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Digital Currency & Blockchain Quarterly Litigation Update

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In This Issue

It's the dawn of a new era for the digital assets industry in the United States. In this edition, we unpack the US Securities and Exchange Commission's (SEC) retreat from its former "regulation by enforcement" tactic through dismissals of pending actions and abandonment of pending investigations; the SEC's push for a smarter regulatory framework; the Trump administration's crypto-friendly executive orders; and the recent disbandment of the Department of Justice's (DOJ) cryptocurrency unit.

IN THIS ISSUE

0 The SEC Retreats from Enforcement Actions, Investigations, and Appeals

Key Takeaway: The SEC's recent retreat from its high-profile enforcement actions and investigations that have marred the industry over the past several years represents a marked shift in its approach to digital assets and an apparent recalibration of its regulatory strategy. But it's not open season yet for the industry, because the long-term regulatory landscape remains uncertain until a broader regulatory framework governing digital assets emerges. Furthermore, there is the possibility that private litigation and state regulators will seek to fill in the gap left from the lack of federal enforcement activity.

Enforcement Action Updates

The SEC has announced a number of dismissals and general retreats from the litigation and enforcement actions it initiated against the digital assets industry in the past four years. This reversal of position and resulting voluntary dismissals, as discussed below, are unprecedented. Over the first 60 days of the current administration, the SEC systematically dismissed on its own accord a series of lawsuits against this industry. This marks an abandonment of the aggressive "regulation by enforcement" positions the SEC took under former Chairman Gary Gensler.

The SEC's decision to dismiss or quickly resolve the cases discussed below reflects the SEC's new regulatory approach, as directed by the new administration. The SEC has expressed intentions to develop a clear, comprehensive, and industry-friendly regulatory framework for crypto-assets and use tools such as no-action letters and staff guidance while potentially awaiting a comprehensive statutory framework from Congress.

Ripple Will Get $75 Million of Court-Ordered Fine Back from SEC

After several years of litigation, the SEC and Ripple appear to have resolved their dispute. On March 19, 2025, Ripple announced via a post on X that the SEC will drop its appeal of the summary judgment decision by Judge Analisa Torres of the US District Court for the Southern District of New York in the SEC's case against Ripple (*SEC v. Ripple Labs Inc., et al.*). The SEC's complaint alleged the company raised more than $1 billion via unregistered securities sales of XRP tokens. As we previously reported, Judge Torres awarded a civil monetary penalty of $125 million for its improper sales of XRP tokens. Judge Torres refused to grant the SEC's $1.07 billion request for disgorgement for the unregistered sales and declined to order an injunction prohibiting Ripple from "conducting an unregistered offering of Institutional Sales." The SEC filed a notice of appeal of this decision on October 2, 2024, and on October 10, 2024, Ripple filed a notice of cross-appeal. On March 25, 2025, Ripple CEO Brad Garlinghouse announced that the SEC will return $75 million of the court-ordered civil monetary penalty, keeping $50 million in connection with the settlement announced by Garlinghouse the week before. The settlement, which is subject to approval by the SEC and the court, would result in both parties withdrawing their appeal.

SEC Dismisses Its Lawsuit Against Trading Firm Cumberland DRW

The SEC in March dismissed its lawsuit against the crypto-trading arm of the Chicago-based trading firm Cumberland DRW. The SEC filed its complaint against Cumberland DRW on October 10, 2024, alleging the firm acted as an unregistered securities dealer and that the firm sold more than $2 billion in unregistered securities, naming five tokens: Polygon, Solana, Cosmos, Algorand, and Filecoin. Cumberland DRW filed its motion to dismiss the lawsuit on January 15, 2025, which is still pending. On February 20, 2025, DRW signed a joint filing with the SEC (pending final approval by the commission) that would dismiss the case. On March 18, 2025, the parties filed a joint motion to stay the case for three weeks (until April 7, 2025), explaining that the parties "have agreed in principle to dismiss th[e] action with prejudice through stipulation." The court granted the stay on March 19, 2025. The parties filed a stipulation of dismissal on March 27, 2025, referencing the "crypto task force dedicated to helping the Commission further develop the regulatory framework for crypto assets." The stipulation of dismissal further states, "in the exercise of its discretion and as a policy matter, the Commission believes the dismissal of th[e] case is appropriate." Pursuant to the stipulation of dismissal, the court dismissed the case with prejudice on March 31, 2025.

