One Mission. Community Banks.

February 2024

ICBA Regulatory Update: Digital Assets

Topic/Issue: Digital Assets

Agency: Treasury, IRS, IOSCO, FinCEN, Basel Committee (BIS)

Status:

- The Treasury Department and the Internal Revenue Service released a request for comment on proposed regulations on the sales and exchanges of digital assets by brokers. It proposes an expansive definition of broker that would include, among others, crypto payment processors and decentralized exchanges. It also poses questions about tokenization activities by financial institutions. ICBA is currently assessing impacts to community banks and a potential response. Comments are due by November 13.

- The International Organization of Securities Commissions (IOSCO) released a consultation paper on policy recommendations for decentralized finance (DeFi). ICBA responded to the proposal by encouraging IOSCO to continue its work to ensure regulatory harmony across its member jurisdictions. We expressed strong support for markets regulators to exercise their regulatory and enforcement capabilities because we believe that most cryptoassets qualify as securities; therefore, entities involved in the crypto space should adhere to relevant securities laws and regulations.

- In response to growing concerns about money laundering and other illicit activities, FinCEN published a proposed rule to classify the use of cryptocurrency mixers as a "primary money laundering." Cryptocurrency mixers are services designed to make cryptocurrency transactions untraceable, and they are frequently used by ransomware operators, North Korean agents, and other bad actors. This NPRM represents the first time that FinCEN argues that an entire class of transactions should be classified as a "primary money laundering concern." ICBA is reviewing the NPRM, and we will work with members to assess potential impacts to community banks. Comments are due by January 22, 2024.

- The Basel Committee has issued a consultation paper on the disclosure of banks' cryptoasset exposures. This follows the group's earlier work to establish prudential standards for the treatment of cryptoassets. The new proposal sets forth a template for banks to publish critical information about their cryptoasset activities, including quantitative data on their exposure and any related capital and liquidity requirements. ICBA is currently studying the proposal to consider community bank impacts. Comments are due by January 31, 2024.

ICBA Position:

- Unregulated cryptocurrency threatens to disintermediate community banks and undermine their ability to provide funding to support local economic activity, growth, and development.

- ICBA encourages regulators to collaborate on a comprehensive approach to prevent the rise of decentralized finance (DeFi), a shadow banking system filled with unregulated, decentralized platforms that pose risks to consumers, the financial system, and U.S. national security.

- ICBA opposes the creation of a Central Bank Digital Currency (CBDC) because the associated risks would outweigh its potential benefits. The policy goals that have been articulated in support of a CBDC would best be addressed through alternatives that are readily available in the market today.

Key Talking Points

- ICBA supports the work of the SEC to strengthen regulatory frameworks for cryptoassets. In a recent comment letter, ICBA agreed with the SEC's effort to refine the definition of "exchange" to include DeFi protocols as our members believe most cryptoassets likely qualify as securities.

- ICBA and its members oppose all forms of central bank digital currencies. CBDC would disintermediate community banks. Such an outcome could harm their ability to provide credit in their communities, thus leading to more significant economic consequences for the US.

- Policymakers should start by focusing on the gravest risks posed by crypto: its role in facilitating financial crimes. Protecting national security and implementing anti-crime measures should be primary drivers of cryptocurrency policymaking and regulation.