

# Crypto Assets under the Trump Administration

February 3, 2025



# Table of Contents

3		Introduction
8		SEC
19		CFTC
24		Banking Regulators
34		BSA/AML & Sanctions
38		Legislation
51		State-Level Regimes

# Introduction – Trump Administration Approach

While President Trump was skeptical of digital assets during his first term, candidate Trump 2.0 positioned himself as an ally of the crypto-asset industry and was backed by a number of high-profile crypto advocates, such as Marc Andreessen, Elon Musk, Peter Thiel, and Tyler and Cameron Winklevoss.

---

Trump stated that he has **“a plan to ensure the United States will be the crypto capital of the planet and the Bitcoin superpower of the world.”**

---

On January 23, Trump issued an Executive Order titled “Strengthening American Leadership in Digital Financial Technology.”

---

This Executive Order signals a sharp shift away from the Biden administration’s approach to the crypto-asset industry, which many labeled regulation by enforcement. The Executive Order aims to establish federal policy that promotes the “responsible growth and use of digital assets, blockchain technology, and related technologies across all sectors of the economy” and to achieve “regulatory clarity and certainty.” It also seeks to support the development of USD-backed stablecoins worldwide, and fair and open access to crypto-related banking services.

The Executive Order mandates regulatory coordination to provide a path for crypto industry development by:

- Establishing a working group of relevant agency heads led by the new “crypto czar”;
- Directing federal agencies to identify relevant existing regulations and assess whether they should be rescinded or modified; and
- Setting a timeline for recommending legislative and regulatory reforms to create a comprehensive federal regulatory framework.

Conversely, the order prohibits any work to advance a Central Bank Digital Currency.

For additional details on the Executive Order, please refer to our client alert entitled “Trump Executive Order Establishes Federal Policy Supporting Digital Assets, Setting a Path Toward a Crypto Regulatory Framework,” *available [here](#)*.

Sources: [WSJ](#), [White House](#).

<sup>1</sup> We use the term “crypto-assets” to encompass cryptocurrency, virtual currency and digital assets, unless specified otherwise in an order, guidance or proposed legislation, where different terminology may apply.



This deck summarizes current regulatory stances and legislative proposals on crypto-assets<sup>1</sup> and previews the likely regulatory agendas for Trump administration appointees.

# Introduction – Trump Administration Approach

---

Developing and implementing regulatory fixes to facilitate a dynamic industry will not happen overnight.

- Addressing the key barriers in the United States will likely require significant new legislation, substantial regulatory work by the Securities and Exchange Commission (“SEC”), Commodities Futures Trading Commission (“CFTC”) and bank regulators and development of other supporting legal regimes, such as state commercial law, tax law and others.
- 

While we expect early regulatory efforts to create greater clarity on crypto-asset characterization, applicability of SEC requirements and permissible banking activities, we expect the formation of the new regulatory regime necessary to substantially open up the space to be a multi-year project.

Ambitiously, Trump’s Executive Order sets a 180-day timeline for the Working Group to deliver recommended legislative and regulatory proposals.

---

## Timeline Provided by Trump’s Executive Order

- **30 Days** – Within 30 days of the date of the Executive Order (by February 22, 2025), agency heads, including the Department of Justice (“DOJ”), SEC and U.S. Department of Treasury (“Treasury”), must “identify all regulations, guidance documents, orders, or other items that affect the digital asset sector.”
- **60 Days** – Within 60 days of the date of the Executive Order (by March 24, 2025), each agency that is included in the Working Group must “submit to the Chair recommendations with respect to whether each identified regulation, guidance document, order, or other item should be rescinded, modified, or for items other than regulations adopted in a regulation.”
- **180 Days** – Within 180 days of the date of the Executive Order (by July 22, 2025), the Working Group must “submit a report to the President ... which shall recommend regulatory and legislative proposals that advance the policies established” in the Executive Order. The Order details the contents of the report.

Sources: [WSJ](#), [White House](#).

# Introduction – Key Legal and Regulatory Issues

## Legislative Issues

- Classifications of crypto-assets (e.g., security, commodity, currency).
- Application of the current SEC regulatory regime to the issuance and intermediation of crypto-assets, including stablecoins (e.g., securities offering requirements, Rule 15c3-3, regulations promulgated under the Investment Advisers Act of 1940 (“Investment Advisers Act”)).
- Absence of a comprehensive regulatory regime for non-securities crypto-assets.
- Preemption of state regimes (e.g., state regulation of crypto-assets and money transmission laws).

## Regulatory Issues

- Limited SEC exemptions to permit (1) creation of crypto-asset brokerages and (2) broker-dealer custody.
- Staff Accounting Bulletin No. 121 (“SAB 121”) accounting treatment of crypto custody (rescinded on January 23, 2025).
- Historical uncertainty around banking regulator approach to safety and soundness.
- Continued uncertainty around legal permissibility of bank crypto-asset activities.
- Bank Secrecy Act (“BSA”)/Anti-Money Laundering (“AML”) and Office of Foreign Assets Control (“OFAC”) sanctions compliance.

## State Issues

- Interaction between federal legislation/regulation and state legislation/regulation.
- Uncertain status of crypto-assets as property under state law (adoption of UCC Article 12).

Sources: [Federal Register](#), [Treasury](#), [SEC](#).

# Trump Administration: Key Named Appointees



## David Sacks

Artificial Intelligence (“A.I.”) & Crypto Czar

- Former COO of PayPal; Trump appointed Sacks to a new position titled “A.I. and Crypto Czar”; in Trump’s announcement, he said “[Sacks] will work on a legal framework, so the Crypto industry has the clarity it has been asking for.”
- Sacks’ position is a new “advisory” role in the White House, and he will not need Senate confirmation. He is also not required to publicly disclose his assets, and he does not need to leave his venture capital firm Craft Ventures.



## Paul Atkins

SEC Chair

- Co-Chair of the Token Alliance
- “Bitcoin is a revolutionary technology, and its potential is not something that should be stifled by overregulation.”  
- Atkins
- “The SEC’s role should be to protect investors, not to block innovation. We need a regulatory environment that helps digital currencies grow safely.”  
- Atkins



## Scott Bessent

Treasury Secretary

- “Crypto is about freedom, and the crypto economy is here to stay. Crypto is bringing in young people, people who have not participated in markets.”  
- Bessent

Sources: [Truth Social](#), [Financial Times](#), [Time](#), [AMB Crypto](#), [Forbes](#).

# Trump Administration: Key Named Appointees



**Elon Musk**  
Head of Department  
of Government Efficiency

- Musk has previously expressed his support for crypto, such as Bitcoin and Dogecoin.
- In 2021, Tesla bought \$1.5 billion in Bitcoin.



**Mark Uyeda**  
Acting SEC Chair

- Uyeda previously worked for incoming SEC Chair Paul Atkins when Atkins was a commissioner.
- As Acting Chair, Uyeda is establishing a crypto task force “dedicated to developing a comprehensive and clear regulatory framework for crypto assets.”



**Caroline Pham**  
Acting CFTC Chair

- Pham has been a CFTC Commissioner since April 2022.
- Acting CFTC Chair Pham has 10 years of experience in crypto and digital assets.
- In 2023, she was listed on “CoinDesk’s most Influential” following her proposal for a “U.S. regulatory sandbox,” which intended to create a “CFTC digital asset markets pilot program.”

Sources: [Reuters](#), [SEC](#), [Bloomberg Law](#), [CFTC](#).

I

---

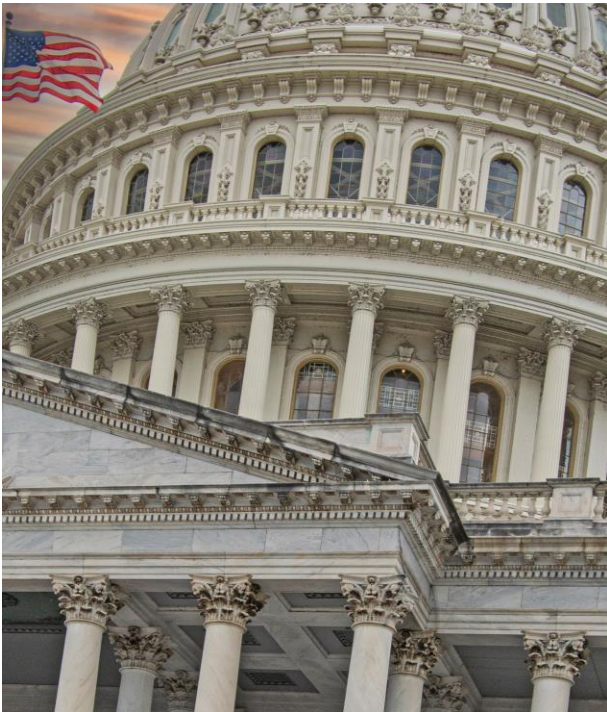
# SEC

II	CFTC.....	19
III	Banking Regulators.....	24
IV	BSA/AML & Sanctions.....	34
V	Legislation.....	38
VI	State-Level Regimes.....	51



# SEC – Introduction

The SEC was one of the first regulators to actively engage with crypto-assets in reaction to the boom of initial coin offerings (“ICOs”) in 2017.



The SEC has offered limited guidance on where the line lies between a security and non-security crypto-asset under the *Howey* test and, particularly, under former SEC Chair Gensler, who was accused of adopting an “enforcement first” approach to regulation.

Because the determination as to whether an asset is a security impacts legality of most activities, the SEC has been one of the main barriers to crypto-asset activities.

