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New administration's crypto whirlwind marks significant shifts for digital assets

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The first two months of the second Trump administration have seen a burst of significant shifts in crypto regulation and policy. These changes have spanned three core areas: (1) regulatory—with a particular focus on the Securities and Exchange Commission; (2) executive; and (3) legislative. New changes seem to arrive almost daily, challenging FinTech and crypto attorneys to keep up with what has changed and what may be changing shortly.

The SEC changes top officials and policy

Immediately after President Donald Trump's inauguration, changes began at the SEC. Prior SEC Chairman Gary Gensler resigned and current SEC Commissioner Mark Uyeda was named as Acting Chairman of the SEC. Former SEC Commissioner Paul Atkins has been nominated to serve as the new SEC Chairman and is awaiting confirmation.

SEC Commissioner Hester Peirce, who had been a highly vocal critic of the SEC's approach toward digital assets under Gensler's approach to digital assets, and who previously served as counsel to Paul Atkins when he was an SEC Commissioner under George W. Bush administration, has taken a leading role in staking out the SEC's new approach to digital assets.

In just these first two months, the SEC has started by pulling back on many of the SEC's activities regarding crypto and digital assets from the Gensler era.

Formation of Crypto Task Force. The SEC began by announcing its "Crypto Task Force" on Inauguration Day, just as Uyeda was named Acting SEC Chairman. The announcement explained that the Task Force would be headed by Commissioner Peirce and will "collaborate with commission staff and the public to set the SEC on a sensible regulatory path that respects the bounds of the law." Press Release, SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force, Sec. & Exch. Comm'n (Jan. 21, 2025).

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More than 50 locations, including London, Houston, New York, Toronto, Mexico City, Hong Kong, Sydney and Johannesburg.

The announcement further explained that the "Task Force's focus will be to help the Commission draw clear regulatory lines, provide realistic paths to registration, craft sensible disclosure frameworks, and deploy enforcement resources judiciously [with regard to crypto]."

In the short time since its inception, the Task Force has undertaken several initiatives, including: (1) meeting with members of the public and companies regarding crypto; (2) soliciting feedback from the public on a securities framework for crypto; (3) expanding the Task Force's staff; and (4) hosting roundtables on crypto-related issues.

Since early February, the Task Force has met with a series of industry members and has made its meeting notes public. *Crypto Task Force Meeting Logs*, Sec. & Exch. Comm'n (last visited March 14, 2025).

The Task Force's meetings dovetail with its recent set of questions soliciting feedback on a securities framework for crypto.

The Task Force explained that it had drafted a "potential taxonomy" for crypto assets, with four tiers: (1) assets with intrinsic securities characteristics; (2) assets sold as part of an investment contract, even if the asset itself may not be a security; (3) tokenized securities; and (4) all other assets, which it would not regard as securities.

Most recently, the Task Force has both expanded its team and hosted a roundtable on securities status on March 21.

Rescission of SAB 121 by SAB 122. Almost immediately after Inauguration Day, the SEC issued Staff Accounting Bulletin 122, 90 Fed. Reg. 8492 (Jan. 23, 2025) (SAB 122) which rescinded the SEC's highly controversial prior SEC Staff Accounting Bulletin No. 121, 87 Fed. Reg. 21015 (March 31, 2022) (SAB 121), which had been released under Gensler.

SAB 121 had "add[ed] interpretive guidance for entities to consider when they have obligations to safeguard crypto-assets held for their platform users," and in particular required these entities to recognize digital assets as a liability on their balance sheets.

SAB 121 was a response to the SEC's observation that entities were increasingly providing users with the ability to access cryptocurrencies and highlighted certain perceived risks associated with that access.

To that end, SAB 121 asked reporting entities under the Securities and Exchange Acts to provide specific disclosures of "the nature and amount of crypto-assets" that an entity is "responsible for holding for its platform users, with separate disclosure for each significant crypto-asset, and the vulnerabilities [the entity] has due to any concentration in such activities."

SAB 122 rescinded SAB 121, thus making registered entities no longer required to consider the full value of client crypto assets as liabilities. However, the SEC reminded entities in SAB 122 "that they should continue to consider existing requirements to provide disclosures that allow investors to understand an entity's obligation, and if so, the measurement of such a liability."

Abandoning SEC's Appeal of the Successful Challenge to Its "Dealer Rule." On Feb. 20, 2025, the SEC voluntarily dismissed its pending appeal to the Fifth Circuit from the ruling in *Nat'l Ass'n of Priv. Fund Mgrs. v. SEC*, 2024 WL 4858590 (N.D. Tex. Nov. 21, 2024).

