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SEC Civil Insider Trading Case Has Broader Repercussions for Cryptoasset Market

Yesterday, the U.S. Attorney's Office for the Southern District of New York [criminally charged](#) three individuals, including a former employee of the cryptoasset exchange Coinbase, with wire fraud in connection with alleged trading of particular cryptoassets ahead of Coinbase's public announcement that it would make a market in them. In a parallel action, the SEC brought [civil insider trading charges](#) against the same individuals, asserting that their trades violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. The criminal action itself is notable as the first insider trading case involving cryptocurrency markets, but it does not address the legal status of the traded cryptoassets. The SEC's civil action, however, expressly asserts that at least nine of the cryptoassets at issue are securities that are subject to the federal securities laws.

While we have previously called for measures to [enhance cryptoasset market integrity](#), the SEC's allegation that the cryptoassets at issue are securities — against the backdrop of other [recent enforcement actions](#) — underscores the need for clarity about whether and how the securities laws apply to particular cryptoassets. While the SEC has promulgated a complex, fact-intensive [framework](#) for determining whether a particular cryptoasset is a security, and SEC officials have informally [expressed the view](#) that many cryptoasset platforms are trading securities, the agency has generally refrained from opining on the legal status of specific cryptoassets (with notable exceptions including Bitcoin and XRP) and even has avoided stating which cryptoassets constitute securities in a previous [enforcement action](#) against a cryptoasset promoter. For their part, a number of centralized U.S. cryptoasset exchanges have explicitly noted that they only list assets that they [determine](#) not to be securities.

We express no view here as to the legal status of any of the cryptoassets in question. But the SEC's allegation that nine of the traded cryptoassets are securities poses important issues beyond this case. Most significantly, it spotlights the risk that cryptoassets may be presumed to be securities — with substantial legal and economic consequences — on the basis of civil enforcement actions in which cryptoasset developers, exchanges, and users are not litigants. That presumption raises a number of practical questions for market participants that typically would be addressed in a rulemaking process under the Administrative Procedure Act. Without such a process, market participants must confront the risks of continuing to develop, list, or transact with cryptoassets with limited transparency on how the SEC may apply the securities laws.

These charges also lay bare the continued uncertainty the cryptoasset market faces as to the respective oversight responsibilities of different regulators, including the SEC and the CFTC. Rather than rely on case-specific regulation-by-enforcement to address pressing challenges in the cryptoasset arena, we [reiterate](#) the urgent need for enhanced coordination among regulators to adopt an appropriately balanced and transparent legal regime that can ensure fair and orderly markets for cryptoassets and protect investors.

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