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REGULATORY BRIEFING

How Crypto Regulation Has Evolved in 2026

Understand the evolving SEC/CFTC framework following the Senate's failure to advance the CLARITY Act failure.

By the Abra Advisory Team · September 2026

ABRA CAPITAL MANAGEMENT, LP

01 Context and Executive Summary

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The September 15, 2026 Senate vote fell short of the threshold to advance the CLARITY Act, leaving the proposed market-structure overhaul unenacted. Agencies continued to act under existing authority. This report examines those changes, their practical implications and the questions institutions and investors should still assess. [1]

Executive Summary

01 **Regulatory pathways are more specific.** SEC and CFTC actions address token classification, tokenized stock venues, software interfaces, collateral and records. The post-vote September updates add useful operating detail, while each pathway retains its own conditions. [3] [5] [8]

02 **Institutional access is broadening.** Major banks now participate across trading, custody, reserves and payments. Named audit engagements also show that large U.S. accounting firms are serving the sector. These developments broaden the range of service providers available for certain digital-asset activities. [21] [47] [52]

03 **A stronger record may matter in future disputes.** Prior guidance and reasonable reliance can be relevant to fair notice, enforcement remedies and policy reversals. Outcomes remain fact-specific; neither today's guidance nor institutional adoption guarantees future legal treatment. [54] [56]

Coordination Provides the Foundation

The March SEC-CFTC memorandum covers rulemaking, data sharing, examinations and enforcement, including firms supervised by both agencies. It may reduce conflicting demands and duplicative work, without changing statutory jurisdiction or ruling out parallel proceedings. [2]

> **REPORT GUIDE**
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> Regulatory actions, pp. 3–7; audit access, p. 8; enforcement and durability, p. 9; institutional adoption, p. 10; client considerations, p. 11; linked sources, p. 12.

Scope: U.S. federal developments and selected institutional examples, as of September 29, 2026. Educational analysis only; not legal, regulatory, tax or investment advice. Interpretations, orders, staff positions and proposals carry different legal weight.

02 Asset Classification

CLASSIFYING THE ASSET AND THE TRANSACTION

The March 17 SEC interpretation, joined by the CFTC, distinguishes a crypto asset from an investment contract involving that asset. A token that is not itself a security can still be sold through a securities transaction. The interpretation also addresses when that investment contract can end, and covers airdrops, protocol mining, staking and wrapping. [3]

The Five-Category Framework

Category	What the framework describes
Digital commodities	Assets associated with the operation of a functional crypto system; value derives from that system and market forces rather than essential managerial efforts.
Digital collectibles	Digital objects valued for artistic, entertainment, social or cultural qualities, without ownership rights in a business.
Digital tools	Practical instruments such as memberships, tickets, credentials and title records.
Stablecoins	Assets designed to maintain a stable value. Treatment depends on their structure and the applicable stablecoin framework.
Digital securities	Securities represented in crypto form. Tokenization does not remove their securities-law character. [44]

What the September 25 and 28 FAQs Add

Issuer promises: Whether promises have been fulfilled depends on what the issuer actually undertook to do. A new party assuming those promises does not, by itself, end the investment contract.

Staking receipts: A qualifying receipt evidences ownership of deposited assets and rewards without changing underlying rights or adding benefits. The described structure does not permit the issuer to lend, pledge or rehypothecate deposited assets.

Continuing development: Staff discusses maintenance, security and improvements after a system becomes functional, distinguishing them from essential managerial efforts promised to build it.

Buybacks: The September 28 revision confines the favorable example to a functional system with no central party. A buyback marketed as yield on a nonfunctional system presents a different analysis. These are staff views, not binding rules. [9]

FOR INSTITUTIONS AND INVESTORS

Ask for the analysis of both the token and the transaction. A classification label alone does not answer how the asset was offered, what a promoter promised, or what a staking or yield arrangement adds.

A useful diligence record connects the actual asset rights, marketing, network operation and service agreement. The March interpretation is a Commission position; the September FAQs are staff guidance. Neither should be described as a court judgment on every token.

