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DIGITAL ASSETS: U.S. REGULATORY AND ENFORCEMENT CONSIDERATIONS IN THE NEW ADMINISTRATION

GIBSON DUNN

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Today's Presenters



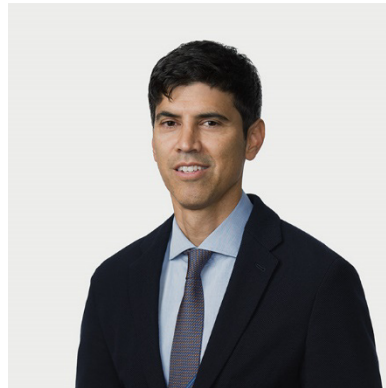
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Agenda

01 **Overview of Landscape**

02 **Rulemaking and Legislative Developments**

03 **Enforcement Actions**

04 **New Administration**

OVERVIEW OF LANDSCAPE

01

Overview of Landscape

Various U.S. regulators currently have different jurisdictional limitations and different regulatory mandates, creating a complicated web of oversight and regulation.

Under the Biden Administration, cryptocurrency enforcement became a key priority of the U.S. federal government. Many agencies created cryptocurrency teams within the agencies and devoted significant resources to cryptocurrency enforcement efforts.

- SEC, CFTC, and DOJ have actively enforced matters involving alleged fraud and manipulation.
- DOJ has enforced in matters involving alleged sanctions, money laundering and Bank Secrecy Act (BSA) registration violations.
- CFTC and SEC have focused on registration-related matters.
- FinCEN and OFAC have actively enforced against digital asset exchanges for alleged violations of sanctions and BSA/AML.

Additionally, state regulators have been active, including in implementing regulations and taking enforcement actions.

Overview of Landscape

- The priorities of the Trump Administration appear to be different and the resources and policies at the regulatory agencies around digital assets will likely be very different.
- We expect a **more hospitable environment** in the United States for digital assets.
- While the last Congress introduced numerous bills related to the regulation of digital assets, none has been signed into law. The next Congress is, along with the Trump Administration, expected to prioritize developing a **legislative framework for digital assets**.
- President Trump has nominated well-known advocates of cryptocurrency to high-ranking positions, including SEC Chair, and has named an inaugural **“Crypto Czar.”**

“If crypto is going to define the future, I want it to be mined, minted, and made in the USA.”

- President Trump

Paul Atkins “also recognizes that digital assets & other innovations are crucial to Making America Greater than Ever Before.”

- President Trump on his selection of Paul Atkins as SEC Chair

“I look forward to working with President Trump, David Sacks, and my colleagues in Congress to develop a regulatory framework for digital assets that encourages innovation here in the United States, not overseas.”

- Senator Tim Scott, incoming Senate Banking Committee Chair

“We need a market structure for digital assets.”

-Rep. French Hill, incoming House Financial Services Committee Chair

U.S. Agencies Involved in Regulating Digital Assets and Enforcement Actions



SEC



CFTC



FINRA



State Banking Regulators



FinCEN



OFAC



State Securities Commissions



DOJ



CFPB



FTC



**Prudential Regulators:
Federal Reserve Board, FDIC, OCC**



Overview of Landscape

Securities vs. Commodities

- There is **no definitive rule** as to whether a token qualifies as a security or a commodity.
- SEC continues to engage in **ad hoc enforcement** activities applying the *Howey* test to various digital assets.
- CFTC relies on its fraud and manipulation enforcement authority to regulate tokens that are commodities, such as Bitcoin, ether, USDT and Litecoin.
 - The CFTC does not have **rulemaking authority over spot commodities**, but does have **enforcement over fraud and manipulation in the spot commodities market**.

Stablecoins

- Stablecoins are cryptocurrency where the value of the digital asset is supposed to be pegged to a reference asset, which is often fiat currency.
 - Stablecoins allow users to interact directly with the cryptocurrency industry, but do not typically shift radically in value. **They are typically treated as commodities (i.e., not securities)**.
- President Biden's Working Group on Financial Markets, along with the OCC and FDIC, issued a report on stablecoins in November 2021, which called for **bank-like regulation of stablecoins**.

Overview of Landscape

“Centralized Exchanges”

- Centralized exchanges facilitate cryptocurrency buying, selling, and trading.
- CEXs act as intermediaries, connecting users to each other as a way to transact in cryptocurrencies or exchange to fiat.
- CEXs usually custody their users’ cryptocurrency (and fiat sent to the CEX for purchasing crypto).
- Traditionally, regulators have focused on CEXs’ obligations, with enforcement actions against centralized exchanges going back approximately ten years.

“DeFi”

- Decentralized finance provides financial instruments and services through “smart contracts” on the blockchain.
- DeFi exchanges do not custody their users’ funds.

