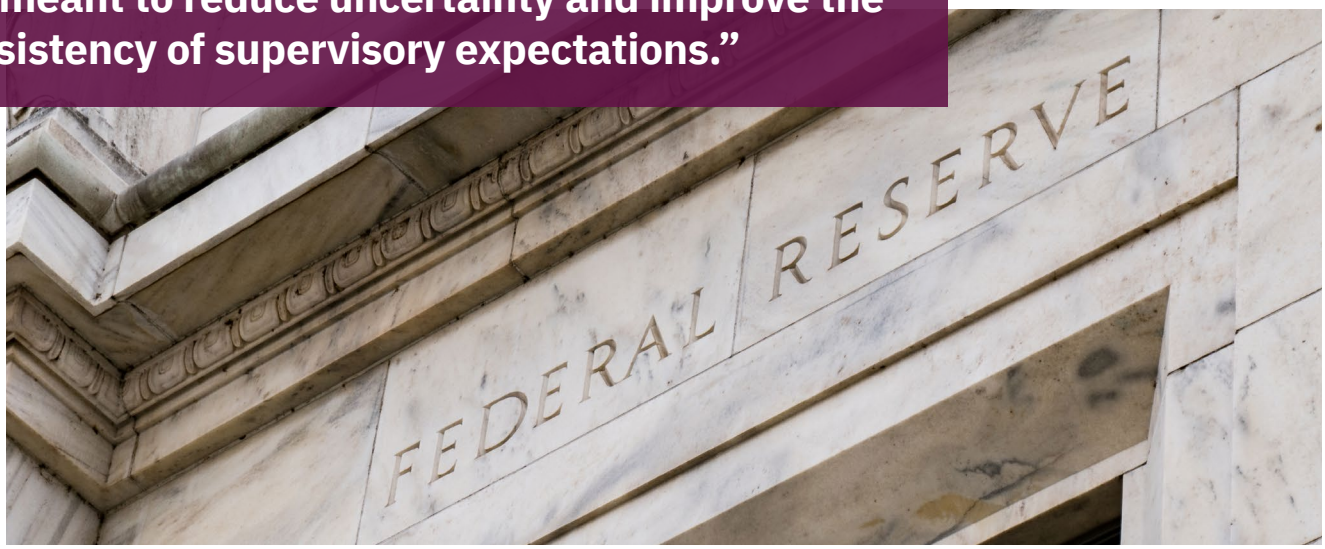
Federal Reserve Proposes Reforms to Stress Testing Framework to Reduce Capital Requirement Volatility – Leel Sinai

On April 17, 2025, the Federal Reserve released a proposal to reform its annual bank stress testing framework, with the goal of reducing year-over-year volatility in capital requirements for large financial institutions. The proposed changes aim to increase the stability and transparency of capital planning, while minimizing unintended consequences on banks' ability to lend and support the broader economy.

A key element of the proposal is the introduction of a two-year averaging methodology for stress test results used to determine the stress capital buffer (SCB). By averaging outcomes over two consecutive test cycles, the Federal Reserve hopes to smooth out abrupt shifts in capital requirements that can result from one-off stress scenarios or economic shocks.

In addition, the Federal Reserve is proposing to shift the effective date for SCB requirements from October 1 to January 1 of the following year. This adjustment is designed to provide banks with more time to prepare for any changes in capital requirements triggered by the results of the annual supervisory stress tests.

“While the changes are not expected to materially alter the overall level of capital in the system, the Federal Reserve emphasized that the reforms are meant to reduce uncertainty and improve the consistency of supervisory expectations.”



The Federal Reserve also recommends several targeted revisions to its data collection procedures, particularly the FR Y-14 reports, which are used to gather detailed financial and risk data from large firms. These revisions would eliminate obsolete fields, refine existing data inputs and introduce new reporting items to better align regulatory assessments with firms’ actual risk profiles and income-generating capacity.

