**_The Crypto Exchange_ — Navigating 2025: Federal Legislative and Regulatory Updates on Stablecoins and Decentralized Finance**
**Hosts: Ethan Ostroff and Alexandra Barrage**
**Guest: Matt Bornfreund**
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**Ethan Ostroff:**

Welcome to another episode of *The Crypto Exchange*, a Troutman Pepper Locke podcast, focusing on the world of digital assets. I'm Ethan Ostroff, a co-host to the podcast, and a partner at Troutman Pepper Locke.

Before we jump into today's episode, let me remind you to visit and subscribe to our blogs, ConsumerFinancialServicesLawMonitor.com and TroutmanFinancialServices.com. Don't forget to check out our other podcast on troutman.com/podcast.

I am stoked to be joined today by my co-host, Alex Barrage, and our partner, Matt Bornfreund to discuss recent activity by the federal banking regulators, and talk a little bit about Congress related to the digital assets industry. We'll talk about the rise of new banks and innovative business models in the banking sector, and their impact on the digital asset industry, as well as recent developments in stablecoin legislation, and some other recent interesting things going on from these regulators in Congress in coming out of the White House.

So. Alex, Matt, thanks so much for making time today and joining me. I thought it's sort of the lead-in to this, I guess, from my perspective, fast-moving conversation that seems to be shifting and new things coming out almost daily. It's kind of been fun to try to track it and keep our arms around it. That we might just sort of level set with, coming into the new administration, what were we getting from the Biden administration. In that context, I think, number one, talk about SAB 121, issued in March 2022, placed a significant restraint on the ability of banks to maintain custody of crypto assets on behalf of customers at a high level, by requiring a reporting company bank to reflect both an asset and a liability for which the bank must reserve capital on its balance sheet, even though it's not the owner of the crypto.

We saw the House and the Senate last year by large margins pass a resolution disapproving it, but then, President Biden or former President Biden vetoed it, and it wasn't taken up by Congress again. Then, fast forward now, we've got some movement, some changes on that with it being rescinded, and the potential repercussions of that rescission, and whether or not it's a real green light open season in that regard, which I'm excited to talk to you all about.

Then, we sort of put that context with the guidance released by the OCC, the Federal Reserve Board and the FDIC. Starting in my head, sort of going back to 2020, positive but cautious. Then, you sort of fast forward to later guidance that became less and less clear. They had the January 2023 joint statement, saying banks are neither prohibited nor discouraged from providing banking services to customers of any specific class or type. But also saying,

cryptocurrency activities are highly likely to be inconsistent with safe and sound banking practices.

That led to what we generally talk about is these pause letters that were sent by the FDIC, these private direct supervisory letters to numerous financial institutions. Basically saying, pause, don't expand any planned or ongoing crypto-related activities, which was criticized by the then FDIC officer and inspector general. Then, that sort of led to, at the very end of the Biden administration, the FDIC after getting hit with a FOIA lawsuit by the industry trying to get information out of the FDIC about that, a trickle of things in December and then January of 2025. Redacted copies of some of the pause letters, redacted 2022 internal memorandum describing procedures to be followed by the FDIC regional offices and detailed questions that were supposed to be posed to banks as part of the supervisory process.

Then, most recently, that led to a further production disclosure of like 175 documents by Acting Chairman Hill of the FDIC that gave out further information about what had been going on internally at the FDIC. So, we're sort of bringing us to current in a real quick way. What's your all sense of the shift in the regulatory approach with the new administration and how we should think about the rescission of SAB 121, and the other recent statements by Acting Chairman Hill, as well as Federal Reserve Chair Powell.

**Alexandra Barrage:**

Thank you, This Alex Barrage, I'm a partner, and I focus on core bank regulatory issues, as well as a lot of issues arising in the representation of our fintech clients. We have a number of crypto clients too that are in the mix. So, we look at those issues that you raised from all those different perspectives. I think that, well, we do have a new administration and we certainly have a shift in tone from the top on crypto. There is still a lot that we don't know. We don't have confirmed agency heads at the banking agencies yet. That will happen, my guess is. over the next month or so.

We do have some statements from Acting Chairman Hill, indicating a broader openness to blockchain, innovation, and crypto activity. I tend to take a moderate view of those things, and my view of that is, while there will be more openness, there will still be scrutiny on activities to make sure that they're legally permissible and so on. I think before the industry sort of felt frankly like the object of the ire of the agencies, it's very difficult to really get anything off the ground with all of the different supervisory letters that you mentioned, including 1179, which we'll touch on in a minute. And the extent to which things really get going now are still in development, but certainly. the view is a positive view.

