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Lending Against Digital Assets: Five Key Takeaways for Lenders After a Year of Regulatory and UCC Change

By Cristina Diaz, Scott A. Lessne, Carlton Greene and Anand Sithian*

In this article, the authors survey the current landscape for banks' crypto-asset activities, from regulatory permissibility and perfection through custody, structuring, and compliance, for institutions active in this market or considering entering it.

Over the past 18 months or so, the federal banking agencies have clarified supervisory expectations for banks' crypto-asset activities, and several of the largest U.S. banks have announced programs accepting Bitcoin and Ether as loan collateral. Separately, on June 3, 2026, New York's enactment of the 2022 amendments to the Uniform Commercial Code (UCC) took effect, changing the rules governing the perfection of a security interest in digital asset collateral in New York, the jurisdiction whose law governs most institutional credit documentation. Together, these developments may create significant opportunities for lenders navigating the complexities to comply with the newly enacted statutes. This article surveys the current landscape, from regulatory permissibility and perfection through custody, structuring, and compliance, for institutions active in this market or considering entering it.

BACKGROUND: A CHANGED SUPERVISORY LANDSCAPE

Beginning in March 2025, the OCC confirmed in a series of interpretive letters that national banks may custody crypto assets, buy and sell custodied assets at customer direction, outsource custody and execution to sub-custodians, and hold crypto as principal in limited circumstances (collectively, the activities incident to taking, holding, and liquidating crypto collateral). The Federal Reserve and the FDIC withdrew their parallel notification requirements and activity restrictions over the course of 2025, placing state-chartered institutions on substantially the same footing.[1] The result is that lending against

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[1] OCC Interpretive Letter 1183 (Mar. 7, 2025), available at https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2025/int1183.pdf; OCC Interpretive Letter 1184 (May 7, 2025), available at https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2025/int1184.pdf; OCC Interpretive Letters 1186 (Nov. 18, 2025), available at https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2025/int1186.pdf, and 1188 (Dec. 9, 2025), available at https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2025/int1188.pdf; Federal Reserve withdrawal of SR 22-6 and SR

crypto collateral no longer requires advance regulatory permission for national banks, state member banks, or FDIC-supervised institutions.

Regulators' focus has now moved to examination. The agencies' July 14, 2025, joint statement on crypto-asset safekeeping catalogs the expectations examiners will apply, including cryptographic key management, segregation of customer assets, sub-custodian oversight, and contingency planning for forks and airdrops (i.e., blockchain splits and unsolicited token distributions that can leave a custodian holding assets no one anticipated; loan documentation typically treats both as proceeds of the collateral).[2] Institutions entering this market should also anticipate interest from examiners in liquidity and collateral stress testing, BSA/AML and sanctions screening, third-party risk management, and the capital allocated to the product, and may wish to consider having a board-approved risk appetite in place before launch.

PERFECTION AFTER THE 2022 UCC AMENDMENTS

The 2022 UCC amendments, now enacted in more than 30 states, the District of Columbia, and, as of June 3, 2026, New York, classify most cryptocurrencies and tokens as "controllable electronic records" under new Article 12. A security interest in a controllable electronic record may still be perfected by filing, but a secured party that perfects by control after June 3, 2027, will have priority over a filing-only secured party regardless of the order in time perfection has been achieved.[3] In addition, a qualifying purchaser that obtains control for value, in good faith, and without notice takes the asset free of competing claims, meaning that a filing-only lender's collateral can be transferred beyond its reach even where no competing secured party has

23-8 (Apr. 24, 2025), available at https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250424a.htm, and rescission of the 2023 Section 9(13) policy statement, 90 Fed. Reg. 95537 (Dec. 22, 2025), available at https://www.federalregister.gov/documents/2025/12/22/2025-23548/policy-statement-on-section-913-of-the-federal-reserve-act; FDIC FIL-7-2025 (Mar. 28, 2025), available at https://www.fdic.gov/news/financial-institution-letters/2025/fdic-clarifies-process-banks-engage-crypto-related.

[2] OCC, Federal Reserve & FDIC, Joint Statement on Risk-Management Considerations for Crypto-Asset Safekeeping (July 14, 2025), available at https://www.fdic.gov/interagency-statement-crypto-asset-safekeeping.pdf. See also SEC Staff Accounting Bulletin No. 122 (Jan. 23, 2025) (rescinding SAB 121 and removing the principal accounting impediment to bank custody of crypto assets), available at https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-122.

[3] U.C.C. §§ 12-105 (control), 9-107A, 9-326A (2022 amendments). For current enactment status, see Uniform Law Commission, 2022 Amendments to the Uniform Commercial Code, available at https://www.uniformlaws.org/committees/community-home?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac.

perfected by control.[4] Filing alone accordingly offers limited protection in this asset class.

New York's adoption of the 2022 UCC amendments includes a one-year transition period. Security interests perfected by filing before June 3, 2026, retain their priority over competing control-perfected interests only until the June 3, 2027, adjustment date.[5] Lenders holding digital asset collateral perfected by filing alone should consider taking steps to comply with UCC Article 12's control arrangements well before that date. Because effective dates and transition periods vary from state to state, and different aspects of perfection may be governed by different states' laws (e.g., the debtor's location for filing, the record's own jurisdiction for control), multistate facilities may warrant analysis under each potentially applicable regime rather than a single state's timeline.