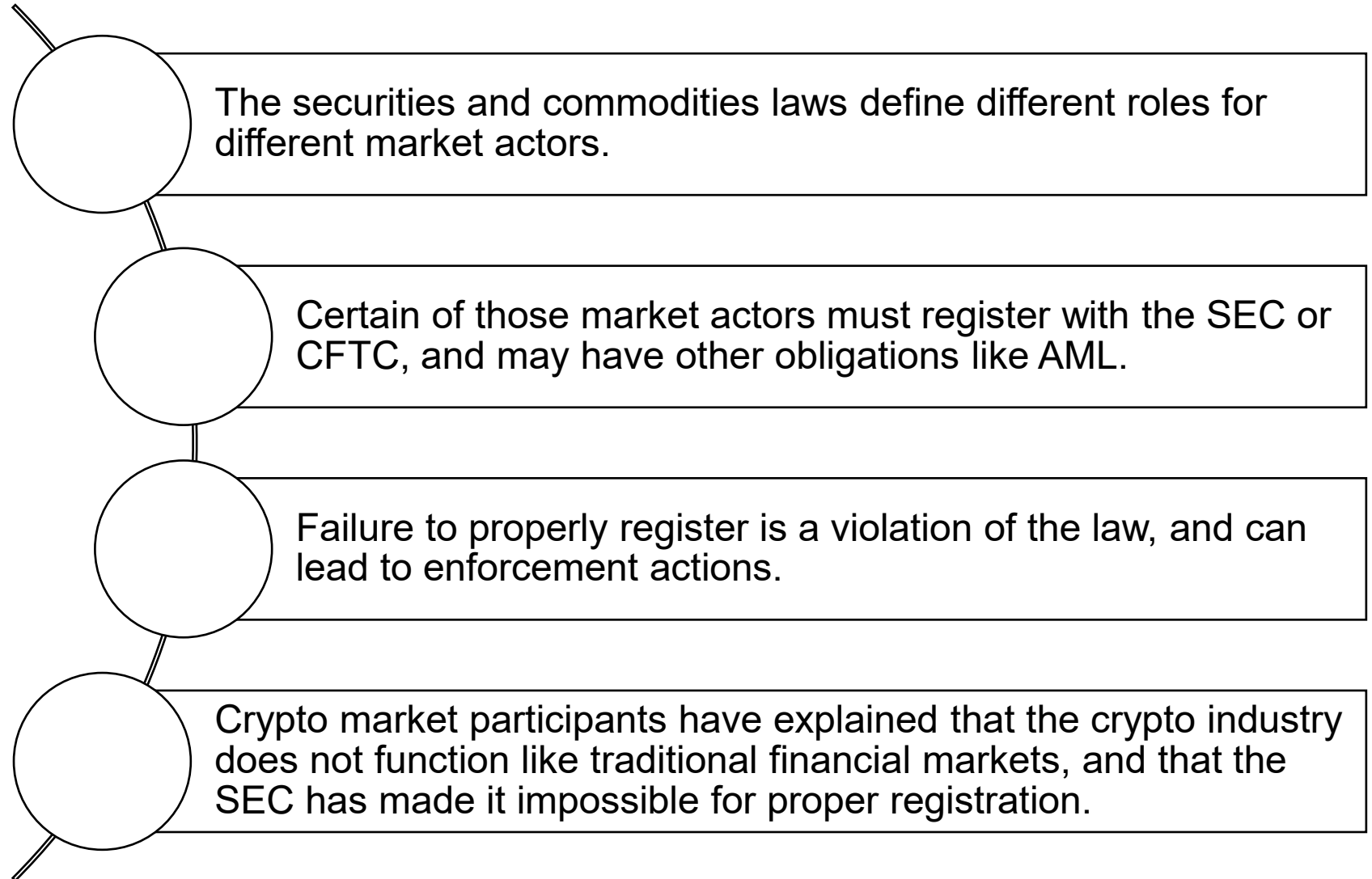
Regulators have been focusing more on the DeFi space.

For example, in April 2023, the U.S. Department of Treasury published its “**2023 DeFi Illicit Finance Risk Assessment**” in response to the mandate from the Biden Administration’s September 2022 White House Report. The Risk Assessment alleged significant risks in decentralized finance, with a particular focus on: (i) AML regulatory gaps for decentralized finance businesses; (ii) lack of AML regulatory compliance by covered decentralized finance businesses; and (iii) increasing use of decentralized finance solutions by bad actors to move illicit funds anonymously.

In 2023 and 2024, SEC, CFTC, and DOJ also all brought actions involving DeFi protocols.

Overview of Landscape

Registration Violations



Overview of Landscape

Fraud and manipulation

The SEC, CFTC, and DOJ have legal authority to bring actions against fraudulent or manipulative conduct.

- SEC and CFTC can only do so when the conduct involves a security or commodity.
- CFTC has primary authority over fraud involving crypto derivatives, a particularly popular product.
- DOJ has often used interstate wire fraud charges, given that most frauds involving cryptocurrencies occur on the internet and thus cross state lines.

The agencies often bring separate parallel actions in cases involving fraud, asserting that certain conduct constituted securities fraud, commodities fraud, and wire fraud.

- DOJ has also brought criminal charges under the securities and commodities laws.

Each of these fraud regulatory regimes has its own benefits and weaknesses for the agencies.

- One particular benefit for the CFTC's enforcement of derivatives is that the commodities laws apply extraterritorially to swap agreements, which allows the CFTC, and the DOJ bringing commodities charges, to take more aggressive approaches to foreign conduct.

Overview of Landscape

Money Laundering

Definition

- It is a crime to engage in a financial transaction with knowledge that the proceeds involved are the proceeds of unlawful activity, and the proceeds were derived from a specified unlawful activity.

Unlawful Activity

- Generally any violation of criminal law – federal, state, local or foreign
- Over 200 specified unlawful activities in the U.S. and certain foreign crimes

Knowledge

- Turning a blind eye or deliberately avoiding gaining positive knowledge when faced with a high likelihood of criminal activity, i.e., ignoring red flags (“willful blindness”)

Scope

- Applies broadly to include corporate and individual enforcement of U.S. persons and individuals outside the U.S.

Overview of Landscape

Anti-Money Laundering

Authorities have often brought actions against cryptocurrency companies charging violations of the Bank Secrecy Act.

DOJ and FinCEN have alleged that crypto companies that exchange crypto-to-fiat or one type of crypto to another are “money services businesses,” which must obtain licenses from the Department of Treasury, implement an AML program, and file suspicious activity reports.

State regulators have made similar allegations for violations of their state money transmitter laws.

DOJ, FinCEN, and CFTC have also alleged that crypto companies are required to implement AML programs because the company is a future commission merchant under the commodities laws.

The major issue in these actions has been whether the crypto company was acting within the United States, thus requiring conformance with the BSA.

Overview of Landscape

Sanctions

- The U.S. sanctions laws cover **U.S. persons and U.S. companies**.
- The law bars transacting with certain individuals or entities, including comprehensive sanctions on certain countries, list-based sanctions, and secondary sanctions.
- **Civil sanctions violations are strict liability** – there is no need to show that the defendant knew of the sanctions regime or that the person they were transacting with was sanctioned.
- The government must establish a defendant “willfully” violated the sanctions in order to prove a **criminal violation**.
- The government can also take other steps designed to cut entities off from the U.S. financial system.
- Sanctions have become a highly-leveraged tool of foreign policy, and **enforcement of those sanctions has similarly increased**.