SAB 121 is a great example of this tone shift. SAB 121 basically came out of the SEC from an office that was not – it was not a board level issuance – or sorry, commissioner level issuance at the SEC. It was basically an accountant at the SEC that came up with this. It was not based on conversations with folks that Matt and I know, was not coordinated with the banking agencies. It was just kind of a one off that was out there seemingly, intermittently, despite the pushback back on the results of SAB 121 on the balance sheet, as you mentioned.

There are a number of examples where different agencies took actions that really just shut down the activity. Plus, I think you may have mentioned, we had also a lot of regulation by

enforcement. That's going to change. It's already started to change. A couple of the big crypto cases that we've heard about just over the past week are in the process to basically being dropped by the SEC.

**Ethan Ostroff:**

More and more of them as we speak, quite frankly. It's unbelievable how quickly this is happening, the retreat from the federal courts. We're like watching it in real time.

**Alexandra Barrage:**

Definitely a new era, and also feels like a full -time job, tracking all this stuff, which is why we're here for clients to do that. I think we do a pretty good job of it. So, maybe one way to frame all the things that are changing, including the stuff that's really recent, just over the past several weeks, is to think about what's happening in three buckets. The buckets that I think we want to talk about on this podcast are first, how do we think about new bank formations, including banks that have what we call innovative business models. So, not your traditional brick and mortar banks. What's the openness on new charters going to be generally, and then, with respect to these kinds of interesting new models?

Then, I think we'll spend some time talking about letters to the different agencies by different members of the industry, both the crypto and the banking industry. I think that's super interesting. Then, maybe we'll give some updates on the legislative front. So, if that works for folks and for listeners, that's where we plan on going. I'm going to turn it over to Matt, who can talk about our work in concert with other experts on de novo bank formations.

**Matt Bornfreund:**

Yes. So, Ethan, I just want to play off something you said in your introduction and what Alex also said. The tone shift is truly hard to grasp and how much different the tone is. So, in my work, I help banks with all kinds of regulatory issues that they have with the FDIC, the OCC, and the Fed, and that includes helping new banks form. I had staff at the OCC ask us, in the context of a new de novo application, whether or not the bank that we were looking to form would be engaging in any cryptocurrency activity. And we said, "No." Said, "Here's what you need to do. In the first paragraph of your application, make sure you explicitly state that this bank will not engage in any cryptocurrency-related activity." That was something that the staff completely said. "This is a requirement. If you want to make sure that you're going to get approved, you have to commit that you won't do any cryptocurrency activity. Right there, paragraph one of your application."

Now, contrast that with the tone shift over the last month where it's, "Oh, yes, we're open to considering all kinds of options for cryptocurrency." Alex is definitely right. It doesn't mean that that there is just free range to do anything you want and all the rules are gone, there's a lot of questions still to be answered. But the tone is definitely one of openness and willingness to consider new banks that might be engaging in cryptocurrency activities, new activities from existing banks, and even new entrants who may be non-banks to the regulated financial system.

What Alex was referencing there with de novos, we partnered with some other lawyers and some other experts, actually led by Claros, which was a consulting company, to put out an open letter that we then delivered to the heads of all the banking agencies, laying out eight detailed points of how the de novo process could be made more streamlined, made more fair, made more efficient, and made more open to new models for banks. Because under the existing methods that the regulators use for de novo activity, it's often very hard for applicants to understand that would be required in order to get an application.

It was difficult to understand when there were delays, what the actual delay was, whether it was a policy issue where the agency maybe just simply didn't want to approve the application, or there was some question about whether or not the business model would be functional or feasible. A lot of that was kind of in the dark. This goes hand in glove with the kinds of pause letters that you were talking about, where it oftentimes is very opaque to understand what the regulators were thinking and why they would or would not approve certain activities.

So, we laid out in our open letter and we've gotten some good feedback already from the agencies themselves. It's a system that's more objective, more open to new models, and importantly, also willing to allow applicants with untested business models, where there may actually be a small percent chance that there could be a failure. Since the financial crisis, the banking agencies have been very loath to consider any kind of new bank or new activity that is any possibility of failure. We think that what's happening is they're so intensely or they had been so intensely worried about the potential risks that they were not allowing any kind of innovation at all.