SEC Agrees to Dismiss Its Lawsuit Against Kraken

On March 3, 2025, digital asset trading platform Kraken announced in a blog post that the SEC has agreed in principle to dismiss the enforcement action against it with prejudice, with no admission of wrongdoing, no penalties assessed, and no changes required to Kraken's business going forward. Kraken describes the SEC's decision to dismiss its lawsuit as "more than just a legal victory" and as "a turning point for the future of crypto in the U.S." The parties filed a joint stipulation of dismissal on March 27, 2025, also referencing the crypto task force and stating, "in the exercise of its discretion and as a policy matter, the Commission believes the dismissal of th[e] case is appropriate."

We previously reported that, on August 23, 2024, Judge William H. Orrick of the US District Court for the Northern District of California denied Kraken's motion to dismiss the lawsuit (*SEC v. Payward, Inc. [Kraken]*). In that decision, Judge Orrick ruled in a manner consistent with most but not all district courts, holding that secondary market transactions for cryptocurrency did not exempt them from the *Howey* framework. With the dismissal of the lawsuit and others like it, it seems unlikely that the courts of appeals will provide guidance anytime soon on whether the Howey framework applies to secondary market transactions.

SEC Agrees to Dismiss Case Against Coinbase

On February 21, 2025, Coinbase, the largest US digital asset trading platform, announced that the SEC had agreed to dismiss the enforcement action against it.

As detailed in a Goodwin litigation alert, the SEC filed its lawsuit on June 6, 2023, alleging that Coinbase operated as an unregistered securities exchange, broker, and clearing agency, and facilitated trading of crypto tokens that should have been registered as securities. Coinbase disputed these allegations, maintaining that crypto-assets do not meet the definition of investment contracts under the *Howey* test and therefore should not be classified as securities. The company emphasized that its business model remained unchanged since its public listing in 2021, which had been reviewed and approved by the SEC at that time. Despite this position, Judge Katherine Polk Failla of the US District Court for the Southern District of New York denied the majority of Coinbase's motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). As set forth in greater detail in a prior litigation update, on March 27, 2024, Judge Failla found that the SEC adequately alleged that Coinbase's digital asset trading platform was operating as an unregistered securities exchange, broker dealer, and clearing agency; but as to Coinbase's wallet, the court found it did not need to register as a broker. The SEC's dismissal of the *Coinbase* action signaled a sea change from the commission's prior "regulation by enforcement" approach and paved the way for the additional dismissals that followed.

Death Knell for "Dealer Rule" as SEC Abandons Fifth Circuit Challenge

On February 19, 2025, the SEC withdrew its appeal of a November 6, 2024, ruling by the U.S. District Court for the Northern District of Texas that invalidated the SEC's "Dealer Rule."

Originally adopted on February 6, 2024, the Dealer Rule aimed to further clarify the definitions of "dealer" and "government securities dealer" under Sections 3(a)(5) and 3(a)(44) of the Securities Exchange Act of 1934. The rule would have broadened the scope of market participants required to register with the SEC as dealers or government securities dealers, including certain principal trading firms, private funds, investment advisers, and crypto-asset-related entities.

Industry groups representing private funds and the digital assets sector sued the SEC shortly after the rule's adoption, challenging its legality. The court ultimately ruled in their favor to vacate the rule, reasoning that the SEC had exceeded its statutory authority in adopting the rule. On January 17, 2025, mere days before President Trump took office, the SEC appealed the decision to the Fifth Circuit. With the SEC's recent withdrawal of the appeal, and the district court's vacatur of the rule intact, the Dealer Rule has effectively been abandoned.