03 SEC Market Access

TRADING AND CAPITAL FORMATION

SEPTEMBER 17, 2026 · CONDITIONAL EXEMPTIVE ORDER

A Five-Year Route for Tokenized U.S. Stocks

The SEC issued an Innovation Exemption for qualifying Tokenized Securities Venues using permissioned automated market-maker pools. It provides exchange-definition relief for eligible venues and dealer-definition relief for qualifying proprietary liquidity providers. The order lasts five years from publication, subject to its terms. [5]

Its safeguards include limits on stocks and trading volume, equivalent shareholder rights, public and auditable smart contracts, trading halts coordinated with the primary exchange, and public operating disclosures. Unaffiliated third-party tokenization requires issuer notice and an opportunity to object. [5]

> **INSTITUTIONAL IMPLICATION**
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> This creates a concrete route to assess for onchain equity infrastructure. A venue must map its operating model to the order, including pool access, liquidity provision, issuer rights and surveillance. A tokenized stock remains a security.

> **INVESTOR IMPLICATION**
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> Check whether the instrument actually carries the shareholder rights of the underlying stock, who maintains the ownership record, how trading can pause, and how the token is redeemed or transferred. The word “tokenized” does not answer those questions.

AUGUST 18, 2026 · PROPOSAL

Regulation Crypto Assets: Two Proposed Offering Routes

The SEC proposed exemptions for certain investment contracts involving crypto assets: up to $5 million over four years and up to $75 million in each 12-month period. Issuers would make principles-based disclosures and remain subject to antifraud and antimanipulation provisions. A conditional investment-contract safe harbor is also proposed. Comments are due October 20, 2026. [10]

For issuers and allocators, the proposal helps identify the agency’s direction on capital formation and the transition from an investment contract to a functioning network. It is not a currently available exemption merely because the SEC has published it.

Why this matters: The proposal identifies potential operating and disclosure pathways in advance. That may give institutions an additional basis for product design and diligence beyond trying to infer boundaries solely from enforcement cases.

04 CFTC Operations

SOFTWARE, COLLATERAL AND BLOCKCHAIN RECORDS

September 17: Broader Relief for Passive Software

Staff Letter 26-25 extends relief beyond the earlier Phantom-specific letter to qualifying passive software providers and relevant personnel. Covered activity includes interfaces that connect users to registered futures brokers and designated contract markets. Staff will not recommend enforcement for specified introducing-broker or associated-person registration failures when the conditions are met. [6] [35]

Providers cannot hold customer assets, generate buy/sell signals or exercise order-routing discretion. Conditions include conflict and risk disclosures, direct customer access to the registered firm, compliant marketing, records and notices. The provider and participating registrant must undertake joint and several liability for covered violations. [35]

> WHAT THIS MEANS
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> Wallet and interface developers have a clearer path to connect customers with regulated derivatives markets. The relief is conditional and staff-level; the customer's broker, clearing arrangements and trading permissions remain central.

September 24: Four New Answers and a Margin Update

Q12, customer-fund investments: Futures commission merchants (FCMs) and derivatives clearing organizations (DCOs) may use tokenized versions of investments already permitted by Regulation 1.25. Equivalent legal and economic rights, investment limits and an acceptable depository remain required. Eligible government money market fund holdings also require a custodian acknowledgment.

Q13 to Q15, records: Blockchain records can meet Regulations 1.31 and 45.2. Staff does not object solely because an offchain duplicate is absent, but firms must still retain and produce records during network or block-explorer outages.

Updated Q5, uncleared swaps: Tokenized eligible collateral can qualify when it preserves equivalent rights and meets the rules. Crypto assets, including payment stablecoins, remain outside the eligible margin list. Staff FAQs do not amend the regulations. [36]

Three different uses, three different tests: Accepting an asset as customer margin, investing customer cash, and posting margin for an uncleared swap are separate activities. Permission for one does not automatically cover the others.

The Earlier Collateral Relief Behind the FAQs

Letter 26-05, reissued February 6, permits conditional treatment of certain non-security digital assets as FCM customer margin, with valuation and haircut requirements. The initial three-month phase limits eligible crypto to payment stablecoins, Bitcoin and Ether and adds reporting and incident notices. It also permits qualifying proprietary stablecoins as residual interest in segregated accounts. [37]

A separate crypto markets initiative entered OIRA review September 17. The September 25 listing identified a prerule under review, not an effective rule or new license. [7]

05 Custody + Registration

CUSTODY AND REGULATED ENTITIES

State Trust Companies: A Defined Custody Pathway

On September 30, 2025, SEC Investment Management staff provided conditional no-action relief for registered advisers and regulated funds treating qualifying state trust companies as banks for specified crypto custody requirements. The relief gives institutions a clearer basis for evaluating these custodians. [4]

01 **Annual due inquiry.** Confirm state authority and review safeguards, including private-key protection and cybersecurity, before engagement and at least annually.

