

Cozen Currents: Congress' Remaining Summer Agenda

The Cozen Lens

- There remains high bipartisan interest in creating a regulatory framework for digital assets in the US as both the House Financial Services Committee and House Agriculture Committee intend to mark up a stablecoin bill and broader crypto market structure proposal next week.
- It's "ESG month" in Washington as the House GOP demonstrates how it would regulate companies' actions on environmental, social, and governance issues given the chance in 2025.
- The US has historically not regulated emerging technology as aggressively as Europe, instead taking a more cautious approach focused on supporting innovation and getting it right rather than being first.

Congress Tackles Crypto (Again)

Stabilizing Stablecoins. Of the two crypto-related bills expected to be marked up in the House Financial Services Committee (HFSC) in the near future, the stablecoin proposal has a better chance to attract bipartisan support.

- HFSC Chair Patrick McHenry (R-NC) and Ranking Member Maxine Waters (D-CA) appeared to have an agreement on a stablecoin draft last year, but talks fell apart with pushback from rank-and-file committee members at the top-down process. The main sticking point has been the role of state regulators.
- McHenry has already released one attempt at a compromise draft last month and it is possible that another version will be published before the markup this month. Waters and Democrats seemingly balked at the new version. The changes include increasing the Fed's role to oversee state regulators to assuage Democratic concerns.
- Further amendments during the markup are possible as members of both parties continue to consider the bill and receive input from industry members and other stakeholders. McHenry appears to want to get bipartisan backing for the bill, but is doubtful to approve revisions that would jeopardize the chances it passes the committee.

Out with the SEC, in with the CFTC. The more expansive proposal from House Republicans is their crypto market structure bill, which includes redefining commodities and securities, and it will face an uphill battle.

- Democrats have not dismissed this bill entirely, but have signaled that there are significant changes that they would want to see made to support it. These include concerns about the safe harbor that would be created for provisionally registered firms while the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) work to finalize implementing regulations. No revised drafts have been released yet and while one may not be published prior to the hearing, it seems probable that the markup will be based on a new version.
- Depending on the changes made, it is possible that the committees could see different levels of minority support as Democratic members of the House Agriculture Committee have tended to be more open to backing this bill. This is likely due at least in part to the opportunity to grow the committee's crypto jurisdiction with the expansion of the CFTC's role whereas Democrats on the HFSC have been more focused on protecting the SEC's jurisdiction.



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Senate Re-enters the Arena. Amidst this progress in the House, the Senate has been fairly quiet, although a bipartisan pair of senators are expected to re-introduce an updated version of their own comprehensive legislation this week.

- Senators Kirsten Gillibrand (D-NY) and Cynthia Lummis (R-WY), previous sponsors of a comprehensive regulatory framework for digital assets, are reportedly set to re-introduce a new version of their bill tomorrow. The revised proposal will emphasize consumer protection and registration requirements, but is still being framed as all encompassing. The bill will likely mirror aspects of the House legislation, a sign of bicameral unity on certain aspects of crypto regulation.
- Bipartisan support in the House may not necessarily spell success for the legislation in the Senate Banking, Housing and Urban Affairs Committee. Chair Sherrod Brown (D-OH), a crypto skeptic, has expressed interest in addressing stablecoins previously, but with no draft of his own, uncertainty lingers around what his legislative red lines are.
- While this latest effort is unlikely to result in comprehensive legislation being passed into law this Congress, both its substantive nature and the extent of its procedural progress will be good indicators of what the contours of ultimate legislation addressing the digital assets space will look like.

July is ESG Month

House Republicans Unveil Proposals. The GOP has a busy schedule ahead of them as they move to crack down on environmental, social, and governance (ESG) investing.

- The House Financial Services Committee has four hearings scheduled this week on ESG and proxy voting this week as part of a themed month on these topics. In the background, bills are being written piecemeal that would address individual areas of GOP concern. A tentative schedule has the committee voting on these bills on July 26th.
- A working group on the topic *revealed* just where Republicans currently stand on this issue. Most of the listed reforms are modifications of Securities and Exchange Commission regulations, making ESG shareholder proposals more difficult to suggest and requiring greater oversight of proxy advisory firms and asset managers.
- These bills may pass in the House but face no chance of becoming law under divided government. However, they cumulatively represent an indication of what Republicans would do in 2025 given the opportunity. The bills written today will serve as the basis for laws under future GOP administrations.

Navigating a Difficult Political Environment. Firms in every industry are trying their best to avoid becoming this week's cause célèbre in the all-encompassing culture wars.