While the changes are not expected to materially alter the overall level of capital in the system, the Federal Reserve emphasized that the reforms are meant to reduce uncertainty and improve the consistency of supervisory expectations. Looking ahead, the Federal Reserve plans to release additional proposals later this year focused on enhancing the transparency of the stress testing process. These include efforts to solicit public feedback on the modeling frameworks and economic scenarios used in stress tests.

The proposal is open for public comment for 60 days following its publication in the Federal Register.

Read the Proposal **here**.

DOJ Memo Signals Shift in Digital Asset Enforcement – Leel Sinai, Neil Issar, Dustin Leenhouts

Consistent with the current administration’s reduced-regulation approach to digital assets, the United States Deputy Attorney General issued a memorandum on April 7, 2025, which disbanded the Department of Justice’s (DOJ) National Cryptocurrency Enforcement Team and instructed all DOJ employees to cease “regulation by prosecution” in the digital asset space. DOJ employees must instead focus on crimes by digital asset platform users, not by platforms or exchanges themselves.

Specifically, the DOJ will now prioritize prosecuting crimes that “victimize digital asset investors”—such as embezzlement, misappropriation of customers’ funds, fake digital asset development projects such as “rug pulls,” and exploiting vulnerabilities in smart contracts—or that use digital assets to further criminal offenses, such as terrorism, narcotics, human trafficking, fentanyl trafficking, organized crime, hacking, and cartel and gang financing.

Correspondingly, the memorandum instructs prosecutors not to charge regulatory violations in cases involving digital assets, including but not limited to unlicensed money transmitting, violations of the Bank Secrecy Act, unregistered securities offering violations, unregistered broker-dealer violations and other violations of registration requirements under the Commodity Exchange Act, unless there is evidence that the defendant knew of the licensing or registration requirements at issue and violated them willingly. It also limits the scope of cases prosecutors should charge based on violations of the Securities Act of 1933 and the Securities Exchange Act of 1934.

The memorandum affirmatively cites Executive Order 14178, in which the current administration stated it would "provid[e] regulatory clarity and certainty built on technology-neutral regulations, frameworks that account for emerging technologies, transparent decision making and well-defined jurisdictional regulatory boundaries, all of which are essential to supporting a vibrant and inclusive digital economy and innovation in digital assets." The memorandum appears to be a step in that direction, providing clarity that the DOJ is shifting its focus from regulatory violations to holding individuals accountable for crimes that cause financial harm. In other words, the DOJ appears to be following the current administration's embracing of innovation involving digital assets.

A day after the memorandum was issued, Caroline D. Pham, the acting commissioner of the CFTC, directed CFTC staff to comply with the DOJ's new approach to digital asset enforcement. So, the CFTC will also no longer "charge regulatory violations in cases involving digital assets, in particular violations of registration requirements under the Commodity Exchange Act, unless there is evidence that the defendant knew of the licensing or registration requirement at issue and violated [it] willfully."[1]

The DOJ memorandum has already been raised by at least one defendant in an ongoing digital asset fraud case. Braden Karony, the CEO of cryptocurrency and blockchain company SafeMoon, cited the memorandum as supplemental authority in support of his motion to dismiss an indictment charging him with conspiracies involving securities fraud, wire fraud and money laundering.[2] But the government responded that the DOJ memorandum was not intended to create any rights or benefits for defendants in ongoing cases against the government, and that the government was prepared to proceed with the case to trial as scheduled.[3] In addition, on April 18, 2025, the district court denied

the defendant's motion to dismiss without referencing the memorandum, meaning the case will continue notwithstanding the DOJ's new approach to digital asset enforcement.

In short, the DOJ memorandum sheds light on the agency's enforcement priorities going forward as well as its alignment with the current administration's broader goals, but it remains to be seen whether it will have any impact on current investigations and lawsuits.

Read the DOJ Memorandum **here**.

