



# Regulatory Recap

January 2024 at a glance

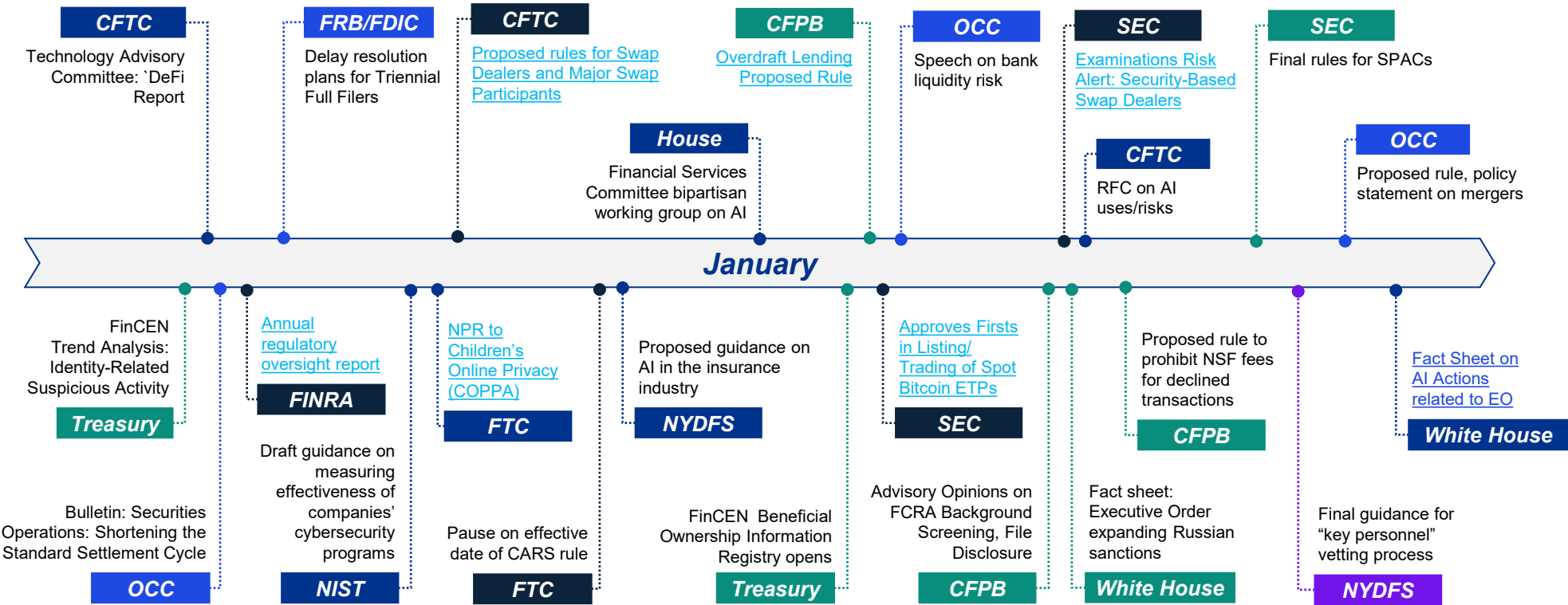


# Regulatory Insights: January 2024 Summary

January 2024 saw regulatory attention across the spectrum of:

- Financial risk (resolution plans, proposed rule on mergers, remarks on liquidity risk)
- Consumer/investor protections (financial crime (identity theft, BOI), fees (overdraft, NSF), FCRA)
- Tech and data risks (proposed rule on COPPA, AI (cross-agency releases, CFTC RFC).

Legend	Regulatory Intensity
	Governance & Risk Management
	Financial Risk
	Consumer/Investor Protection
	Tech & Data Risks



# Regulatory Insights: January 2024

## Fees: CFPB Overdraft Lending Proposed Rule

The Consumer Financial Protection Bureau (CFPB) issues a notice of proposed rulemaking that would amend Regulation E (which implements the Electronic Fund Transfer Act) and Regulation Z (which implements the Truth in Lending Act) to update certain exceptions for overdraft credit provided by “very large financial institutions” (defined in the rule as insured depository institutions and insured credit unions with total assets of more than \$10 billion and any affiliate thereof – hereinafter “covered institutions”). Under this proposal, Regulation Z would apply to overdraft credit provided by covered institutions unless the overdraft fee is restricted to “a small amount that only recovers applicable costs and losses”.

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- **Focus on Fees:** Continuation of regulatory focus on consumer fees – in this case, overdraft fees.
- **Closing the Exemptions:** Closing prior exemption on overdraft loans, application of Truth in Lending Act requirements.
- **Fee Limitations:** Would effectively limit overdraft fees to “breakeven” amounts or a “benchmark” fee set by the CFPB; higher charges would be regulated as loans.
- **Direct/Indirect Applicability:** Directed to “very large financial institutions”, aligning with institutions under CFPB supervisory authority (over \$10B), but smaller institutions likely to be affected via competition and/or rulemaking.
- **Expected Challenges:** Industry push-back to the proposed rulemaking and potential legal actions to challenge.



