

LITIGATION MINUTE: BATTEN DOWN THE HATCHES: BEST PRACTICES TO WEATHER THE STORM OF A GOVERNMENT INVESTIGATION

CRYPTOCURRENCY LITIGATION SERIES: PART THREE OF FOUR

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WHAT YOU NEED TO KNOW IN A MINUTE OR LESS

Given the evolving regulatory and enforcement landscape—along with the increasingly heightened attention paid by regulators to the cryptocurrency, digital assets, and blockchain space—industry participants should expect to experience interactions with state and federal regulators. When (not if) the government comes knocking, it pays to be prepared.

Consider the Form of the Government's Outreach

Typically, a regulator may take one of two approaches to jumpstart an investigation or enforcement action.

You may receive a formal subpoena, which, in most instances, signals that the regulator's attention is particularly piqued.

Alternatively, the regulator may choose to issue a more informal request for documents and information. Although such a request does not rise to the level of a subpoena, this development should be taken seriously.

Establish Positive Rapport With Regulator

In the instance of either a subpoena or a document request, it is critical to seek counsel that is timely and responsive in communicating with the regulator. As an initial step, counsel should contact the examiner, investigator, or attorney responsible for the investigation in order to understand the scope and direction of the investigation if possible, and to facilitate your cooperation if appropriate.

Tighten the Scope of the Investigation

Although you cannot control the fact that an investigation has been launched, you may be able to influence other important facets of the investigation in your favor. Focusing the investigation most narrowly takes priority at the beginning of an investigation, opening up some breathing room by buying additional time to respond. Methods for achieving this result include:

- Requesting an extension to the return date of the subpoena or document request to ensure your strategy is fully developed prior to any production of information or documents;

- Identifying pointed areas to reasonably reduce the scope of the investigation and pitching that proposal to the regulator; and
- “Reading the tea leaves” and assessing what information the government is most interested in and determining efficient means to provide that information to mitigate the need for a broader investigation.

In these ways, outside counsel is often able to satisfy the government's appetite and sidestep what may otherwise become a more expansive investigation.

Awareness and Advocacy

If you are the subject of a government investigation, it is critical for you, along with outside counsel, to expediently but comprehensively assess any potential exposure. Knowing and preparing for potential pitfalls is crucial. From there, you should work to develop a response and advocacy strategy to carry you through the investigation.

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