

# Client Alert

Special Matters & Government Investigations

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## SEC Creates Crypto Task Force and Pivots Away from Regulation by Enforcement

### INTRODUCTION

Two recent actions by the U.S. Securities and Exchange Commission (“SEC”) show it is already acting on President Trump’s support for digital assets: 1) by forming, on January 21, 2025, a Crypto Task Force to promote innovation, and 2) most recently, by rebranding the prior Crypto Assets and Cyber Unit into a new Cyber and Emerging Technologies Unit to “root out those seeking to misuse innovation to harm investors and diminish confidence in new technologies.”<sup>ii</sup> These developments demonstrate that the SEC’s enforcement focus is shifting away from crypto and back to cyber-related frauds. This client alert provides a brief overview of the newly minted Crypto Task Force and CETU, and how enforcement efforts are being diverted from crypto.

### PURPOSE & SCOPE OF CRYPTO TASK FORCE

Last month the SEC established the Crypto Task Force to provide long-awaited clarity on the application of federal securities laws to digital assets and to recommend practical policy measures “to foster innovation and protect investors.”<sup>iii</sup> The Task Force will focus on digital assets, crypto assets, cryptocurrencies, and digital coins and tokens, as well as protocols.<sup>iv</sup> The Task Force’s priorities will include drawing regulatory lines, distinguishing securities from non-securities, establishing meaningful disclosure frameworks, providing pathways for registration for crypto assets and market intermediaries, and appropriately deploying enforcement resources.<sup>v</sup> SEC Acting Chairman Mark T. Uyeda launched the Task Force, which will be led by Commissioner Hester Peirce.<sup>vi</sup> Richard Gabbert, Senior Advisor to the Acting Chairman, will serve as the Task Force’s Chief of Staff, while Taylor Asher, Senior Policy Advisor to the Acting Chairman, will be the Task Force’s Chief Policy Advisor.<sup>vii</sup>

Commissioner Peirce's term is set to expire in June of 2025.<sup>viii</sup> Her statement introducing the Task Force indicates that the journey toward regulatory clarity is likely to be a long one, despite only a few short months remaining in her tenure.<sup>ix</sup> However, Commissioner Peirce noted that the Commission has already achieved one crypto-related milestone — rescinding Staff Accounting Bulletin 121<sup>x</sup> — and has actively solicited public input on issues essential to the Commission's resolution of the Task Force's priority initiatives, indicating that the Task Force has quickly gotten to work on tackling these key issues.<sup>xi</sup>

Notably, on January 23, 2025, President Trump created a separate crypto working group — the President's Working Group on Digital Asset Markets — which was tasked with proposing new digital asset regulations and exploring the creation and maintenance of a national digital asset stockpile.<sup>xii</sup> This is consistent with President Trump's promises to roll back the previous Administration's federal crypto regulatory and enforcement policies. The objectives of the President's Working Group are broader than those of the SEC's Crypto Task Force.<sup>xiii</sup> Importantly, if digital assets are not considered securities under federal law (as appears likely under the Trump administration<sup>xiv</sup>), most of the regulatory action regarding digital assets would fall within the scope of the President's Working Group (as opposed to the SEC's).

## COMMISSIONER PEIRCE'S STATEMENT

As mentioned above, Commissioner Peirce has been charged with leading the Crypto Task Force.<sup>xv</sup> In her statement introducing the Task Force, Commissioner Peirce analogized the Commission's establishment of the Task Force with a road trip that "should be more enjoyable and less risky than the crypto road trip the Commission has taken the industry on for the last decade."<sup>xvi</sup> Harkening back to many of her dissenting opinions during the prior Administration, Commissioner Peirce's statement criticized the SEC's past "refus[al] to use regulatory tools at its disposal and incessant[] slam[ming] on the enforcement breaks as it lurched along a meandering route with a destination not discernible to anyone."<sup>xvii</sup> She described the Commission's past handling of crypto issues as "marked by legal imprecision and commercial impracticality."<sup>xviii</sup> Based on these pronouncements, the Task Force will now work toward striking a balance of the SEC's regulatory objectives — protecting investors while simultaneously "preserving the industry's ability to offer products and services."<sup>xix</sup> Commissioner Peirce acknowledged that developing an appropriate crypto regulatory framework will impose costs and other compliance burdens on market participants.<sup>xx</sup>

