CLIENT ALERTS & INSIGHTS

December 2025 Crypto Update: New Changes and Challenges in U.S. Regulation of Digital Assets

DECEMBER 10, 2025

Authors: William E. Walsh, Patrick Beisell, Collin Cahill, Matthew G. Wulf

Key Takeaways

- Regulators and lawmakers are advancing multiple digital-asset initiatives, including a new Senate draft expanding CFTC authority, increased SEC/CFTC coordination, cross-border efforts with the UK and new SEC and IRS guidance affecting token classification and custody.
- Momentum is building toward a clearer regulatory framework, but differing definitions and unresolved gaps mean the landscape remains fragmented and subject to change.
- Firms should prepare for enhanced compliance expectations, monitor upcoming SEC exemptions and CFTC rules, reassess token classifications and evaluate how new IRS and cross-border developments may affect operations.

As 2025 winds down, legislators and regulators continue their efforts to establish a comprehensive framework for cryptocurrencies and other digital assets. In this December 2025 Roundup, we break down the latest developments out of Washington concerning digital assets.

Senate Agriculture Committee's Crypto Discussion Draft

In November, the U.S. Senate Committee on Agriculture, Nutrition and Forestry released a bipartisan discussion draft of legislation that would provide new authority to the Commodity Futures Trading Commission (CFTC) to regulate digital commodities. Introduced by Chairman John Boozman (R-AR) and Senator Cory Booker (D-NJ), the draft follows (i) passage of Digital Asset Market Clarity Act ("CLARITY Act") by the House in July[1] and (ii) the Senate Banking Committee's passage of its own discussion draft of legislation.

The Boozman-Booker draft provides a definition of "digital commodities" that differs from that provided by the CLARITY Act. The draft broadly defines digital commodities as "any fungible digital asset that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary and is recorded on a cryptographically secured public distributed ledger." In contrast, the House's CLARITY Act defines digital commodities more narrowly and in a blockchain-centric manner (defining digital commodity as a digital asset "intrinsically linked to a blockchain system, and the value of which is derived from or is reasonably expected to be derived from the use of the blockchain system").

The Boozman-Booker draft also proposes granting the CFTC exclusive jurisdiction over spot digital commodity markets. Under this framework, digital commodity brokers, dealers, custodians and trading facilities would be required to register with the CFTC and meet core market-integrity obligations. These include segregation of customer assets, conflicts-of-interest safeguards, prohibitions on certain affiliate and proprietary trading, minimum disclosure and reporting requirements, cybersecurity and operational-resilience standards and governance and financial-resource obligations designed to support orderly markets. For market participants, these requirements begin to mirror the compliance architecture of traditional financial markets.

The Boozman-Booker draft leaves several core issues unresolved. Key definitions-including those for "blockchain," "blockchain applications," and "decentralized finance"-remain undefined. The Committee is actively soliciting stakeholder feedback, and no date for a markup has been announced.

It will take time for the gaps to be filled in and for the Senate and House to resolve the discrepancies between their proposals. But the draft signals continued momentum in enhancing regulation of digital commodities and adjacent markets.

Regulatory Update

While the momentum for improved crypto regulation has been sustained for some time, much of the work has been internal to the agencies, leaving market participants in anticipation for concrete guidance. Many roundtable discussions with regulators have occurred, comments have been sought for proposed rules, and regulators have kept the market in anticipation of when the next public update is coming.

Cross-Agency Initiatives

In our last article, we discussed SEC and CFTC jointly pursuing crypto-focused initiatives as well as hosting a roundtable. That roundtable occurred on September 29, 2025, and it focused on the agencies' goal of "harmonization" of their regulatory frameworks. There, Commissioner Uyeda suggested that the agencies may use "information-sharing agreements, joint examinations and harmonized reporting forms" to ensure a consistent framework without duplicative requirements. However, while much of the discussion was about the practicalities and benefits of this approach, nothing concrete was announced.

Cross-Border Initiatives

Beyond domestic harmonization, the UK's HM Treasury and the U.S. Treasury have announced the "Transatlantic Taskforce for Markets of the Future," to facilitate the regulation of digital assets between countries, which is considered necessary given the ease with which cross border transactions can occur with digital assets. The Transatlantic Taskforce for Markets of the Future is expected to issue its recommendations around March 2026. Since the announcement of the Taskforce, the UK has begun putting a greater legislative focus on cryptocurrency, even creating a third category of property, , separate from personal and real property, to classify digital assets.

SEC Action

On September 30, 2025, the SEC Division of Investment Management issued a No-Action Letter stating it would not recommend enforcement against advisors who maintain crypto assets with "State Trust Companies." Commissioner Peirce praised this decision for providing clarity on whether State Trust Companies were permissible custodians under the Investment Company Act of 1940.

On November 12, Chairman Atkins gave us a peek inside the thought process of Project Crypto, the SEC's crypto initiative. He reiterated his belief that "most crypto tokens trading today are not themselves securities." He spoke specifically on his view that "digital commodities," "network tokens," "digital collectibles" and "digital tools" (all terms mentioned in the CLARITY Act) do not constitute securities under the *Howey* test.[2] He pointed out that the value of many digital assets comes from their practical use and decentralized nature rather than any ongoing efforts of others.

In discussing the application of the *Howey* Test, Chairman Atkins noted that "investment contracts can be performed and they can expire. They do not last forever simply because the object of an investment contract continues to trade on a blockchain." This approach is aligned with Commissioner Pierce's statements regarding some tokens being securities at initial offering but ceasing to be securities as the value of the token shifts away from the initial efforts of the developer and the expectation of someone being "at the helm" dissipates.

This insight into how cryptocurrencies and other digital assets may be subject to securities rules only at launch places greater importance on the exemptions, especially the promised "innovation exception." On December 2, 2025, Chairman Atkins suggested that this exemption should be revealed in January 2026 or shortly after (its rollout was delayed by the government shutdown). He also stated that the SEC has been providing guidance to Congress on digital assets and cryptocurrency legislation, including the CLARITY Act.

While many investors have been excited for this development, the World Federation of Exchanges ("WFE"), whose members include Nasdaq, sent a letter to the SEC Crypto Task Force warning against exemptions that "dilute" core protections of securities laws or distorting competition. The WFE stated that exceptions to account for issues that were not contemplated when the rules were adopted, but too sweeping of an exception might create unintended consequences.

IRS Announcement

Not to be left out of the regulatory momentum, on November 10, 2025, the IRS issued Rev. Proc. 2025-31, which provides a safe harbor for trusts to maintain "investment trust" status while also having the ability to "stake" crypto assets. This was issued partially in response to the SEC clarifying its position of staking digital assets.

[1] For an overview of the CLARITY Act, see our Summer 2025 Roundup.

[2] For an explanation of the *Howey* test, please see our first article on this topic.