Overview of Landscape

State Regulators

- States have regulated certain crypto-related activity as **money transmission** for more than a decade. States differ in their approach, some on the basis of fiat activity incidental to crypto transactions and others on the basis of cryptocurrency as “monetary value” or a “medium of exchange.”
- **Key activity types** subject to state money transmission licensing laws include:
 - **Exchange activity:** A company acts as an intermediary in exchanging fiat and crypto between two users (receiving fiat from the first and transferring it to the second; receiving crypto from the second and transferring it to the first).
 - States have generally regulated the first component of that exchange, involving fiat currency.
 - A majority of states now deem **crypto as “monetary value” or a “medium of exchange,”** meaning that the second component of that exchange, transferring crypto, is also subject to the money transmission laws.
 - **Holding activity:** In addition to regulating the transmission of money or monetary value, state money transmission law generally extend to holding of money or monetary value for others (i.e., crypto wallets). Accordingly, states that deem crypto to be “monetary value” or a “medium of exchange” treat the holding of crypto for others as regulated money transmission activity.
 - **Sale of crypto as a principal:** Finally, a minority of states also regulate the sale of crypto to persons as a principal.
- In addition to requiring that entities providing these services maintain money transmission licenses in each state or territory in which customers are located, money transmission laws impose substantive obligations (e.g., AML, disclosure requirements) and other prudential requirements (e.g., net worth, bonding).

Overview of Landscape

FINRA

- The **Financial Industry Regulatory Authority** (FINRA) is a self-regulatory organization for member broker-dealers that is responsible under federal law for supervising member firms.
- **Approval to engage in crypto activity**: Prospective members intending to engage in crypto asset activities must seek approval from FINRA (FINRA Rule 1013) and existing members contemplating crypto-related business may also have to seek approval (FINRA Rule 1017).
- FINRA rules relating to securities, or that do not depend on securities status, may impose obligations on member firms and associated persons, including:
 - **Rule 3110** – requiring member firms to establish and maintain a system to supervise the activities of associated persons;
 - **Rules 3270 and 3280** – imposing obligations on associated persons engaged in outside business activities or private securities transactions;
 - **Rule 3310** – requiring member firms to establish AML programs; and
 - **Rule 2210** – addressing communication by member firms with the public.

Overview of Landscape

Banking Regulators

- Banking regulators (the Federal Reserve, the OCC, the FDIC, and others) supervise bank practices.
- Among other things, banks must **adhere to safe and sound banking practices**.
- Under the Biden Administration, the banking regulators (Federal Reserve, FDIC, OCC) issued a joint statement expressing that they would “**take a careful and cautious approach**” related to current or proposed crypto-asset-related activities and exposures at each banking organization.” In the statement, the regulators warned that certain activities could be **unsafe and unsound banking practices**.
- Despite the November 2021 announcement of an interagency “policy sprint” designed to “**provide coordinated and timely clarity**” regarding the permissibility of certain crypto-asset activities by banking organizations, the federal banking agencies **effectively thwarted** almost any efforts by banking organizations to engage in crypto-asset activities.

RULEMAKING AND RELATED ACTIVITY

02

Crypto Bill FIT21

- On May 22, 2024, the [U.S. House of Representatives passed the Financial Innovation and Technology for the 21st Century Act \(FIT21\)](#), which was the first time that a significant crypto bill had cleared a chamber of Congress. The bill aims to provide regulatory clarity for digital assets. The legislation, which was largely driven by House Republicans, “would establish a regime to regulate the U.S. crypto markets, setting consumer protections, installing the Commodity Futures Trading Commission (CFTC) as a leading regulator of digital assets and the watchdog of the non-securities spot markets and it would more clearly define what makes a crypto token a security or a commodity.”
- Both Rep. French Hill and Senator Tim Scott have said that FIT21 and a stablecoin bill that was close to bipartisan support will be the starting points for legislation in this Congress.

SEC Approvals of Spot Digital Asset ETFs/ETPs

- Throughout 2024, the SEC has approved the listing and trading of a number of spot digital asset ETFs/ETPs, including spot Bitcoin ETPs, and spot Ether ETFs. However, in April 2024, [the SEC postponed its decision on a proposed New York Stock Exchange \(NYSE\) rule change](#) that would permit the listing and trading of options on trusts holding Bitcoin.

Appellate Court Mandates SEC Explanation Regarding Rulemaking

- Our colleagues in [Gibson Dunn’s appellate practice recently won a decision on behalf of Coinbase](#) in the Third Circuit Court of Appeals requiring that the SEC provide a reasoned, non-arbitrary explanation about why it denied Coinbase’s petition seeking a rulemaking regarding the SEC’s views on whether and how the securities laws apply to digital assets.
- Judge Bibas concurred separately, agreeing with Coinbase that “[e]xisting rules do not fit blockchain technology” and that the SEC’s refusal to provide guidance “creates a serious constitutional problem” by depriving digital-asset firms of fair notice of their legal obligations.

Digital Assets and Terrorist Financing

CVC Mixing

- October 19, 2023, FinCEN published a NPRM pursuant to Section 311 that identifies international **CVC Mixing as a class of transactions of primary money laundering concern** and imposing special measures on financial institutions to implement certain recordkeeping and reporting requirements for transactions involving CVC Mixing.
- This rule was not finalized and could be reversed.

