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**BLOG**

# White House Issues Executive Order on Crypto and Other Digital Assets

MARCH 10, 2022

## Introduction

Despite initial skepticism toward cryptocurrency technology, the Biden administration recently announced new processes to investigate, understand, and potentially further regulate the space. On March 9, 2022, President Joe Biden signed an Executive Order (EO) setting forth the U.S. Government's objectives, policies, and actions with respect to "digital assets," defined to include cryptocurrencies, stablecoins, central bank digital currency, and other financial instruments, claims, and representations of value issued or represented in digital form through the use of distributed ledger technology. Importantly, the EO calls for policy positions that support innovation and U.S. competitiveness in digital assets, reflecting a balanced approach between risk, regulation, and innovation.

The policy objectives and related rules under the EO focus on six key areas: (1) consumer and investor protection; (2) financial stability; (3) illicit finance; (4) U.S. leadership in the global financial system and economic competitiveness; (5) financial inclusion; and (6) responsible innovation. Although the EO does not set forth any immediate regulatory changes for digital asset companies, the EO directs a variety of government agencies/entities to begin a regulatory and legislative investigatory process regarding the aforementioned key areas. As a part of these efforts, the EO places an urgency on the research and development of a potential United States Central Bank Digital Currency ("CBDC"). This Client Alert summarizes the requirements under the EO that could eventually impact digital asset companies, digital asset service providers, and other counterparties.

## Regulatory and Legislative Investigatory Process

The EO directs a variety of government agencies to submit investigatory reports regarding protecting consumers, investors, and businesses, promoting financial stability, limiting illegal activities, and fostering competition and international cooperation. These reports should include regulatory or legal proposals by the respective issuing entities. These reports are summarized below:

- *Protecting Consumers, Investors, and Businesses*. The Secretary of the Treasury is directed to submit a report to the President in consultation with the Secretary of Labor, the FTC, the SEC, the CFTC, federal banking agencies, and the CFB, discussing implications of developments and adoption of digital assets and changes in financial market and payment system infrastructures. Additionally, the Director of Science and Technology and the Chief Technology Officer are directed to submit a "technical evaluation" in consultation with the Secretary of Treasury, the Chairman of the Federal Reserve, and the heads of other relevant agencies of the implications of technical infrastructure, capacity, and expertise to introduce a CBDC system. The Attorney General in consultation with the Secretaries of Treasury and Homeland Security is also asked to submit a report on the role of law enforcement agencies in detecting, investing, and prosecuting criminal activity related to digital assets, including any legislative or regulatory recommendations. The FTC and CFPB are also asked to consider the effects of digital assets on competition policy, privacy, and consumer protection measures. The EO also recognizes the complex environmental impact of digital assets, directing the Director of the Office of Science and Technology Policy in consultation with the EPA, the National Climate Advisor, and others to report about energy transitions, the effect of these technologies on climate change, and the impact of these technologies on the environment.

- *Promoting Financial Stability, Mitigating Systemic Risk, and Strengthening Market Integrity*. Agencies are also directed to report on establishing and overseeing protections for the financial system. This initiative includes a report by the Secretary of the Treasury in consultation with the Financial Stability Oversight Council addressing the financial stability risks posed by digital assets and related regulatory gaps, and recommending remedial measures.
- *Limiting Illicit Finance and Associated National Security Risks*. Several agencies are directed to report on the growing use of digital assets in illicit activities, including money laundering, terrorist financing, corruption, and fraud schemes, and develop a "coordinated action plan" for mitigating such risks, which will "address the role of law enforcement and measures to increase financial service providers' compliance with AML/CFT obligations related to digital asset activities." These reports are to be made by the Secretary of Treasury, Secretary of State, the Attorney General, the Secretary of Commerce, Secretary of Homeland Security, the Director of National Intelligence and heads of other relevant agencies. Following these reports, the Secretary of the Treasury in consultation with the relevant agencies will consider mitigating risks through regulation.
- *Fostering Competition and International Cooperation*. Several agencies are directed to report on how the United States can foster international cooperation and competitiveness with respect to digital assets. Specifically, the Secretary of the Treasury, in consultation with the Secretary of State, Secretary of Commerce, the Administrator of the United States Agency for International Development, and others are to establish a framework on international engagement and cooperation with respect to digital assets, and frameworks for interagency international engagement to promote global compliance, as well as crafting international principles, standards, and best practices. Additionally, the EO explicitly reaffirms the United States' cooperation with international organizations, including G20, G7, the FATF, and FSB to develop standards surrounding digital assets, including national CBDCs.

