

The Path Toward a Market Structure for Crypto Assets

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Over the past few months, U.S. market regulators have taken significant steps toward crafting a regulatory framework for crypto assets, with the objective of defining a market structure where digital assets can be an integral part of the financial markets. These moves have been in response to the Trump administration's embrace of crypto assets and the clear directive early in the administration to make the United States the crypto capital of the world. The Securities and Exchange Commission and Commodity Futures Trading Commission have prioritized this goal, with both agencies overhauling their approach to crypto regulation—by deemphasizing enforcement and instead looking to find regulatory solutions to allow crypto assets to be traded alongside traditional assets.

Following the release this past summer of a report from the President's Working Group on Digital Asset Markets, the SEC and CFTC have stepped up these efforts. The SEC announced "[Project Crypto](#)"—a "Commission-wide initiative to modernize the securities rules and regulations to enable America's financial markets to move on-chain." The CFTC likewise launched its "[Crypto Sprint](#)," aimed at "enabling immediate trading of digital assets at the Federal level." And just last month, the agencies announced a "harmonization" initiative, intended to coordinate these efforts.



Courtesy photos

Ladan F. Stewart, left, and Shuhang Liu, right, of White & Case.

While a fully developed market structure for crypto assets will take time to develop and implement—and will likely include some form of legislative mandate—we already have important insights into what the eventual structure may look like.

President's Working Group

In January, President Donald Trump signed an [executive order](#) outlining his administration's goal to "support the responsible growth and use of digital assets, blockchain technology, and related technologies across all sectors of the economy." The order established the President's Working Group on Digital Asset Markets (consisting of officials from throughout the federal government, including the SEC and CFTC) and required that the working group submit recommendations on regulatory and legislative proposals to advance that goal.

In July, the working group released a comprehensive [report](#) with a series of recommendations across five areas: market structure; banking; stablecoins and payments; countering illicit finance; and taxation. With respect to market structure, the report called for the SEC and CFTC to use their existing rulemaking and exemptive authorities to enable the trading of digital assets. The report included detailed recommendations for actions by each agency. For example, it recommended that the SEC consider an “innovation exemption” to allow SEC registrants to engage in innovative new business models, and relief from registration obligations for certain “decentralized finance” providers (which facilitate automated, non-intermediated financial market activity). The report also recommended that the agencies explore ways to allow registrants to offer multiple services within a single user interface.

The report was clear that “absent congressional action, the SEC and CFTC should use their existing authorities to provide fulsome regulatory clarity that best keeps blockchain-based innovation within the United States.” The report also provided recommendations for the highly anticipated market structure legislation for which the crypto industry has long advocated (and which is currently being considered by Congress). The report prescribed that the SEC’s and CFTC’s respective jurisdictions should be clear, with the CFTC given authority to regulate crypto assets that are not securities (and the SEC regulating those that are securities), and that SEC and CFTC registrants be allowed to “engage in multiple business lines under the most efficient licensing structure possible, ensuring a clear and simple regulatory framework.” In addition, the report provided various recommendations for the regulation of market intermediaries, including that intermediaries should be able to trade both securities and non-securities and that trading platforms should be able to custody customer digital assets.

Project Crypto and Crypto Sprint

In announcing [Project Crypto](#) in response to the working group’s report, SEC Chair Paul Atkins noted that “the SEC must holistically consider the potential benefits and risks of moving our markets from an off-chain environment to an on-chain one.” Atkins directed SEC staff “to draft clear and simple rules of the road for crypto asset distributions, custody, and trading for public notice and comment,” and to consider using interpretive and exemptive authorities “to make sure that archaic rules and regulations do not smother innovation and entrepreneurship.”

To that end, Atkins has prioritized the following actions: (1) developing clear guidelines to enable market participants to “slot crypto assets into categories” in order to determine whether the asset can be deemed a security; (2) modernizing the SEC’s custody requirements to facilitate the custody of crypto assets; (3) developing a framework to allow securities and non-securities to trade side-by-side on SEC-regulated platforms, with the aim of enabling securities intermediaries to offer a broad range of products and assets under one roof with a single license; (4) updating SEC rules to allow “decentralized finance” systems to operate as part of the securities markets without “unnecessary regulation”; and (5) creating an “innovation exemption” that allows markets participants to “quickly go to market with new business models and services that do not neatly fit within [] existing rules and regulations,” so long as they comply with certain conditions, such as periodic reporting to the SEC.

Similarly, the CFTC responded to the working group’s report by launching its [Crypto Sprint](#). As its [first initiative](#), the CFTC has sought comment from market participants on listing spot crypto assets on CFTC-registered futures exchanges.

In September, the two agencies [announced](#) “a new beginning for coordination,” starting with a joint SEC-CFTC roundtable on “regulatory harmonization.” As

part of this coordination, the SEC and CFTC will be “harmonizing their approaches to product offerings, enabling increased market choice” and “clear, predictable, and pro-innovation regulatory frameworks.” Priority areas include expanded trading hours, a coordinated framework for portfolio margining, and coordinated “innovation exemptions.”

Going Forward

Looking ahead, while Congress continues to debate legislation to provide clarity on the appropriate market structure for digital assets, the market regulators have been directed to forge ahead with creating a framework directed at enabling the U.S. financial markets to move “on-chain.” Though we do not yet have the full picture of the ultimate structure, several key elements will likely be included.

First, market participants will likely receive long-awaited clarity on whether particular assets are securities or commodities—a distinction that dictates whether they are under the SEC’s regulatory jurisdiction or the CFTC’s—and that is central to the agencies’ harmonization goals.

Second, regulators may ultimately propose a structure that enables financial intermediaries to offer platforms that can provide a range of products and services (including trading, custody, brokerage, clearing, staking, lending), relating to both securities and non-securities, under a single regulatory umbrella—with the aim of lessening regulatory burdens and increasing choice for market participants.

Third, market participants attempting to bring novel products to market quickly will likely benefit from “innovation exemptions” and other safe harbors from current regulatory frameworks.

These initiatives seek to change the playing field for the crypto industry—and the wider financial industry—

and will likely take years to finalize and implement. But as the agencies work toward these goals, and work through necessary and complicated updates to their rules and regulations, we expect that they will continue to provide interim guidance in other ways, including through staff statements and responses to requests from market participants. For example, last month, NASDAQ filed a [request](#) with the SEC for rule changes to enable the trading of tokenized securities on its platform. This request appears very much in line with the SEC’s stated goal of moving markets on-chain, and thus the SEC’s response will be closely watched. And most recently, SEC staff issued new guidance through two “no-action letters”—[one](#) relating to custody of crypto assets by regulated funds and investment advisers, and [another](#) relating to certain issuances of crypto tokens.

One thing is certain—in crafting a new and forward-looking market structure, the SEC and CFTC will be guided by this principle, [articulated](#) by Atkins: “Regulators should provide the minimum effective dose of regulation necessary to protect investors while allowing entrepreneurs and businesses to flourish.”

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