02 **Independent evidence.** Review GAAP audited financial statements and an independent controls report covering design and operating effectiveness.

03 **Contractual restrictions.** Require segregation from the trust company's assets and restrict lending, pledging or rehypothecation without prior written consent for the client's benefit.

04 **Client interests and disclosure.** Assess best interests and disclose material custody risks. The letter does not displace other applicable custody obligations. [4]

For a client, these are diligence inputs to request from an adviser, rather than assumptions to make from the phrase "qualified custodian." Staff relief does not determine every insolvency issue, insure the asset, or guarantee its recovery.

SAB 122 Removes a Separate Accounting Obstacle

In January 2025, SEC staff rescinded SAB 121, which had required a safeguarding liability and corresponding asset for covered customer crypto arrangements. SAB 122 directs entities back to applicable accounting standards, including evaluation of loss contingencies and appropriate disclosures. This reduces a specific balance-sheet obstacle to custody services; it does not remove ordinary capital or risk obligations. [17]

The CFTC Is Already Registering Crypto Businesses

Entity / status	What the record demonstrates
Gemini Titan / DCM	Designated a contract market on December 10, 2025: an actual exchange authorization. [18]
Coinbase Derivatives / DCM	Listed in the CFTC designated-market register. This is an existing derivatives-market pathway, not a new blanket spot-market license. [19]
Crypto.com Derivatives North America / DCO	Registered clearing organization with permissions for margined futures and specified fully collateralized products. [20]

Verify the entity and the activity. An exchange designation, a clearing registration, adviser registration and a custody permission solve different problems. None automatically covers every affiliate, token or product sold under the same brand.

06 Banking Policy

BANKING PERMISSIONS AND STABLECOINS

Token classification is only one part of an institution's operating environment. Banks also need a basis to provide custody, execute customer instructions, hold tokenized instruments and connect clients to payment systems.

Agency action	What changed and why it matters
OCC / Mar 7, 2025	Letter 1183 reaffirmed permissible custody, certain stablecoin activities and distributed-ledger payments for national banks and federal savings associations, removing prior supervisory non-objection. [38]
OCC / May 7, 2025	Letter 1184 confirmed customer-directed trading of custodied assets and outsourcing of permissible crypto activities, with appropriate third-party risk management. [39]
FDIC / Mar 28, 2025	Rescinded prior notification. Supervised banks can conduct permissible crypto activities without prior FDIC approval, while managing associated risks. [40]
Fed / Apr 24, 2025	Withdrew the 2022 advance-notification guidance and the 2023 dollar-token non-objection process. The agencies also withdrew their 2023 joint crypto risk statements. [13]
Fed / Aug 15, 2025	Ended the separate Novel Activities Supervision Program and returned oversight of those activities to the standard supervisory process. [41]
All three / Mar 5, 2026	Clarified that eligible tokenized securities generally receive the same capital treatment as their traditional equivalents. The capital framework is technology neutral; risk-management obligations remain. [42]

INSTITUTIONAL IMPLICATION

These changes remove special procedural obstacles and clarify existing powers. Banks still need to establish that an activity is permissible for their charter, implement controls and satisfy supervisors. Service availability will therefore differ by institution.

GENIUS Is a Separate Statutory Development

Congress enacted the GENIUS Act on July 18, 2025, creating a payment-stablecoin framework that includes issuer approval, reserve and redemption requirements. The CLARITY setback did not repeal that law. The OCC issued an implementation proposal on February 25, 2026; that proposal itself is not a final rule. [43] [45]

Institutions evaluating a stablecoin need to check its issuer, reserves, redemption terms and applicable implementation dates. A stablecoin, a tokenized bank deposit and a tokenized money market fund are different legal claims even if each aims to move dollars efficiently.

Client implication: More banks can evaluate digital asset services within familiar supervision. That can broaden provider choice and institutional participation, while leaving the quality of each service and its protections to be examined.

