

The New SEC Crypto Task Force: A Journey into Uncharted Waters



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ALERTS

February 12, 2025

The lead of the U.S. Securities and Exchange Commission's (SEC's) new **Crypto Task Force** (Task Force), Commissioner Hester Peirce, recently laid out principles for how the Task Force will approach regulation and provided a roadmap for specific issues the Task Force is working on with policy staff of the SEC (Staff). While "[The Journey Begins](#)" (the Statement) represents Commissioner Peirce's own views and not the official positions of either the SEC or the Task Force, it provides insights into the Task Force's anticipated direction.

The Task Force is charged with developing a "comprehensive and clear regulatory framework" for crypto assets. Led by Commissioner Peirce, who has been a vocal proponent of a clearer regulatory framework than she believes has been provided by the SEC in recent years, the Task Force is charged with providing companies in the space paths to registration and crafting new disclosure frameworks, among other things. It will make its recommendations after seeking input from industry participants and other interested parties, as well as from within the SEC and other federal departments and agencies.

Commissioner Peirce's Statement specifically invites collaboration. In appropriate cases, crypto participants should consider accepting that invitation by submitting comments or approaching the Task Force and the SEC for discussions about what the industry sees as priorities for policy change. The Task Force's initial work could be a critical and potentially brief opportunity for providing input in the early stages of a changing policy environment. More broadly, the Statement seems to signal an SEC approach that invites potential discussions with industry participants, for example to ask for guidance regarding planned business activities that may raise novel legal issues.

The Statement suggests that the SEC will continue to regulate at least some aspects of crypto under the securities laws and raises important questions for what regulation will ultimately look like, particularly in light of potential congressional action that is also in play.

Task Force Priorities

In the Statement, Commissioner Peirce presents general principles for how the Task Force will approach regulation and a non-exhaustive list of priorities that give indications of what's to come. The particular tasks listed in the Statement include the following:

1. **Clarifying the status of different types of crypto assets** under the securities laws.
2. **Identifying areas outside the SEC's jurisdiction**, including through responses to "no-action" relief requests from the industry.
3. **Providing temporary and retroactive relief for certain coin and token offerings**. This relief could be offered to issuers or other responsible entities that would provide specified information, keep

- the information updated, and agree not to contest SEC jurisdiction in the event of fraud allegations.
4. **Providing modified paths to registration**, including under Regulation A and through crowdfunding.
 5. **Updating guidance for “special purpose broker dealers,”** for example by potentially allowing broker-dealers to custody crypto asset securities alongside crypto assets that are not securities, which is currently not permissible.
 6. **Providing a framework for custody of crypto assets by registered investment advisers**, which is currently problematic because it is unclear which entities are permissible “qualified custodians” under [current rules](#).
 7. **Providing clarity around crypto-lending and staking programs**, including whether they are covered by the securities laws and, if so, how they can be structured to comply.¹
 8. **Reconsidering approach to crypto exchange-traded products** by providing more clarity on the approach used for approval and considering requests to modify existing products.
 9. **Providing guidance on how clearing agencies and transfer agents can provide services** for digital assets, including tokenized securities, or otherwise use blockchain technology to modernize traditional financial markets.
 10. **Developing a cross-border sandbox** that would allow cross-border experimentation on a limited scale and temporary timeframe with the goal of more permanent, long-term solutions.

A Few Key Takeaways

The list and additional color provided in the Statement point to several important takeaways:

- **Companies in the space should consider engaging with the SEC staff.** As noted above, the Statement specifically invites collaboration. Participants in the crypto markets should consider weighing in and potentially asking for guidance regarding planned crypto asset offerings and transactions and other crypto business activities.
- **Technological considerations will be at the center of policy change.** The Statement contains references to a “practical” approach, “commercial” considerations, and prioritizing the ability of industry to offer new products and services. These references suggest that Commissioner Peirce and the current administration believe that certain features of blockchain technology and digital assets do not work well with existing SEC precedent and rules. This is a marked change from [statements](#) by former SEC Chair Gary Gensler suggesting that existing securities laws and guidance provide sufficient guidance for how the industry and its operations can comply with existing law.
- **Companies engaging with the SEC will need solid grounding in existing legal precedent and SEC guidance.** The Statement emphasizes the need for the same legal precision and adherence to legal requirements by the industry that Commissioner Peirce describes as critical to the Task Force and SEC’s missions. She notes that requests for relief lacking those elements may be delayed. This suggests, in essence, that the SEC will ultimately hold issuers and actors involved in digital assets to a similar standard of compliance, and require a similarly rigorous understanding of the law, as it applies to those in the traditional securities markets, even though there may be different compliance requirements. The Statement also reinforces the importance of engaging lawyers and other gatekeepers.
- **The SEC may change its approach to jurisdiction in critical ways.** At several points in the Statement, Commissioner Peirce references SEC jurisdictional issues, noting that some assets may not fall within the SEC’s mandate to regulate the securities markets, and emphasizing the need for cooperation among regulators who operate within their congressionally mandated jurisdictions. This suggests there will be movement away from the stance in recent years that the SEC has jurisdiction over virtually all digital assets other than Bitcoin and a few others.² It is also consistent with Commissioner Peirce’s [objections](#) in recent years to enforcement actions she has said were outside the SEC’s jurisdiction because they did not involve securities. The Statement specifically references potentially referring instances of fraud outside the SEC’s jurisdiction to other regulators or, where fraud lies outside current regulation entirely, to Congress.
- **The SEC will continue to regulate the crypto markets, however.** Nothing in the Statement indicates that the SEC is voluntarily moving away from jurisdiction over at least some types of digital assets—in fact, the Statement suggests that the SEC will continue to see many assets and transactions as properly falling within its regulation and will apply the securities laws to them. Commissioner Peirce emphasized that where it does have jurisdiction, the Task Force will focus on combatting fraud and may impose rules that some “may find irritating.” She also states that the SEC will continue to pursue enforcement based on noncompliance and fraud.
- **The process of revamping policy will take time.** While the SEC has been under pressure to revamp its approach to crypto, Commissioner Peirce did not commit to doing so quickly, and she stressed that the Task Force would give careful consideration to how to “disentangle” former guidance, such as proposed rules, speeches, and no-action letters, and existing litigation. She also

noted that an increase in requests for exemptive relief, no-action guidance, and approval of registration statements may cause delays.

A Few Outstanding Questions

The Statement is not a comprehensive overview of what's to come. It raises a handful of questions that will affect the development of crypto-related policy, including the following.

- **What will become of *Howey* and *Reves*?**

SEC v. W.J. Howey Co. (1946) (*Howey*) and *Reves v. Ernst & Young* (1990) (*Reves*) are critical to current analyses of whether certain assets or transactions involve securities. These cases have been at the center of determinations from both the SEC and the federal courts of when the SEC has jurisdiction over the crypto industry. The SEC's stance on the issue is reflected in, among other guidance, its Framework for "Investment Contract" Analysis of Digital Assets, which articulated the SEC's considerations regarding when it has authority to regulate the crypto markets. Many in the industry, though, have called for an alternative test for digital assets that is less tied to traditional precedent or, alternatively, for more updated and streamlined guidance on how *Howey* and *Reves* may apply.

Commissioner Peirce's Statement suggests the Task Force will seek to provide new guidance on this question, perhaps moving significantly from the SEC's current approach. But Congress would need to act to change the statutory definition of a security and obviate Supreme Court precedent for the digital asset markets. The current Congress may be the most crypto-friendly in history—and Congress seems on track to pass new legislation quickly—so that may certainly occur. Any changes made by Congress could, of course, also change what the Task Force and the SEC are authorized to do.

- **Will the SEC change its stance on stablecoins—or will Congress force it to?**

Stablecoins may be a starting point for rethinking when and if SEC regulation applies and if so, how. Stablecoins are often pegged to another asset, such as the U.S. dollar, or rely on algorithms to maintain value with relatively little volatility. Stablecoins are often promoted as a potential payment mechanism, i.e., a method of transferring value for transactions on a blockchain.