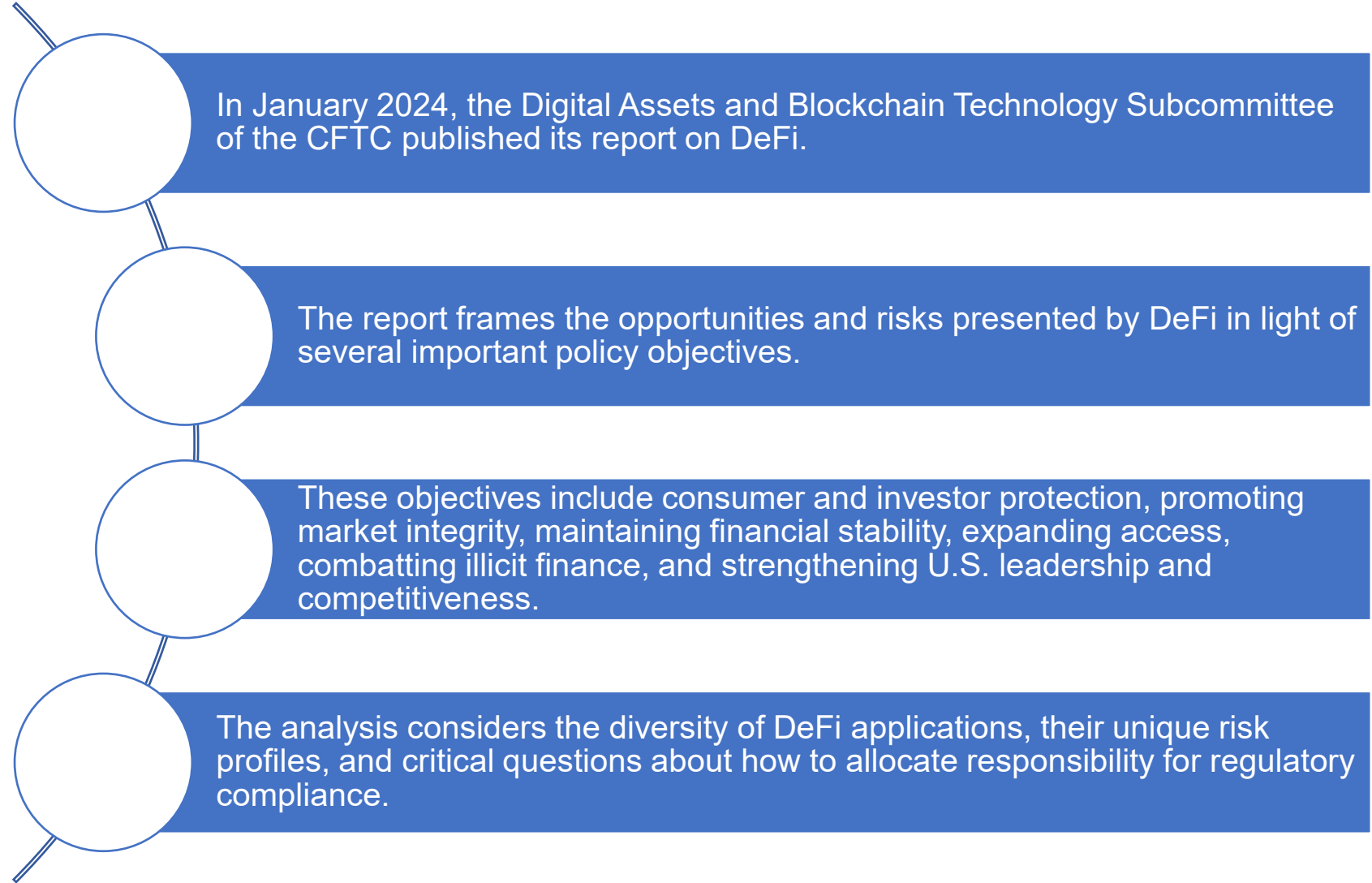
Primary Money Laundering Concern

- FinCEN has identified two Russian connected entities, **Bitzlato and PM2BTC**, as “primary money laundering concerns.” These Orders prevent financial institutions from “engaging in a transmittal of funds from or to” the entities, “or from or to any account or CVC address administered by or on behalf of” the entities.

Hamas Related Orders

- After Hamas’ October 7 Attacks, FinCEN alerted financial institutions to **counter financing to Hamas and its terrorist activities**, and warned of terrorist use of fundraising campaigns by both fiat and virtual currency.
- OFAC has issued a number of sanctions orders adding individuals connected to Hamas to the SDN List, and has specifically listed associated cryptocurrency wallets.
- After the attacks, OFAC designed an entity called “**Buy Cash**,” which was linked to Hamas’ military wing, the Qassam Brigades, and had previously been sanctioned by Israel.
- In March 2024, OFAC announced sanctions on an entity called “**Gaza Now**,” a Hamas-aligned terrorist fundraising network, and its associated individuals. OFAC also added eight associated cryptocurrency addresses to the SDN List.

CFTC Report on DeFi



ENFORCEMENT ACTIONS

03

Key Themes – Failure to Register

SEC, CFTC and FinCEN have brought actions for **alleged failures to register** within the appropriate category.

- Categories requiring registration include money services business (MSB), futures commission merchant (FCM), designated contract market (DCM), swap execution facility (SEF), offers or sales, investment company, investment advisor, exchange, broker or dealer, or clearing agency.
 - Qualifying criteria for each category vary and can overlap.
 - For international businesses, a key component of a registration case is whether the entity does sufficient business in the United States, though the various statutory and regulatory schemes gauge an entity's connection to the U.S. in different ways.
- One of the key takeaways from the SEC's actions have been their breadth, including against **some of the largest crypto exchanges in the world**.
- The Third Circuit recently required the SEC to provide more information about the agency's denial of a petition to provide more guidance about which cryptocurrencies are securities, and a judge in the Southern District of New York certified her decision on whether certain tokens are securities to the Second Circuit.

SEC – Selected Alleged Registration Violations

Matter	Allegation	Status
<i>Kraken</i>	Unregistered exchange, broker, dealer, clearing agency.	Filed in 2023, pending; court denied defendants' motion to dismiss.
<i>Binance</i>	Unregistered exchanges, broker, dealer, clearing agencies; misrepresentation of controls; unregistered offer and sale of securities.	Filed in 2023, pending; court partially denied defendants' motion to dismiss.
<i>Coinbase</i>	Unregistered exchange, broker, dealer, clearing agency; unregistered offer and sale of securities.	Filed in 2023, pending; court partially denied defendants' motion for judgment on the pleadings; court recently granted motion for interlocutory appeal.

CFTC – Selected Alleged Registration Violations

Matter	Allegation	Status	Settlement
<i>Falcon Labs</i>	Unregistered FCM	Filed and Settled in 2024	More than \$1 million
<i>Bitfinex</i>	Unregistered FCM	Filed and Settled in 2021	\$1.5 million

Key Themes – Fraud

Fraud remains a common government allegation in crypto-related actions.

- SEC, CFTC, DOJ and FINRA have brought actions for alleged fraud.
- Fraud continues to be **one of the most common allegations** by the SEC and CFTC, in particular, in the crypto space.
- While crypto-related actions may involve native tokens or claims regarding innovative technology, the government's **underlying conduct allegations tend to resemble allegations of fraud in traditional contexts** (e.g., misappropriation of funds, or pyramid/ponzi schemes, manipulative trading).
- These agencies have emphasized that laws barring fraud apply even to new asset classes.

For example, the SEC's Division of Enforcement tried its largest-ever crypto related trial in 2024. The SEC alleged that defendants orchestrated a multi-billion-dollar crypto asset securities fraud involving crypto assets offered and sold as a security. After a jury found defendants liable, defendants agreed to pay more than \$4.5 billion in disgorgement, prejudgment interest and civil penalties.

- The agencies have also pursued theories of alleged **market manipulation**, which has raised complex trial questions about the crypto products, as well as legal requirements like jurisdiction and venue.