FDIC Changes to Resolution Planning – Leel Sinai, Livingstone Harriott

On April 18, 2025, the FDIC updated its Frequently Asked Questions (FAQs) concerning its "IDI Resolution Planning Rule" and released "Content Requirement Exemptions for Initial Submission Cycle," exempting large insured depository institutions (IDIs) from certain content requirements under 12 CFR § 360.10 for full resolution plans, interim supplements and informational filings during the upcoming submission cycle. The FDIC's regulation 12 CFR § 360.10 requires IDIs with $50 billion or more in total assets (CIDIs) to submit resolution plans periodically to facilitate the FDIC's readiness to resolve a CIDI, in the event of its insolvency, under the Federal Deposit Insurance Act of 1950. The goal of the revised standards is to focus the resolution planning process on the operational information most relevant for the FDIC to resolve a large bank through a weekend sale or operate a short-term bridge bank scenario while marketing the institution. CIDIs were exempted from certain content requirements such as those related to credibility findings, identified strategy, failure scenario, franchise components, valuation, economic effects of resolution, digital services and non-deposit claims.

[1]*See* Press Release, Commodity Futures Trading Comm'n, Acting Chairman Pham Lauds DOJ Policy Ending Regulation by Prosecution of Digital Assets Industry and Directs CFTC Staff to Comply with Executive Orders (Apr. 8, 2025), https://www.cftc.gov/PressRoom/PressReleases/9063-25.

[2]*See* Defendant's Letter of Supplemental Authority, *United States v. Karony*, No. 1:23-cr-00433 (E.D.N.Y.), Dkt. No. 137.

[3]*See* United States' Letter in Response to Defendant's Letter of Supplemental Authority, *United States v. Karony*, No. 1:23-cr-00433 (E.D.N.Y.), Dkt. No. 138.

- **Credibility under paragraph (f) of regulation 12 CFR 360.10:** FDIC staff will focus its review of a submission on its quality and thoroughness, rather than a comprehensive verification of capabilities or evaluation of projections. The FDIC will not make credibility findings as to identified strategy, and it will only make a credibility determination if a submission is determined not to be credible, rather than with respect to each individual submission.
- **Identified strategy for group A CIDIs under paragraph (d)(1):** The FDIC requested that filers describe the potential suitable resolution strategy or strategies that reasonably could be executed by the FDIC, rather than abiding by a prescribed bridge bank strategy. The FDIC waived the content requirements of bridge bank formation and stabilization and meaningful optionality in sub-paragraphs (d)(1)(ii) and (d)(1)(iii), respectively. The description of the resolution strategy should include key elements involved to provide an opportunity for the FDIC and the CIDI to discuss strategy options.
- **Failure scenario under paragraph (d)(2):** The FDIC waived the content requirement in paragraph (d)(2) that required the use of a failure scenario for the identified strategy.
- **Franchise components under paragraph (d)(10):** Franchise components that meet the definition should be identified by all group A CIDIs. They represent options that are readily executable currently and therefore should have a readily definable parameter that supports prompt marketing and closing on a sale. Franchise components are characterized as currently separable and able to be marketed in a timely manner in resolution. Group B CIDIs may disregard the phrase "franchise components."
- **Valuation options under paragraph (d)(12):** The FDIC waived the content requirements under sub-paragraphs (d)(12)(ii)(A) and (d)(12)(iii) that requires CIDIs to provide analysis of liquidity and deposit runoff assumptions and factors underlying such runoff estimates.
- **Economic effects of resolution under paragraph (d)(19):** The FDIC waived the content requirement under sub-paragraph (d)(19)(iii) that requires a discussion of mitigants to the potential impact of terminating activities that provide a material service to other financial institutions.
- **Non-deposit claims under paragraph (d)(20):** The FDIC waived the content requirement in paragraph (d)(20) that requires full resolutions to identify and describe systems and processes used to identify unsecured creditors of the CIDI that are not depositors or that are material entities.
- **Digital Services under paragraph (d)(23):** For purposes of an initial submission, the FDIC expects filers to describe only unique digital services and electronic platforms with low substitutability that might result in customer loyalty.
- **Interim Supplements under paragraph (e)(2):** The FDIC waived interim supplement content requirements for content related to franchise components, off-balance sheet exposures, payment, clearing, settlement, capital structure, funding sources, cross-border elements, management information systems, software licenses and intellectual property.