This ruling had struck down SEC's so-called "Dealer Rule," *Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer in Connection With Certain Liquidity Providers*, 89 Fed. Reg. 14938 (Feb. 29, 2024), under the Administrative Procedure Act as being "unlawful agency action taken in excess of its authority."

The Dealer Rule had expanded the definition of certain tests used by the SEC to determine whether someone was acting as a dealer "as part of a regular business" pursuant to Sections 3(a)(5) and 3(a)(44) of the Securities Exchange Act of 1934. Under the SEC's new rule, liquidity providers could be considered "dealers," requiring registration with the commission.

This rule affected crypto broadly because it appeared to include DeFi "automated market maker" protocols, so as to require these protocols to register with the SEC as dealers. This potential requirement prompted Peirce to ask "[h]ow can a software protocol register as a dealer?"

The court in striking down the Dealer Rule reasoned that "[t]he Rule as it currently stands de facto removes the distinction between 'trader' and 'dealer' as they have commonly been defined for nearly 100 years." The court thus vacated the Dealer Rule in its entirety.

The SEC filed its appeal days before the start of the new Trump administration, on Jan. 17, 2025, then withdrew the appeal a month later under the new administration. Accordingly, the vacatur of the Dealer Rule now stands and DeFi protocols will not be required to register with the SEC as dealers.

Dismissing or Pausing High-Profile Cases Against Exchanges. Starting in late February, the SEC began voluntarily dismissing a number of major litigations it had been prosecuting against various cryptocurrency exchanges. Under Gensler's tenure, the SEC initiated several enforcement actions against major cryptocurrency exchanges in the United States.

These cases had charged these exchanges with failure to register as broker-dealers and exchanges, as well as providing unregistered securities offerings, arguing that tokens offered or traded on such exchanges were "securities" or were otherwise part of "investment contracts" within the *Howey* test.

In early February, for example, the SEC agreed to a 60-day stay in the enforcement litigation it had brought against Binance, in which Binance had challenged the applicability of the securities laws to its activities.

Following that stay, the SEC voluntarily dismissed its enforcement actions against Gemini Trust Company, LLC, and a number of other major cryptocurrency exchanges. The SEC likewise voluntarily dismissed its pending cases against MetaMask developer Consensys and the NFT trading platform OpenSea.

These dismissals mark a significant shift from the stance the SEC was taking toward cryptocurrency exchanges as recently as just before the change of administration, where the SEC notably issued a Wells Notice to the NFT protocol CyberKongz as recently as this past December.

Whether the SEC will withdraw its Second Circuit appeal from the partial dismissal of its claims in *SEC v. Ripple Labs*., 697 F. Supp. 3d 126 (S.D.N.Y. 2023), remains to be seen.

Action on Meme Coins. On Feb. 27, 2025, the SEC's Division of Corporate Finance issued its Staff Statement on Meme Coins, explaining that the division did not view so-called "meme coins" as "securities." Meme coins are crypto tokens, typically launched on the Solana blockchain, that lack real utility beyond their attention-grabbing nature.

Notable recent examples include Trump's meme coin, $TRUMP, launched shortly before his inauguration, and the $LIBRA meme coin, endorsed briefly and subsequently disavowed by Argentinian President Javier Milei.

While meme coins have existed for some time, e.g., going back to the creation of Dogecoin in 2013, they only recently have become a major phenomenon. Their status as securities has been the subject of recent debate, as illustrated by class action lawsuits filed this past January against the meme coin platform Pump.Fun, alleging that the meme coins sold on the platform are securities under the *Howey* test.

By contrast, the staff statement takes the position that meme coins "are typically purchased for entertainment, social interaction, and cultural purposes, and their value is driven primarily by market demand and speculation. In this regard, meme coins are akin to collectibles."

The staff statement based this position on the requirements of the *Howey* test, stating that offers and sales of meme coins are not "undertaken with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others."

The division thus took the position that "transactions in the types of meme coins described in this statement, do not involve the offer and sale of securities under the federal securities laws."

At the same time, however, the division warned that even though it does not consider such coins to be securities, any fraudulent conduct "related to the offer and sale of meme coins may be subject to enforcement action or prosecution by other federal or state agencies under other federal and state laws."