One structural point warrants particular attention. Article 12 governs directly held crypto assets. In institutional practice, however, collateral is typically held through a qualified custodian, and many custodians opt in to UCC Article 8 by agreeing to treat custodied crypto as "financial assets" credited to a securities account. In that structure, the borrower (as the accountholder) holds a security entitlement rather than the tokens themselves; Article 12 does not apply, and the lender perfects by control under Article 8 through a control agreement over the securities account, the familiar mechanism from securities-based lending, which achieves the same control-based priority.[6] Which regime governs turns on the custodian's account terms rather than the parties' preference. Security agreements in this market are accordingly drafted to grant and perfect across both characterizations, with a precautionary UCC-1 filing as a backstop.

CUSTODY ARRANGEMENTS: LESSONS FROM CELSIUS

The Celsius bankruptcy remains instructive. Because Celsius' terms of use gave it the right to use, pledge, and rehypothecate assets that customers deposited, the bankruptcy court held that those assets were property of Celsius's

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[4] U.C.C. § 12-104(e). New York's enactment requires actual knowledge or bad faith to defeat qualifying-purchaser status.

[5] A.3307-A/S.1840-A, 2025 N.Y. Laws (signed Dec. 5, 2025; effective June 3, 2026; adjustment date June 3, 2027), available at https://www.nysenate.gov/legislation/bills/2025/A3307/amendment/A.

[6] U.C.C. §§ 8-102(a)(9), 8-106, 9-106, 9-328. Whether custodied crypto assets are "financial assets" credited to a securities account (a characterization that takes them outside Article 12) turns on the custodian's agreement to treat them as such under U.C.C. § 8-102(a)(9)(iii) and the terms of the account documentation.

estate, and customers and pledgors alike were deemed unsecured creditors.[7] The rulings underscore the importance of custody documentation to insolvency outcomes. Parties to a crypto-backed loan should confirm that pledged collateral is held in a segregated custody account under documents that leave title with the borrower subject only to the lender's security interest, and that give the custodian no right of use or rehypothecation. Lenders financing crypto intermediaries should diligence whether the coins offered as collateral belong to the intermediary and not its customers. Post-Celsius, no-rehypothecation has become the market default in retail and private-wealth lending, with rights of use surviving mainly in institutional prime arrangements, where they are exchanged for pricing concessions between sophisticated parties.

STRUCTURING CONSIDERATIONS: MARGIN MECHANICS FOR A 24/7 MARKET

Crypto-collateralized facilities depart from term-loan convention because the collateral reprices continuously. The documentation for these facilities typically provides initial advance rates of roughly 40–65% loan-to-value (LTV) for Bitcoin and Ether, margin calls at defined LTV thresholds with cure periods measured in hours, and a further threshold permitting immediate liquidation. The legal work lies in making those remedies enforceable. Article 9 requires that every aspect of a disposition be commercially reasonable, and a foreclosure sale of a volatile asset invites hindsight challenge, so lenders may wish to use Section 9-603 to pre-agree pricing sources, sale venues, and size parameters.[8] These remedies are pre-petition remedies: spot crypto loans may not qualify for the Bankruptcy Code's safe harbors for securities contracts, commodity contracts, or repos, so once a borrower files, the automatic stay may bar liquidation.[9] Margin mechanics should therefore operate on collateral deterioration, before any filing occurs.

BSA/AML AND SANCTIONS CONSIDERATIONS

Crypto collateral imports source-of-funds risk into the lending relationship in ways that traditional collateral does not. Pledged wallets may carry exposure to sanctioned addresses, darknet marketplaces, or other high-risk attributes, and accepting or liquidating tainted collateral may itself create sanctions exposure

[7] In re Celsius Network LLC, 647 B.R. 631 (Bankr. S.D.N.Y. 2023), and subsequent rulings extending the analysis to collateral posted by retail borrowers.

[8] U.C.C. §§ 9-610(b), 9-603(a). Section 9-603 permits the parties to determine by agreement the standards measuring commercial reasonableness, provided the standards are not manifestly unreasonable.

[9] 11 U.S.C. § 362(a); see id. §§ 555, 556, 559–561 (safe harbors).

under OFAC's strict-liability framework.[10] At onboarding, institutions may wish to consider screening pledged wallets and their transaction histories against OFAC's SDN and blocked-address lists as well as on an ongoing basis; applying blockchain-analytics tools to assess exposure to high-risk counterparties and protocols; incorporating the product into the institution's BSA/AML risk assessment and suspicious-activity monitoring system; and establishing procedures for handling collateral subject to blocking obligations, recognizing that inbound transfers generally cannot be refused on public blockchains. Examiners will likely assess the adequacy of these controls as a core element of any crypto lending program.