The Trump administration and Paul Atkins, the nominee to replace Gensler as SEC Chair, will seek to offer more clarity on regulation under existing laws and have generally put forward a pro-crypto agenda, potentially opening up more opportunities for companies to issue crypto-assets or to offer services to crypto-asset companies, without falling victim to an enforcement action.

# Incoming Chair Atkins

## Background



- Atkins has a long history working in the financial markets as a lawyer, regulator and consultant.
- He is currently the CEO and founder of the financial services consulting firm Patomak Global Partners.
- Atkins served as SEC Commissioner under President George W. Bush from 2002-2008 and reportedly was viewed as the most conservative member of the SEC.
- Atkins was a member of the board of advisors for The Digital Chamber and co-chair of the Token Alliance.

## Public Comments on Crypto and Deregulation

“

At a 2009 Senate hearing, Atkins detailed his theories of regulation, stating “We must recognize that businesses ultimately are better than governments at business, because both can and do make mistakes.... By removing risk management from firms and placing it in the hands of government, there is a danger that firms will become careless and take on additional risk, believing regulators are protecting them.”

With regard to crypto-assets specifically, Atkins has generally endorsed a more “accommodating” and “straightforward” approach to crypto-asset regulations.

Atkins has also praised Commissioner Peirce’s token safe-harbor proposal.

In 2018, the Token Alliance and the Chamber of Digital Commerce released guidelines on “digital tokens,” including detailed advice on how to design a token to reduce the chances it is considered a security. Atkins was featured as a Co-Chair of the Token Alliance and as a U.S. subject matter expert that helped to “author” the U.S. section of the guidelines.

The Digital Chamber (where Atkins serves on the board of advisors) has supported policy issues including:

- Implementing well-defined interpretive and disclosure standards to differentiate digital asset securities and commodities; and
- Creating a clear regulatory pathway for the approval of crypto exchange-traded funds (“ETFs”).

Sources: [CBS](#), [Rollcall](#), [YouTube](#), [APNews](#), [EY](#), [Digital Chamber](#).

# Other Key Commissioners

## Commissioner Hester M. Peirce



- Nominated by President Trump in 2018.
- Commissioner Peirce has been generally supportive of more accommodating regulation of crypto-assets and has even gained the nickname “crypto mom.”
- **Named to head a crypto task force launched by Acting Chair Uyeda on January 21.**



It is wrong when people are trying to figure out how to apply [to the SEC] and need help, then we come in on the enforcement end. We can design a better regulatory framework than having enforcement show up at your door.”

## Acting Chair Mark T. Uyeda



- Nominated by President Biden in 2022 to fill a Republican seat.
- Commissioner Uyeda has also advocated for a more accommodating approach to crypto, often dissenting with Commissioner Peirce on decisions by the SEC to deny or severely limit the powers of crypto-asset companies.



I prefer having a discussion about crypto assets in the context of notice and comment rulemaking as opposed to enforcement actions. For too long, the Commission’s approach to crypto asset regulation has been to use enforcement actions to introduce novel legal and regulatory theories.”

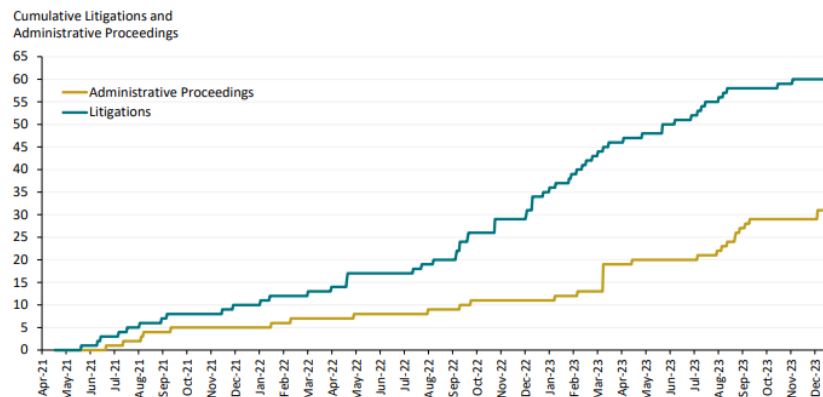
Sources: [YouTube](#), [Financial Times](#), [Reuters](#).

# SEC – Approach to Enforcement

## Gensler Approach – Enforcement Actions

- Under former Chair Gensler, the SEC adopted a broad view of *Howey* and strict application of the existing regulatory regime with limited carve-outs.
- The SEC’s cryptocurrency-related enforcement actions increased by 53% in 2023 as compared to 2022, bringing 46 crypto-related actions. Common allegations included fraud and unregistered securities offerings, and exchanges and other intermediaries were targeted for registration violations.

Figure 2: Cumulative Number of SEC Cryptocurrency Enforcement Actions during the Gensler Administration April 2021–December 2023



Source: SEC.gov

Note: The figure focuses on SEC cryptocurrency litigations and administrative proceedings. Dates represent the filing date of the complaint or order instituting cease-and-desist proceedings under Section 8A of the Securities Act, Section 21C of the Exchange Act, and/or Section 203(e) and 203(k) of the Investment Advisers Act. Trading suspensions, delinquent filings, stop orders, subpoenas, and follow-on administrative orders are excluded from the figure. Gary Gensler was sworn in as Chair of the SEC on April 17, 2021.

## Changes under Trump/Atkins

- Overall, we expect the Trump administration, and the SEC in particular, to take a less aggressive enforcement approach to cryptocurrency businesses focused more narrowly on frauds.
- At the Blockchain Association’s recent policy summit, Hester Peirce, Mark Uyeda and Summer Mersinger told attendees that they do not intend to use enforcement as a means of regulating the crypto industry. Mersinger said that “enforcement is [not] going away” but that, “enforcement will focus on...fraud, like they should.”
- Peirce has also suggested that the SEC may create a regulatory sandbox to allow experimentation with crypto technologies and use of tools like no-action letters and exemptive orders to provide space for trial projects with crypto projects.
- Uyeda has separately remarked that before holding market participants to a “certain standard of conduct” regulators must first “explain what that standard of conduct is.”
- Reports also suggest that the new administration may settle ongoing litigation against the main cryptocurrency exchanges on favorable terms.

Sources: [Intelligencer](#), [Cornerstone Research](#), [SEC](#), [WSJ](#), [CBSNews](#), [NYU Law](#), [Congressional Research Service](#).

# SEC – Crypto Task Force

- Discussions about establishing a dedicated crypto regulatory body emerged prior to Trump’s inauguration, signaling a proactive approach to crypto oversight.
- The swift formal announcement of the Task Force underscores the administration’s commitment to engaging with the crypto industry.



**Clarifying Regulatory Boundaries:** The Task Force will aim to delineate clear guidelines for crypto-related activities, reducing ambiguity for industry participants.

**Facilitating Compliance:** The Task Force will seek to develop practical pathways for entities to register and fulfill regulatory obligations, promoting adherence to established standards.

**Policy Shift from Enforcement to Engagement:** The announcement of the Task Force highlights a move away from previous reliance on regulation by enforcement. The Task Force represents a move towards proactive engagement with industry stakeholders to develop a regulatory framework.

**Leadership:** Commissioner Hester Peirce has been selected to head the Task Force. In her announcement, Peirce emphasized the importance of input from an array of stakeholders, including industry participants and investors. She sounded a note of caution that the undertaking will take time and effort.

# Interpretation of “Security” under *Howey* and *Reves*

- The statutory definitions of “security” include both “investment contracts” and “notes,” broad terms that have been defined by the Supreme Court in the *Howey* and *Reves v. Ernst and Young* opinions.
- Under the *Howey* Test, an investment contract is an “investment of money in a common enterprise with an expectation of profits derived from the efforts of others.”
- While the SEC has offered interpretive guidance focusing on centralized vs. decentralized ecosystems and the presence or absence of an expectation of profit derived from the efforts of a sponsor, promoter or other third party, the guidance has left many open questions and been difficult to put into practice.
- For crypto token intermediaries, the *Reves* “family resemblance” test for “notes” that are securities raises issues for crypto lending and staking programs.

## Legacy State

Under the leadership of former SEC Chair Gary Gensler, the SEC had generally taken a broad view of which crypto-assets are securities and an activist approach to enforcement targeting unregistered intermediaries as well as unlawful offerings and frauds.

- For example, the SEC famously alleged that the token XRP was a security and sued Ripple for unregistered sales of securities.

## Potential Change

Incoming Chair Atkins is a strong advocate for establishing clear regulatory standards for enforcement, so we would expect clarifying the application of the *Howey* test to be one of the SEC’s main priorities.

A priority of the SEC’s new crypto task force is to “draw clear regulatory lines.” It is fair to presume that the task force was launched with Atkins’ blessing and guidance.

Other priorities include providing realistic paths toward registration and crafting sensible disclosure frameworks.

Sources: [Investopedia](#), [Bitcoin.com News](#), [SEC](#), [ICBA](#), [Coin Telegraph](#).

# SEC – Broker-Dealer Intermediation

Cramped SEC positions on permissible broker-dealer custody of crypto assets under Rule 15c3-3 (the “Customer Protection Rule”) have effectively blocked their facilitation of secondary market activity.

## Customer Protection Rule

In a Joint Staff Statement by the Financial Industry Regulatory Authority (“FINRA”) and the SEC in 2019, the regulators cast significant doubt as to whether a broker-dealer could satisfy the Customer Protection Rule, noting the difficulty in evidencing custody with a private key and the inability to correct error transactions.

