

## Look Ahead Calendar - PolicyPartner

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- Q2 could prove for US crypto regulators
  - Battle over Basel III
  - EBA is steadily completing RTS for stablecoins under MiCA
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### Q2 could prove pivotal for US crypto regulators

Treasury and the SEC face several key decision points on digital asset regulation over the several months - potentially a finalized IRS broker rule, implementation of the OECD crypto Asset Reporting Framework in the US, a final Safeguarding rule, and potential resolution of the tenuous status of SAB 121. **While the regulatory agenda is simply an estimation and the CRA deadline only matters if Democrats lose, we believe regulators will soon wrap up first administration priorities in digital assets.**

#### Treasury

The IRS Broker Rule and the implementation of the OECD framework are currently on the rulemaking agenda as a Final Rule and Notice of Proposed Rule, respectively. These rules are interrelated. It is logical the Broker rule would come first as participation in the [cross-border information sharing as envisioned by OECD](#), a country first needs to establish a solid definition of “broker,” or Virtual Asset Service Provider.

In the recent open hearing on the rule, the IRS seemed particularly sensitive to comments that suggested that the proposed definition of broker was misaligned with the FATF definition. **This point could be a critical issue to press in follow-up engagement on the Broker Rule – we believe the IRS proposed definition goes far beyond what FATF established in 2021.**

Key to the international recommendations is a country’s approach to identifying “obliged entities.” FATF states that a centralized party holding keys or collecting fees is a possible determinant. We revisit the [2021 FATF guidelines for reference](#).

“A DeFi application (i.e. the software program) is not a VASP under the FATF standards, as the Standards do not apply to underlying software or technology (see paragraph 82 below). However, creators, owners and operators or some other persons who maintain control or sufficient influence in the DeFi arrangements, even if those arrangements seem decentralized, may fall under the FATF definition of a VASP where they are providing or actively facilitating VASP services” FATF guidelines”

**FATF goes on to explicitly say most wallet software shouldn't be covered.** Power to manage or transfer the assets is key.

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“Firms which merely provide ancillary infrastructure to allow another entity to offer this service, such as cloud data storage providers or integrity service providers responsible for verifying the accuracy of signatures, will not normally satisfy this definition. Nor does this limb typically cover software developers or providers of unhosted wallets whose functions are only developing and/or selling the software//hardware. However, countries must look at individual facts and circumstances in applying the definition for specific cases.”

## **The SEC**

Far more turbulent than Treasury's IRS work is the state of SEC's governance of the crypto space. At hand is a potential judgement in the Coinbase case concerning secondary sales of tokens, a revised SEC Safeguarding rule, and the outstanding SAB 121 quagmire. Outside of crypto, the SEC has roughly 20 other rules to consider. The SEC has finalized 9 of 30 outstanding final stage rules on its agenda.

Our conversations with policymakers have repeatedly stressed that Chair Gensler intends to implement the entirety of the SEC's agenda. We remain skeptical of his ability to do this – take the Safeguarding rule for example, even the Fed Charman Jerome Powell has agreed in testimony the proposed rule is unworkable. We believe inaction is the highest probability – if the rule is modified, the changes would be significant and require a new notice and comment period.

SAB 121 seems likely to stay for now - House legislation to remove SAB 121 was met with resistance from House Democrats. These opposing members outright stated that they don't like Bitcoin, the rule makes it difficult for banks to touch Bitcoin, so they refuse to support the repeal. We were hopeful democrat members of congress would support the measure on its merits, which would create political pressure on the SEC to withdraw the rule, but this did not materialize.

## **Congressional Review Act Deadline**

Congressional review act deadlines only matter if Republicans take the presidency. While Democrats will have greater concerns if Biden loses in November, agencies are cognizant of this dynamic and will generally try to get first term priorities finalized by this date.

Estimates indicate the deadline for the Congressional Review Act (CRA) deadline is May 22<sup>nd</sup>; any rules published after the deadline are eligible for review by the next Congress. Additionally, significant/major regulatory actions need to be sent to the OMB for review. Some speculate that the OMB needs to receive these rules well in advance of the official CRA deadline to properly review the rules before they can be considered.

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## **Battle over Basel III**

Basel III end game in practice remains a hot button issue in the US and in Europe. Relevant for digital asset infrastructure and tokenization in Europe is the optional operational risk weights an NCA can apply based on the structure of the blockchain system. While a bank can apply parallel risk weights to underlying asset the token represents, a bank's regulator can activate additional capital requirements -

“Infrastructure risk add-on: An add-on to risk-weighted assets (RWA) to cover infrastructure risk for all Group 1 cryptoasset that authorities can activate based on any observed weaknesses in the infrastructure on which cryptoasset are based.”

This remains an issue, and a focus of ECB/ESMA discussions as banks explore tokenization of assets in the EU. **The [BIS consultation](#) on this very issue ends March 28<sup>th</sup>.**

In the US, pushback from industry is having a significant effect - policymakers [wrote](#) a letter to the Fed, FDIC and OCC urging to withdraw the Basel proposal.

## **EBA is steadily completing RTS for stablecoins under MiCA**

The EBA consultation on the regulatory technical standards for policies and procedures [on conflicts of interest for issuers](#) of stablecoins closed yesterday.

Today, [EBA launched new guidance and consultation](#) on orderly redemption plans under MiCA with respect to Asset Referenced Tokens. This question set closes June 10<sup>th</sup>.