Some of the Task Force's priority initiatives will include:

- Examining different crypto assets and their status under securities laws;
- Scoping out areas outside of the SEC's jurisdiction, specifically with no-action letters;
- Offering temporary prospective and retroactive relief for certain coin or token offerings;
- Modifying paths to registration for token offerings;
- Exploring the possibility of updating the special-purpose broker dealer no-action statement to cover broker dealers that custody crypto asset securities alongside crypto assets that are not securities;
- Providing custody solutions for investment advisors;
- Addressing the structuring of crypto-lending and staking programs;
- Implementing potential rule changes to list new types of crypto exchange-traded products;

- Working on the intersection of crypto and clearing agency and transfer agent rules; and
- Facilitating limited and temporary cross-border experimentation.<sup>xxi</sup>

In what should be a positive development for the industry, the Commission purports to effectuate the Task Force's goals through collaboration with key stakeholders, including SEC staff, Congress, other federal government actors, state securities regulators, international counterparts, and the public.<sup>xxii</sup>

Commissioner Peirce optimistically described the goal of the Task Force as “travel[ing] to a destination where people have great freedom to experiment and build interesting things,” but she cautioned that this destination “will not be a haven for fraudsters.”<sup>xxiii</sup> Specifically, she noted that the Commission will focus on rules to protect investors and marketplace integrity with no tolerance for “liars, cheaters, and scammers.”<sup>xxiv</sup>

## SEC ENFORCEMENT PIVOTS AWAY FROM CRYPTO AND RETURNS TO FRAUD

Under the prior administration, the SEC's Division of Enforcement coordinated its investigations and lawsuits in this space through its Crypto Assets and Cyber Unit. On February 20<sup>th</sup>, the SEC renamed this group the Cyber and Emerging Technologies Unit (“CETU”) and pivoted its attention away from crypto and toward cyber-related market misconduct sounding in fraud. In addition to targeting cyber-related misconduct, CETU will work with the Crypto Task Force to combat fraud and protect retail investors in the blockchain technology and crypto asset spaces, though it is anticipated that the range of digital assets considered “securities” under federal law will be substantially narrowed. That narrowing will similarly narrow the SEC's jurisdiction. This is the second “rebranding” of the relevant specialized enforcement unit.<sup>xxv</sup> Under the first Trump Administration in 2017, then Chair Jay Clayton announced the formation of the Cyber Unit.<sup>xxvi</sup> This original Cyber Unit's priorities similarly focused on fraud and misconduct across of a host of digital vectors, and the listed priorities from 2017 are extremely similar to those just announced in 2025.<sup>xxvii</sup> Acting SEC Chairman Mark Uyeda highlighted how the CETU will “not only protect investors but will also facilitate capital formation and market efficiency by clearing the way for innovation to grow.”<sup>xxviii</sup> Laura D'Allaird, co-chair of the now-replaced Crypto Assets and Cyber Unit, will head the CETU and its team of approximately 30 fraud specialists and attorneys.<sup>xxix</sup>

## LOOKING AHEAD

The digital asset industry is optimistic that regulatory clarity is near, and that the scope of the SEC's jurisdiction over digital assets will be substantially narrowed. Still, the SEC remains on the lookout for bad actors looking to abuse a developing system, and it is likely to attempt to retain some level of digital asset jurisdiction through enforcement efforts focused on fraudulent conduct in connection with the purchase and sale of securities. In addition to policy and organizational changes such as through CETU, the recently announced resolution of the SEC's action against Coinbase may similarly be a harbinger of what is to come.<sup>xxx</sup> That said, Commissioner Peirce noted that “it took us a long time to get into this mess, and it is going to take some time to get out of it.”<sup>xxxi</sup>

