

# “Ending Regulation by Prosecution”: The DOJ’s Revised Outlook on Digital Assets

*April 9, 2025*

On April 7, 2025, Deputy Attorney General Todd Blanche issued a memorandum to all DOJ employees laying out the Department’s priorities for digital asset enforcement.

The memo criticizes the prior Administration’s “reckless strategy of regulation by prosecution, which was ill conceived and poorly executed.” The memo then directs DOJ personnel to leave questions about the regulatory framework for digital assets to the regulators, including whether specific digital assets are securities or commodities.

The memo announces new priorities for criminal enforcement, focusing on prosecuting individuals who victimize digital asset investors, or those who use digital assets in furtherance of criminal offenses such as terrorism, narcotics and human trafficking, organized crime, hacking, and cartel and gang financing. Notably, the focus of the memo is on primary violators of those criminal offenses, rather than the digital asset platforms that wrongdoers may use to conduct illegal activities.

The memo explicitly calls for ongoing investigations inconsistent with these policies to be closed, and for the Deputy Attorney General’s Office to work with the Criminal Division and EOUSA to review ongoing cases for consistency with these policies.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

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The notable directives in the memo include:

### **Disbanding the NCET**

The memo directs the disbandment of the National Cryptocurrency Enforcement Team (“NCET”), effective immediately. The DOJ had established the NCET in February 2022 to coordinate the Department’s approach to digital assets and set strategic priorities for digital asset enforcement. The termination of the NCET is consistent with the policy priorities described in the memo to shift focus away from the digital asset industry to other areas of enforcement.

The memo also directs the Market Integrity and Major Frauds Units to cease cryptocurrency enforcement and focus on other priorities, including immigration and procurement fraud.

### **Raising the Bar for Unlicensed Money Transmitting and Other “Regulatory Violations”**

The memo directs prosecutors not to charge “regulatory violations” in cases involving digital assets unless there is evidence that the defendant knew of the licensing or registration requirement at issue and violated such a requirement willfully. Knowledge of the actual legal requirement allegedly violated is not typically an element of a criminal charge, but the memo says that it is imposing this requirement in these cases “as a matter of discretion.” Examples of “regulatory violations” listed in the memo include unlicensed money transmitting, violations of the Bank Secrecy Act, unregistered securities offering violations, unregistered broker-dealer violation, and registration requirements under the Commodity Exchange Act. These types of violations were a major focus of the DOJ and NCET under the previous Administration, and several of these cases remain pending.

### **Restricting Criminal Liability of Digital Asset Platforms and Intermediaries**

The memo directs DOJ personnel not to target digital asset exchanges, mixing and tumbling services, and offline wallets for the acts of their end users or unwitting violations. Instead, the DOJ should prioritize cases that involve harm to 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 the theft of funds, and exploiting vulnerabilities in smart contracts.”

The DOJ will continue to prioritize cases involving digital assets that involve drug cartels, terrorist groups, and human trafficking. The memo emphasizes the need to hold the primary wrongdoers themselves accountable in the first instance, rather than focusing on the digital asset platforms that they use to conduct their illegal activities.

### **Limiting Securities and Commodities Fraud Charges**

There are currently both legislative and regulatory efforts to develop a classification framework for digital assets, including whether certain digital assets are securities or commodities. While those efforts are ongoing, the memo instructs DOJ personnel not to litigate whether a digital asset is a security or commodity. Rather, the memo suggests prosecutors may pursue mail or wire fraud charges in appropriate cases as an alternative to securities or commodities fraud.

### **Considering Changes to Asset Forfeiture and Crypto Victims’ Compensation**

Finally, the memo is critical of the regulatory framework for asset forfeiture as applied to digital assets. In some major fraud cases, prosecutors have obtained forfeiture of billions of dollars’ worth of digital assets. But under the current regulatory framework, some courts have held that victims who lost digital assets may only recover the dollar value of their digital assets at the time the fraud was perpetrated. That is, victims are unable to recover any appreciation in the digital asset that occurred after they were defrauded. The memo instructs the Office of Legal Policy and the Office of Legislative Affairs to evaluate and propose legislative and regulatory changes to address these concerns.

### **Conclusion**

Since the 2024 U.S. Presidential election, digital asset regulation and enforcement have taken a sharp turn in favor of the digital asset industry. The President issued an Executive Order declaring that

the policy of the Administration is to promote U.S. leadership in digital assets, while Congress is considering bills that would create legal certainty for stablecoins and clarity around digital asset market structure. The SEC has dismissed practically all pending litigation and terminated many investigations, while beginning to develop a regulatory framework with the industry's input.

Consistent with these other efforts, the memo demonstrates the DOJ's commitment to taking a more hands-off approach to criminal enforcement while the SEC and Congress build a new regulatory and legislative framework for digital assets.

The memo is likely to have a direct impact on pending cases that do not align with the DOJ's priorities, including potential dismissals of high-profile prosecutions either entirely or in part. Ongoing investigations will be closed because they are inconsistent with the specific directives and general policy thrust of the memo.

The shift in policy will not result in a complete cessation of criminal enforcement against the digital asset industry. For example, individuals and entities that are accused of victimizing investors are still subject to being investigated for a variety of charges, including wire and mail fraud. The Administration's prioritization of investigations relating to international cartels and foreign terrorist organizations will likely result in a primary focus on those entities.<sup>1</sup> However, digital asset platforms could still be at risk, particularly if the DOJ believes they knowingly assisted alleged wrongdoers.

Most fundamentally, the memo will redirect DOJ resources away from the digital asset industry to other Administration priorities, and signals to the digital asset industry that the broad enforcement crackdown by the prior Administration has come to an end.

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<sup>1</sup> See our prior alert memo [here](#).