Selected Alleged Fraudulent Conduct

Matter	Allegation	Status
<i>FTX</i>	Wire Fraud, Commodities Fraud, Securities Fraud, Money Laundering	Five Executives Convicted; Bankman-Fried sentenced to 25 years' imprisonment. CFTC settled with the company for \$12.7 billion; SEC and CFTC claims against Bankman-Fried remain pending.
<i>Avi Eisenberg</i>	Wire Fraud, Commodities Fraud, Commodities Manipulation	Convicted at trial, sentencing pending. SEC and CFTC claims remain pending.
<i>Do Kwon</i>	Commodities Fraud, Securities Fraud, Wire Fraud, Money Laundering	Along with Terraform Labs, found civilly liable to the SEC at trial, and agreed to settle for \$4.5 billion. DOJ Charges remain pending.
<i>Alex Mashinsky</i>	Commodities Fraud and Securities Fraud	Pleaded guilty to criminal charges; sentencing pending. CFTC and SEC claims remain pending.

Key Themes – Money Laundering

Enforcement agencies also focus on money laundering allegations in the crypto space.

DOJ has brought actions against the proprietors of crypto platforms that allegedly laundered money.

- DOJ has alleged that the **pseudonymity of crypto has attracted criminals to crypto platforms**, whether created for the purpose of laundering money or with compliance weaknesses that allow money laundering to occur.

FinCEN has also focused its unique tools for combatting money laundering in the crypto space.

- FinCEN has designated two crypto entities as “**Primary Money Laundering Concern**”—Bitzlato and PM2BTC.

Selected Alleged Money Laundering Conduct

Matter	Allegation	Status
<i>Roman Sterlingov</i>	Money Laundering, Unlicensed money services business	Convicted at trial, sentenced to 12.5 years
<i>Ilya Lichtenstein</i>	Money Laundering	Pleaded guilty, sentenced to 5 years
<i>Larry Dean Harmon</i>	Money Laundering	Pleaded guilty, sentenced to 3 years

Key Themes – BSA/AML Violations

CFTC, DOJ, FinCEN, bank regulators and state regulators have brought actions for alleged BSA/AML violations against crypto companies operating in the United States.

- These agencies have alleged that the Bank Secrecy Act (BSA) applies to crypto platforms and operations within the United States and that platforms must comply with the BSA.
- The BSA authorizes the Department of the Treasury to impose reporting and other requirements on financial institutions and other businesses to **help detect and prevent money laundering**.
- The regulations implementing the BSA require financial institutions to, among other things, **collect and maintain certain records about customers and transactions, and to file reports on certain activity and transactions**.
- The CFTC has parallel compliance program requirements that require, for example, customer identification programs.
- Bank regulators have also brought action against banks for inadequate AML on their crypto customers, and the SEC brought a similar action against a public company that made misstatements about their controls.
- These obligations apply to entities that should be registered, even if they are not.

Selected Alleged AML Violations

Matter	Allegation	Status	Total Penalties
<i>Binance</i>	Unlicensed MSB; Violation of BSA; Violation of IEEPA	2023 Guilty plea, along with guilty plea from CEO; civil resolutions with FinCEN, CFTC, and OFAC	\$4.3 billion
<i>BitMEX</i>	Violation of BSA	2021 resolution with FinCEN; 2022 guilty pleas from high- ranking CEOs; 2024 guilty plea from company	\$210 million
<i>Kucoin</i>	Unlicensed MSB; Violation of BSA	Criminal charges pending, including charges against two founders. CFTC suit pending	
<i>Silvergate</i>	Violation of securities laws for false statements about BSA program; violation of BSA.	2024 settlement with SEC and Federal Reserve	\$50 million to SEC; \$43 million to Federal Reserve; \$20 million to state regulator

Selected Alleged State AML Actions

Matter	Allegation	Status
<i>BitPay</i>	Inadequate cybersecurity and AML controls	Settled in 2023 with NYDFS for \$1 million
<i>Coinbase</i>	AML controls	Settled in 2023 with NYDFS for \$50 million penalty; \$50 million to be invested in compliance
<i>Genesis</i>	Inadequate cybersecurity and AML controls	Settled in 2024 with NYDFS for \$8 million and agreed to return BitLicense

Key Themes – Sanctions

Enforcement Agencies have focused on alleged sanctions violations in recent years.

- FinCEN, OFAC, DOJ have brought actions for alleged **violations of U.S. sanctions laws**.
- These agencies have alleged terrorist financing and other sanctions evasive conduct using crypto.
- Sanctions violations in the crypto space are often pursued **alongside BSA/AML violations** on the alleged premise that weak BSA/AML controls allow for sanctions violations.
- Sanctions regimes are “**strict liability**” regimes, meaning that OFAC may impose civil penalties against a person subject to U.S. jurisdiction even if such person did not have knowledge that it was engaging in a prohibited transaction.
- In one high-profile action, **OFAC designated a decentralized crypto platform** and its smart contracts, alleging that the platform had been used by North Korean entities to commit cybercrimes including the laundering of stolen cryptocurrency. **The Fifth Circuit Court of Appeals recently overturned that designation.**

**OFAC / FinCEN
– Selected
Alleged
Sanctions
Violations and
Designations**

Matter	Allegation	Status	Total Penalty
<i>CoinList</i>	Russia and Ukraine	Settled in 2023	\$1.2 million
<i>Poloniex</i>	Crimea, Cuba, Iran, Sudan and Syria	Settled in 2023	\$7.6 million
<i>Bittrex</i>	Crimea, Cuba, Iran, Sudan and Syria	Settled in 2022	\$24.3 million

Primary Money Laundering Concern		Status	Specially Designated National (SDN)	
				Status
<i>Bitzlato</i>		2023	<i>Tornado Cash</i>	2022; Overturned by COA in 2024
<i>PM2BTC</i>		2024	<i>Blender.io</i>	2022
			<i>Garantex</i>	2022

NEW ADMINISTRATION

04

Trump's Policies Towards Crypto

President Trump's First Administration

- President Trump's historical views on Bitcoin have ranged from skepticism to cautious optimism.

"I am not a fan of Bitcoin and other Cryptocurrencies, which are not money, and whose value is highly volatile and based on thin air. Unregulated Crypto Assets can facilitate unlawful behavior, including drug trade and other illegal activity..." Post on Twitter (July 11, 2019).

"Bitcoin, it just seems like a scam. I don't like it because it's another currency competing against the dollar." Interview with Fox Business (June 7, 2021).

