

Blockchain News, BLOCKCHAIN—3d. Cir.: Third Circuit orders SEC to clarify position on Coinbase crypto rulemaking petition, (Jun 7, 2023)

By [Lene Powell, J.D.](#)

The Third Circuit's order throws the SEC on its heels right as it declares battle against major crypto powers.

Amid crypto industry turmoil, the Third Circuit ordered the SEC to report within a week whether it has decided to deny a Coinbase request for the SEC to engage in rulemaking on crypto assets. The SEC must also explain why the court should not order the SEC to provide periodic reports relating to Coinbase's rulemaking petition ([In re: Coinbase, Inc.](#), June 6, 2023, Krause, C.).



Coinbase has [argued](#) that “regulatory clarity is overdue for our industry” and the SEC is engaging in “regulation by enforcement.”

The ruling comes amid major SEC enforcement actions against crypto giants Binance and Coinbase, which have sent a massive shockwave through the crypto industry in the past week.

Coinbase demand for rulemaking. Coinbase, a major crypto asset company, is [seeking a writ of mandamus](#) in the Third Circuit to compel the SEC to respond to Coinbase's [petition for SEC rulemaking](#) on digital assets regulation, which it filed last July.

Coinbase argues the SEC has not provided much-needed guidance on how existing rules apply to digital assets. Coinbase contends the SEC has internally decided to deny the rulemaking petition.

Coinbase is backed in the action by a U.S. Chamber of Commerce [amicus brief](#).

The SEC has [responded](#) that it is considering the rulemaking petition “in the ordinary course.” According to the SEC, the regulatory questions are complex and Coinbase only filed the petition in July 2022, and has since supplemented it. The agency dismissed as “baseless” the assertion that it has already decided to deny the rulemaking petition.

SEC ordered to report. A three-judge panel of the Third Circuit issued an order requiring the SEC to submit a letter to the court addressing:

1. Whether the SEC has decided to deny Coinbase's petition for rulemaking;
2. If not, how much additional time the SEC requires to decide whether to grant or deny the petition;
3. Why the court should not retain jurisdiction and (a) order periodic reports as Coinbase has proposed, and/or (b) establish a deadline by which the Court will rule on Coinbase's Petition for Writ of Mandamus if the SEC has not yet granted or denied the petition for rulemaking.

The SEC must submit the letter within seven days.

A win for Coinbase. Although the order is narrow, it can be seen as a significant win for Coinbase. For the court to require the SEC to provide this information about its action on a rulemaking petition signals a relatively tight leash as to the agency's regulatory activities.

The panel cited several factors in its order:

- Coinbase's request for the alternative relief of ordering the SEC to submit periodic reports to the Court regarding the Commission's progress on Coinbase's petition for rulemaking;
- SEC Chair Gary Gensler's statements to both Congress and the public that current regulations are sufficient for digital assets;
- Enforcement actions the SEC has recently filed against Coinbase and others without having ruled on Coinbase's petition.

SEC enforcement actions. The Third Circuit order adds to a massive clash of the SEC with major crypto industry players.

The same day, SEC charged [Coinbase](#) with multiple serious securities law violations including failure to register and offering unregistered securities. The SEC also recently charged [Binance](#), which operates the world's largest crypto platform, with similar violations.

When the dust settles from this epic clash of the titans, new regulatory certainty on crypto assets is likely to emerge. Until then, expect a wild ride.

The case is [No. 23-1779](#).

Attorneys: Jonathan C. Bond (Gibson Dunn & Crutcher LLP) for Coinbase Inc. Tracey Hardin for the SEC.

Companies: Coinbase Inc.

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