The Joint Staff Statement also noted that crypto-assets not deemed securities under the Securities Investor Protection Act (“SIPA”) would not be protected in a broker-dealer insolvency (“investment contracts” are not securities under SIPA unless publicly offered under a registration statement).

In 2020, the SEC issued an agency interpretive statement allowing for the custody of crypto-asset securities by special purpose broker-dealers.

- Under the statement, for a five-year period, special-purpose broker dealers that limit their custody activities to providing custody for digital asset securities exclusively and comply with specified conditions would not face SEC enforcement actions concerning the custody of these assets.

FINRA approval for such special broker dealers is still required and notoriously difficult to obtain.

## Outlook

The SEC’s historical insistence that crypto broker-dealers can only custody crypto securities is unduly limiting to protect investors from custody and insolvency risk. We believe there is a material likelihood that the SEC will extend and liberalize the requirements for crypto-asset custody and/or revise Rule 15c3-3 to provide a road map for custody of crypto-asset securities.

- Legislation on custody of crypto-assets may also provide a clear path for broker-dealers to comply with the Customer Protection Rule.

Sources: [Forbes](#), [WSJ](#), [US News](#), [Wired](#), [Seeking Alpha](#), [Law360](#), [Law.com](#),

# SEC – SAB 121

## Legacy State

Issued by the SEC in March 2022, SAB 121 provided accounting guidance for public securities issuers that custody crypto-assets held for platform users. It required such issuers and their subsidiaries to recognize a liability and corresponding asset on their balance sheets at the fair value of the crypto-assets safeguarded.

- SAB 121 has faced scrutiny for its issuance without public consultation or a formal notice and comment process.
- SEC Commissioner Hester Peirce criticized this approach, highlighting concerns about the lack of transparency and stakeholder engagement.

On January 23, 2025, Staff Accounting Bulletin No. 122 (“SAB 122”) rescinded SAB 121. Under SAB 122, entities that have “an obligation to safeguard crypto-assets for others” are directed to measure liability related to the risk of loss using the Financial Accounting Standards Board Codification or the International Accounting Standard.

Sources: [Forbes](#), [WSJ](#), [US News](#), [Wired](#), [Seeking Alpha](#), [Law360](#), [Law.com](#), [Congressional Research Service](#), [SEC](#).



# SEC – Registered Investment Advisers

## Investment Advisers Act (“Custody Rule”)

### Legacy State

Rule 206(4)-2 of the Investment Advisers Act requires registered investment advisers that have custody of client funds or securities to maintain those assets with a qualified custodian, provide clients with regular account statements and undergo annual examination by an independent public accountant.

- In February 2023, the SEC proposed Rule 223-1 to expand the scope of the Rule 206(4) to cover all client assets rather than only securities and funds. Former SEC Chair Gensler said, “Thus, through this expanded custody rule, investors working with advisers would receive the time-tested protections that they deserve for all of their assets, including crypto assets....” The SEC did not finalize the proposed rule.

### Outlook

Unclear if this rule will continue to be on the agenda, but provision of relief to broker-dealers under the Customer Protection Rule would be helpful.

Sources: [Forbes](#), [WSJ](#), [US News](#), [Wired](#), [Seeking Alpha](#), [Law360](#), [Law.com](#), [Congressional Research Service](#).



### Galois Capital Management Enforcement Action:

On September 3, 2024, the SEC charged Galois Capital Management LLC, a former registered investment adviser, for “failing to comply with requirements related to the safeguarding of client assets, including crypto assets being offered and sold as securities.”

# SEC – Crypto ETFs

## Legacy State

- The SEC has been slow to approve crypto-asset ETFs, issuing a staff letter as early as 2018 discussing concerns around valuation and pricing, and liquidity.
- In contrast, other jurisdictions, like Canada, approved Bitcoin and Ether ETFs by 2021.
- Commissioner Peirce was outspoken during this period and argued that some of the applications the SEC had rejected deserved approval.
- Finally, in January 2024 and May 2024, the SEC approved the formation of Bitcoin and Ethereum ETFs, respectively.
  - None of the ETFs approved were permitted to engage in staking, a potential source of revenue for large Ethereum holders, or providing in-kind distributions.

## Outlook

- ETF sponsors may have an easier time obtaining approval under the Atkins SEC and may even consider launching ETFs with more permissibility or based on different crypto-assets.
  - Atkins has generally advocated for clearer regulatory pathways.
  - Commissioner Pierce stated in an interview in December 2024 that the SEC would likely reconsider approving Ethereum ETF staking and in-kind redemptions for ETFs.

Sources: [Forbes](#), [WSJ](#), [US News](#), [Wired](#), [Seeking Alpha](#), [Law360](#), [Law.com](#).

I	SEC.....	8
---	----------	---

---

## II CFTC

III	Banking Regulators.....	24
-----	-------------------------	----

IV	BSA/AML & Sanctions.....	34
----	--------------------------	----

V	Legislation.....	38
---	------------------	----

VI	State-Level Regimes.....	51
----	--------------------------	----

# CFTC Approach – Legacy State

## Treatment of Cryptocurrency as a Commodity.

The CFTC has considered certain crypto-assets, such as Bitcoin, Ether and other “virtual currencies,” to be commodities under the Commodity Exchange Act.



Sources: [Reuters](#), [CFTC](#), [CFTC](#).

This classification allows the agency to regulate derivatives markets for these crypto-assets, but the CFTC’s oversight of “spot” transactions involving commodities (other than certain retail commodity transactions with a leverage component) is limited to anti-fraud and anti-manipulation provisions of the Commodity Exchange Act.

**Retail commodity transactions involving leverage/margin:** In the spot market, the CFTC has authority to regulate contracts offered to retail persons for leveraged, margined or financed purchases of commodities as if they are futures contracts.

- Under related regulations, an exception applies for contracts of sale in which “actual delivery” of the underlying commodity occurs within 28 days.

**CFTC interpretive guidance in 2020:** “Actual delivery” in the context of retail virtual currency transactions means the purchaser has (1) possession and control of the entire quantity of the digital asset and (2) the ability to use the entire quantity of the digital asset freely in commerce (and away from any particular execution venue).

- Under the guidance, an exchange could establish or associate with an affiliated depository to serve as custodian by the expiration of the 28-day period.
- Overall, the guidance provides a narrow exception and potential operational path for a non-registered exchange platform to offer leveraged purchases, but not a broader ability to offer margin trading to retail customers outside of a CFTC-registered futures exchange.

“

I believe the single most important thing I have done, and continue to do, is advocate to this body to fill the regulatory gap....This gap for non-security tokens continues to constitute a majority of the digital asset market measured by market capitalization. Given the risks that this unregulated market poses to U.S. investors, I have consistently and publicly called for new legislative authority for the CFTC, including before this Committee. Congress must act quickly in order for regulators, like the CFTC, to provide basic customer protections that are core to U.S. financial markets.”

---

*CFTC Chair Rostin Benham*

Source: [CFTC](#).

# CFTC Approach – Enforcement Actions

In May 2024, CFTC Enforcement Director Ian McGinley said that “digital asset cases accounted for almost 50% of [the] docket” in the last year. These cases underscore the CFTC’s active role in ensuring compliance and protecting market integrity in the evolving cryptocurrency sector.

---

The CFTC has consistently pursued enforcement actions against entities and individuals that violate U.S. laws, particularly those operating unregistered derivatives trading platforms, engaging in fraud or misusing customer funds.

---

The CFTC’s FY 2024 Enforcement Results said, “The CFTC continued to cement its reputation as a premier enforcement agency in the digital asset space.”

Sources: [Reuters](#), [CFTC](#), [CFTC](#), [CFTC](#), [CFTC](#).



Notably, the CFTC secured a \$12.7 billion settlement against FTX and its founder, Sam Bankman-Fried, for fraud and misappropriation of customer funds.

---

The CFTC filed a lawsuit against Binance, one of the world’s largest cryptocurrency exchanges, and its CEO, alleging willful evasion of U.S. laws and operation of an illegal digital asset derivatives exchange.

# CFTC Approach – Trump Administration

## CFTC Jurisdiction

Reports suggest that, under the Trump administration, the CFTC’s oversight of digital assets could be expanded by congress.

### CFTC Chair.

While Trump named Caroline Pham as Acting CFTC Chair, he will have an additional appointment when Benham leaves on Feb. 7. His nominee for permanent CFTC Chair remains less certain.

Those that have been named by sources as potential appointees, however, share a positive outlook on crypto:

- + **Caroline Pham:** Acting CFTC Chair has actively replaced staff suggesting she may expect to become the permanent chair. Pham previously suggested creating a “regulatory sandbox” for crypto commodities, though CFTC authority in the crypto space is limited.
- + **Brian Quintenz:** Former CFTC Commissioner and current Head of Policy for a16z crypto (the crypto venture funds of Andreessen Horowitz).
- + **Summer K. Mersinger:** Current CFTC Commissioner (former aide to Republican Senator John Thune).
- + **Marco Santorini:** Chief Legal Officer for Kraken Digital Asset Exchange.
- + Others include **Neal Kumar** (lawyer and former Counsel at the CFTC) and **Josh Sterling** (lawyer and former CFTC Division Director).