- The first Trump Administration was an active enforcer in the crypto space.
 - The SEC initiated, via litigation or administrative proceedings, nearly 70 actions involving crypto, including actions against Ripple and Block.one.
 - The CFTC first took actions against crypto companies for alleged fraud during the first Trump Administration.
 - DOJ actively prosecuted crypto cases, including charges of fraud, money laundering, and the Bank Secrecy Act.
 - Multiple agencies began investigations into large exchanges.

Trump's Policies Towards Crypto

President Trump's Second Administration

DONALD J. TRUMP

Now accepting crypto

Demonstrating President Trump's success as a champion of American freedom and innovation, we proudly offer you a chance to contribute to the campaign with cryptocurrency. Saving our nation from Biden's failures requires your support. As Biden piles regulations and red tape on all of us, President Trump stands ready to embrace new technologies that will Make America Great Again.

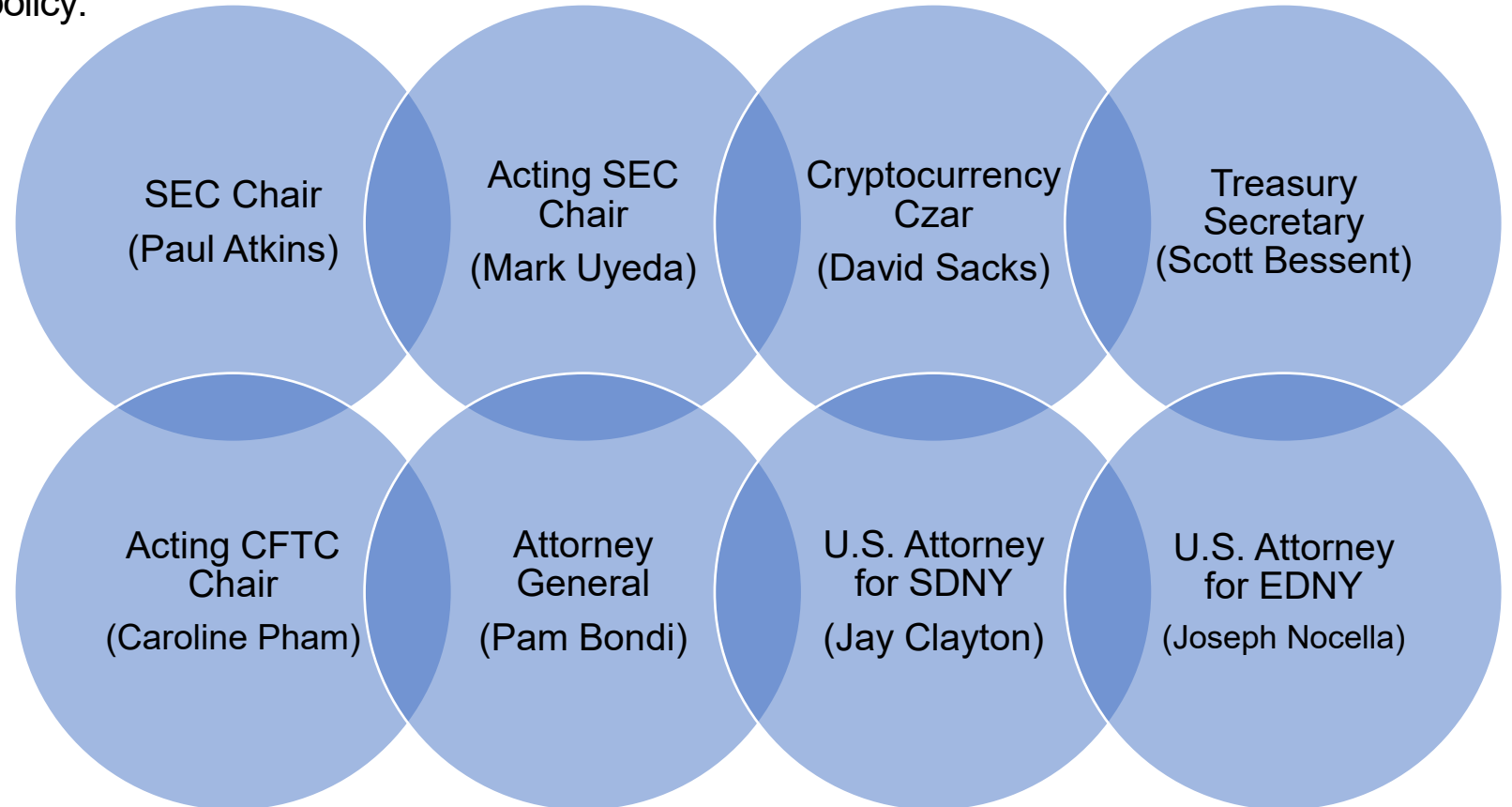
- Early in his campaign, President Trump expressed a pro-crypto platform.
- "I am laying my plan to ensure that the United States will be the crypto capital of the planet and Bitcoin superpower of the world and we'll get it done." Bitcoin 2024 Conference, Nashville, TN (July 27, 2024).
- He has also been an active Digital Asset creator, including NFTs and "memecoins."



Trump's Policies Towards Crypto

President Trump's Second Administration

- During the campaign and transition, President Trump expressed that crypto policy is a priority, and suggested that he will issue Executive Orders related to crypto.
- Trump has made a number of nominations for positions with important influence on crypto policy:



- Many of these appointments have previously expressed pro-crypto and de-regulatory opinions.
- Other important positions, as-yet-unnamed, include the permanent CFTC Chair and the chairs of the banking regulators.

Trump's Policies Towards Crypto

President Trump's Second Administration

On January 21, 2025, SEC Acting Chairman Mark Uyeda announced formation of a new crypto task force, dedicated to developing a comprehensive and clear regulatory framework for crypto assets. Commissioner Hester Peirce will lead the task force.

- Overall, we expect fewer enforcement actions related to registration violations, particularly where companies are trying to comply.
 - Acting Chairman Uyeda has previously stated that the commission should not bring actions “solely based on a failure to register with no allegation of fraud or harm.”
 - That may also mean fewer enforcement actions for violations of the BSA and against DeFi protocols.
- We expect the Trump Administration will continue to bring actions related to national security and fraud.