07 Audit Access

INDEPENDENT ASSURANCE AND ACCESS TO AUDITORS

Kraken's Account of the Earlier Pressure

In July 2026, Kraken said its parent, Payward, had won a $22 million arbitration award against Mazars USA and sought entry of judgment in Delaware. According to Kraken, Mazars withdrew in December 2023 from the nearly completed audit of its 2022 financial statements, citing legal uncertainty after the SEC sued Kraken. [46]

Kraken's co-CEO said he believed the auditor had been pressured as part of a wider effort to cut crypto firms off from essential services. The alleged pressure is Kraken's account; its public statement does not establish a judicial finding that government officials directed Mazars to resign. [46]

Documented U.S. Audit Engagements Today

Client / auditor	Evidence and scope
Tether / KPMG U.S.	Tether announced in August 2026 that KPMG U.S. completed an audit of Tether International's 2025 financial statements and issued an unqualified opinion. This is a company-reported financial statement audit, distinct from reserve attestations. [47]
Coinbase / Deloitte & Touche LLP	The signed auditor reports in Coinbase's 2025 Form 10-K cover its financial statements and internal control over financial reporting. Deloitte has served since 2020. [48]
Circle / Deloitte & Touche LLP	Circle's 2026 proxy identifies Deloitte as its independent registered public accounting firm since 2023 and its appointed auditor for 2026. [49]

These engagements illustrate participation by established audit firms in parts of the digital-asset sector, with some relationships continuing across administrations. Named firms, signed reports and can provide institutions with additional diligence information when evaluating service providers.

Professional scrutiny remains necessary: the 2024 Prager Metis settlements concerned alleged FTX audit failures and independence violations, distinct from pressure to abandon an industry. [16]

Client implication: Ask what was examined, which legal entity and period the report covers, and what opinion was issued. A financial statement audit, a reserve attestation and a controls report answer different questions; none guarantees investment performance or recovery of assets.

08 Enforcement + Policy Durability

HOW PRIOR GUIDANCE MAY AFFECT FUTURE ENFORCEMENT

There is precedent for regulatory uncertainty affecting sanctions and, in some cases, defeating enforcement for lack of fair notice. The relevant question is whether the requirement was reasonably knowable when the conduct occurred, rather than whether policy changed at some later date.

Three Cases Illustrate the Distinction

> ***Upton v. SEC | Second Circuit, 1996.*** *In a broker-dealer reserve case, uncertainty contributed to the administrative judge's choice of censure rather than suspension. The appeals court then vacated the SEC order: the agency's changed enforcement position had not been reasonably communicated. This is a securities-law example of both mitigation and a successful fair-notice challenge.* [54]

> ***FCC v. Fox | Supreme Court, 2012.*** *The Court held that broadcasters lacked fair notice that the challenged broadcasts would violate the FCC's changed indecency policy. It rejected that retroactive application while leaving the agency free to modify policy prospectively within legal limits.* [55]

> ***SEC v. Binance | District court, June 2024.*** *The court acknowledged that the SEC's crypto position had evolved but rejected fair notice as a basis for dismissal. Prior cases, published guidance and allegations of the defendants' awareness supported notice. Changing agency positions therefore do not automatically defeat enforcement.* [56]

What Institutions Can Take From These Cases

A contemporaneous record of the guidance relied on, the facts assessed and steps taken to comply may support arguments about fair notice, reasonable reliance or the appropriate remedy. The strength of that argument depends on the clarity of the statute, specificity of the guidance, applicable court decisions and the firm's actual conduct. General uncertainty is a weaker basis than documented reliance on a specific agency position.

Policy-driven dismissals should also be distinguished from merits rulings. In dismissing Coinbase's case in February 2025, the SEC expressly disclaimed a judgment on the merits. That removed a major dispute but did not establish a general fair-notice defense for the industry. [11]

Considerations for a Future Administration

Published reasoning, formal permissions and investments made in reliance on them could complicate a reversal. Relevant reliance interests may need consideration under DHS v. Regents. Under Loper Bright, courts

independently interpret statutes; prior agency analysis may persuade them without controlling the result. [33] [34]

OUR ASSESSMENT

Today's guidance creates a record that could matter in a future dispute. It may support fair-notice or remedy arguments for past conduct, while leaving room for prospective policy changes and targeted enforcement. This is a directional consideration, not a prediction of legal protection.

09 Institutional Adoption

FROM SPECIALIST BANKS TO A WIDER FINANCIAL NETWORK

During the Biden years, Silvergate and Signature were important crypto banking and payment providers. Silvergate reported $11.9 billion in digital-asset customer deposits in September 2022; Signature's digital-asset deposits were about 20% of its year-end 2022 total. Their 2023 exits exposed the sector's dependence on specialized banking relationships. [50] [51]

The network is now broader, with major commercial and custody banks joining asset managers and payment firms. Their roles differ: offering Bitcoin trading or safeguarding stablecoin reserves does not mean providing every crypto company with a deposit account.