I SEC.....8

II CFTC..... 19

---

III **Banking Regulators**

IV BSA/AML & Sanctions.....34

V Legislation.....38

VI State-Level Regimes.....51



# Introduction – Current Regulatory Approach

While the federal banking regulators (the Federal Reserve Board (“FRB”), Federal Deposit Insurance Corporation (“FDIC”) and Office of the Comptroller of the Currency (“OCC”)) do not directly regulate crypto-assets or crypto-asset activities, they have broad powers to regulate how the banking organizations under their jurisdictions engage in crypto-asset-related activities and with crypto-asset companies.

With the notable exception of the OCC during the last year of the first Trump administration, the federal banking regulators have taken a skeptical approach to the banking industry’s involvement in crypto-related activities and effectively prohibited banking institutions from engaging in new crypto-asset-related activities.

The federal banking regulators have issued procedures for notifying and obtaining supervisory non-objection for institutions under their jurisdiction seeking to engage in crypto-related activities.

- Industry experience with these procedures has revealed a high degree of skepticism, as evidenced by the recent public release of “pause letters” the FDIC sent to banks asking them not to proceed with crypto-related activities in 2022.
- Some have alleged implicit or explicit pressure from the regulators regarding providers of traditional banking services has resulted in widespread debanking of the industry, a trend often referred to as “Chokepoint 2.0.”

Sources: [OCC](#), [FRB](#), [FRB](#), [FRB](#), [FDIC](#), [FDIC](#).

## Key Supervisory Concerns over Crypto-Asset Activities in the Banking Industry

### Legal Permissibility of the Activity

Is the activity part of the business of banking, closely related to banking, financial in nature or nonfinancial activity?

### Safety and Soundness

All three regulators have said that issuing or holding as principal crypto-assets on an open, public or decentralized network is “highly likely to be inconsistent with safe and sound banking practices.”

### Compliance

E.g., compliance with AML, sanctions, anti-fraud, consumer protection and, when applicable, securities laws.

# Looking Ahead

## Changes to Agency Leadership Expected to Lead to a Changed Approach

President Trump has the ability to replace key leadership at all three federal banking regulators.

- Acting Comptroller Michael Hsu can be removed at will. As former FDIC Chairman Marty Gruenberg stepped down, Travis Hill has become Acting Chair of the FDIC. FRB Vice Chair for Supervision Michael Barr will step down on February 28, 2025 (although Barr intends to remain on the Board of Governors).

Trump's appointments to these key positions, combined with anticipated changes at the SEC and CFTC and the administration's favorable stance on crypto, could potentially unlock new opportunities for the U.S. banking industry to engage in crypto-related activities.

- In his first public statement as Acting FDIC Chair, Travis Hill stated that he expects the FDIC to focus on “[adopting] a more open-minded approach to innovation and technology adoption, including (1) a more transparent approach to fintech partnerships and to digital assets and tokenization, and (2) engagement to address growing technology costs for community banks.”

Given the significant pent-up demand from banks and crypto-industry participants over the last few years, there will be pressure on the federal banking regulators to act quickly as the industry seeks clearer guidance on the scope of permissible crypto-related activities.

The following slides in this section identify the federal banking regulators' key currently applicable guidance, assess the current status and outlook for various types of crypto-asset-related activities and services banks have sought to provide, and identify other related areas to watch.

# Currently Applicable Regulatory Guidance

Date	Agency	Title	Topic	Applicability
July 22, 2020	OCC	<i>Interpretive Letter #1170: Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers</i>	Concludes that it is legally permissible for national banks and federal savings associations to provide cryptocurrency custody services.	National banks; federal savings associations; federal branches
September 21, 2020	OCC	<i>Interpretive Letter #1172: OCC Chief Counsel's Interpretation on National Bank and Federal Savings Association Authority to Hold Stablecoin Reserves</i>	Concludes that it is legally permissible for national banks and federal savings associations to hold dollar deposits serving as reserves backing stablecoins.	National banks; federal savings associations; federal branches
January 4, 2021	OCC	<i>Interpretive Letter #1174: OCC Chief Counsel's Interpretation on National Bank and Federal Savings Association Authority to Use Independent Node Verification Networks and Stablecoins for Payment Activities</i>	Concludes that it is legally permissible for national banks and federal savings associations to use distributed ledgers and stablecoins to engage in and facilitate payment activities, including by (1) acting as nodes on an independent node verification network (i.e., distributed ledger) to verify customer payments and (2) using stablecoins to facilitate payment transactions on a distributed ledger, including by issuing and exchanging stablecoins.	National banks; federal savings associations; federal branches
November 18, 2021	OCC	<i>Interpretive Letter #1179: Chief Counsel's Interpretation Clarifying: (1) Authority of a Bank to Engage in Certain Cryptocurrency Activities; and (2) Authority of the OCC to Charter a National Trust Bank</i>	Requires national banks and federal savings associations to seek supervisory nonobjection before engaging in new crypto-asset activities, including those described in OCC Letters 1170, 1172 and 1174, described above. As part of the nonobjection process, the bank must demonstrate it can conduct the activity in a safe and sound manner.*	National banks; federal savings associations; federal branches
November 23, 2021	FDIC, FRB, OCC	<i>Joint Statement on Crypto-Asset Policy Sprint Initiative and Next Steps</i>	Describes results of interagency "policy sprints" on crypto-asset activities and identifies a "roadmap" of areas for further guidance, including (1) traditional and ancillary custody services, (2) facilitation of customer purchases and sales, (3) lending against crypto-assets, (4) stablecoin issuance and distribution, and (5) holding crypto-assets on balance sheet.	Banks, savings associations, branches of foreign banks and their holding companies
April 7, 2022	FDIC	<i>FIL-16-2022: Notification and Supervisory Feedback Procedures for FDIC-Supervised Institutions Engaging in Crypto-Related Activities</i>	Requires FDIC-supervised institutions to notify the FDIC about current and proposed crypto-asset related activities, so the FDIC can consider the safety and soundness, consumer protection and financial stability implications of the activity.	State nonmember banks; state-licensed insured branches; state savings associations
August 16, 2022	FRB	<i>SR 22-6 / CA 22-6: Engagement in Crypto-Asset-Related Activities by Federal Reserve-Supervised Banking Organizations</i>	Requires FRB-supervised institutions to notify the FRB about current and proposed crypto-asset-related activities. Prior to engaging in crypto-asset-related activity, the institution must ensure the activity is legally permissible and have adequate systems, risk management and controls to conduct the activity in a safe and sound manner and consistent with applicable laws.*	State member banks; bank and thrift holding companies; and state-licensed branches and U.S. operations of foreign banks

\* Institutions already engaged in crypto-asset activities as of the release of the letter do not need supervisory non-objection but must notify its lead supervisory point of contact and perform the activities in a safe and sound manner.

# Currently Applicable Regulatory Guidance

Date	Agency	Title	Topic	Applicability
January 3, 2023	FDIC, FRB, OCC	<i>Joint Statement on Crypto-Asset Risks to Banking Organizations</i>	<p>Describes key risks associated with the crypto-assets sector and provides an update on the banking regulators' views on crypto-related activities. The release states that the regulators:</p> <ul style="list-style-type: none"> <li>• Continue to assess “whether or how” various crypto-asset-related activities can be conducted in a legally permissible manner that addresses safety and soundness, consumer protection and compliance concerns;</li> <li>• Believe issuing or holding as principal crypto-assets that are issued, stored or transferred on an open, public and/or decentralized network is “highly likely to be inconsistent with safe and sound banking practices”; and</li> <li>• Have “significant safety and soundness concerns” with business models that are concentrated in crypto-asset-related activities or have concentrated exposures to the crypto-asset sector.</li> </ul>	Banks, savings associations, branches of foreign banks and their holding companies
February 7, 2023	FRB	<i>Policy statement on Section 9(13) of the Federal Reserve Act</i>	<p>Harmonizes the powers of state member banks with those of national banks and state non-member banks by limiting state member banks to activities permitted for national banks or specifically authorized for state banks under federal statute or by the FDIC unless the FRB provide permission for a deviation. Specific to crypto-asset related activities, the release states that:</p> <ul style="list-style-type: none"> <li>• The FRB would presumptively prohibit state member banks from holding crypto-assets as principal.</li> <li>• State member banks seeking to issue a dollar-denominated token using distributed ledger technology would be required to follow the procedures and limits in OCC Interpretive Letters 1174 and 1179 but reiterates the view that issuing tokens on a public network is highly likely to be inconsistent with safety and soundness.</li> </ul>	State member banks
February 23, 2023	FDIC, FRB, OCC	<i>Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities</i>	Describes the liquidity risks of certain crypto-asset-related deposit activities, including accepting deposits for the benefit of a crypto-asset-related company's customers and deposits that constitute stablecoin-related reserves.	Banks, savings associations, branches of foreign banks and their holding companies
August 8, 2023	FRB	<i>SR 23-7: Creation of Novel Activities Supervision Program</i>	Announces a “novel activities supervision program” that would cover, among other things, crypto-asset-related activities, projects using distributed ledger technologies and concentrations of banking services to crypto-asset-related companies.	State member banks; bank and thrift holding companies; and state-licensed branches and U.S. operations of foreign banks
August 8, 2023	FRB	<i>SR 23-8 / CA 23-5: Supervisory Nonobjection Process for State Member Banks Seeking to Engage in Certain Activities Involving Dollar Tokens</i>	Requires state member banks to seek supervisory nonobjection before engaging in new dollar token (stablecoin) activities. A state member bank would be required to demonstrate that it has controls in place to conduct the activity in a safe and sound manner.	State member banks