ADDITIONAL CONSIDERATIONS

Capital

U.S. federal banking agencies have not implemented the Basel cryptoasset standard, and their March 2026 capital proposals are silent on digital assets.[11] Under current rules, a loan would be risk-weighted in full by reference to the counterparty (generally 100% for a corporate borrower) because digital assets are not eligible financial collateral and earn no credit-risk-mitigation relief. A digital asset-backed loan therefore carries a meaningful capital cost relative to an economically similar securities-margin loan, which institutions may wish to reflect in pricing.

State Licensing

Nonbank lenders and nonbank lending affiliates of banking organizations may also wish to assess state licensing regimes, not only virtual currency and money transmitter frameworks such as New York's BitLicense or Limited

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[10] 31 C.F.R. pt. 501, app. A (Economic Sanctions Enforcement Guidelines), available at https://www.ecfr.gov/current/title-31/subtitle-B/chapter-V/part-501/appendix-Appendix%20A%20to%20Part%20501; OFAC, Sanctions Compliance Guidance for the Virtual Currency Industry (Oct. 2021), available at https://ofac.treasury.gov/media/913571/download?inline.

[11] Basel Committee on Banking Supervision, Prudential Treatment of Cryptoasset Exposures (SCO60) (Dec. 2022, as amended), available at https://www.bis.org/basel_framework/chapter/SCO/60.htm. The March 2026 interagency capital proposals do not address cryptoasset exposures. See Regulatory Capital Rule: Category I and II Banking Organizations, Banking Organizations with Significant Trading Activity, and Optional Adoption for Other Banking Organizations, 91 Fed. Reg. 14952 (proposed Mar. 27, 2026), available at https://www.federalregister.gov/documents/2026/03/27/2026-05959/regulatory-capital-rule-category-i-and-ii-banking-organizations-banking-organizations-with; Regulatory Capital Rules: Regulatory Capital and Standardized Approach for Risk-Weighted Assets, 91 Fed. Reg. 15332 (proposed Mar. 27, 2026), available at https://www.federalregister.gov/documents/2026/03/27/2026-05960/regulatory-capital-rules-regulatory-capital-and-standardized-approach-for-risk-weighted-assets.

Purpose Trust Charter but also state lender licensing statutes such as the California Financing Law, under which state regulators, including California's DFPI, have actively pursued crypto lenders.[12]

IN SUMMARY

Key Takeaway #1

Bank regulators have shifted from prior approval to examination scrutiny. Banks no longer need supervisory nonobjection to lend against crypto collateral. Regulators are likely to focus their examinations on collateral operations, BSA/AML and sanctions compliance, and third-party risk management.

Key Takeaway #2

Control-based perfection trumps filing, with a June 3, 2027, New York deadline to re-perfect existing security interests. Under the 2022 UCC amendments, a security interest in controllable electronic records perfected by control as of June 3, 2027, will have priority over a filing-only perfection, regardless of timing. Lenders relying on filing alone should consider taking steps to comply with UCC Article 12's control arrangements before the adjustment date.

Key Takeaway #3

Custody terms determine ownership in insolvency. Documents that permit a custodian or platform to use or rehypothecate pledged assets may impair the secured nature of a claim, leaving the lender with an unsecured one. Parties should confirm segregation, retained borrower title, and a prohibition on rehypothecation in custody documentation.

Key Takeaway #4

Bankruptcy safe harbors may not apply; margin mechanics are the practical protection. Because spot crypto lending may fall outside the Bankruptcy Code's safe harbors, conservative advance rates and market-based loan-to-value triggers are the principal protections.

Key Takeaway #5

No capital recognition for digital asset collateral, and state licensing may apply. Digital asset collateral currently earns no credit risk mitigation relief under U.S. capital rules, and nonbank lenders may face state licensing obligations.

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[12] 23 N.Y.C.R.R. pt. 200 (virtual currency business activity); Cal. Fin. Code § 22000 et seq. (California Financing Law).

CONCLUSION

Building a durable digital assets credit program requires attention to the legal fundamentals and new technological capabilities, including control-based perfection, segregated custody with no right of rehypothecation, and wallet-level sanctions screening. For institutions with active facilities, New York's UCC transition rules impose a deadline. Security interests relying exclusively on filed financing statements will be permanently subordinated to any competing interest perfected by control as of June 3, 2027, and legacy collateral documentation may warrant review well before then. As the federal banking agencies continue work on GENIUS Act implementing regulations, which will govern the payment stablecoins that borrowers may pledge as collateral, and Congress considers the CLARITY Act, institutions may wish to preserve the flexibility to adjust their programs as capital, reserve, and market-structure rules evolve.[13]

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[13] GENIUS Act, Pub. L. No. 119-27 (July 18, 2025), available at https://www.congress.gov/119/plaws/publ27/PLAW-119publ27.pdf; Digital Asset Market Clarity Act of 2025, H.R. 3633, 119th Cong. (passed the House July 17, 2025), available at https://www.congress.gov/bill/119th-congress/house-bill/3633. Pending drafts, which remain subject to change, would among other things require registered intermediaries to hold customer digital assets with qualified custodians under segregation requirements, an approach consistent with the custody practices discussed above.