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- <sup>i</sup> Law clerks Nick Cohen and Victoria Panetti assisted in the preparation of this client alert.
- <sup>ii</sup> See SEC Announces Cyber & Emerging Techs. Unit to Protect Retail Investors, Press Release, U.S. SECURITIES & EXCHANGE COMM'N (Feb. 20, 2025), <https://www.sec.gov/newsroom/press-releases/2025-42>.
- <sup>iii</sup> *Crypto Task Force*, U.S. SECURITIES & EXCHANGE COMM'N (Feb. 4, 2025), <https://www.sec.gov/about/crypto-task-force>.
- <sup>iv</sup> See *id.*
- <sup>v</sup> See *id.*
- <sup>vi</sup> *SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force*, Press Release, U.S. SECURITIES & EXCHANGE COMM'N (Jan. 21, 2025), <https://www.sec.gov/newsroom/press-releases/2025-30>.
- <sup>vii</sup> See *id.*
- <sup>viii</sup> See *SEC Commissioners*, U.S. SECURITIES & EXCHANGE COMM'N (Dec. 29, 2020), <https://www.sec.gov/about/sec-commissioners>.
- <sup>ix</sup> See *The Journey Begins*, Hester M. Peirce Stmt., U.S. Securities & Exchange Comm'n (Feb. 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-journey-begins-020425>.
- <sup>x</sup> *Id.* The rescinded accounting guidance had made it more expensive for companies to safeguard crypto assets on behalf of third parties.
- <sup>xi</sup> See *There Must Be Some Way Out of Here*, Hester M. Peirce Stmt., U.S. SECURITIES & EXCHANGE COMM'N (Feb. 21, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125>.
- <sup>xii</sup> See *Strengthening Am. Leadership in Digit. Fin. Tech.*, THE WHITE HOUSE, (Jan. 23, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/strengthening-american-leadership-in-digital-financial-technology/>; see also Hannah Lang & Trevor Hunnicutt, *Trump Orders Crypto Working Group to Draft New Regs., Explore Nat'l Stockpile*, REUTERS (Jan. 24, 2025), <https://www.reuters.com/business/finance/trump-signs-order-create-cryptocurrency-working-group-2025-01-23/>.
- <sup>xiii</sup> See *Strengthening Am. Leadership in Digit. Fin. Tech.*, *supra* note 12.
- <sup>xiv</sup> For example, stablecoins have renewed momentum toward establishing a federal regulatory framework governing digital assets. See Ehren Halse et al., *Could Stablecoin Legis. Be Finally Leaving the Stable?*, King & Spalding (Feb. 18, 2025), <https://www.kslaw.com/news-and-insights/could-stablecoin-legislation-be-finally-leaving-the-stable>.
- <sup>xv</sup> *The Journey Begins*, *supra* note 9.
- <sup>xvi</sup> *Id.*
- <sup>xvii</sup> *Id.*
- <sup>xviii</sup> *Id.*
- <sup>xix</sup> *Id.*
- <sup>xx</sup> See *id.*
- <sup>xxi</sup> *Id.*
- <sup>xxii</sup> See *id.* We note the SEC has made similar "open door" policy statements regarding digital assets in the recent past. See Leo Schwartz, *Gary Gensler Says His Door is Open. Crypto Cos. Say That's Not True*, FORTUNE (Feb. 15, 2023), <https://fortune.com/crypto/2023/02/15/gary-gensler-says-door-open-crypto-companies-say-not-true/>; *SEC Launches New Strategic Hub for Innovation & Fin. Tech.*, Press Release, U.S. SECURITIES & EXCHANGE COMM'N (Oct. 18, 2018), <https://www.sec.gov/newsroom/press-releases/2018-240>.
- <sup>xxiii</sup> *The Journey Begins*, *supra* note 9.
- <sup>xxiv</sup> *Id.*
- <sup>xxv</sup> See *SEC Announces Enforcement Initiatives to Combat Cyber-Based Threats and Protect Retail Investors*, Press Release, U.S. SECURITIES & EXCHANGE COMM'N (Sept. 25, 2017), <https://www.sec.gov/newsroom/press-releases/2017-176>.
- <sup>xxvi</sup> See *id.*
- <sup>xxvii</sup> See *id.*
- <sup>xxviii</sup> See *SEC Announces Cyber & Emerging Techs. Unit to Protect Retail Investors*, *supra* note 2.
- <sup>xxix</sup> See *id.*; Laura D'Allaird, LINKEDIN, <https://www.linkedin.com/in/laura-d-allaird-5b2bba3b/>.
- <sup>xxx</sup> See Paul Grewal, *Righting a Major Wrong*, COINBASE (Feb. 21, 2025), <https://www.coinbase.com/blog/righting-a-major-wrong>.
- <sup>xxxi</sup> *The Journey Begins*, *supra* note 9.

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