

Client Alert: Navigating Remaining Risks in the New Crypto and Digital Assets Environment

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A rising tide does not necessarily lift all boats when it comes to increasing compliance in the world of crypto asset investments. In fact, the existence of a bull market or a seemingly friendly regulatory environment can create headwinds for building a compliance structure needed to fit your business and could create a risk for the crypto market.

As has widely been reported, Trump's SEC (Securities and Exchange Commission) has formed a Crypto Task Force aimed at creating a friendlier regulatory environment for digital assets, dismissed many pending SEC enforcement actions, rescinded SAB 121 (which required on-balance sheet accounting of crypto assets under custody), and adopted a new executive order, the stated purpose of which is to "support the responsible growth and use of digital assets, blockchain technology, and related technologies across all sectors of the economy."

While these developments no doubt represent new opportunity for digital asset companies, there remains regulatory and litigation risk. This article outlines these ongoing risks, the challenges that may be presented by "good times" for crypto, and what digital asset companies can do about it.

The Risk That Remains

Just a month into the new SEC, its approach to enforcement has already taken a dramatic turn. In quick succession, the SEC has begun voluntarily dismissing cases brought under the prior administration nationwide, including cases premised on the theory that crypto assets are securities and that crypto trading platforms should be registered with the SEC. For example, on Friday, February 21, 2025, Coinbase announced that the SEC agreed to drop an enforcement case against the company, pending approval of the dismissal by SEC commissioners. On March 3, 2025, Kraken announced that the SEC was also dropping its enforcement case against the company. Other cases have been put on hold, and more dismissals are forthcoming. This represents a striking reversal from the SEC's aggressive enforcement against crypto companies during the last administration.

Private Suits, State-Level Action, and Non-US Regulation

Although federal enforcement may ease, companies should nonetheless be aware of remaining risks from private actions, state level action, and non-US regulation, all of which are expected to grow under Commissioner Paul Atkins' leadership. While federal enforcement actions against digital asset companies may decrease or be focused on more traditional frauds rather than the status of digital assets as securities, companies should keep an eye to potential legal action in other spheres.

Although the SEC may no longer advance the position that crypto assets are securities, private litigation continues to present risk to digital asset companies. Plaintiffs may use existing federal securities laws for various allegations, such as selling unregistered securities and securities fraud. Private lawsuits may also expose unsettled areas of the law or break new legal ground. For instance, in late January 2025, plaintiffs filed a class action lawsuit against memecoin generator Pump.fun, alleging violations of securities laws. Notably, plaintiffs assert that tokens made on Pump.fun's platform are securities—which is not settled law. The case is pending in the Southern District of New York, where federal judges sit at the center of key questions of law regarding the crypto industry. While the SEC is stepping back from using existing securities laws to pursue litigation against crypto companies (especially as DOGE cuts roles at the SEC), private suits may nonetheless use legal strategies premised on the case law developed under the prior SEC administration.

State attorney generals will also likely increase enforcement activity related to crypto assets, and some states are already active in the space. In June 2024, New York Attorney General Letitia James sued crypto trading company NovaTechFx, its founders, and crypto mining company AWS Mining Pty Ltd. for allegedly defrauding investors through pyramid schemes, causing losses to investors of over \$1 billion. California Attorney General Rob Bonta has also brought actions involving prominent crypto trading platforms and others alleging violations of the California Commodities Law. With these examples in mind, companies should remain aware of state level laws, like California's, which remain a potential source of enforcement activity. These state attorneys general, and others, may ramp up their enforcement efforts to fill a perceived gap from the SEC's retreat.

Digital asset companies should also keep an eye toward global regulators, as well. The newly-created Markets in Crypto-Assets Regulation (MiCA) implements EU market rules for crypto assets. Countries such as the United Kingdom, France, Canada, and Switzerland also monitor and regulate crypto—with EU countries like France transitioning to the MiCA framework. Compared to the SEC, these regulators may take more aggressive regulatory positions.

The Remaining SEC Risk

Significantly, companies should expect continued SEC actions against fraud—and risk of this enforcement will be especially pronounced if there is market stress. The SEC announced the newly-created Cyber and Emerging Technologies Unit (CETU), which replaces the Crypto Assets and Cyber Unit. Listed among the CETU's priority areas include “fraud involving blockchain technology and

crypto assets.” Companies should expect enforcement to continue, and potentially ramp up if and when the market shows distress.

Businesses should also expect enforcement of market manipulation cases. In October 2024, the DOJ and SEC announced fraud charges against crypto asset promoters and three companies holding themselves out to be market makers. The charges alleged that the companies manipulated markets via self-trading (also known as “wash trading”), using algorithms that generated huge amounts of artificial trading volume and transactions. While the SEC’s authority is premised on the transactions involving securities, the CFTC (Commodity Futures Trading Commission) and DOJ also have authority to pursue market manipulation in other markets, so federal enforcement against market abuse is likely to continue regardless of how the securities laws are interpreted or amended.

What Companies Can Do About It—Don't Sleep on Compliance

The digital assets industry—like most cutting-edge industries—has frequently experienced rapid growth outpacing the capabilities of existing compliance regimes. One silver lining of the previous downturn and ensuing era of enforcement is that it focused the attention of many digital asset companies on improving measures to identify and prevent misconduct.

Although this will differ by the business, one universal theme is that companies should focus on making sure that all public statements are vetted and supported. Similarly, all companies should ensure that they are complying with their anti-money laundering obligations.

The change in administration has prompted hopes of a new era of growth for the crypto industry, and while certain risks have abated (at least for now), companies will benefit from ensuring that compliance programs keep pace with their business and the rapidly evolving federal and state regulatory landscape.

Jenner & Block’s Markets and Trading and Fintech and Crypto Assets teams are prepared to guide market participants through this developing regulatory landscape.

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