On the same day, though, SEC Commissioner Caroline Crenshaw offered her own statement on meme coins which took a different view. She asserted that the division's statement "advances an incomplete, unsupported view of the law to suggest that an entire product category is outside the bounds of SEC jurisdiction." Commissioner Caroline A. Crenshaw, *Response to Staff Statement on Meme Coins: What Does it Mean?*, Sec. & Exch. Comm'n (Feb. 27, 2025).

Crenshaw contended that the Division's statement "offers no clear definition from law or even a basic dictionary definition," and that "[d]ecades of controlling authority do[] not permit such easy avoidance of the federal security laws." Rather, Crenshaw took the view that "the individualized inquiry *Howey* requires simply cannot be reconciled with the staff's conclusion that offers and sales of a vaguely defined category . . . are generally not securities."

Executive branch actions

Trump has long made overtures to the digital asset industry—even appearing at a Bitcoin conference in Nashville before the election last year.

In keeping with those overtures, he has implemented several of his own direct changes regarding digital assets—issuing an early executive order on crypto, announcing a crypto "strategic reserve," and meeting with crypto industry leaders to discuss their questions and concerns.

These actions have significantly departed from the executive branch approach to cryptocurrencies under the prior Biden administration.

Crypto Executive Order. On Jan. 23, 2025, Trump issued Executive Order No. 14178, entitled "Strengthening American Leadership in Digital Financial Technology," to "support the responsible growth and use of digital assets, blockchain technology, and related technologies across all sectors of the economy[.]" Exec. Order No. 14178, 90 Fed. Reg. 8647 (Jan. 23, 2025).

The Executive Order established the President's Working Group on Digital Asset Markets, which will work in partnership with a number of agency heads to recommend issuance or rescission of guidelines or regulations related to digital assets.

Perhaps most notably, the Executive Order prohibited the creation of any central bank digital currency (CBDC), and revoked President Biden's Executive Order 14067 on "Ensuring Responsible Development of Digital Assets." Exec. Order No. 14067, 87 Fed. Reg. 14143 (Mar. 9, 2022).

The Biden executive order had focused primarily on evaluating the potential implementation of CBDCs and addressing national security concerns that crypto might present, as well as U.S. economic leadership and competitiveness. As such, Trump's order marks a significant shift away from the Biden-era crypto outlook.

Crypto Strategic Reserve. President Trump's January 23 executive order on crypto also signaled intentions to build a "national digital asset stockpile."

On March 6, 2025, a further executive order was in fact issued: "Establishment of the Strategic Bitcoin Reserve and United States Digital Asset Stockpile." Exec. Order No. 14233, 90 Fed. Reg. 11789 (Mar. 6, 2025). President Trump's Order came the night before holding a crypto summit with industry leaders.

The order provided:

> "It is the policy of the United States to establish a Strategic Bitcoin Reserve. It is further the policy of the United States to establish a United States Digital Asset Stockpile that can serve as a secure account for orderly and strategic management of the United States' other digital asset holdings."

The reserve will be "capitalized with all BTC held by the Department of the Treasury that was finally forfeited as part of criminal or civil asset forfeiture." The same applies for administration of the "United States Digital Asset Stockpile." These assets will not be sold, and the Order further directs the Secretaries of the Treasury and Commerce to develop budget-neutral strategies for acquiring additional Bitcoin.

The OCC Endorses Crypto in Banking. On March 7, the Office of the Comptroller of the Currency (OCC) issued an interpretive letter rescinding certain of its prior interpretive letters and "reaffirm[ing] that . . . crypto-asset custody, distributed ledger, and stablecoin activities . . . are permissible [for national banks and federal savings associations]." OCC Interp. Ltr. No. 1183 (Mar. 7, 2025).

Additionally on that same day, the OCC withdrew its participation in a Federal Reserve/FDIC Jan. 3, 2023 "Joint Statement on Crypto-Asset Risks to Banking Organizations", and a Feb. 23, 2023 Federal Reserve/FDIC "Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities". OCC Bull. 2025-2, "Bank Activities: OCC Issuances Addressing Certain Crypto-Asset Activities".

The OCC's endorsement of having national banks and federal savings associations provide crypto custody services is but another example of how the executive branch is now reversing course and breaking from the prior administration's positions on cryptocurrency.

Legislative proposals for stablecoins and potentially more

The 119th Congress began on Jan. 3, 2025, but already has seen a flurry of activity regarding cryptocurrencies. While prior congresses also saw their fair share of proposed crypto-related legislations—the Lummis-Gillibrand Responsible Financial Innovation Act, S. 2281, 118th Cong. (2023), and the Financial Innovation and Technology for the 21st Century (FIT21) Act, H.R. 4763, 118th Cong. (2023), for example—none were passed.

