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EXPERT OPINION

Litigation and Enforcement in the New Era of Digital Assets Regulation

The SEC's recent settlements and dismissals of high-profile securities violations cases against cryptocurrency companies signal a significant shift in U.S. regulation of digital assets.

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Risk and Compliance

By David Brill

The Securities and Exchange Commission's recent settlements and dismissals of high-profile securities violations cases against cryptocurrency companies signal a significant shift in U.S. regulation of digital assets. In the wake of these dismissed cases and based on recent SEC guidance, future enforcement will likely focus primarily on prosecution of fraud and protection of retail investors, replacing the previous approach of regulating market structure and classification through enforcement actions.

This shift has led many to believe the industry is entering an era of free enterprise. Still, it's important to note that there remains a need in the U.S., and other jurisdictions globally, for clear legislation that establishes foundational definitions, rules and parameters for how the industry will be governed. These regulations are expected to be developed in the year ahead.

Moreover, the reversal of the previous regulation by enforcement approach does not equate to a lack of regulatory responsibility or an absence of legal and compliance requirements. Even where regulations are less restrictive, there are still rules that organizations must understand, operationalize and adhere to. Additionally, they must be aware of the potential for an array of civil and criminal litigations.

For cryptocurrency and financial services institutions to operate effectively in the current and emerging environment, they will need to understand where litigation is likely to emerge in lieu of continued SEC actions and the steps they can take to reduce risk.

One area where increased activity is expected is state-driven litigation and enforcement. Some U.S. states have already moved to revive or relitigate cases the SEC dismissed. Depending on state policies and the priorities of state attorney generals, certain states are more likely than others to pursue litigation as an enforcement strategy. For instance, cases have emerged in New York under the Martin Act, where the threshold for violation is materiality — a lower standard than the scienter requirement under the federal securities laws — and more such cases are anticipated. The New York Investor Protection Unit has been particularly active and similar cases are expected in California, Oregon, Texas, Florida and others.

Organizations should prepare for the Department of Justice to pursue violations related to cryptocurrency under the Bank Secrecy Act and other existing anti-money laundering laws. In early April 2025, the DOJ announced the disbandment of its National Cryptocurrency Enforcement Team, which was responsible for cryptocurrency investigations. In a recent memo to employees, the Deputy Attorney General confirmed that the DOJ will now focus on “prosecuting individuals who victimize digital asset investors.” While fulfilling AML and KYC requirements is not a new issue for the digital assets industry, it is important to note that the SEC’s shift in focus should not be considered as a relaxation of the U.S. government’s stance on enforcing foundational financial regulations that clearly apply to cryptocurrency and digital assets.

An active plaintiff’s bar is another area expected to increase in activity regardless of the direction federal enforcement takes this year or in the future. This year, there has already been an uptick in plaintiff’s lawyers initiating class actions and other lawsuits across multiple jurisdictions.

Many of these cases focus on classification issues, such as claims a token is a security, as well as violations of data privacy, including data breaches at cryptocurrency companies.

Defending against and responding to cryptocurrency-focused cases can be particularly challenging due to the market's complexity and the technical nature of the evidence often required to support both prosecution and defense.

To minimize the risk of legal issues or adverse outcomes, organizations involved in blockchain and digital assets must establish a strong foundation of governance and compliance programs specifically designed to this sector. It is essential to understand the distinction between government guidance and mandates and how to implement these directives within the organization. Effective implementation, thorough testing and third-party validation of compliance controls will be crucial and will require expert guidance. Knowing how to achieve compliance and how to demonstrate it will be vital, even in pro-crypto environments.

Additionally, organizations must be ready to conduct discovery, analysis and funds tracing within complex financial systems and on the blockchain. This requires support from specialized experts who can perform investigative activities and provide testimony about these intricate concepts to judges, juries and arbitrators, including:

- Transaction-based review, including attribution, correlation analysis, wallet examination and accounting review.
- Analysis of asset movements, protocol deployments and company structures in relation to requirements across different jurisdictions.
- Comprehensive review of trading activities and profitability.
- Forensic and technical analysis of smart contract code.
- Asset valuation and estimating potential losses.
- Price dispersion and correlation to examine price fluctuations and the relationship between assets and external factors.

- Calculating claims by evaluating the value of tokens, trading activities, market pricing and other relevant factors.

As the industry gains momentum and adoption in the U.S. increases, the risks for companies operating within the space is expected to grow, regardless of regulatory positioning. In any environment, there will be risks, allegations of fraud, disputes and investigations that necessitate preparedness, effective governance and expertise.

***David Brill**, a Managing Director at FTI Technology, has played a pivotal role in shaping significant milestones within the digital assets industry. As the former deputy general counsel for a large, publicly traded cryptocurrency platform, Mr. Brill draws on his expertise as an attorney and his background in financial services and technology to address complex regulatory and legal issues for international organizations in the digital assets ecosystem.*

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