## Development of United States CBDC

As noted above, the EO states that there is the "highest urgency on research and development efforts into the potential design and deployment" of a United States CBDC. The EO recognizes that issuing a CDBC could support efficient and low-cost transactions, better cross-border funds transfer and payments, and promote greater access to financial systems with lower risk.

To that end, the EO directs several agencies to provide insight on developing the CBDC. This includes a report by the Secretary of State, in consultation with the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Director of the Office of Management and Budget, the Director of National Intelligence, and the heads of other relevant agencies to report on the future of money and payment systems, including the implications of a United States CBDC, possible public-private relationships for the CBDCs, national security and crime risks, and the effect of foreign CBDCs on the United States. Additionally, the Chairman of the Federal Reserve is encouraged to provide additional insight on implementation of a United States CBDC and its effects on monetary policy as a macroeconomic stabilization tool.

## Conclusion

Although agencies and administrative heads have previously expressed concerns over the potentially dangerous and disruptive force of digital assets, the EO marks a more balanced, positive and comprehensive position toward these technologies. Various administrative officials, including SEC Chair Gary Gensler and Federal Reserve Chair Jerome Powell, had expressed skepticism regarding the potentially disruptive force of digital assets. The EO marks an evolution from these views and recognizes that digital assets can be a positive, innovative technology. Additionally, the EO demonstrates a comprehensive, coordinated approach to centralize the actions of potential regulatory bodies with a stake in this area. This approach builds on earlier actions taken by the Biden administration to create more comprehensive approaches to digital assets, such as establishing a National Cryptocurrency Enforcement Team with members from U.S. Attorney offices across the country, various units of the DOJ's criminal division, and the appointment of a "Crypto Czar," Eun Young Choi, to oversee the criminal prosecution of crypto-related material. The EO also demonstrates that a U.S. CBDC is a strong possibility, marking progress from the Federal Reserve's 2020 report on the issue.

Although the EO does not propose specific legislative or regulatory policies applicable to digital assets, it indicates that digital asset regulation, legislative change, and oversight may be forthcoming. These changes could have a material impact on companies and persons utilizing or issuing digital assets, digital asset service providers, and other counterparties. On March 9, 2022, cryptocurrency prices fluctuated due to the EO, with some coin prices rising by nearly ten percent. New rules may also mean new obligations and compliance requirements, including increased compliance costs, new privacy and consumer protections. The potential introduction of a United States CBDC could lead to changes that impact international commerce to daily purchases of goods and services. In addition, the EO provides hope that more clarity is forthcoming with respect to digital asset regulation, and that current gaps in and confusion about regulatory oversight may be addressed. Further, these changes could usher in an element of centralization to the realm of decentralized finance.

Generally, many of the mandated agency/entity reports are due between June 7, 2022 and October 5, 2023. Given bipartisan support for increased regulation, and the additional pressures imposed by the reported use of digital assets in connection with the Russo-Ukrainian War, legislative changes and regulations are likely forthcoming.

Winston & Strawn is closely monitoring this development and expects the digital asset industry to respond. We will provide our clients and friends of the firm with more information on this issue as it becomes available.

6 Min Read

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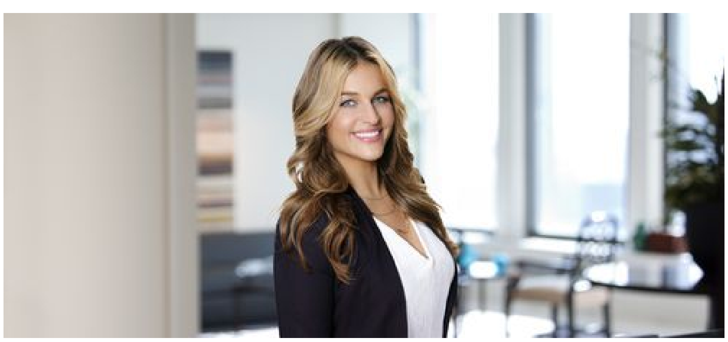

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