

## [Securities Regulation Daily Wrap Up, BLOCKCHAIN—3d Cir.: Third Circuit grants SEC four months in Coinbase crypto rulemaking lawsuit, \(Jun. 21, 2023\)](#)

Securities Regulation Daily Wrap Up

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

The court held off on ruling on writ of mandamus for now, but noted the SEC's indication that staff expects to submit a recommendation on Coinbase's rulemaking petition within 120 days.

The Third Circuit gave the SEC a breather in a closely watched lawsuit related to crypto assets, ordering the SEC to update the court on October 11 on how it is handling Coinbase's petition for rulemaking on crypto assets. The court said it will retain jurisdiction in the meantime (*In re: Coinbase, Inc.*, June 20, 2023, Krause, C.).

Coinbase had asked the court for a writ of mandamus to force the SEC to respond to its petition. The SEC said this is unnecessary and it is considering the petition "in the ordinary course."

The court's order could help calm crypto industry turmoil, providing an outer bound on when the SEC will respond yea or nay on rulemaking to clarify how the securities laws apply to crypto assets. The order also gives space for the SEC as it pursues a major enforcement action against Coinbase.

**Coinbase rulemaking petition.** Crypto giant Coinbase filed a [rulemaking petition](#) with the SEC last July. Coinbase [says](#) regulatory clarity is overdue for the crypto industry and the SEC is engaging in "rulemaking by enforcement."

In its Third Circuit [petition for writ of mandamus](#), Coinbase [contends](#) the SEC has already decided to deny the petition but has not revealed this publicly. The crypto company points to statements by SEC Chair Gary Gensler that "the rules are already clear." Coinbase also cites the SEC's enforcement action against it as "smoking-gun evidence" that the SEC is not seriously entertaining the rulemaking petition.

The SEC [says](#) it has not decided what action to take on the petition and its ongoing consideration is reasonable. A three-judge panel previously [ordered](#) the SEC to inform the court whether it has decided to deny the Coinbase petition, and to show cause why the SEC should not be ordered to submit periodic reports.

**SEC enforcement action.** Coinbase's action in the Third Circuit is playing out alongside an [SEC enforcement action](#) against Coinbase in the Southern District of New York. The SEC has charged Coinbase with operating as an unregistered securities exchange, broker, and clearing agency, as well as the unregistered offer and sale of securities.

**Court grants four months.** For now, the panel declined to rule on Coinbase's petition for writ of mandamus, though it retained jurisdiction.

The panel cited the SEC's indication that staff expects to submit a final recommendation to the Commission on the rulemaking petition within 120 days.

The court ordered the SEC to update the court on its status on October 11, 2023.

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

Attorneys: Robert A. Batista (BCG Attorney Search) and Jonathan C. Bond (Gibson Dunn & Crutcher LLP) for Coinbase Inc. Tracey Hardin for the SEC.

Companies: Coinbase Inc.

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