

LITIGATION MINUTE: STAYING INFORMED OF GOVERNMENT ENFORCEMENT PRIORITIES AND TRENDS

CRYPTOCURRENCY LITIGATION SERIES: PART TWO OF FOUR

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WHAT YOU NEED TO KNOW IN A MINUTE OR LESS

The uptick in government investigations and enforcement actions related to cryptocurrency industry participants is striking. The scope and scale of government attention on the industry continues to manifest in daily headlines. Given the somewhat murky regulatory environment that persists today, a hallmark of the current enforcement landscape is the tendency of the government to regulate in large part through enforcement, rather than through industry-specific rulemaking.

Cryptocurrency Task Forces

In an effort to prioritize and focus enforcement efforts, government agencies have created teams and task forces with enforcement mandates specific to the cryptocurrency space. Among others, the Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) have taken leading roles.

- On 3 May 2022, the SEC announced that it nearly doubled the size of the Enforcement Division's Crypto Assets and Cyber Unit, initially created in 2017.¹ In announcing this significant development, SEC Chair Gary Gensler underscored the SEC's priority to dedicate substantial resources and attention to police the crypto markets.
- On 6 October 2021, the DOJ launched a National Cryptocurrency Enforcement Team (NCET) to handle criminal investigations and prosecutions with respect to the cryptocurrency industry, including a focus on virtual currency exchanges.²

Primary Focuses of Regulatory Enforcement

The bulk of crypto enforcement has centered on whether particular cryptocurrency products, technologies, and offerings qualify as securities, commodities, or currencies—or as an entirely different category, which may or may not be subject to regulation.

Although regulators are indeed focused on the current activities and future actions of market participants, they focus equally on past conduct. For example, the SEC recently brought enforcement actions in connection with a number of initial coin offerings (ICOs) that occurred in 2017. As such, the government has demonstrated that it does not have a short memory, and is instead committed to enforcing past conduct, even if such conduct occurred during a period when the regulatory landscape was arguably ambiguous.

Staying Aware and Prepared

Regulators are laser-focused on protecting investors in the crypto markets. The SEC in particular has focused substantial attention on crypto asset exchanges, decentralized finance (“DeFi”) platforms, crypto asset lending and staking products, and others. Staying informed as to the ever-changing trends in crypto enforcement will enable you to anticipate areas of improvement in your business model and conduct, and to ensure you are not caught unaware when the government comes knocking.

In the next edition of Litigation Minute, we will outline the best practices to employ should you become the subject of an investigation or enforcement action.

FOOTNOTES

¹ U.S. Securities and Exchange Commission (SEC). (3 May 2022). [*SEC Nearly Doubles Size of Enforcement's Crypto Assets and Cyber Unit*](#) [Press release].

² The United States Department of Justice (DOJ). (6 October 2021). [*Deputy Attorney General Lisa O. Monaco Announces National Cryptocurrency Enforcement Team*](#) [Press release].

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