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Justice Department's New Policy on Prosecutions to Focus on Bad Actors, Not the Digital Asset Industry

Teresa Goody Guillén, Robert A. Musiala Jr., Joanna F. Wasick, Jonathan A. Forman, Isabelle Corbett Sterling, and Tanner J. Gattuso*

In this article, the authors discuss the Justice Department's new policy to "stop participating in regulation by prosecution" in the digital asset industry.

Deputy Attorney General Todd Blanche has announced in a memorandum to all Department of Justice (DOJ) employees (the Blanche Memorandum) that the DOJ "will stop participating in regulation by prosecution" and "no longer pursue litigation or enforcement actions that have the effect of superimposing regulatory frameworks on digital assets."[1] Instead, the DOJ made clear that it will refocus its resources on clear criminal activity rather than situations where Congress has not yet clearly defined unlawful conduct with respect to digital assets.

The Blanche Memorandum marks a complete pivot from the prior administration and states the DOJ will refrain from "target[ing] virtual currency exchanges, mixing and tumbling services, and offline wallets for the acts of their end users or unwitting violations of regulations."[2] Instead, the DOJ will concentrate on "conduct victimizing investors," including "embezzlement and misappropriation of customers' funds on exchanges, digital asset investment scams, fake digital asset development projects such as rug pulls, hacking of exchanges and decentralized autonomous organizations resulting in theft of funds, and exploiting vulnerabilities in smart contracts."[3] The DOJ "will also prioritize cases involving the use of digital assets in furtherance of unlawful conduct by cartels, Transnational Criminal Organizations, Foreign Terrorist Organizations, and Specially Designated Global Terrorists."[4]

The Blanche Memorandum lists specific regulatory violations the DOJ should refrain from prosecuting, provided there is no

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evidence an individual knew of and willfully violated the applicable regulation.[5] This list includes unlicensed money transmitting under 18 U.S.C. § 1960(b)(1)(A) and (B), Bank Secrecy Act violations, unregistered securities offerings violations, unregistered broker-dealer violations, and other similar violations under the Commodity Exchange Act.[6] The DOJ will also no longer be charging violations of the Securities Act of 1933, the Exchange Act of 1934, and Commodity Exchange Act, or the regulations promulgated thereunder, if doing so would require it to litigate the issue of whether a digital asset is a "security" or a "commodity" and there is an adequate alternative criminal charge available (e.g., mail or wire fraud).[7]

The Blanche Memorandum rescinds all prior policies and directives that are inconsistent with these new policies, instructs federal prosecutors to close any ongoing investigations or actions that are similarly inconsistent, and disbands the National Cryptocurrency Enforcement Team.[8]

Other Regulators Appear to Follow DOJ's New Policy

One day after the Blanche Memorandum was published, the acting chair of the Commodity Futures Trading Commission (CFTC) issued a statement directing CFTC staff and the Director of Enforcement to "adhere to the [DOJ]'s policy on digital assets enforcement priorities and digital assets charging considerations" set forth in the Blanche Memorandum and not to charge regulatory violations in cases involving digital assets unless the individual knew of and willfully violated the regulation at issue.[9]

As of the date this article was written, the U.S. Securities and Exchange Commission (SEC) has not issued a statement commenting on the Blanche Memorandum. Yet, its recent dismissals of enforcement actions against several exchanges and other digital asset actors indicate that the SEC's enforcement efforts will follow the spirit of this new DOJ policy.

In Summary

- The DOJ recently announced a new policy to "stop participating in regulation by prosecution" in the digital asset industry. Instead, it will focus on prosecuting bad actors in

the space and otherwise support the "vibrant and inclusive digital economy."

- The new policy heeds the Trump administration's Executive Order 14178 directing the DOJ to protect and promote "the ability of individual citizens and private-sector entities alike to access and use for lawful purposes open public blockchain networks without persecution."[10]
- To that end and in light of the existing regulatory uncertainty, the policy directs prosecutors, as a matter of discretion, not to charge regulatory violations in cases involving digital assets unless there is evidence of willful violations of licensing or registration requirements.
- The DOJ will also pursue illicit financing of those bad actors, including when it involves digital assets, but will not pursue actions against the platforms that the bad actors utilize to conduct their illegal activities.
- The DOJ will also fully participate in the President's Working Group on Digital Asset Markets, which aims to provide regulatory clarity for the crypto industry.

Conclusion

The DOJ's new digital asset policy of targeting bad actors in the crypto industry rather than the crypto platforms and exchanges themselves marks another demonstrable step toward fulfilling the administration's campaign promise to make the United States the "crypto capital of the world." However, the policy does not grant the crypto industry carte blanche to disregard U.S. law. Federal prosecutors and regulators seem ready to continue investigating and charging individuals or entities that know they are subject to certain regulations but nevertheless willfully disregard them. Thus, it remains important that digital asset participants understand whether and to what extent they are subject to U.S. law, craft regulatory programs to ensure they are in compliance as necessary, and—where it remains unclear—engage with the administration and regulators to help them achieve the market structure appropriate for the crypto industry.

Notes

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1. Mem. from Todd Blanche, Deputy Att'y Gen., Dep't of Justice, to all DOJ Employees (Apr. 7, 2025), https://www.justice.gov/dag/media/1395781/dl?inline.
2. Id.
3. Id. at 2.
4. Id.
5. Id.
6. Id. at 2-3.
7. Id. at 3. The Blanche Memorandum provides two permissible positions under this policy: (1) Bitcoin or Ether is a "commodity" under the CEA, and (2) filing securities fraud charges where the "security" at issue is a digital asset company's stock. Id.
8. Id. at 2, 4.
9. Release No. 9063-25, Acting Chairman Pham Lauds DOJ Policy Ending Regulation by Prosecution of Digital Assets Industry and Directs CFTC Staff to Comply with Executive Orders, Commodity Futures Trading Comm'n (Apr. 8, 2025), https://www.cftc.gov/PressRoom/PressReleases/9063-25.
10. Executive Order 14178, § 1 (Jan. 23, 2025).