Selected Potential Recent Proposals



Donald J. Trump 

@realDonaldTrump

VOTE FOR TRUMP! Bitcoin mining may be our last line of defense against a CBDC. Biden's hatred of Bitcoin only helps China, Russia, and the Radical Communist Left. We want all the remaining Bitcoin to be MADE IN THE USA!!! It will help us be ENERGY DOMINANT!!!
bitcoinmagazine.com/culture/tr...

4.45k ReTruths 16.1k Likes

Jun 11, 2024, 11:57 PM

- Policies supporting crypto mining could have major effects on the supply of certain cryptocurrencies, including in relation to cryptocurrencies that do not need to be mined.
- The SEC under President Trump could overturn SEC SAB 121.
 - SAB 121 was SEC guidance advising institutions that hold crypto on behalf of customers that they should report their customers' crypto as a liability on their balance sheets. Mark Uyeda and Hester Peirce have both opposed SAB 121.

Selected Potential Recent Proposals

*“If I am elected, it will be the policy of my administration, United States of America, to keep 100% of all the bitcoin the U.S. government currently holds or acquires into the future.”
Keynote Address, Bitcoin 2024 Conference (July 27, 2024).*

- President Trump could maintain crypto stockpiles from crypto assets the government currently holds, like from asset seizures and forfeitures, or set up a “strategic reserve” that involves buying more cryptocurrency as a reserve.
- Either option would have serious effects on supply and on major centralized exchanges that often are used by the government to transact in cryptocurrencies.

Jan. 16, 2025, 4:10 PM EST

Trump Plans to Designate Cryptocurrency as a National Priority

Stephanie Lai



Olga Kharif

Bloomberg News



- This proposal would likely include creation of a crypto advisory council.
- It could also guide government agencies to work closely with the crypto industry.
- It could also seek to pause litigation involving crypto, though this could face challenges where cases have already been filed, particularly in criminal cases.

Potential Banking Developments

Banking Regulators

- The federal banking agencies seem poised to **consider the incorporation of digital assets into existing frameworks.**
- We expect the federal banking agencies to revisit their approach to crypto-asset activities, potentially including:
 - **crypto custody activities;**
 - **activities involving payments, including stablecoins;** and
 - the **facilitation of customer purchases and sales of crypto-assets.**
- The purchase and sale of crypto assets by banks and their holding companies as principal will likely be tied to federal legislation clarifying the status of crypto-assets as securities, commodities, or other financial instruments.
- The federal banking agencies also seem poised to continue to support tokenization of traditional financial assets.



EDUCATION

Georgetown University
Juris Doctor

Northwestern University
Bachelor of Science

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Stephanie L. Brooker, a partner in Washington D.C. office of Gibson, Dunn & Crutcher, is Co-Chair of the firm’s White Collar Defense and Investigations, Anti-Money Laundering, and Financial Institutions Practice Groups. Prior to joining the firm, Stephanie served as a prosecutor at the U.S. Department of Justice. As a DOJ prosecutor, Stephanie served as the Chief of the Asset Forfeiture and Money Laundering Section in the U.S. Attorney’s Office for the District of Columbia, investigated a broad range of white collar and other federal criminal matters, tried 32 criminal trials, and briefed and argued criminal appeals. Stephanie also served as the Director of the Enforcement Division and Chief of Staff at the U.S. Department of Treasury’s Financial Crimes Enforcement Network (FinCEN), the lead U.S. anti-money regulator and enforcement agency.

During her approximately 25 years in legal practice, Stephanie has been consistently recognized as a leading practitioner in the areas of anti-money laundering compliance and enforcement defense and white collar criminal defense. *Chambers USA* has ranked her and described her as an “excellent attorney,” who clients rely on for “important and complex” matters, and noted that she provides “excellent service and terrific lawyering.” Stephanie has also been named a *National Law Journal* White Collar Trailblazer, a *Global Investigations Review* Top 100 Women in Investigations, and an NLJ Awards Finalist for Professional Excellence—Crisis Management & Government Oversight.

Stephanie’s practice focuses on internal investigations, regulatory enforcement defense, white-collar criminal defense, and compliance counseling. She handles a wide range of white collar matters, including representing financial institutions, boards of directors, multi-national companies, and individuals in connection with criminal and regulatory enforcement actions involving anti-money laundering (AML)/Bank Secrecy Act (BSA); sanctions; anti-corruption; digital assets and fintech; securities, tax, and wire fraud, foreign influence; work place misconduct; and other legal issues. She routinely handles complex cross-border investigations. Stephanie’s practice also includes BSA/AML and FCPA compliance counseling and deal due diligence and significant criminal and civil asset forfeiture matters.

Stephanie’s full biography can be viewed [here](#).

Jeffrey L. Steiner

Partner / Washington, D.C.

Jeffrey L. Steiner is a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher. He is Chair of the firm's Derivatives Practice Group and Co-Chair of the firm's Financial Regulatory Practice Group. Jeffrey is also the Co-Chair to the firm's Fintech and Digital Assets Practice Group and a member of the firm's Financial Institutions, Energy and Public Policy Practice Groups. Jeffrey advises a range of clients, including commercial end-users, financial institutions, dealers, hedge funds, private equity funds, clearinghouses, industry groups and trade associations on regulatory, legislative, enforcement and transactional matters related to OTC and listed derivatives, commodities and securities. He frequently assists clients with compliance and implementation issues relating to the Dodd-Frank Act, the rules of the Commodity Futures Trading Commission (CFTC), the Securities and Exchange Commission (SEC), the National Futures Association and the prudential banking regulators. He also helps clients to navigate through cross-border issues resulting from global derivatives requirements, including those resulting from the Dodd-Frank Act, the European Market Infrastructure Regulation (EMIR), the Markets in Financial Instruments Directive II (MiFID II) and the rules of other jurisdictions.

Jeffrey also advises a range of clients on issues related to digital assets, cryptocurrencies and distributed ledger technology, including analyzing and advising on regulatory and enforcement matters relating to their application and use. He regularly works with clients on structuring products involving the use of digital assets and the application of blockchain technology, including digital token issuances and cryptocurrency trading. He also analyzes the cross-border impacts relating to clients' use of digital currencies and blockchain technology.

Jeffrey has been named a 2018 Cryptocurrency, Blockchain and Fintech Trailblazer by *The National Law Journal*. Additionally, *Chambers Global* ranked Jeffrey as an international leading lawyer for his work in derivatives. He has also been recognized as a leading derivatives lawyer in *Chambers USA* from 2014-2023 and has been ranked in Band 1 for Derivatives: Mainly Regulatory, with clients saying that he is "a phenomenal attorney and business adviser," "very aware of all aspects of derivatives regulation in the US, UK, and EU," and that "he's someone that can speak knowledgeably."