However, Congress' tenor may now be different, with two stablecoin bills currently under consideration in both houses, as well as the proposed legislative repeal of an IRS reporting rule concerning crypto transactions.

Proposed Stablecoin Bills. On Feb. 4, 2025, Senate Committee on Banking, Housing, and Urban Affairs Chairman Tim Scott, alongside Senators Bill Hagerty, Cynthia Lummis, and Kirsten Gillibrand, introduced legislation aimed at establishing a stablecoin regulatory framework, which they dubbed the "Guiding and Establishing National Innovation for U.S. stablecoins Act of 2025" or "GENIUS Act," S. ____, 119th Cong. (2025).

Two days later, House Financial Services Committee Chairman French Hill and Representative Bryan Steil circulated a discussion draft of a House version of the bill, which they dubbed the "Stablecoin Transparency and Accountability for a Better Ledger Economy Act of 2025" or "STABLE Act," H.R. ____, 119th Cong. (2025). On March 13, the Senate Banking Committee took a bipartisan step toward stablecoin legislation by voting the GENIUS Act out of committee in an 18-6 vote.

The two bills are similar in many ways, with the senate version establishing a framework for issuing and redeeming payment stablecoins with oversight by the Comptroller of Currency. Notably, the senate bill also includes a provision that would allow any stablecoin issuer with a total market capitalization of not more than $10 billion to opt out of the federal regulatory regime and instead submit purely to state-level regulation.

Both bills impose civil penalties for non-permitted issuance of payment stablecoins. This is not the first time that congress has seen stablecoin legislation—former Representative Patrick McHenry proposed the Clarity for Payment Stablecoins Act in July 2023, H.R. 4766, 118th Cong. (2023)—but it is the first time that stablecoin legislation has appeared in both houses of Congress.

Efforts to Repeal the IRS' Broker Rule. The IRS had issued a new rule on Dec. 30, 2024, adding new reporting requirements for digital asset "brokers" to take effect Feb. 28, 2025. The rule itself would have "required [digital asset] brokers to file information returns and furnish payee statements reporting gross proceeds on dispositions of digital assets effected for customers in certain sale or exchange transactions." *Gross Proceeds Reporting by Brokers That Regularly Provide Services Effectuating Digital Asset Sales*, Internal Rev. Serv., 89 Fed. Reg. 106928 (Dec. 30, 2024).

The IRS explained that "the term broker is not limited to conventional securities brokers," and instead could include anyone who provides a "trading front-end service," such as for digital assets. The rule would ultimately require DeFi protocols to provide user information, such as names, addresses, and gross proceeds from activity to the IRS—something that most DeFi protocols do not inherently collect, prompting the pushback.

On March 4, 2025, a bipartisan Senate majority voted 70-27 to pass a Congressional Review Act resolution repealing the IRS's broker rule. The Congressional Review Act, 5 U.S.C. §801 et seq., permits Congress to review major rules issued by agencies within sixty days of the rule's finalization. Passing a resolution of disapproval nullifies the rule. The Senate's vote was followed by a bipartisan 292-132 vote in the House on March 11, thus overturning the IRS' rule.

The resolution now goes to Trump, who is expected to sign it. This situation is a kind of replay of the attempted Congressional Review Act disapproval of the controversial SAB 121 by the previous congress, which passed in congress but then was vetoed by President Biden—thus suggesting yet another shift with regard to the government's stance toward crypto.

What comes next for crypto?

These developments certainly signal some seemingly transformative changes for crypto policy and regulation in the United States. The Trump administration has made significant changes to the government's approach to crypto thus far, and it is possible that the frameworks being developed now may set important standards that will govern crypto for years to come.

Indeed, more developments may be coming: the SEC may have to make decisions about its appeal in the *Ripple* case, Paul Atkins' SEC Chair confirmation hearing is yet to occur, and congressional discussion of stablecoin legislation is well underway. There thus may be even greater change on the way for crypto beyond what these first two months have already brought.

At the same time, unless and until new legislation is passed, existing judicial case law that has endorsed application of the current securities laws to many aspects of digital asset transactions remains on the books and may continue to be applied in future cases, such as in private civil litigation.

The legal environment for crypto and other digital assets may thus continue to be contentious and confusing for some time to come, even under this new, more crypto-friendly administration. FinTech and crypto attorneys may thus continue to struggle to keep up with what has changed so far and what may be changing shortly for some time to come.