The SEC and Binance Stay Pending Litigation, Citing Launch of New Crypto Task Force

On February 10, 2025, the SEC and defendants Binance Holdings Ltd.; its founder and former CEO, Changpeng Zhao; BAM Trading Services Inc. and BAM Management US Holdings Inc. filed a joint motion to stay the SEC's case (*SEC v. Binance in the Southern District of New York*) against the digital-asset-trading platform Binance for a period of 60 days. The thrust of the allegations against the defendants is that virtually all crypto transactions, especially the secondary-market trades on the platform, constitute securities transactions.

The parties asserted that a brief stay in the litigation is warranted, explaining that the launch of the new crypto task force dedicated to helping the SEC develop a regulatory framework for crypto-assets may affect and facilitate a potential resolution of the case. The parties must file a joint status report by June 16, 2025.

In our Digital Currency & Blockchain 2024 Year End Review, we explored in-depth the motions to dismiss the SEC's amended complaint against Binance. Those motions have been fully briefed by the parties and are currently pending. If the litigation is ultimately resolved following the stay, those motions will not be decided.

Investigation Updates

Consistent with the SEC's retreat from its prior litigation strategy of regulation by enforcement, the SEC has closed a number of investigations, both publicly disclosed and undisclosed. For obvious confidentiality reasons, only the SEC's retreat from public investigations is discussed below.

The SEC Drops Its Investigation into Uniswap

As we previously reported, Uniswap Labs (Uniswap) issued a statement that it had been served with a Wells notice from the Enforcement Division of the SEC in an April 10, 2024, blog post titled "Fighting for DeFi." According to Uniswap, the SEC's Wells notice notified Uniswap that the SEC planned to recommend a legal action against Uniswap because, among other things, "most" tokens traded on its decentralized platform are securities. In the statement, Uniswap asserted that "the overwhelming volume of traded tokens are definitively not securities — they are stablecoins, community and utility tokens, and commodities like Ethereum and Bitcoin."

On February 25, 2025, Uniswap announced that the SEC had officially closed its investigation into the decentralized exchange, with no action. A recent Uniswap blog post provided more insight into the allegations in the Wells notice, stating the SEC claimed Uniswap operated an unregistered securities exchange, engaged in unregistered broker or clearing firm activity, or issued an unregistered security. Uniswap asserted that the SEC's decision to close its investigation reaffirms that Uniswap operates in full compliance with all applicable laws.

Robinhood Announces the SEC Dropped Investigation into Robinhood Crypto

On February 24, 2025, Robinhood announced that the SEC's Enforcement Division advised Robinhood Crypto by letter that it had concluded its investigation and did not intend to move forward with an enforcement action against it. In its statement, Robinhood said it "has long disagreed with the argument that transactions in most digital assets are subject to the federal securities laws," but nevertheless "made difficult choices not to provide certain products and services that the SEC under previous Chairman Gensler alleged are securities in public actions." Robinhood said that it is "helping advance a more transparent and tailored regulatory environment for digital assets, and look[s] forward to working with the SEC under this new administration to establish a clear path forward."

Private Litigation and State Regulators Could Seek to Fill Some of the SEC's Enforcement Void

While the SEC's unprecedented abandonment of its high-profile enforcement actions and investigations signals a realignment of agency goals with the new administration's priorities, that will not prevent the plaintiffs' bar from using the SEC's prior legal positions — along with the cases that previously ruled in the SEC's favor — to bring private litigation arising out of many of the same theories. The same is true for state regulators.

Indeed, using federal and state laws, private actions are likely to continue to bring claims relating to the alleged sale of unregistered securities; the sale of securities based on untrue statements and omissions of material facts; securities fraud; breaches of fiduciary duty; and other classic securities and corporate private rights of action. In particular:

- First, as evidenced by recent putative class actions, private plaintiffs will also seek to take advantage of current district court rulings in (now dismissed) SEC enforcement actions confirming the applicability of securities laws to digital asset sales.

District court decisions on *Howey's* application to token sales remain a persuasive authority, even if the enforcement actions giving rise to those decisions are now dead. For example, there has been a flurry of recent private securities litigation activity surrounding recently launched meme coins that resulted in alleged consumer harm.[1] While litigation activity surrounding meme coins will likely be tempered in light of the recent guidance from the SEC's Division of Corporation Finance (as discussed further below), these cases indicate the appetite among the plaintiffs' bar for increased class action activity as more tokens launch in the coming year.