Jeffrey's full biography can be viewed [here](#).

EDUCATION

Tulane University
Juris Doctor

Emory University
B.A. Business Administration

Sara K. Weed

Partner / Washington, D.C.

Sara K. Weed is a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher and Co-Chair of the Fintech and Digital Assets Practice Group. Sara's fintech's practice spans both regulatory and transactional advice for a range of clients, including traditional financial institutions, non-bank financial services companies and technology companies.

Sara's outstanding achievements in private practice have been recognized by various organizations. Most recently, Sara was recognized as a leading lawyer in the 2025 edition of *Chambers and Partners* Fintech in the category USA: Nationwide – Fintech Legal: Payments and Lending, with clients describing her as “a very commercially-minded attorney with deep expertise and experience in navigating regulatory issues and relationships in the fintech space.” In 2024, *Lawdragon* recognized Sara as one of their Leading Global Cyber Lawyers. In 2021, she was named a Rising Star in Fintech by *Law360*, and in 2018, she was shortlisted for the *Financial Times* Innovative Lawyers Award North America in the “Access to New Markets and Capital” category.

Prior to working in private practice, Sara held various roles in the financial services industry, including serving as in-house counsel to IBM's financial services group and as a policy counsel with a national financial services research organization. She also served as director and counsel with the North Carolina Office of the Commissioner of Banks, where she oversaw supervision of non-bank mortgage lenders and brokers, money services businesses, and consumer finance companies.

Sara's fintech practice provides support to clients throughout their life cycle, including: product development, regulatory strategy, including chartering, licensure and partnerships, supporting supervisory examinations and regulatory inquires, regulatory diligence related to acquisitions, investments, and exit events, and the defense of regulatory enforcement actions.

Sara's full biography can be viewed [here](#).



EDUCATION

University of North Carolina
Juris Doctor

Osman Nawaz

Partner / New York

Osman Nawaz is a litigation partner in the New York office of Gibson, Dunn & Crutcher LLP, and a member of the firm's Securities Enforcement and White Collar Defense and Investigations Practice Groups. He advises clients on internal and government investigations and enforcement actions, as well as follow-on civil litigation and regulatory and compliance-related issues.

Prior to joining Gibson Dunn, Os concluded a 14-year career with the U.S. Securities & Exchange Commission (SEC). During his time with the SEC, he worked in the agency's New York Office, serving through multiple administrations and in roles ranging from staff attorney to Assistant Regional Director. Most recently, he was a Senior Officer in the agency's Division of Enforcement and in national leadership where he led Enforcement's Complex Financial Instruments Unit, a specialty group focused on complex products and trading involving sophisticated market participants' structuring, sale, trading and valuation of derivatives, asset-backed securities, and other instruments. Os oversaw high-profile investigations and litigations and professional staff located in seven different offices including the agency's headquarters in Washington, D.C. He was a frequent collaborator with other groups throughout the agency.

Os's government work provided him with a deep understanding of investigations, the markets, and complex trading and products. His work covered the entire breadth of the SEC's subject matter and involved asset managers, broker-dealers, security-based swap dealers, credit rating agencies, issuers, and other market participants. During his time at the SEC, he was involved in numerous first-in-kind and landmark actions concerning valuation, market manipulation, regulatory issues such as net capital and Regulation SHO, internal controls, disclosure, fraud and other violations of the federal securities laws. Os also worked closely with the Department of Justice, FBI, CFTC, state and foreign regulators, and other authorities. He is a past recipient of the SEC Chair's Award for Excellence and the Stanley Sporkin Award.

Before joining the SEC, he was an associate at an international law firm. Os received his J.D. from the University of Denver College of Law and his B.B.A. from Baylor University.

Os's full biography can be viewed [here](#).



EDUCATION

University of Denver
Juris Doctor

Baylor University
B.A. Business Administration



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Sam Raymond is Of Counsel in the New York office of Gibson Dunn & Crutcher and a member of the White Collar Defense and Investigations, Litigation, Anti-Money Laundering, Fintech and Digital Assets, and National Security Groups. As a former federal prosecutor, Sam has a broad-based government enforcement and investigations practice, with a specific focus on investigations and counseling related to anti-money laundering, the Bank Secrecy Act, and sanctions.

Sam is an experienced investigator and trial lawyer. Prior to joining Gibson Dunn, Sam was an Assistant United States Attorney in the U.S. Attorney's Office for the Southern District of New York from 2017 to 2024. In that role, Sam tried multiple cases to verdict and prosecuted a broad range of federal criminal violations. Sam was a member of the team that prosecuted executives at FTX and Alameda Research, including as a member of the trial team in *United States v. Bankman-Fried*, and was the lead prosecutor in the FTX case on issues related to asset seizure and forfeiture. Sam was also a member of the DOJ team that brought criminal charges against the senior leadership of Hamas for their roles in planning, supporting and perpetrating the October 7 terrorist attacks on Israel. Sam was a lead prosecutor in one of the first cases ever charging individuals with violations of the Bank Secrecy Act, in a pathbreaking prosecution of executives at a cryptocurrency exchange.

Sam led dozens of other investigations and prosecutions, including in cases involving money laundering, unlicensed money transmitting, sanctions evasion, asset seizure and forfeiture, tax fraud, securities fraud, bank and wire fraud, racketeering, extortion, illicit gambling, art fraud, and government benefits fraud. Earlier in his career, Sam prosecuted cases involving gang violence and narcotics trafficking. Sam argued multiple times before the Second Circuit Court of Appeals, including with respect to constitutional issues of first impression. He also served as one of the Office's inaugural Digital Asset Coordinators, offering trainings and coordinating within the Office regarding digital assets, and engaging with other U.S. Attorney's Offices, Department of Justice components, and law enforcement agencies, regarding cryptocurrency.

Prior to his government service, Sam practiced for several years at another major international law firm, where he practiced white collar defense and litigated complex civil cases and appeals.

Sam's full biography can be viewed [here](#).

EDUCATION

New York University
Juris Doctor

Massachusetts Institute of Technology
Bachelor of Science

CLERKSHIPS

U.S. Court of Appeals, 9th Circuit

U.S.D.C., Central District of California

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