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The Growing Enforcement Focus on Cryptoassets

Underscoring that misconduct surrounding cryptoassets has become a top U.S. enforcement priority, today the Department of Justice [announced](#) the appointment of Eun Young Choi as head of a dedicated National Cryptocurrency Enforcement Team. The NCET's mandate is to oversee complex investigations and prosecutions of criminal misuses of cryptocurrency, including where involving virtual currency exchanges, mixing services, and facilitators of money laundering. The appointment comes on the heels of DOJ's seizure last week—its largest financial seizure ever—of over \$3.6 billion of bitcoin from, and arrest of, the alleged perpetrators of a massive 2016 hacking incident targeting the Bitfinex exchange. The arrest and asset recovery highlight the ability of law enforcement to deploy sophisticated techniques to pierce the veil of blockchain pseudonymity to combat criminal activity. And DOJ has been tenacious in its pursuit of these cases. In a few weeks, it begins trial in the criminal case against operators of the BitMEX cryptocurrency derivatives trading platform for violations of the Bank Secrecy Act.

For some time, the regulation of cryptoassets at the federal and state levels appeared as decentralized as the industry itself, which benefitted from the absence of coordinated governmental action. This is changing rapidly. In the past several months, federal regulators have been coalescing around a common view that cryptoasset activity should be regulated. Notable developments include:

- The impending issuance by the Biden administration of an executive order focused on regulation of digital assets as a matter of national security;
- Last week's hearing before the House Financial Services Committee on the President's Working Group Report laying the groundwork for the imposition of a federal regulatory framework over stablecoins;
- The SEC's announcement this week of a [settlement with BlockFi](#) relating to the company's offering of crypto lending products without registration under the Securities Act of 1933 and its alleged violations of registration requirements under the Investment Company Act of 1940 (BlockFi agreed to pay a \$50 million penalty and an additional \$50 million to settle similar charges from 32 states);
- The SEC's ongoing litigation against Ripple, which tees up the question of whether XRP tokens (or offerings thereof) constitute unregistered securities;

- Continued SEC enforcement relating to the 2017–2018 wave of “initial coin offerings”—generally alleging fraud and/or conduct of an unregistered securities offering—and investigations into the activities of decentralized finance (“DeFi”) protocols, such as certain decentralized exchanges and lending platforms, as well as a proposed amendment to the regulations governing alternative trading systems, which could broaden the definition of “Exchange” to encompass much DeFi activity;
- CFTC actions, including 2021 consent orders resulting in a \$100 million civil monetary penalty against BitMEX principals and a \$6.5 million civil monetary penalty against Coinbase for trade reporting deficiencies, as well as Chair Behnam’s recent testimony seeking Congressional authority to regulate the cash digital asset commodity market;
- The “Crypto-Asset Policy Sprint” by federal bank regulators concluded late last year in which they indicated they would provide greater clarity in 2022 on whether crypto-related activities by banks are legally permissible and their expectations as to safety and soundness, consumer protection, and compliance (the FDIC last week reaffirmed that its 2022 priorities will include consideration of risks posed by cryptoassets and how banking organizations can safely engage in cryptoasset-related activities); and
- The IRS’s top prioritization of taxing cryptoasset transactions.

Cryptoassets and blockchain technology have attracted an enormous amount of capital from a broad spectrum of investors, ranging from venture capital firms to individual speculators. The underlying technology offers significant potential efficiency gains and benefits—including trustless, disintermediated transactions; elimination of central points of failure from financial systems; and digital recordation of property rights. At the same time, critics question the functionality of cryptoassets and blockchain technology and view them as solutions in search of problems. In the U.S., governmental bodies have so far eschewed carving out regulatory sandboxes or safe harbors for cryptoassets, reaching instead for more familiar enforcement tools and assertions of authority. As regulators seek consensus for regulation that will still enable innovation and U.S. leadership, the industry must provide the transparency and education necessary to help shape an appropriately balanced regulatory regime.

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