We're hoping that there's a lot of momentum now for improving the de novo process, which will bleed into having entities apply, that maybe want to engage in cryptocurrency activity or maybe crypto first kind of banks. Things like Anchorage, that was approved right on the tail end of the last Trump administration. Well, there haven't been any approvals of that type of institution since then. Hopefully now, there will be more of those kinds of approvals going forward. So, we think the de novo process is going to open up.

**Ethan Ostroff:**

To me, it's interesting when we talk about what's going on with these federal banking regulators, that the one that seems to have been the most silent since that joint statement with the Federal Reserve and FDIC in 2023 is the OCC. That to me has always struck me as like, they seem to be the one that says the least about their perspectives on activities that touch on crypto. You mentioned, they've been regulating at least one federally chartered crypto bank in the United States for about four years-ish now.

They have an institutional knowledge and experience of supervising that type of federally chartered crypto bank. I wonder why we don't hear more from them about this. Do you have any thoughts about that or what we might expect now?

**Alexandra Barrage:**

I think by "them", you're likely referring to the prior administration. I think it's correct to say that from a public issuance perspective like 1179, I don't remember hearing much more after 1179.

1179 just talked about crypto custody and the fact that, if you're a bank that want to engage in this activity, you need to get a written supervisory non-objection. But from a different perspective, certainly the former acting comptroller of the OCC spoke on many occasions about his concerns around the lack of interoperability around certain crypto assets, in particular, stablecoins. He talked about hacks. He talked about when those bankruptcy cases filed, the crypto winter and the after effects.

I think that there was this broader, I don't know if you want to call it allergy or something, following the crypto winter, a lack of, as we said before, just a lack of, in part, understanding of the technology in some cases, and a general desire to not let this activity creep into the perimeter that these agencies supervise. I mean, there are really good policy debates about whether that even makes sense, because presumably, if you can't see the activity, you want to be able to see it. The way to do that is to bring it in, and to let banks do it using the process of ordinary supervision.

I think these are super interesting issues. I think to the extent that de novo applications truly do open up. I agree with Matt, that we're likely to see innovative business models that in some way touch crypto, and we may as a result see increased competition by new banks who want to do what Anchorage is doing, or what Bank of New York, Mellon, and U.S. Bank, and all the large custodians also want to do. More competition for the activity could be a good thing. Of course, there are plenty of state-chartered entities that are not banks that do crypto custody. Some of them are limited purpose trust. They're likely will be at some point in the future a proliferation of entities, state, or federally-chartered entities that are engaged in some kind of crypto custody activity. That's sort of the market result that I expect as a result of this broader openness to chartering.

**Ethan Ostroff:**

I thought it was interesting that Chairman Powell, I think at the end of January, had a press conference and talked about cryptocurrency risks. I think he was touching on what was outlined by the Financial Stability Oversight Council's annual report. He downplayed the issue of debanking of crypto customers and said something to the effect of, banks are perfectly able to serve cryptocurrencies, and a good number of banks they regulate and supervise already do that.

**Alexandra Barrage:**

Well, maybe his position has modified a little bit over time. Because when he testified last week, he is on record saying that like the banking is a thing that they are looking into, that they are taking seriously. A few days ago, Vice Chair Michael Barr came out with a speech and basically said, "I don't think this happened." And by the way, the Fed does not discourage specific types of entities from being banked. So, I feel like if I'm stepping back, I'm hearing different messages from people at the Fed, which would not be a first.

**Matt Bornfreund:**

I think you have to disambiguate some of these things. So, there's the question of banks providing traditional banking services to companies that engage in crypto activities, and then,

there's also banks engaging in these activities themselves. And the degree to which actual debanking has happened or actually seeing is worries about other kinds of risks that potentially cannot be managed to things like BSA/AML risk.

On the one hand, you have the OCC, that 1179 interpret letter that we've mentioned a few times. That was November of 2021. So, that was about a year into the Biden administration. What that letter actually did was it clarified that there was three previous interpretations that had come out from the OCC and said that banks for themselves can engage in certain kinds of cryptocurrency activity. Particularly, trust activities holding crypto in custody and functioning as nodes. It layered on this additional aspect and said, "Yeah, we're not saying that banks are not allowed to do those things themselves. What we're saying is that, if you're going to do them, you have to do it consistently with your safety and soundness obligations, which includes BSA/AML.