# Legacy Status and Outlook for Bank Crypto Activities

## Traditional Banking Services and Stablecoin Reserve Accounts

Activity	Description	Legacy Status and Outlook
<b>Traditional banking services for crypto-asset companies</b>	Financial institutions offering deposit accounts, loans and other banking products to companies involved in crypto-asset activities.	<ul style="list-style-type: none"> <li>• Legally permissible, no special notice or non-objection required based on public guidance.</li> <li>• Banking regulators consistently state that banks are neither prohibited nor discouraged from providing banking services to customers of any specific class or type, as permitted by law or regulation. However, banking regulators have expressed safety and soundness and compliance concerns about exposure to crypto-asset companies and activities, even through traditional banking services.                             <ul style="list-style-type: none"> <li>- Industry participants have alleged implicit or explicit pressure from the regulators resulted in general debanking of the industry dubbed “Chokepoint 2.0.”</li> </ul> </li> <li>• New leadership at the banking regulators is expected to be more open to bank engagement with crypto-asset companies, although risk management will remain a focus.</li> <li>• Legal clarity in other areas of crypto-asset regulation, such as security classification and SEC expectations, may help to facilitate bank engagement with crypto-asset companies.</li> <li>• <b>Outlook: Opportunities likely to expand in the near term.</b></li> </ul>
<b>Loans collateralized by crypto-assets</b>	Accepting crypto-assets as collateral in lending arrangements	<ul style="list-style-type: none"> <li>• Supervisory nonobjection or notice required under current guidance.</li> <li>• Although lending against collateral is a traditional banking activity, this form of lending has been identified by regulators as a crypto-asset related activity. See SR 22-6.</li> <li>• <b>Outlook: Opportunities likely to expand in the near term, but some uncertainty remains.</b></li> </ul>
<b>Stablecoin reserve accounts</b>	Accepting as deposits the fiat currency used as reserves to back stablecoins.	<ul style="list-style-type: none"> <li>• Supervisory non-objection or notice required under current guidance.</li> <li>• Legally permissible for national banks and federal savings associations to hold deposits representing stablecoin reserves where the stablecoin is backed 1:1 by a single fiat currency and held in hosted wallets under OCC Interpretive Letter #1172 and subject to certain conditions of OCC Interpretive Letter #1179.</li> <li>• The February 23, 2023 joint statement highlighted liquidity risks of holding stablecoin reserves as a safety and soundness issue, emphasizing importance of effective risk management.</li> <li>• <b>Outlook: Opportunities may expand, but expect a continued supervisory focus on managing liquidity risk.</b></li> </ul>

Sources: [OCC](#), [OCC](#), [FRB](#), [FRB](#), [FRB](#), [FRB](#), [FDIC](#), [FDIC](#), [Joint Statement](#).

# Legacy Status and Outlook for Bank Crypto Activities

## Custody and Agent Activities

Activity	Description <sup>1</sup>	Legacy Status and Outlook
<b>Crypto-asset safekeeping and traditional custody services</b>	Traditional custody services in this context include facilitating the customer's exchange of crypto-assets and fiat currency, transaction settlement, trade execution, recordkeeping, valuation, tax services and reporting.	<ul style="list-style-type: none"> <li>• Supervisory non-objection or notice required under current guidance.</li> <li>• Legally permissible for national banks and federal savings associations under OCC Interpretive Letter #1170 and subject to certain conditions of OCC Interpretive Letter #1179.</li> <li>• Presumptively permissible for state member banks to act as custodian for crypto-assets. See FRB's Policy Statement on Section 9(13) of the Federal Reserve Act.</li> <li>• Regulatory concerns around safety and soundness, consumer protection and compliance concerns apply to custody and related customer services discussed below.</li> <li>• Unfavorable accounting treatment of crypto-assets held in custody under SAB 121 can make custody activities capital intensive.</li> <li>• <b>Outlook: Opportunities likely to expand in the near term with repeal of SAB 121 and clarity around capital treatment from the banking regulators, but some uncertainty remains, and additional guidance would be helpful.</b></li> </ul>
<b>Ancillary custody services</b>	Potentially includes staking, facilitating crypto-asset lending and distributed ledger technology governance services	<ul style="list-style-type: none"> <li>• Supervisory nonobjection or notice required under current guidance.</li> <li>• Legal permissibility of ancillary services, such as staking and crypto-asset lending, is not addressed in OCC Interpretive Letters or other guidance. The 2021 joint statement stated that regulators may issue a request for information about these activities before providing further clarity.</li> <li>• <b>Outlook: Opportunities may expand, but may require additional guidance or other agency action.</b></li> </ul>
<b>Facilitating customer purchases and sales of crypto-assets</b>	Acting as finder, agent or broker, or ancillary services, to facilitate customer purchases and sales of crypto-assets.	<ul style="list-style-type: none"> <li>• Supervisory non-objection or notice required under current guidance.</li> <li>• Although identified as a crypto-asset-related activity, the regulators have not issued specific guidance analyzing legal permissibility or other issues.</li> <li>• Because these activities generally should not involve holding crypto-assets on balance sheet, safety and soundness concerns may be more easily mitigated.</li> <li>• Clarification of the securities and commodities law treatment of crypto-assets may be important to assessing legal permissibility.</li> <li>• <b>Outlook: Opportunities may expand, but may require additional guidance or other agency action.</b></li> </ul>

<sup>1</sup> Traditional and ancillary custody services as described in the Joint Statement on Crypto-Asset Policy Sprint Initiative and Next Steps (November 23, 2021).

Sources: [OCC](#), [OCC](#), [SEC](#), [FRB](#), [FRB](#), [FRB](#), [FRB](#), [FDIC](#), [FDIC](#), [Joint Statement](#).

# Legacy Status and Outlook for Bank Crypto Activities

## Issuing and Holding Crypto-Assets as Principal

Activity	Description	Legacy Status and Outlook
<b>Issuance and distribution of stablecoins and other crypto-assets</b>	Issuing and distributing crypto-assets and related activities.	<ul style="list-style-type: none"> <li>• Supervisory non-objection or notice required under current guidance.</li> <li>• Legally permissible for national banks and federal savings associations to serve as a node and validate payments on a distributed ledger and to buy, sell, and issue stablecoin to facilitate customer payment transactions, under OCC Interpretive Letter #1174 and subject to certain conditions of OCC Interpretive Letter #1179.                             <ul style="list-style-type: none"> <li>- OCC Interpretive Letter #1174 did not address issuance or distribution of crypto-assets other than stablecoins.</li> </ul> </li> <li>• Presumptively permissible for state member banks to issue dollar-denominated tokens using distributed ledger technology or similar technologies. See FRB’s Policy Statement on Section 9(13) of the Federal Reserve Act.</li> <li>• Regulatory concerns around safety and soundness, consumer protection and compliance concerns would apply.</li> <li>• In other guidance, banking regulators have stated that issuing or holding as principal crypto-assets on a public blockchain is “highly likely to be inconsistent with safe and sound banking practices.” Banks may have more flexibility to use private chains, which were not addressed.</li> <li>• <b>Outlook: Opportunities may expand, particularly for stablecoins, but may require additional guidance or other agency or legislative action. If passed, stablecoin legislation should provide additional clarity.</b></li> </ul>
<b>Activities involving the holding of crypto-assets on balance sheets</b>	Any activities resulting in the bank holding crypto-assets on its balance sheet, including buying and selling crypto-assets as principal.	<ul style="list-style-type: none"> <li>• Supervisory non-objection or notice required under current guidance.</li> <li>• OCC Interpretive Letter #1174 suggests it may be legally permissible for national banks and federal savings associations to buy, sell and hold stablecoin as principal to facilitate customer payment transactions. It did not address other types of crypto-assets.</li> <li>• The FRB’s Policy Statement on Section 9(13) of the Federal Reserve Act confirms that investing in or trading most crypto-assets as principal in any amount is presumptively not permissible for state member banks.</li> <li>• Similar considerations and outlook as noted directly above.</li> </ul>

Sources: [OCC](#), [OCC](#), [SEC](#), [FRB](#), [FRB](#), [FRB](#), [FDIC](#), [FDIC](#), [Joint Statement](#).

# Other Areas to Watch

## Federal Charters

### Legacy Status

In early 2021, the OCC granted conditional approval for three crypto-asset-focused national bank trust charter applicants. Only one of the three successfully began operating as a national trust bank, and it entered into a BSA/AML-focused consent order with the OCC only one year later. No other crypto-asset-focused charters have been approved by the OCC.

### Outlook

We expect the OCC and other regulators to reconsider the apparent moratorium on crypto-focused national trust bank charters and potentially permit other applications to move forward, possibly including full national bank charters or other novel charter forms.

Sources: [OCC](#), [OCC](#), [OCC](#), [OCC](#), [OCC](#), [OCC](#), [OCC](#), [Roll Call](#).



## Note on Fintech Charters

In 2018, the OCC issued a policy statement on “Financial Technology Companies’ Eligibility to Apply for National Bank Charters,” opening up the potential for a special purpose charter for fintech companies.

The OCC was sued by the Conference of State Bank Supervisors and the New York State Department of Financial Services (“NYDFS”), both claiming that issuance of the charter would be beyond the OCC’s authority. While the suits were dismissed, the grounds for dismissal were ripeness or lack of standing, so it is likely the issue would be relitigated if an entity was granted a charter. Many firms abandoned their attempts for this special purpose charter as even if approved, the threat of the suits from state bodies creates too much uncertainty.

Given the threat of state suits, absent a legislative solution, we would expect the OCC and other banking regulators to focus more on traditional bank models engaged in crypto-activities rather than novel charters.



