

Securities Law

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# Trump's Crypto Fandom Isn't the End of State or Investors' Suits

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- Private securities lawsuits could pick up what SEC doesn't
- State AGs, private parties can still sue those seen as bad actors

Investor litigation around cryptocurrency won't disappear just because the US Securities and Exchange Commission has been dropping Biden administration enforcement actions.

Buoyed by campaign support from the industry, President Donald Trump returned to office pledging to make the US "the crypto capital of the world," issuing an executive order creating a strategic bitcoin reserve and abandoning the prior administration's efforts to regulate by enforcement the virtual currencies as though they were traditional securities.

He also pardoned Ross Ulbricht, founder of the drug-trafficking site known as Silk Road, where virtual currency was the coin of the realm. He had been serving a life sentence following his 2015 conviction for trafficking and other crimes.

But even as Trump's SEC ends suits against Coinbase Global Inc., Binance Holdings Ltd, Ripple Labs Inc.—in which a court had ruled its token was a security when sold to institutional investors, but not to the general public—and others, privately-filed lawsuits against them have continued.

And suits against promoters of other digital assets, such as the "Hawk Tuah" and "Peanut the Squirrel" memecoins, are ongoing despite a signal that the SEC won't consider most securities.

Private plaintiffs and state attorneys general can and likely will still pursue claims—perhaps even more so if the SEC backs off enforcement entirely and bad actors emerge, lawyers said.

Nothing's changed legally in determining what is a security—it's still the *Howey* test outlined by the US Supreme Court in 1946, said Sean Masson, a partner at Scott+Scott Attorneys at Law LLP. Even if the federal securities route for crypto accountability gets nixed, there are other ways under state securities laws, consumer laws, or just plain fraud, he said.

## Regulation Still in Play

"There's still a lot of arrows left in the plaintiffs bar's quiver," Masson said. Much of the litigation surrounding crypto was pretty far along when the administration changed, he said. The number of new cases arising depends on the number of new digital asset projects, he said, while the SEC's task force explores a "regulatory framework" for crypto.

The SEC will still pursue securities fraud claims, said Davis Polk & Wardwell LLP partner Rob Cohen among multiple attorneys Bloomberg Law spoke to. The idea that federal officers aren't going to recommend regulating crypto is false—the query is by how much and whom, said Masson.

And, acting SEC Chairman Mark Uyeda has said it's possible some digital assets will be defined as securities. The SEC, in an email, declined to comment for this story.

Trump's pick to lead the agency, Paul Atkins, said in a public Senate committee hearing on March 27 that providing a “firm regulatory foundation” for crypto assets would be a “top priority.” Atkins himself reported having up to \$6 million in crypto-related investments in ethics disclosures publicized days earlier.

### **Private Action**

There's such a wide range of digital assets, attorneys said—from stablecoins, whose values are pegged to other currencies, to memecoins, digital tokens depicted with an animated character or animal, that can quickly gain value—that might draw different regulation or recommendations.

One of those lawyers, Stubbs Alderton & Markiles LLP partner Neil Elan, said “even if a ‘Hawk Tuah’ coin or the newest ‘Libra’ coin or the ‘Melania’ coin or the ‘Trump’ coin is not deemed a security, it does not mean that the operators or offerors are free to commit fraud, make materially false statements, or otherwise act improperly.” The prospect of liability remains, he said.

Consumer protection is a wide body of law, said Max Burwick, founder and senior managing partner at Burwick Law. His firm leads a series of suits involving the Hawk Tuah, Libra, and other memecoins.

“Although there is a supposed lack of regulatory clarity, an active plaintiff's bar stands as a check on bad actors, and can positively impact the market,” he said.

### **State Enforcers**

Just as plaintiffs' attorneys remain a resource for aggrieved investors, state attorneys general haven't paused as state officials of the opposing party of the administration typically tend to increase activity during the president's term.

There may be “an increase in state regulatory activity in the space, which has been more active in the last few years (both in enforcement activity as well as digital asset legislation),” said, Mitzi Chang, co-chair of Goodwin Procter LLP's FinTech and Digital Currency & Blockchain practices.

The office of California Attorney General Rob Bonta this month said it would continue protecting consumers from “crypto confidence scams.” California's Department of Justice shuttered 42 crypto scam sites that drew at least \$6.5 million from individuals in 2024.

Illinois' too said it would continue. "As we review the SEC's decisions and their impact on the marketplace, we urge consumers to be cautious when purchasing or using cryptocurrencies," a spokesperson for Attorney General Kwame Raoul's office said in an email.

New York Attorney General Letitia James and Massachusetts' Andrea Campbell have also indicated they too intend to pursue perceived crypto-wrongdoing. All four of the AGs are Democrats.

### **Caution, Readiness**

But some plaintiffs' attorneys might not want to pursue claims without clear regulatory support. Adam Moskowitz, founding and managing partner of The Moskowitz Law Firm, said there would probably be a ton of litigation, "but you won't see me doing them because what am I going to do, put millions of dollars towards these cases where there may be no federal regulatory support or guidance?"

Davis Polk's Cohen said crypto companies have a strong point to make: "That federal regulation is very much in flux, and the fairness of trying to enforce what may soon become an old set of rules is a legitimate point for them to raise in private litigation."

And so companies would be prudent "to backstop compliance efforts by demonstrating that either offerings are not securities and that there are established capital formation objectives to crypto asset offerings," said Al Chakravarty, a partner at Saul Ewing LLP.

— With assistance from Martina Barash.

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