So, I think what you saw in the background was a lot of banks who wanted to engage in the activity but felt that they couldn't manage the risks in the way that the regulators wanted them to manage the risks. So, what comes out of that is different views. If you are of the opinion that The product you're providing is not one that's risky, and all you want from your bank are cryptocurrency company, and all you want from your bank is like a settlement account. That bank tells you no. It feels like the industry is being told, "No, we can't bank cryptocurrency" even if the bank wants to. So, for them, that feels like debanking.

But from the regulator standpoint, what they're trying to say is, "Look, we've always said that a bank is allowed to provide these services to cryptocurrency companies, as long as they can do it in a safe and sound manner. It's not our fault that you can't do it in a safe and sound manner." So, a lot of this is like, how much weight do you want to put on this phrase debanking versus, where is the emphasis? Is it a bank that wants to engage in it as principal, versus a bank that wants to provide these services to cryptocurrency companies, and where are the different risks? It may actually be the case that it is less risky for a bank to act as a custodian for cryptocurrency, than it is for a bank to provide on-ramps and off -ramps to some other cryptocurrency company.

**Alexandra Barrage:**

You mentioned 1179. Thanks for breaking it down so well. It's been a pain point for the industry, so much so that several weeks ago, Coinbase, early February submitted a letter to the OCC requesting – well first, saying, there was a need for regulatory clarity, and urging the FDIC, and the OCC, and the Federal Reserve to confirm a couple of things. The first was to confirm that banks are permitted to offer crypto custody services, either directly or through established third parties. So, it wasn't just the custody of the crypto, it was actually enabling the buying and selling of crypto by banks.

The second ask was, remove the, "a lawful inconsistent impediments" for those service providers to partner with banks. What's interesting about this letter is, it's coming just right on the heels of the new administration. It's backed by a significantly detailed legal analysis on why banks should be able to do crypto custody activities. It's exceptionally well done. But it's only technically looking at 1179, it doesn't address the other parallel issuances at the other agencies.

That letter goes out, it's on Coinbase's website and a number of the leading figures. Coinbase did publish the letter both on LinkedIn and X. Following that letter, and likely, also happening in parallel, we saw the American Bankers Association, the Association of Global Custodians, BPI, which is made up of many large banks, the largest banks, SIFMA, the Financial Services Forum, and the Clearing House.

Basically, the epitome of TradFi plus a focus on custody trigger. They sent a letter to the new special advisor for the artificial intelligence and crypto, that's David Sacks, the czar, I think is what he's known as. Basically, they made a couple of asks there. They asked that David Sacks, re-review and rescind policy statements and guidance issued by all federal banking agencies, so not just any one, particular one, hamstring the bank's ability to operate in the digital asset space. They're going beyond the ask of Coinbase. They're going much broader than that.

Secondly, these group of very large banks requested that within the working group, the cryptos are, David Sacks, which was set up by an executive order pretty early on in the second Trump administration, that they please add the federal banking agencies to that list of agencies that can be part of that much broader working group. So, in that respect, it also went beyond the Coinbase letter that preceded it. It talks about a myriad of policies and guidance in letter. It's fascinating to see, and I always think this is really interesting, all the different entities at – the master to the first page that are united on this issue.

Well, this too, I submit, is a pretty important change in tone. It's not just the administration that's changing tone. It's the largest banks that now see that SAB 121 is no longer. The largest banks that had been set up to do crypto custody years ago are picking up their pencils again. It's time to get in there, and the banks are just unanimously wanting to do that. That's what this letter from BPI represents.

I would say, the Biden administration, there was a slightly different tone, which was, in many cases, just bashing crypto for the crypto winter that they caused, which is kind of an unfair characterization, but I'm parroting the view. So now, you have banks saying, "Wait a second, we should be able to do this. Get rid of these gates, tear them down, let's do it." So, I think what's super interesting, again, with this intersection of traditional finance and crypto, is how allied these two very different organizations in this ask of the White House and the Federal Banking Agency.

So, I'm going to pause there because that's a pretty pivotal moment if you're just comparing where we are today versus where we were two months ago. Matt, you're nodding your head. I'm sure you have many thoughts.

**Matt Bornfreund:**

I'm just agreeing, because again, the change is so significant across all aspects. The change at the government's tone, the change in the way large banks are looking at this and approaching it, the change in the posture of trade organizations, it's up and down. It's changed attitudes over the last month, 180 degrees.