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## Swaps: SEC Examinations Risk Alert; CFTC Proposals

The SEC Division of Examinations (Division) issues a Risk Alert in which it shares observations, based on examinations and outreach, related to security-based swap dealers' compliance with relevant rules and requirements under the Securities Exchange Act of 1934 (Exchange Act). The Division aims to remind security-based swap dealers of their obligations under the relevant rules and encourage them to consider improvements in their compliance programs, policies, procedures, and internal controls.

The CFTC separately proposes various rules applicable to CFTC-supervised Swap Dealers and Major Swap Participants, including proposals to revise CFTC regulations regarding real-time public reporting and swap data recordkeeping and reporting, among others.

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- **Supervisory Insights:** SEC and CFTC each focus attention on reporting, recordkeeping, and risk management. Swaps are among the SEC's 2024 examination priorities.
- **Data Focus:** Accurate, timely, complete, and high-quality data related to swaps activity to support transparency in the swaps markets.
- **Strong Controls:** SEC Risk Alert and CFTC proposals stress strong controls to promote accuracy and to prevent, detect, and mitigate identified risks.



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# Regulatory Insights: January 2024

## [Privacy: FTC NPR to Children’s Online Privacy \(COPPA\)](#)

In line with regulatory focus around "big tech", data use/access and data security, the Federal Trade Commission (FTC) issues a notice of proposed rulemaking (NPR) to amend its rule implementing the Children’s Online Privacy Protection Act (COPPA), which requires websites and online services to obtain verifiable parental consent before collecting, using, or disclosing children's personal information (the rule was last updated in 2013).

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- **Privacy Expands:** After over a decade, privacy protection rules for children see proposed amendments.
- **Collection of Personal Information:** Significant changes proposed in the collection of children’s personal information.
- **Data Security and Retention:** Heightened standards to show ‘reasonable need’ for use/retention and security based on data sensitivity.
- **Burden on Providers:** The FTC states that “the proposal aims to shift the burden from parents to providers to ensure that digital services are safe and secure for children”.



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## [Regulatory Oversight: FINRA 2024 Annual Report](#)

The Financial Industry Regulatory Authority (FINRA) issues its 2024 Annual Regulatory Oversight Report. The report contains insights and findings from FINRA’s Member Supervision, Market Regulation, and Enforcement programs. (Note: FINRA previously issued this report under the title “Report on FINRA’s Examination and Risk Monitoring Program”. The new title reflects “ongoing efforts to increase both the integration among our regulatory operations programs and the utility of the Report for member firms as an information source they can use to strengthen their compliance programs”.)

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- **Emerging/Key Risks:** Call out of risk areas, including AI, fraud, crypto, cybersecurity, and off-channel communications.
- **Future Exam Focus:** Puts forth a “roadmap” for upcoming 2024 exam expectations.
- **Regulatory Environment:** Consider FINRA’s insights and findings in concert with the SEC’s 2024 Examination Priorities and regulatory agenda



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# Regulatory Insights: January 2024

## SEC Approves Firsts in Listing/Trading of Spot Bitcoin ETPs

The Securities and Exchange Commission (SEC) approves several applications for the listing and trading of spot bitcoin exchange-traded products (ETPs). The SEC notes that the approval is limited to ETPs holding only bitcoin, which is a non-security commodity, and does not necessarily signal a "willingness to approve listing standards for crypto asset securities."

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- **Landmark Decision:** Further opens U.S. markets for bitcoin exchanges and trading via approved ETPs.
- **Fees Matter:** SEC approval process confirms that fees matter, including fee structure and introductory waiving of fees.
- **Regulatory Scrutiny:** Expect regulatory scrutiny with respect to existing federal securities laws and investor protections, including frauds, scams and "market manipulation".



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## AI Regulation: Cross-Agency Actions

AI regulatory action continues to expand via proposed rules, requests for information/comment, guidance, and speeches. At the same time, regulators are clear that existing authorities and regulations can (and will) be applied to AI.

An Administration "Fact Sheet" outlines recent actions related to the Administration's October 2023 Executive Order (14110) on safe, secure, and trustworthy AI, notably including a new Department of Commerce requirement for developers of the most powerful AI systems (including potential dual-use foundation models) "to report vital information, especially AI safety test results".

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- **Regulators Coming:** Using existing and expanding frameworks/guidance, expect the regulators to inquire/review AI development and use against evolving risk governance/management expectations.
- **Show Your Testing:** Anticipate additional levels of testing requirements, including in areas of security, safety, and consumer protection.
- **Expect to Report:** Evolving standards for regulatory communication/reporting will necessitate strong build of AI controls, robust risk assessment, and timely governance reviews and escalation.



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