- In addition, private plaintiffs are likely to continue to scrutinize public disclosures made by digital-asset issuers, trading platforms, and other Web3 companies for any evidence of materially false and misleading statements that affect the public, both in formal marketing materials and informal channels such as social media. Such plaintiffs may seek to bring claims not only under the federal securities laws but also under state consumer-protection laws, such as laws concerning unfair or deceptive acts and practices. For this reason, companies must continue to be vigilant about the accuracy of all public-facing communications, including when providing updates following material events such as cybersecurity incidents.
- Further, private plaintiffs will also continue to monitor the trading activity of insiders related to market events that alter the price of a digital asset for evidence of insider trading or other forms of market manipulation. As a result, it is important for companies to think carefully about their market integrity policies and to ensure that their employees are made aware of the risks of trading on material, nonpublic information.
- Finally, we anticipate that private plaintiffs will continue to pursue litigation against participants in decentralized autonomous organizations (DAOs), seeking to take advantage of the legal uncertainty stemming from the prior positions taken by the CFTC (and subsequently adopted by certain district courts) concerning the applicability of state general partnership law to such structures. In the case of *Samuels v. Lido DAO*, the US District Court of the Northern District of California recently held that the plaintiffs had plausibly alleged that Lido DAO was a general partnership and that three out of four major institutional investors in Lido were members of it. On January 29, 2025, the court set the deadlines for class certification, discovery, and dispositive motions, with an anticipated trial date of March 8, 2027. We suspect that the private plaintiffs' bar will continue to watch this case closely to determine whether it may provide an opening for other actions against DAOs and particularly their institutional investors; however, with the reopening of the United States as a jurisdiction for potential token issuances and distributions, token platforms and issuers may be able to take advantage of onshore structuring alternatives that could protect against such liability.

Thus, while the industry will face a less aggressive regulatory environment under the current administration, there remains a risk of private litigation as private plaintiffs seek to exploit the void in enforcement activity amid a period of continued legal and regulatory uncertainty.

State regulators remain another area of concern. While they have never been as active as the SEC, they launched a number of investigations and announced public settlements during the prior administration. Often when the federal government retreats from a regulatory area, the states tend to become more active. We may yet see that for the digital assets industry.

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[1] *See, e.g.*, *Albouni et al. v. Schultz et al.*, No. 1:24-cv-08650 (E.D.N.Y. filed Dec. 19, 2024); *Carnahan v. Baton Corp. Ltd.*, No. 1:25-cv-00490 (E.D.N.Y. filed Jan. 29, 2025).

0 A Crypto-Friendly SEC Forms Task Force for a Smarter Regulatory Framework, Eases Crypto Custody Rules for Banks, Issues New Guidance, and Establishes New Unit to Broaden Enforcement Aperture Beyond Digital Assets

Key Takeaway: The SEC's newly established Crypto Task Force and Cyber and Emerging Technology Unit signal a shift from an enforcement-heavy approach to a more structured regulatory framework. The SEC also repealed Staff Accounting Bulletin No. 121, thereby easing crypto custody rules for traditional financial institutions. Meanwhile, the SEC's Division of Corporation Finance has provided guidance concerning specific, discrete aspects of the industry, including most recently on stablecoins, proof-of-work mining, and meme coins. Under its prior leadership, the SEC claimed an expansive view of its jurisdiction and provided limited usable guidance. Helpfully, the first actions of the task force have been to provide clear examples of certain types of tokens and types of token transactions that are not securities or securities transactions. With clear statements that certain activities are outside of the SEC's jurisdiction, the industry awaits a statutory solution that comprehensively addresses how digital assets and transactions will be regulated.

SEC's Crypto Task Force

The SEC's Crypto Task Force, announced earlier this year, marks a notable shift in the agency's approach to digital assets. Historically known for its enforcement-heavy stance, the SEC now appears to be using a more fulsome tool kit to provide specific regulatory guidance to the industry, signaling a new era for crypto regulation.