**Alexandra Barrage:**

I think there's even more change. We haven't talked about the third branch of our government, the legislative branch. Well, yesterday I attended virtually, hearing at the Senate Banking Digital Asset Subcommittee on stablecoin legislation. Something that is very near and dear to my intellectual heart and to where I think the future of crypto is headed very soon. There, again, if you compare the stablecoin bills from earlier this year to the ones even from two or three years ago, and you track the different voices at the Senate on what should we do with crypto, it's changing. We're seeing just over the past month, bipartisan proposals, we're seeing democrats interested in joining those proposals, so long as issues are addressed. And we're also seeing a very clear imperative from the White House to get stablecoin legislation done, and then, broader markets infrastructure legislation done.

All of these pieces put together, this openness by the agency heads, the White House imperative, and now, legislation that appears to be pretty aligned and fairly close in terms of passage, it's a new world, and its exciting times to be at the forefront with clients who now are saying, bank clients, "We want to get in there. We want to do this." And our crypto clients are saying, "How do we partner with banks in doing this?" So, it's almost like third-party risk management all over again with a slightly different set of

players and different activities, but the same kind of thing.

**Matt Bornfreund:**

Yes. There is a good point about the voices that are involved in that legislation. What I think is also interesting is, to my eye, the proposed legislation is also more sophisticated than previous versions. It almost seems like it's closer to being passage ready than what the other ones were. That to me says that this is something that is ready to go and we might actually see it more quickly. Interestingly, though, in that legislation, there are still some actual risk management procedures. They haven't thrown open the gates to say, this is open season. What appears to be happening is that, we're actually moving forward with a properly established industry as opposed to the darkness that everyone's been living in for the previous four years, where it wasn't clear whether it was permissible or impermissible. Was it part of the regulatory world? Was it not part of the regulatory world?

Well, I think we're going to see that as being brought in to the proper financial system, and that's good for growth and innovation, I think, for everyone.

**Alexandra Barrage:**

I think it's also good for competition, Matt. Traditionally, stablecoins, payments stablecoins, they're basically two issuers across the world that dominate this market. I think, legislation will not only provide clear guardrails and give some legitimacy to this market to all the skeptics out there, and there are many of them. But importantly, to our clients, it will open up more entities that want to do this issuance, including banks, including credit unions, including state-chartered entities. So, again, I think the broader point is, we're going to see more players. Those players are going to be falling within either a state or a federal regime, or both, depending on how things work out. We might see a payments charter. I think that would likely be led by the OCC, and

buying whatever is ultimately confirmed. Looks like that's going to be Jonathan Gold. He's been nominated for that position.

If you follow this stuff closely and you take the time to read the legislation as we have, you can pretty clearly predict who this new group of stakeholders are going to be. I think for a future podcast, because otherwise, we'd be here for a couple hours, but we're thinking long and hard about entities that want to play in the crypto space or even stablecoins, and whether they should be, and how they should be putting together their strategy right now in anticipation of the legislation that Matt and I think is going to happen fairly soon.

**Matt Bornfreund:**

Interesting holdover. Also, you mentioned the payments charter. That was floated in the closing days of the previous administration, right? It is interesting how there are a few things that are going to stay. So. that's why I keep coming back to the idea that it doesn't mean that there's no rules, it doesn't mean that it's open season to do whatever you want. It's just that there's been a dramatic shift in the tone and an openness to seeing what could be done seeing what's possible. Some of the things that were actually done right under the previous administration may actually find new life. So, the payments charter you mentioned, that was proposed by treasury with what, a month left in the term? So, hopefully, that actually gets some more legs. And instead of just being a nice idea, maybe turn it into a reality.

**Alexandra Barrage:**

Yes. Maybe there's a pathway for master account holders for non-banks. Lots of things in the mix and lots of things to talk about for next time.

**Ethan Ostroff:**

I appreciate very much the conversation today, Alex and Matt, and thank you for joining us. Thanks to our audience for listening to today's episode. We're certainly following all these things closely and interested in hearing from our listeners as well about what they're thinking about and things they want to hear from us about as well. Don't forget to visit our blogs and subscribe so you can get the latest updates. Make sure to subscribe to this podcast via Apple Podcast, Google Play, Stitcher, or whatever platform you use. We're looking forward to our next episode.

**Alexandra Barrage:**

Thank you.

**Matt Bornfreund:**

Thanks.

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