# Other Areas to Watch

## Central Bank Digital Currency (“CBDC”)

### Legacy Status

In 2022, the FRB released a discussion paper that examines the pros and cons of a potential U.S. CBDC.

- The paper states that the FRB does not intend to proceed with issuing a CBDC without “clear support” from the executive branch and from Congress “ideally in the form of a specific authorizing law.”
- Trump’s Executive Order directly addresses the issuance of CBDCs.

### Outlook

Trump’s Executive Order purports to flatly prohibit federal agencies from undertaking any action to “establish, issue, or promote CBDCs within the jurisdiction of the US or abroad.”

## Master Account Access

### Legacy Status

The FRB has so far resisted granting master account access to crypto-asset-focused institutions and other institutions with “novel” characters and business models.

### Outlook

The Federal Reserve may reconsider its policies regarding master account access, but we expect there will still be a high bar for less regulated institutions to gain direct access. Congress may also implement a legislative solution, as several lawmakers, including Senator Lummis, have expressed concerns with the Federal Reserve’s current approach. Finally, while not successful at the district level, ongoing lawsuits could result in a judicial solution on appeal.

A master account at a Federal Reserve Bank gives an institution direct access to FRB payment systems. It is also a necessary first step towards gaining access to the FRB’s discount window and membership in the major U.S. payment clearing networks.

- In August 2022, the FRB published guidelines for review of master account access applications that divides applicants into three tiers, based on the level of scrutiny applied to the application. The guidelines apply strict scrutiny to master account applications from “tier three” institutions that are not federally insured and are not subject to prudential supervision by a federal banking agency at either the institution or holding company level.
- In 2024, two federal district courts upheld the Federal Reserve Bank of Kansas City’s and the Federal Reserve Bank of San Francisco’s decisions to deny master account applications from “tier three” state-chartered institutions, including one with a focus on crypto-asset custody and related services, affirming a Federal Reserve Bank’s discretion to deny master accounts to legally eligible institutions. Both institutions have challenged their rulings in the applicable U.S. Courts of Appeals.

I	SEC.....	8
II	CFTC.....	19
III	Banking Regulators.....	24

---

## IV BSA/AML & Sanctions

V	Legislation.....	38
VI	State-Level Regimes.....	51

# BSA/AML & Sanctions

Under the Biden Administration, U.S. authorities evidenced clear concern about the illicit finance, national security and sanctions evasion risks of digital asset-related activities.

2021

The Financial Crimes Enforcement Network's ("FinCEN") first government-wide AML/countering the financing of terrorism ("CFT") priorities identified convertible virtual currency as "the currency of preference in a wide variety of online illicit activity" and noted its uses in money laundering and other financial crime.

2021

Treasury issued an "Action Plan to Address Illicit Financing Risks of Digital Assets," which laid out priority steps for coordinated interagency action to mitigate illicit finance and national security risks of digital assets, including, among others, monitoring emerging risks, strengthening AML supervision of virtual asset activities and improving AML enforcement.

2021

FinCEN proposed identifying "Convertible Virtual Currency Mixing" as a class of transactions of "primary money laundering concern." If finalized, the rulemaking would require convertible virtual currency ("CVC") exchangers regulated as money services businesses and other financial institutions to comply with recordkeeping and reporting obligations related to transactions involving CVC mixing, in order to assist in mitigating the illicit finance risks posed by such transactions.

2021

Treasury issued illicit finance risk assessments for non-fungible tokens and decentralized finance services.

Crypto industry members also have recognized the illicit finance risks of digital assets.

“ For example, in 2024, the Blockchain Association stated, “its members share FinCEN’s interest in combating illicit finance, especially where the digital asset industry is being exploited for illegal purposes . . . [and] are active and trusted partners with law enforcement and regulators across the globe in order to identify, prevent, and deter illicit activity within the digital assets ecosystem.”

# BSA/AML & Sanctions

Firms engaging in digital asset activities may have BSA/AML compliance obligations depending on their regulated status (e.g., money services businesses and futures commission merchants have such obligations).

Firms in the digital asset space that do not comply with BSA/AML obligations have faced significant civil and criminal enforcement penalties.

For example, Binance and its founder pleaded guilty in 2023 to charges related to failures to maintain an effective AML program and agreed to pay billions of dollars in penalties to civil and criminal authorities. Under the first Trump administration, BTC-E paid \$110 million to FinCEN to settle AML charges and also faced criminal action.

Other regulators too have focused on digital asset firms' BSA/AML compliance and on enforcement related to associated failures. For example, in July 2024, the SEC charged Silvergate in relation to BSA/AML compliance program deficiencies. The SEC's 2025 examination priorities include reviewing whether registrants offering crypto asset-related services comply with their BSA/AML requirements.



Additionally, all U.S. persons must comply with U.S. sanctions.

- Firms engaged in digital asset activities that have not complied with U.S. sanctions obligations have faced enforcement actions.
- For example, OFAC has entered settlement agreements with a number of cryptocurrency exchanges for apparent sanctions violations, including under OFAC's Iran, Cuba, North Korea, Russia/Ukraine, Venezuela, Sudan and Syria sanctions programs.

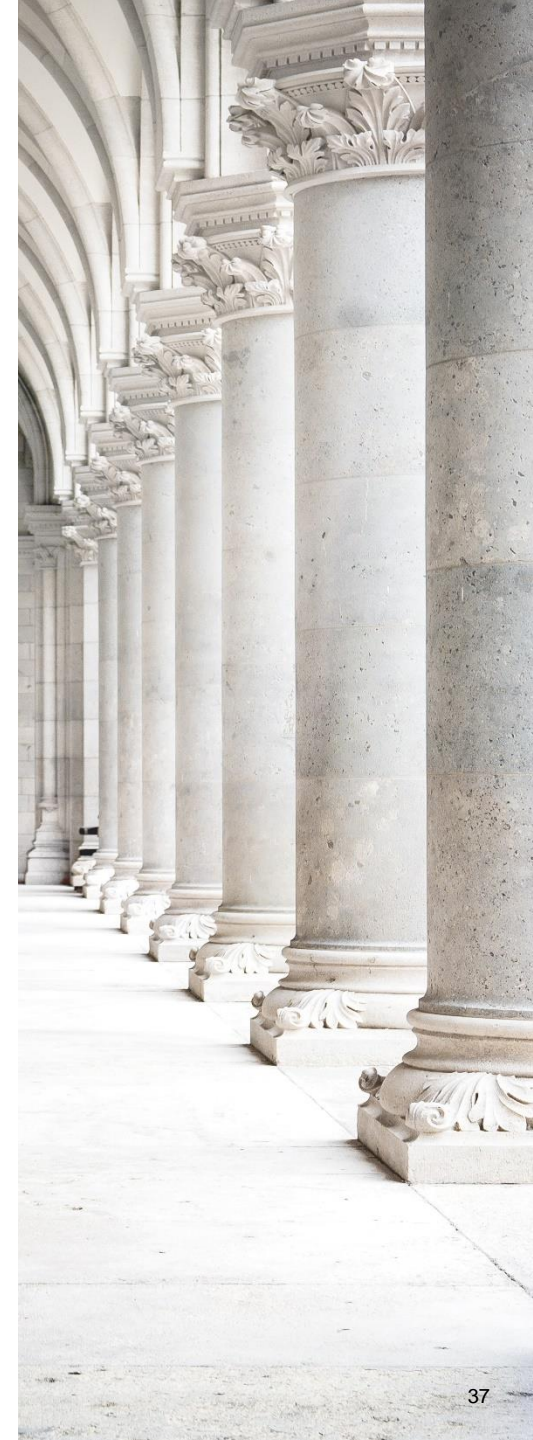


Cryptocurrency service providers have been the target of sanctions designations as well, although the interplay between U.S. sanctions and decentralized finance potentially is in flux in light of a November 2024 Fifth Circuit decision in *Van Loon et al. v. Treasury* determining that “immutable smart contracts” are not “property” that can be blocked under the relevant U.S. sanctions statute.

# BSA/AML & Sanctions

## Outlook under Trump Administration

- In general, measures to address money laundering and illicit finance risks have bipartisan support, and firms with BSA/AML and sanctions obligations will continue to be expected to comply with relevant rules.
- A pro-crypto Trump administration may reduce negative regulatory pressure on firms' risk-based approaches to address the illicit finance risks posed by digital asset activities, but enforcement risks for deficient (or absent) BSA/AML compliance programs are likely to remain (as for any other institution with BSA/AML obligations).
- Similarly, although the focus of sanctions policy may change, the robust use of sanctions as a tool to achieve foreign policy objectives—and attendant focus on programs to comply with sanctions and mitigate sanctions evasion—likely will continue under the Trump administration.
- Under the Biden administration, Democratic members of Congress proposed a number of BSA/AML- and sanctions-related bills targeting the crypto industry, which did not come to fruition. It is unclear whether a Republican-led Congress would have interest in similar legislation.



I SEC.....8

II CFTC.....19

III Banking Regulators.....24

IV BSA/AML & Sanctions.....34

---

V **Legislation**

VI State-Level Regimes.....51

# The Need for Legislation

As noted in the introduction, legislation is likely needed in a number of areas to create the clarity needed for robust industry development.

---

Classifications of crypto-assets (e.g., security, commodity, currency).

Address application of the current SEC regulatory regime to the issuance and intermediation of crypto-assets, including stablecoins (e.g., securities offering requirements, Rule 15c3-3, regulations under the Investment Advisers Act).