Former SEC Chair Gary Gensler expressed **concerns** that stablecoins do not have sufficient predictability or assurances that they will maintain value, and that some are "investment contracts" subject to SEC regulation. Alternatively, Chair Gensler **asserted** that in cases where stablecoins are backed by a pool of assets, they may look like a money market or other mutual fund and should be regulated in the same way. In each case, the regulation that would apply would make it almost impossible to engage in stablecoin transactions for payments purposes.

Commissioner Peirce's Statement does not explicitly mention stablecoins, but it is possible that any new framework for when digital assets are securities would, for example, provide a safe harbor for stablecoins—for example, based on specified guardrails for pricing stability.

Alternatively, it is possible that this is an area where Congress will step in more quickly. There are already **bills** in Congress designed to provide a framework for stablecoin structure and assign certain regulatory authority to banking regulators rather than the SEC, for example. This legislation could preempt any guidance from the Task Force and/or the SEC.

- **Will the SEC's existing litigation actions continue?**

The Statement suggests a lighter focus on enforcement, to be replaced with more proactive guidance. The SEC has been litigating actions against **Coinbase**, **Ripple**, and other companies. The most advanced of the active cases are in federal appeals courts. Commissioner Peirce hints that the Task Force could recommend changing the SEC's approach to existing litigation, which she references as one of the many threads that the SEC must "disentangle." Among other outcomes, it is possible that the SEC could drop all or parts of ongoing enforcement actions, or settle them on terms that are relatively favorable to the target companies, as it moves forward.

- **Will registration of token offerings become more common?**

Commissioner Peirce's Statement references the possibility of modifying Regulation A or crowdfunding for token offerings. While there have been a handful of Regulation A offerings thus far,³ this mechanism has not been widely used for distributing tokens. This is in part due to high costs, uncertainty of approval, and onerous post-qualification requirements. It may also result from

a [concern](#) from some in the industry that the qualification process is inconsistent with the purpose of token offerings, which are intended to be more decentralized than fits with the idea of federal filings and qualifications. As a result, it is possible that even if the SEC creates a more practical path to registration or qualification, it will not be widely used.

- **Does decentralization have a place in the SEC’s approach?**

A notable omission from the Statement is any reference to decentralization. This concept can refer to many things and it is not a defined term either in the crypto industry or under the securities laws. For regulatory purposes, among other things, decentralization sometimes refers to the notion that the governance of blockchain platforms may be so diffuse (“decentralized”) that there is no identifiable “issuer” of digital assets. Decentralization can also reference the idea that “defi” platforms should not be regulated because they enable transactions solely through code, and so no person could or should have responsibility for compliance. The Statement does not point to either possibility, or whether the Task Force or SEC will consider these arguments or factor them into its recommendations.

This may be another area where Congress steps in, and that may be a reason behind Commissioner Peirce’s silence. Legislation that was [passed](#) by the House of Representatives last year is anticipated to be proposed again; this legislation would (among other things) allow certification that a network is decentralized and thus not subject to SEC regulation.

For more information, please contact [Amy Caiazza](#), [Alice Cao](#), or any other member of Wilson Sonsini’s [fintech and financial services team](#).

^[1]These programs have been the subject of several enforcement actions. *See, e.g., TradeStation Crypto, Inc.*, SEC File No. 3-21845 (Feb. 7, 2024); *BlockFi Lending LLC*, SEC File No. 3-20758 (Feb. 14, 2022); *SEC v. Consensys Software Inc.*, No. 24-civ-04578 (E.D.N.Y. June 28, 2024).

^[2]*See, e.g., William Hinman, Digital Asset Transactions: When Howey Met Gary (Plastic)* (June 14, 2018); *eToro USA LLC*, SEC File No. 3-22106 (September 12, 2024) (in a settlement, requiring eToro to stop trading as an illegally unregistered broker and limiting listed assets to Bitcoin, Bitcoin Cash, and Ether).

^[3]Wilson Sonsini worked on two Reg A offerings for “investment contract” tokens. For more information about conducting a token offering under Reg A, read our [whitepaper here](#).