- Boycotts, protests, angry letters — none of these are new to doing business. What *is* novel is the expanding universe of politically relevant topics. Corporations also have to shore up their flanks from a demographic that has traditionally been pro-business: Republicans.
- This month, that means Republican leaders are laser focused on ESG, putting financial services companies on their back foot. Partly due to negative political pressure, investment flows to US sustainable funds were *negative* last year for the first time in a decade per Morningstar. BlackRock CEO Larry Fink has *dropped* "ESG" from his vocabulary on account of its politicization, and asset managers are *retreating* from activist shareholder measures.
- Focus is by no means exclusive to ESG or being driven from the top alone. Anheuser-Busch lost billions in value and Bud Light its top position in the American beer market following a *conservative backlash* to a marketing campaign that gave a personalized beer can to a transgender online personality. Target became the subject of a boycott over putting LGBTQ-themed merchandise in their stores during Pride Month.

The Future of ESG. Hedging political fallout is part of the cost of doing business in 2023, and it's not going away anytime soon.

- There's already a backlash to the backlash to ESG. Florida Governor and presidential candidate Ron DeSantis (R-FL) is posing as a proud cultural warrior by passing strong

anti-ESG measures and taking on Disney. This has led to other candidates pushing back and mocking Disney's lawsuit against his state. Democratic states, meanwhile, have been passing pro-ESG bills.

- Right now, the dynamics of the Republican presidential primary promote anti-ESG sentiment. According to a Gallup poll in May, most people, even Republicans, aren't too tuned into the term or have an opinion on it. However, with candidates trying to prove they are the most conservative in the race and anti-wokeness reigning supreme, the poorly defined boundaries of what "woke" even is are ripe for expansion.

Transatlantic Differences on Tech Standards

Data Privacy. The European Union (EU) has moved quicker than the United States to pass rules regulating the use of consumer data.

- Late last month, the EU reached agreement on the Data Act, which enacts protections on data generated by smart objects, devices, and the Internet of Things. This builds on the EU's General Data Protection Regulation, which took effect in 2018 and governs firms' handling of user data.
- By contrast, the U.S. Congress has been unable to produce a nation-wide data privacy framework. Instead, privacy reforms have largely come on the state level, most notably in California, which due to the size of its market has become a de facto national standard. Per a court ruling last month, the California Privacy Protection Agency will be blocked from enforcing rules that had been set to go into effect on July 1st until March 2024.
- The United States and EU yesterday announced a deal to manage transatlantic data flows. Last week, the federal government took necessary steps to enact the agreement, including new procedures from intelligence agencies and a Justice Department designation for European countries. Historically, European concerns about US intelligence agencies' handling of their citizens' data has been a stumbling block. Once in effect, the US-EU Data Privacy Framework would end the environment of uncertainty that businesses are currently operating in. This would give Meta, fined \$1.3 billion by EU regulators this spring over transfers of European Facebook users' data to the United States, and other companies a stronger legal basis for their operations. The EU could reportedly approve the agreement as early as this week.

Artificial Intelligence (AI). On AI, the EU has pursued more aggressive regulation, while the Biden administration has opted for a lighter touch, but the two sides are working together on this quickly emerging technology.

- Last month, the EU Parliament voted in favor of the AI Act, which regulates use of the technology based on risk. Some AI would be banned, such as a system predictive of criminal behavior, while others would be limited, such as a system that could influence election outcomes. The legislation would also require products of generative AI to be labeled as such and for companies to release summaries of the copyrighted material used in training AI systems.
- In the United States, Senate Majority Leader Chuck Schumer (D-NY) recently launched his SAFE Innovation framework for AI regulation and called for Congress to hold "AI insight forums" with experts including tech and labor representatives as an alternative to hearings, but this effort is still in the early stages. Schumer is holding the first ever-classified all-senators briefing today with the Intelligence Community to educate lawmakers on how AI is being deployed.
- So far, the Biden administration has largely focused on developing voluntary guidance for companies on AI, but the release of requests for public comment in recent weeks and months suggests that more binding rules may be on the horizon.
- At the end of May, US and EU representatives met for a meeting of the US-EU Trade and Technology Council and announced three expert-level groups to work on AI terminology, standards for trustworthy AI and risk management, and monitoring of AI risks. The two sides are also at work on a voluntary code of conduct to govern the emerging technology in the time before the EU's AI Act takes effect. In a late May news conference, Margarethe Vestager, the EU's digital commissioner, said "within the next weeks we will advance a draft of an AI code of conduct," though the document has not

yet been announced.

Crypto. The EU passed its sweeping Markets in Crypto Assets regulation earlier this year, but work in Congress suggests that the US may not be too far beyond with its own regulatory framework.

- The EU's new rules are not set to take effect until before next July with some not even coming into force until January 2025. The regulations are comprehensive, addressing stablecoins and creating rules for providers of crypto-related services, including exchanges, traders, custody providers, advisors, and providers of transfer services. Also addressed are consumer protection rules, including requirements to protect consumer funds.
 - While the US has yet to pass its own comprehensive legislation, work is gaining momentum to do so. Two House committees are set to have mark-ups of crypto legislation, both of which could see floor votes later this month or in the fall and may attract some bipartisan support. There is also an increase of crypto-related activity in the Senate where Senators Cynthia Lummis (R-WY) and Kirsten Gillibrand (D-NY) are expected to re-introduce their comprehensive proposal tomorrow.
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