Firm	Documented activity
JPMorgan	Kinexys infrastructure; JPM Coin deposit token launched on Base in 2025. [21]
PNC Bank	Launched Bitcoin buying, holding and selling for eligible Private Bank clients through Coinbase in December 2025. [52]
U.S. Bank	Selected in October 2025 to custody reserves backing Anchorage Digital Bank's payment stablecoins. [53]
Morgan Stanley	Morgan Stanley Bitcoin Trust provides exchange-traded Bitcoin exposure. [22]
Fidelity	Launched FIDD in February 2026; participates in tokenized fund infrastructure. [23] [24]
Goldman Sachs	GS DAP mirrors selected money market fund records in its July 2025 BNY solution. [24]
BNY	Institutional platform for the Goldman Sachs tokenized fund solution. [24]
BlackRock	iShares Bitcoin Trust ETF; participant in the Goldman Sachs-BNY initiative. [24] [25]
Federated Hermes	Initial participant in the Goldman Sachs-BNY fund solution. [24]
Charles Schwab	Announced phased Bitcoin and Ether trading through Schwab Crypto in April 2026. [26]
Franklin Templeton	Benji records OnChain U.S. Government Money Fund ownership on blockchain. [27]
Citi	Token Services for Cash became a live institutional commercial service in 2024. [28]
State Street	Launched its Digital Asset Platform in January 2026 for tokenized products. [29]
UBS	Launched uMINT, an Ethereum-based money market investment, in Singapore. [30]

Visa	Launched USDC settlement for participating U.S. institutions in December 2025. [31]
Mastercard	Announced stablecoin wallet, acceptance and payment capabilities in April 2025. [32]

Selected examples as of September 29, 2026, with different jurisdictions and eligibility restrictions. Wider institutional participation may affect the practical consequences of future policy changes; it cannot prevent adverse regulation or establish investment suitability.

10 Client Considerations

IMPLICATIONS AND CONCLUSION

One notable change is the growing specificity of agency positions. Institutions can assess defined custody arrangements, trading exemptions, token rights and collateral practices. Investors can ask providers to show which of those pathways supports a service, instead of relying on a general claim that crypto is now regulated.

The broader banking network and named audit relationships make the industry less isolated. The earlier pressure points still warrant attention: the FDIC Inspector General documented crypto-related pause letters and unclear timelines in 2022 and 2023. Kraken's March 2026 master-account opening, reported as initially restricted and limited to one year, also shows that payment access remains institution-specific. [12] [14] [15]

Five Considerations for Institutions and Advisers

01 **Map the permission.** Identify the serving legal entity and the activity covered. Record whether the authority is a statute, registration, exemptive order, interpretation or staff position, and any term or expiry.

02 **Document the asset and transaction.** Assess token rights, issuer promises, transfer mechanics and any staking or yield layer. Revisit the analysis when the product changes.

03 **Inspect custody and counterparties.** Review segregation, asset-reuse rights, independent controls, banking links and withdrawal procedures. Understand which entity owes the client an asset or payment.

04 **Test operational continuity.** Consider a bank exit, custodian change, network outage, trading halt or revision of relief. A contingency plan should explain how clients access or transfer holdings.

05 **Separate access from suitability.** More permissible infrastructure can improve choice. It does not resolve volatility, liquidity, fees, concentration or whether an allocation fits a client's needs.

> FOR INDIVIDUAL INVESTORS
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> Ask who holds your assets, which protections apply to your account, whether assets can be reused, and what happens if a provider or service becomes unavailable. Clear documented answers can be more informative than broad claims of regulatory approval.

ABRA'S POSITION

The Abra Perspective

Abra Capital Management, LP is an SEC-registered investment adviser. Our focus remains clear account structures, documented controls, transparent reporting and advice grounded in each client's circumstances. Registration does not imply SEC approval or eliminate investment risk.

This briefing is general educational information as of September 29, 2026. It is not legal, regulatory, tax or investment advice, or a recommendation to buy or sell any asset. The implications and durability considerations are general analysis, not opinions on a specific firm's compliance or predictions of court outcomes. Digital assets involve significant risk, including loss of principal. Consult qualified advisers about your circumstances.

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