“On April 14, 2025, the New York Attorney General filed a suit against MoneyLion, Inc. (MoneyLion) and DailyPay, Inc. (DailyPay).”

- **Engagement under paragraph (f)(6):** The FDIC plans to provide at least three months’ advance notice before conducting engagement with a CIDI. Aside from informal communications, the FDIC expects to conduct engagement once with each triennial filer per submission cycle.

The FDIC continues to evaluate other provisions of 12 CFR § 360.10, and their applicability, and noted it may issue additional FAQs in the future.

Read the IDI Resolution Planning Rule Frequently Asked Questions **here**.

Read a summary of content requirements exemptions for initial submission cycle **here**.

New York Attorney General Files Suit against MoneyLion and DailyPay for Alleged Usury Violations – Leel Sinai, Krista Garcia

On April 14, 2025, the New York Attorney General filed a suit against MoneyLion, Inc. (MoneyLion) and DailyPay, Inc. (DailyPay). The respective complaints both allege that MoneyLion and DailyPay attempt to violate New York’s usury laws. The usury laws in New York were enacted to help protect consumers from high-cost lending. Historically, usury laws have been used to prohibit loansharks, payday lenders or others who exploit lending practices.

The Attorney General alleges in the complaint against MoneyLion that the company engages in “small-dollar, high-cost loans.” For example, a MoneyLion transaction at issue can include a scenario where individuals will obtain an advance for up to $100 but also agree to pay “fees and tips” ranging from $5-10. Users then agree to authorize future deductions from their bank account to repay the money that was borrowed. The Attorney General for New York alleges that the amount borrowed is treated as principle and the “fees and tips” are effectively interest. The Attorney General of New York argues this is a usurious cost of credit. The complaint further argues that this contravenes the principles that MoneyLion markets to entice customers: instant access to funds and a “free product that charges zero percent interest or APR.” The complaint also alleges that MoneyLion has “sophisticated algorithms and dynamic models to pressure users to tip, designs and deploys manipulative tactics, guilts users into tipping and implicitly threatens negative consequences for those users who do not.”

The Office of the Attorney General also alleged that DailyPay engages in similar practices, including: (i) lending based on payroll data or algorithmic estimates of future deposits, (ii) charging transaction fees or

extract tips, and (iii) carrying on as though they are not making loans and not collecting interest. The Attorney General again claims that these payday advances constitute loans, and the "fees" are the interest.

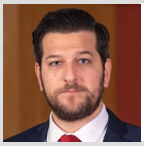
On April 7, 2025, mere days before the Attorney General's complaint was filed against DailyPay, DailyPay sued the New York Office of the Attorney General seeking a declaratory judgment that its payments do not constitute loans or violate state or federal laws. DailyPay has argued that it does not provide loans because among other things, it does not charge interest, does not check creditworthiness, does not report information to credit bureaus, does not engage in debt collections, and the "employer-integrated model ensures that any transfer that a worker receives is money the worker already has earned and is entitled to." DailyPay further explains that workers have no obligation to repay DailyPay and there is no contractual or legal recourse.

The New York Office of Attorney General appears to be pushing forward in attempt to enforce state usury laws. Both of these cases are ongoing and interesting developments should occur as the parties prepare their answers to the recently filed complaints.

Read the Complaint Against MoneyLion **here**.

Read the DailyPay Complaints here and **here**.

EDITOR



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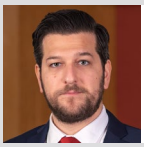

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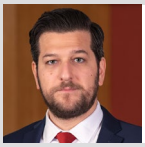

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