Commissioner Hester Peirce, who is leading the task force, has been a central figure in these efforts. In recent remarks, dubbed her "crypto road trip," Peirce underscored the importance of direct engagement with stakeholders in the digital assets industry, a position she long has advocated. She emphasized that regulators should strive to understand the practical challenges facing crypto projects and investors rather than defaulting to punitive actions. Peirce's approach has been a departure from the historic SEC philosophy, advocating for open dialogue and a more nuanced regulatory framework.

On February 21, 2025, Peirce took a significant step in that direction by releasing a comprehensive request for public input on crypto regulation. The request included a proposed draft taxonomy aimed at categorizing crypto-assets into clearer legal and functional buckets. It also posed more than 100 questions covering a wide range of issues, including security status, public offerings, safe-harbor provisions, trading, lending, and custody. This initiative reflects an effort to create a more industry-friendly, predictable, and transparent regulatory landscape for market participants. And so far, the task force's efforts have been successful at engaging the industry. Indeed, major market players have submitted written input in response to the questions posed by the task force.

Further aligning with this shift, the task force is launching a series of roundtable discussions under the banner "Spring Sprint Toward Crypto Clarity." The first of these sessions, titled "How We Got Here and How We Get Out — Defining Security Status," took place on March 21 at the SEC's headquarters in Washington, D.C. The event was open to the public and live streamed, offering an opportunity for industry leaders, legal experts, and regulators to engage in a critical conversation about the evolving classification of digital assets.

The diverse panel of experts discussed the applicability of existing securities laws to digital assets, particularly the challenges in applying the *Howey* test to cryptocurrencies. Panelists disagreed on whether crypto-assets have grown beyond sophisticated parties such that asset holders merit protection on par with traditional securities holders. Acting SEC Chairman Mark Uyeda highlighted the need for clear guidance through notice-and-comment rulemaking rather than relying solely on enforcement actions. Panelists noted the possibility that, as the SEC steps back from crypto-asset enforcement, other agencies could fill the void (e.g., the CFTC asserting oversight over cryptocurrencies by deeming them "commodities").

The second roundtable, titled "Between a Block and a Hard Place: Tailoring Regulation for Crypto Trading," took place on April 11 and was moderated by Nick Losurdo of Goodwin Procter. The roundtable's attendees debated whether centralized crypto trading platforms should be regulated like national securities exchanges or as alternative trading systems, and they considered possible exemptions or rule changes to accommodate decentralized protocols. Commissioner Caroline Crenshaw raised red flags about inherent conflicts of interest and investor risks within vertically integrated crypto firms. Several panelists emphasized the urgency of regulatory clarity, particularly related to custody and registration, while others warned that overly rigid rules could drive innovation offshore. Though the roundtable did not resolve any policy questions, it signaled the SEC's openness — at least among some commissioners — to iterative, dialogue-based policymaking in the crypto space.

SAB 121 Repealed

On January 23, 2025, the SEC issued Staff Accounting Bulletin (SAB) No. 122, effectively rescinding SAB No. 121. Issued on March 31, 2022, SAB No. 121 mandated that companies holding crypto-assets for clients recognize these assets and corresponding liabilities on their balance sheets. This requirement faced stark criticism because it discouraged financial institutions from offering crypto custody services. Under SAB No. 122, custodians are now instead required to "determine whether to recognize a liability related to the risk of loss under such an obligation, and if so, the measurement of such a liability, by applying the recognition and measurement requirements for liabilities arising from contingencies" under Generally Accepted Accounting Principles or International Financial Reporting Standards. This rescission is anticipated to encourage traditional financial institutions to expand their digital asset services because they are no longer required to report custodial crypto-assets as liabilities, thus reducing associated capital constraints.

SEC Division of Corporation Finance Issues Stablecoin Guidance

On April 4, 2025, the SEC's Division of Corporation Finance issued a statement providing guidance on the application of federal securities laws to certain stablecoins, referred to as "Covered Stablecoins." These are stablecoins designed to maintain a one-to-one value with the US dollar, backed by low-risk, liquid assets, and redeemable at par. The division's analysis focused on whether the offer and sale of such stablecoins constitute securities under the *Reves* test (which determines if a note is a security) and the *Howey* test (which determines whether an instrument is an investment contract and focuses on the economic realities surrounding the transaction).

Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act each defines the term "security" by providing a list of various financial instruments, including "stock," "note," and "evidence of indebtedness." The division reasoned that "[b]ecause Covered Stablecoins share some characteristics with a note or other debt instrument, we analyze them under the test set forth in *Reves v. Ernst & Young*." Recognizing the possibility that a "Covered Stablecoin is not viewed as a note or other debt instrument, and considering that it is not any of the other financial instruments that are specifically enumerated in the definition of 'security,'" the division also analyzed Covered Stablecoins under the *Howey* test.

Under the *Reves* test, the division considered four factors to conclude that Covered Stablecoins are likely not securities:

1. Motivation of the parties: Covered Stablecoin issuers aim to facilitate transactions rather than raise capital, and purchasers seek a stable store of value, not investment profits.
2. Plan of distribution: Covered Stablecoins are widely available for transactional purposes, not for speculative investment.
3. Reasonable expectations of the investing public: Marketing emphasizes utility in payments, not potential profits.
4. Existence of another regulatory scheme: Issuers often operate under state money transmitter laws (i.e., an existing scheme with regulatory oversight).

The division concluded that, based on these factors, the offer and sale of Covered Stablecoins likely do not constitute securities under the *Reves* test. The division came to a similar conclusion when applying the *Howey* test: because buyers do not purchase Covered Stablecoins with a reasonable expectation of profit derived from the entrepreneurial or managerial efforts of others — and because these instruments are not marketed as investments or with any emphasis on the potential for profit — the division determined that Covered Stablecoins are likely not investment contracts.

The division's guidance emphasizes that the classification of Covered Stablecoins under securities laws depends on their specific structure and operation, particularly focusing on the nature of the reserve assets and the redemption mechanisms in place. This guidance aims to provide issuers and market participants with greater regulatory certainty regarding these specific stablecoin structures.

SEC Division of Corporation Finance Issues Proof-of-Work Mining Guidance

The SEC's Division of Corporation Finance released a statement on March 20, 2025, clarifying how federal securities laws may apply to certain proof-of-work (PoW) mining activities. The statement focuses on crypto-assets earned through participation in public, permissionless networks — referred to as "Covered Crypto Assets" — and a process termed "Protocol Mining." The statement reasoned that PoW networks rely on consensus mechanisms through which miners solve cryptographic puzzles to validate blocks of transactions and earn newly minted crypto-assets as rewards. In assessing the securities status of assets earned through PoW mining, the statement considered that these activities do not require miners to own the assets beforehand, and the network's protocol governs how rewards are distributed. With respect to mining pools, which are groups of miners who coordinate their computational resources to increase their chances of successfully mining a block, the pool's earned rewards are typically distributed among participants based on their contributed work.

The statement clarifies that while solo PoW mining generally does not raise securities law concerns, participation in mining pools or hosted mining services could be subject to securities regulations depending on how the pool is structured and promoted and if it involves investment-like arrangements in which participants rely on the efforts of others for profit, which may meet the criteria of an "investment contract" under the *Howey* test. The statement urges participants and operators to carefully assess the structure and disclosures associated with their mining activities, especially in pooled arrangements, to avoid inadvertently running afoul of securities laws. In short, the SEC is signaling that some mining pools may cross the line into offering unregistered securities, depending on how they are run — and particularly if they resemble passive investment scheme managed by others.

SEC Division of Corporation Finance Issues Meme Coin Guidance

In another significant development, on February 27, 2025, the SEC's Division of Corporation Finance issued a statement saying that meme coins are not securities. The guidance paints meme coins with a broad brush, explaining that such assets "typically" lack the investment contract elements necessary to meet the definition of a security under the familiar *Howey* test. The SEC's rationale was that these assets often function more as social or entertainment-driven tokens rather than investment vehicles with a reasonable expectation of profit based on the efforts of others.