Fill the gap for a comprehensive regulatory regime for non-securities crypto-assets.

Address preemption of state regimes (e.g., state regulation of crypto-assets, money transmission laws).

# Key Bills and Legislators

## Recent History and Current Developments of Cryptocurrency Legislation

### I. Key Bills

- Lummis-Gillibrand Payment Stablecoin Act
- Financial Innovation and Technology for the 21st Century Act (“FIT21”)
- The Boosting Innovation, Technology and Competitiveness through Optimized Investment Nationwide Act of 2024 (“BITCOIN Act of 2024”)

### II. Key Legislators

- **Representative French Hill**  
(Chair, House Financial Services Committee)
- **Representative Maxine Waters**  
(Ranking Member, House Financial Services Committee)
- **Senator Tim Scott**  
(Chair, Senate Banking Committee)
- **Senator Elizabeth Warren**  
(Ranking Member, Senate Banking Committee)
- **Senator Cynthia Lummis**  
(Republican consensus builder concerning cryptocurrency legislation)
- **Senator Kirsten Gillibrand**  
(Democrat consensus builder concerning cryptocurrency legislation)

Sources: [Payment Stablecoin Act](#), [FIT21](#), [BITCOIN Act of 2024](#), [Senate Banking Committee’s 2023 Hearing on Crypto](#).



# House Financial Services Committee

## French Hill (R) Chair



### Snapshot of Key Issues: Crypto

- Proponent of crypto legislation in the next session
- Author of FIT21

### Quotes

“We need a market structure for digital assets. We don’t have rules of the road. Under Chairman Gensler, we had just regulation by enforcement – this is not helping America succeed, not helping technological advance, innovation for Web3, the use of blockchain both in publicly traded companies and in financial services. So, that is the top priority for us. And, our majority leader, Steve Scalise, has it on his First 100 Days of the House is to move a regulatory structure bill for digital assets. And I also believe a dollar-backed payment stablecoin under U.S. law as well.”

*(CNBC interview with Andrew Sorkin on December 13, 2024)*

## Maxine Waters (D) Ranking Member



### Snapshot of Key Issues: Crypto

- Proponent of more robust crypto legislation
- Recently voted against H.J. Res. 109 (rollback of SEC guidelines that discouraged banks from holding digital assets)
- Recently voted against the FIT21

### Quotes

“But I want to do something, and I know you do too, Mr. Chairman (former Chairman, Patrick McHenry). Before the end of this year, I want us to strike a grand bargain on stablecoins and other long overdue bills...I strongly believe we can reach a deal that prioritizes strong protections for our nation’s consumers and strong federal oversight.”

*(Waters’ opening statement during a Full Committee hearing, Oversight of the Securities and Exchange Commission, on September 24, 2024)*

Sources: [JD Supra](#), [Hill and Sorkin interview](#), [crypto legislation “top priority”](#), [Reuters](#), [Walk the Street](#), [H.J. Res. 109](#), [FIT21 vote](#), [House Banking Committee](#).

# Senate Committee on Banking, Housing and Urban Affairs

(“Senate Banking Committee”)

**Tim Scott (R)**  
Chair



## Snapshot of Key Issues: Crypto

- Proponent of crypto legislation being voted on and passed in the next session
- Proposes creation of specialized subcommittees that foster dialogue to accelerate crypto-related legislation and address industry concerns efficiently

## Quotes

“The one thing I will absolutely guarantee will be done (if elected Banking Committee Chairman) is watching your (pro-Bitcoin) legislation get a vote, pass the Banking Committee, and we’re going to fight to make it a law in the United States of America.” *(At the 2024 Bitcoin Conference on July 26, 2024)*

“Blockchain technology and cryptocurrency have the potential to democratize the financial world, and 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.” *(During meeting with David Sacks in Washington on December 17, 2024)*

**Elizabeth Warren (D)**  
Ranking Member



## Snapshot of Key Issues: Crypto

- Proponent of stringent crypto legislation
- Biggest concern: AML and counter-terrorism financing issues/gaps
- Recently voted against [H.J. Res. 109](#)

## Quotes

“Crypto fraud is a big problem, but it’s one we can fix. The solution starts with the SEC.”  
*(From speech hosted by American Economic Liberties Project and Americans for Financial Reform on January 25, 2023)*

Sources: [Anti-Crypto Army](#), [Dems Break with Warren](#), [Warren’s Senate page](#), [Coin Telegraph](#), [CoinDesk](#), [Yahoo Finance](#), [Tim Scott and David Sachs](#), [Tim Scott All In on Bitcoin](#).

# Other Notable Legislators

**Cynthia Lummis (R)**  
*U.S. Senator (WY)*



**Kirsten Gillibrand (D)**  
*U.S. Senator (NY)*



## Snapshot

Senator Lummis and Senator Gillibrand are regarded as consensus builders within Congress. Their collaborative efforts with lawmakers from both major parties have been instrumental in developing bipartisan strategies for crypto regulation.

## Examples of Bipartisanship

### Lummis-Gillibrand Responsible Financial Innovation Act

In 2022—and again through a reintroduction in 2023—Lummis and Gillibrand advanced the Lummis-Gillibrand Responsible Financial Innovation Act which aimed to establish a comprehensive regulatory framework for crypto assets.

### Lummis-Gillibrand Payment Stablecoin Act

In 2024, Senator Lummis and Senator Gillibrand introduced the bipartisan Payment Stablecoin Act that proposed a regulatory framework for payment stablecoins.

Sources: [Gillibrand Lummis RIFA 2022](#), [Gillibrand Lummis RIFA 2023](#), [Gillibrand Lummis Stablecoin Act 2024](#).

# Pro-Crypto Legislators in Congress

The crypto industry spent more than \$170 million supporting pro-crypto Congressional candidates, leading to consequential outcomes that shaped the control of Congress, including:

Ohio, U.S. Senate:  
**Bernie Moreno**  
(\$40.2 million in support)

Arizona, U.S. Senate:  
**Ruben Gallego**  
(\$10 million in support)

Michigan, U.S. Senate:  
**Elissa Slotkin**  
(\$10 million in support)

West Virginia, U.S. Senate:  
**(R) Jim Justice**  
(\$3 million in support)



- According to Stand With Crypto, a crypto advocacy organization, there are nine Democratic Senators who are marked as “Strongly Supportive” of crypto.
- This would permit ***a filibuster-proof majority for crypto-asset legislation*** if these Democratic Senators vote with the 53 Republican Senators.

Sources: [Barron's](#), [Reuters](#), [X](#).



“

2025 will be the year for bitcoin & digital assets. With David Sacks as Crypto Czar, this will be the most pro-digital asset administration ever!

I look forward to working closely with [David Sacks] to pass comprehensive digital asset legislation [and] my strategic bitcoin reserve.”

*Senator Lummis*



# Lummis-Gillibrand Payment Stablecoin Act

**Overview.** Seeks to establish a comprehensive regulatory framework for payment stablecoins (digital assets pegged to a stable asset, such as the U.S. dollar).

---

## Key Provisions

### Authorized Issuers:

State non-depository trust companies registered with the Federal Reserve permitted to issue payment stablecoins with a nominal value up to \$10 billion. Depository institutions that have been authorized as national payment stablecoin issuers.

### Prohibited Issuance and Uses:

Unlawful to engage in the business of issuing, creating or originating an algorithmic payment stablecoin. Would generally prohibit rehypothecation of stablecoin assets.

### Consumer Protections:

Issuers would be required to maintain one-to-one reserves of nominal value of all outstanding payment stablecoins (non-depository trust companies, as well as depository institutions).

---

## Procedural Status

April 17, 2024: Introduced in the Senate by Senator Lummis and Senator Gillibrand, read twice and referred to the Senate Banking Committee.

Source: [Payment Stablecoin Act](#).

# BITCOIN Act of 2024

**Overview.** The BITCOIN Act of 2024 would provide for the storage and acquisition of the Bitcoin currency by the U.S. Government.

## Key Provisions

**Strategic Bitcoin Reserve:**

Directs Treasury to create a Strategic Bitcoin Reserve, a decentralized network of secure Bitcoin storage facilities across the country for the storage of U.S. Bitcoins with robust physical and cybersecurity measures.

**Bitcoin Purchase Program:**

Directs Treasury to establish a Bitcoin Purchase Program to purchase not more than 200,000 Bitcoins per year over a five-year period, for a total acquisition of 1,000,000 Bitcoins.

**Voluntary State Participation:**

Directs Treasury to establish a program that permits a State to store their Bitcoin holdings within the Strategic Bitcoin Reserve in segregated accounts, maintaining exclusive ownership and control, while benefiting from joint state and federal security infrastructure.

**Proof of Reserve System:**

To ensure transparency and accountability in the management of the Strategic Bitcoin Reserve, the Treasury is directed to establish a Proof of Reserve system consisting of published quarterly reports on the Strategic Bitcoin Reserve to include a public cryptographic attestation, an official website for the public to access the quarterly reports and independent third-party audits.

## Procedural Status

July 31, 2024: Introduced in the Senate by Senator Lummis, read twice and referred to the Senate Banking Committee.

Source: [BITCOIN Act of 2024](#).

