



CRYPTO BRIEF



February 6, 2025

Lowenstein Crypto advises leading digital asset and cryptocurrency projects, exchanges, and trading firms. Our practice covers regulatory advice, transactions and structuring advice, investigations, and adversarial matters including commercial disputes, bankruptcy, and related litigation. As these markets continue their rapid growth and market participants continue to evolve and mature their businesses, we are providing this weekly digest as a resource that highlights and summarizes a selection of key recent legal regulatory developments.

Commissioner Hester Peirce Provides Outlook for Crypto Task Force

In her speech on February 4, Commissioner Peirce announced the SEC's newly minted Crypto Task Force is set to take on the challenge of establishing a regulatory framework with respect to cryptocurrencies and digital assets. Commissioner Peirce, who will lead the Crypto Task Force, provided a non-exhaustive list of what she believes the task force will address, including but not limited to the status of crypto assets under securities laws, identifying areas that fall out of the SEC's jurisdiction, coin and token offerings, special purpose broker-dealers, and custody solutions for investment advisers. The Crypto Task Force also hopes to provide clarity on popular crypto asset-related products such as crypto-lending and staking. *See a copy of Commissioner Peirce's speech [here](#) for a more detailed scope of the Crypto Task Force's plans.*

Stablecoin Legislation Introduced as President Donald Trump Sets Crypto-Friendly Agenda

In a significant move toward regulating stablecoins, Sens. Tim Scott (R-S.C.), Bill Hagerty (R-Tenn.), Cynthia Lummis (R-Wyo.), and Kirsten Gillibrand (D-N.Y.), introduced the Guiding and Establishing National Innovation of U.S. Stablecoins Act (GENIUS Act) as part of a broader crypto-friendly agenda initiated by Trump. The proposed legislation aims to establish clear guidelines for the issuance and management of stablecoins, ensuring both financial stability and consumer protection. This initiative has received backing from various industry stakeholders that believe it will bring much-needed regulatory clarity. However, critics warn that the bill could stifle innovation and impose excessive regulatory burdens on emerging technologies. *See the Senate Committee press release [here](#). The full text of the introduced bill can be found [here](#).*

CFTC Division of Enforcement to Refocus on Fraud and Helping Victims, Stop Regulation by Enforcement

This week, the Commodity Futures Trading Commission (CFTC) announced a reorganization of its enforcement task forces to prioritize combating fraud and helping victims. The CFTC wants to end the practice of regulation by enforcement and prioritize efficiency in the enforcement process. Previous task forces will now be reorganized into two new task forces: the Complex Fraud Task Force and the Retail Fraud and General Enforcement Task Force. The Complex Fraud Task Force will be responsible for complex fraud and manipulation inquiries, investigations, and litigation matters. The Retail Fraud and General Enforcement Task Force will be responsible for retail fraud and general

enforcement matters relating to violations of the Commodity Exchange Act and CFTC rules. See *the CFTC press release* [here](#).

FDIC Releases Documents Related to Supervision of Crypto-Related Activities

On February 5, the Federal Deposit Insurance Corporation (FDIC) released 175 documents related to its supervision of banks that engaged in, or sought to engage in, crypto-related activities. Acting Chairman Travis Hill has directed FDIC staff to compile and review all supervisory communications with banks that sought to offer crypto-related products and/or services. The released documents indicate, in part, the FDIC's prior position in and resistance to permitting banks from engaging in crypto- or blockchain-related activities. Acting Chairman Hill aims to find a pathway forward for institutions to engage in crypto- and blockchain-related activities. See *the press release* [here](#).

Senate Committee Holds Hearing 'Investigating the Real Impacts of Debanking in America'

The Committee on Banking, Housing, and Urban Affairs held a hearing on February 5 discussing the impact of debanking in America. Sen. Elizabeth Warren, D-Mass., and Chairman Scott, R-S.C., provided statements and testimony was heard from Nathan McCauley, co-founder and CEO of Anchorage Digital; Stephen Gannon, a partner at Davis Wright Tremaine LP; Mike Ring, co-founder and CEO of Old Glory Bank; and Aaron Klein, a senior fellow in economic studies at the Brookings Institution. Discussions related to, among other things, the impact of banking services that were terminated and the federal regulatory pressure for banks to disengage in activities related to crypto assets, resulting in a de facto ban on engaging in crypto-related activities. Suggestions to combat the effect of debanking include enhancing communications between regulators and industry players, developing new standards for account closures, and removing the regulatory gatekeeping function by amending or repealing certain guidance. *Member statements and witness testimony can be accessed* [here](#).

SEC Approves Combined Bitcoin and Ether ETF

On January 30, the SEC approved a proposed rule change allowing the NYSE Arca exchange to list and trade shares of the Bitwise Bitcoin and Ethereum ETF (the Trust). The Trust will hold spot Bitcoin and Ether, weighted by market capitalization, and aims to provide investors with exposure to these cryptocurrencies. The SEC's accelerated approval was granted after Amendment No. 1 clarified the Trust's structure and terms, aligning it with similar previously approved crypto proposals. See *the SEC's release of approval* [here](#).

SEC Staff Directed To Seek Permission Prior to Formally Launching Probes

On February 2, SEC staff was advised that they need to seek permission from appointed SEC leadership before formally launching any probe that may delay investigations. Accordingly, the SEC's enforcement staff is now required to obtain commissioner approval prior to all formal orders of investigations being issued that, notably, are required to issue subpoenas for testimony or document production. See *the Reuters article* [here](#).

Texas' Department of Banking Clarifies Position on Virtual Currency

On January 28, the Texas Department of Banking released a supervisory memorandum outlining its policy on virtual currencies under its existing statutory framework. The department clarified that non-stablecoin virtual currencies are not considered money nor do they have monetary value under the Money Services Modernization Act. Thus, under the department's policies, receiving non-stablecoin virtual currency for transmission alone is not money transmission. However, when a virtual currency transaction involves fiat or stablecoins, it may be money transmission, depending on the facts and circumstances. See *a copy of the department's memorandum* [here](#).

U.S. Crypto and Digital Assets Top White House Adviser David Sacks' First Press Conference

On February 4, President Trump's crypto and artificial intelligence czar, David Sacks, held his first press conference. During the press conference, Sacks unveiled a new plan aimed at establishing U.S. leadership in the digital asset sphere and expressed his support for both stablecoins and the GENIUS Act. Additionally, Sacks announced the formation of a working group dedicated to advancing legislation to provide clearer regulations across various agencies, such as the SEC and CFTC. He also discussed the potential establishment of a U.S. Bitcoin Reserve, an idea initially floated by President Trump. This initiative would involve holding Bitcoin as part of the national reserves. The administration is currently evaluating the feasibility and implications of this proposal. See *the article* [here](#).

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