This broad language in the guidance has sparked discussion, particularly from Commissioner Crenshaw, who released a statement in response. Commissioner Crenshaw expressed concerns about the sweeping nature of the guidance, emphasizing that regulatory determinations should focus on the economic realities of each asset class. She pointed out that many purchasers of meme coins exhibit speculative intent, which should not be ignored when assessing their regulatory status. Commissioner Crenshaw's remarks suggest that while the guidance provides clarity, it may not fully account for the complexities of investor behavior in the crypto market.

SEC Establishes New Cyber and Emerging Technologies Unit

As detailed in a prior Goodwin blog post, the SEC announced on February 20, 2025, that it was replacing its Crypto Assets and Cyber Unit with the newly formed Cyber and Emerging Technologies Unit (CETU). CETU will not primarily focus on crypto; it instead will address misconduct in securities transactions across various technologies, including blockchain, artificial intelligence, and social media.

Conclusion

The SEC's recent initiatives and guidance reflect an effort to create a more predictable and transparent regulatory landscape for market participants. But while many are heartened by this movement toward long-sought regulatory clarity in the digital assets industry, the SEC's continued role as a central driver of these discussions raises the question of whether, as a matter of first principle, the SEC should be the agency dictating which assets are "in" and "out" at all. Many industry participants are instead focused on the legislative solutions beginning to take shape (e.g., federal legislative proposals for regulating stablecoins, the development of which we are tracking)

For more on the SEC's potential landscape under newly confirmed Chairman Paul Atkins, we direct to you to this recent client alert.

0 To Have and to HODL: White House Embraces Digital Assets Industry

Key Takeaway: Since his inauguration in January 2025, President Trump has released two key crypto-related executive orders that establish, respectively, a Working Group on Digital Asset Markets and strategic digital assets reserves, echoing his hope to make the United States the "crypto capital of the planet."

The White House wasted little time making its mark on digital assets policy, issuing industry-promoting executive orders within the Trump administration's first few months on the job. Signaling a decisive shift in approach, these directives reflect a clear intent to promote and shape the strategic landscape for cryptocurrencies and blockchain technology. These early actions suggest that digital finance will remain a priority at the highest levels of government, with implications for investors, regulators, and the broader economy.

January 23, 2025, Executive Order Establishing Digital Assets Working Group

President Trump issued an executive order shortly after taking office that, among other things, established the Presidential Working Group on Digital Asset Markets, chaired by David Sacks, special adviser for AI and crypto. Titled "Strengthening American Leadership in Digital Financial Technology," the order directs the working group to develop a federal regulatory framework for digital assets, including stablecoins, within 180 days of the order (i.e., by July 22, 2025). Of note, the executive order also revoked Executive Order 14067 of March 9, 2022, which had previously outlined the US government's approach to digital asset development, as well as the Treasury Department's "Framework for International Engagement on Digital Assets," issued on July 7, 2022. The revocation of these directives underscores the administration's intent to pivot toward a more innovation-friendly regulatory environment, aiming to "support the responsible growth and use of digital assets" and bolster the United States' status as a leader in digital finance.

March 6, 2025, Executive Order Establishing Strategic Reserves of Bitcoin and Other Digital Assets

Coming on the heels of public remarks from the President expressing his interest in a US crypto reserve strategy and from Sacks criticizing the US government's past approach to Bitcoin holdings, President Trump issued an executive order on March 6, 2025, that establishes strategic reserves of Bitcoin and other digital assets. The Secretary of the Treasury is tasked with overseeing these reserves.

Specifically, the order mandates the creation of a Strategic Bitcoin Reserve, capitalized with Bitcoin obtained through criminal or civil asset forfeiture, to serve as a reserve asset for the United States. Notably, the order prohibits any sale of these holdings. However, the order provides that the Secretary of the Treasury and the Secretary of Commerce "shall develop" budget-neutral strategies to acquire additional Bitcoin without imposing costs on taxpayers.

The order also establishes a separate reserve, the United States Digital Asset Stockpile, for managing other/non-Bitcoin digital assets acquired similarly through forfeiture. As to this stockpile, the order proscribes additional acquisitions of non-Bitcoin digital assets beyond those obtained through forfeiture; however, unlike the Bitcoin reserve, the executive order notes that the Secretary of the Treasury "may determine strategies for responsible stewardship, including potential sales."