# The Financial Innovation and Technology for the 21st Century Act (“FIT21”)

**Overview.** The Financial Innovation and Technology for the 21<sup>st</sup> Century Act aims to establish a foundational regulatory framework for crypto-assets in the United States by:

- i. Clarifying the characterization of spot crypto assets (“**digital assets**”) by creating a classification regime dividing them into SEC-regulated “**restricted digital assets**” and CFTC-regulated “**digital commodities**” and carving them out from treatment as “investment contract” securities;
- ii. Providing the SEC plenary authority over restricted digital assets, the CFTC plenary authority over spot digital commodity transactions and granting specific rulemaking authority;
- iii. Providing new registration exemptions from the Securities Act of 1933 for issues of digital assets;
- iv. Obligating secondary market intermediaries providing custody, brokerage, dealing or exchange-like venues to register with the relevant regulator and comply with regimes tailored to their activities;
- v. Mandating the SEC and CFTC to adopt rules to put in place the relevant regimes; and
- vi. Providing special treatment for prudentially regulated “permitted payment stablecoins.”

## Procedural Status

July 20, 2023

May 22, 2024

September 9, 2024

Introduced in the House by Representative Glenn Thompson (R-PA).

Passed by vote in the House.

Received in the Senate, read twice and referred to the Senate Banking Committee.

Source: [FIT21](#).

# FIT21 – Digital Asset Classification

For a Digital Asset to be considered a “**digital commodity**,” the blockchain or digital ledger must generally be *functional* and certified as *decentralized*.

A **functional** blockchain system is a network that allows network participants to use the digital asset for the transmission and storage of value on the blockchain system, the participation in services provided by or an application running on the blockchain system or the participation in the decentralized governance system of the blockchain system.

---

A **decentralized** system is one that meets the five conditions:

**Controls and Restrictions:** No person has, or during the preceding 12 months had, unilateral authority to control or materially alter the functionality or operation of the blockchain or to restrict or prohibit participation.

**Aggregate Holdings:** No digital asset issuer or affiliated person beneficially owns or controls or owned or controlled during the previous 12 months 20% or more of the digital asset.

**Intellectual Property:** The digital issuer, affiliates and related persons have not, during the preceding three months, implemented or contributed any intellectual property to the source code that materially alters the functionality or operation of the blockchain.

**Marketing:** Neither any digital asset issuer nor any affiliated person has marketed to the public the digital assets as an investment during the preceding three months.

**End User Distributions:** All issuances of units of such digital asset during the preceding 12 months were “end user distributions”

Sources: [Definition of “digital commodity” \(FIT21, Sec. 103, Part 55\)](#), [Definition of “decentralized system” \(FIT21, Sec. 101, Part 25\)](#), [Certification of Certain Digital Assets \(FIT21, Sec. 304\)](#).



# FIT21 – Digital Asset Classification

## Determinations

A digital asset would generally be deemed a restricted digital asset subject to SEC jurisdiction, unless it is certified to the SEC as a digital commodity or meets the definition of a permitted stablecoin.

---

### Certification Process.

- Any person capable of providing the necessary information may certify a digital asset by filing a statement with the SEC certifying that the blockchain system is decentralized and providing statutorily required information about the blockchain and asset.
  - The SEC would have 60 days to stay or reject the certification. Certifications not stayed or rejected would automatically become effective.
- 

Digital assets held by an issuer would be deemed restricted digital assets even where the ledger is functional and decentralized.

---

Digital assets held by persons other than an issuer, affiliate or “related person” would appear to be digital commodities even before the blockchain is certified as decentralized if acquired in an “end user distribution” without material payment or on a digital commodity exchange.

Sources: [Definition of “digital commodity” \(FIT21, Sec. 103, Part 55\)](#), [Definition of “decentralized system” \(FIT21, Sec. 101, Part 25\)](#), [Certification of Certain Digital Assets \(FIT21, Sec. 304\)](#).



**Permitted Payment Stablecoins**  
are defined as a digital asset:

---

- that is or is designed to be used as a means of payment or settlement;
- the issuer of which (1) is obligated to convert, redeem or repurchase for a fixed amount of monetary value; or (2) represents, will maintain or creates the reasonable expectation that it will maintain a stable value relative to the value of a fixed amount of monetary value;
- the issuer of which is subject to regulation by a federal or state regulator with authority over entities that issue payment stablecoins; and
- that is not (1) a national currency; or (2) a security issued by a registered investment company.

# FIT21 – Digital Asset Intermediaries

Digital asset intermediaries would be required to register with the SEC or CFTC and become a member of an appropriate securities association or futures association based on the type of digital asset in which they transact.

The SEC would have oversight over “digital asset brokers,” “digital asset dealers,” “digital asset trading systems,” “notice registered digital asset clearing agencies” and “qualified digital asset custodians.”

The CFTC would have oversight over “digital commodity brokers,” “digital commodity custodians,” “digital commodity dealers” and “digital commodity exchanges.”

The SEC and CFTC would be mandated to promulgate required rules and regulations governing registration and conduct no later than 360 days after enactment.

- Notice registration would be available prior to adoption of final registration rules
- Joint rulemaking would be required to cover a variety of topics including:



Further definitions

Exemptions from duplicative requirements for dually registered entities

Regulation of “mixed digital asset” transactions

Capital requirements for dually registered entities

I	SEC.....	8
II	CFTC.....	19
III	Banking Regulators.....	24
IV	BSA/AML & Sanctions.....	34
V	Legislation.....	38

---

**VI** State-Level Regimes



# State Legislation/Regulation

While this deck focuses on the federal treatment of crypto-assets, it is also worth noting that businesses engaged in crypto-asset activities may be subject to state crypto-related licensing and permissibility requirements and/or state money transmitter laws, with states like New York enforcing their robust frameworks as applicable alongside federal regulations (whatever they may be).

---

States have taken disparate approaches to engaging with crypto-assets and companies engaged in crypto-asset activities, so even the process of determining whether any state laws apply to a crypto-asset company could be time-consuming and costly.

---

**Outlook under the Trump Administration:** Changes at the federal level, whether supervisory, regulatory or legislative, will likely prompt changes at the state level.



For example, federal legislation may preempt certain state laws, and some states may look to update their regulatory frameworks to attract the business of crypto-asset companies in light of the increased openness at the federal level.



Other states may look to increase enforcement or supervisory controls if they believe it's necessary to “fill the gaps” left by a deregulatory approach.

- For example, Adrienne Harris, the head of the NYDFS, told the Financial Times that scaling back federal regulations would “certainly increase the volume of consumer protection cases that we may bring on the enforcement side” and that the NYDFS was ready to “fill the gaps” left by deregulation in the space.

Sources: [NYDFS](#), [Financial Times](#).

# Contact Information



**Jeff Robins**

Partner | New York

+1 212 909 6526

[jrobbins@debevoise.com](mailto:jrobbins@debevoise.com)

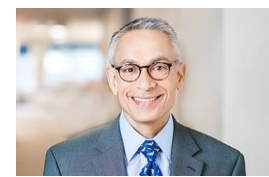


**Gregory J. Lyons**

Partner | New York

+1 212 909 6566

[gilyons@debevoise.com](mailto:gilyons@debevoise.com)



**Satish M. Kini**

Partner | Washington, D.C.

+1 202 383 8190

[smkini@debevoise.com](mailto:smkini@debevoise.com)



**Kristin A. Snyder**

Partner | San Francisco

+1 415 738 5718

[kasnyder@debevoise.com](mailto:kasnyder@debevoise.com)



**Caroline N. Swett**

Partner | New York

+1 212 909 6432

[cnswett@debevoise.com](mailto:cnswett@debevoise.com)



**Douglas S. Zolkind**

Partner | New York

+1 212 909 6804

[dzolkind@debevoise.com](mailto:dzolkind@debevoise.com)

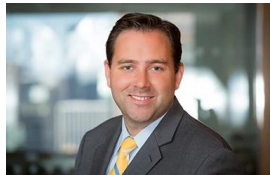


**Andrew J. Ceresney**

Partner | New York

+1 212 909 6947

[aceresney@debevoise.com](mailto:aceresney@debevoise.com)



**Morgan Hayes**

Partner | New York

+1 212 909 6983

[mjhayes@debevoise.com](mailto:mjhayes@debevoise.com)



**Carter Burwell**

Counsel | Washington D.C.

+1 202 383 8149

[cburwell@debevoise.com](mailto:cburwell@debevoise.com)



**Aseel M. Rabie**

Counsel | Washington, D.C.

+1 202 383 8162

[arabie@debevoise.com](mailto:arabie@debevoise.com)



**Gary E. Murphy**

Counsel | New York

+1 212 909 6160

[gemurphy@debevoise.com](mailto:gemurphy@debevoise.com)



**Patrick Fuller**

Counsel | Washington, D.C.

+1 202 383 8119

[pafuller@debevoise.com](mailto:pafuller@debevoise.com)



**Taylor Richards**

Associate | Washington, D.C.

+1 202 383 8009

[tmrichar@debevoise.com](mailto:tmrichar@debevoise.com)



**Jung Eun Choi**

Associate | New York

+1 212 909 6815

[jechoi@debevoise.com](mailto:jechoi@debevoise.com)



**Jonathan R. Wong**

Associate | London

+44 20 7786 3043

[jrwong@debevoise.com](mailto:jrwong@debevoise.com)

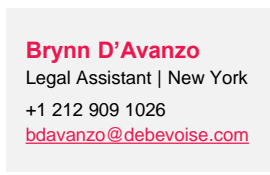


**Lily Zweig**

Law Clerk | New York

+1 212 909 6519

[ldzweig@debevoise.com](mailto:ldzweig@debevoise.com)



**Brynn D'Avanzo**

Legal Assistant | New York

+1 212 909 1026

[bdavanzo@debevoise.com](mailto:bdavanzo@debevoise.com)