A Fact Sheet issued in conjunction with the order estimates that past "[p]remature sales of [federally held] bitcoin have already cost U.S. taxpayers over $17 billion." The Fact Sheet also touts that Bitcoin's security and fixed supply present strategic advantages, noting that it has never been hacked and that its scarcity makes it "digital gold." The Fact Sheet also notes that centralizing the management of all federally held digital assets will help to ensure oversight, accurate tracking, and value maximization.

During a White House-hosted crypto summit held the following day — with the President, Sacks and his team, and ke stakeholders, including members of Congress and staff and industry participants, in attendance — the Presider characterized the reserves as a "virtual Fort Knox for digital gold to be housed within the United States Treasury."

0 The DOJ Issues a Memo “Ending Regulation By Prosecution”

Key Takeaway: The DOJ disbanded its National Cryptocurrency Enforcement Team, consistent with President Trump’s January executive order promising to end regulatory weaponization against digital assets. The DOJ’s memorandum sets forth priorities and directives for prosecutors regarding regulatory enforcement in the digital asset space.

On April 7, 2025, Deputy Attorney General Todd Blanche issued a four-page memorandum titled “Ending Regulation By Prosecution.” The memo makes clear “[t]he Department of Justice is not a digital assets regulator” and chastises the prior administration’s use of the Justice Department “to pursue a reckless strategy of regulation by prosecution, which was ill conceived and poorly executed.” It includes an announcement that the National Cryptocurrency Enforcement Team will be disbanded, effective immediately.

The memo declares that the DOJ will “no longer target virtual currency exchanges, mixing and tumbling services, and offline wallets for the acts of their end users or unwitting violations of regulations.” Instead, the DOJ will “prioritize investigations and prosecutions that involve conduct victimizing investors.” The memo lists several examples, “including embezzlement and misappropriation of customers’ funds on exchanges, digital asset investment scams, fake digital asset development projects such as rug pulls, hacking of exchanges and decentralized autonomous organizations resulting in the theft of funds, and exploiting vulnerabilities in smart contracts.” The DOJ will also prioritize “cases involving use of digital assets in furtherance of unlawful conduct by cartels, Transnational Criminal Organizations, Foreign Terrorist Organizations, and Specially Designated Global Terrorists,” consistent with a “total elimination” policy set forth in a White House executive order. The memo directs that ongoing investigations inconsistent with such directives should be closed and rescinds all previously issued policies and directives that are inconsistent with the policies and directive set forth in the memo.

The memo also sets forth directives regarding charging considerations for federal prosecutors in light of these articulated priorities. Specifically, the memo directs prosecutors to prioritize cases that hold “accountable individuals who (a) cause financial harm to digital asset investors and consumers; and/or (b) use digital assets in furtherance of other criminal conduct, such as fentanyl trafficking, terrorism, cartels, organized crime, and human trafficking and smuggling.” The memo makes clear that prosecutors should not charge regulatory violations in cases involving digital assets — listing examples including unlicensed money transmission, violations of the Bank Secrecy Act, unregistered securities offering violations, unregistered broker-dealer violations, and other violations of registration requirements under the Commodity Exchange Act — unless there is evidence that the defendant knew of the requirement at issue and violated such a requirement willfully. In addition, the memo instructs that “[p]rosecutors should not charge violations of the Securities Act of 1933, the Securities Exchange Act of 1934, the Commodity Exchange Act, or the regulations promulgated pursuant to these Acts, in cases where (a) the charge would require the Justice Department to litigate whether a digital asset is a ‘security’ or ‘commodity,’ and (b) there is an adequate alternative criminal charge available, such as mail or wire fraud.”

The memo also directs the Office of Legal Policy and the Office of Legislative Affairs to propose legislative and regulatory changes to improve asset forfeiture efforts in the digital assets space and announce that the DOJ “will fully participate” in the Working Group on Digital Asset Markets, established in President Trump’s Executive Order 14178.

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