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Vital Briefing

Feds welcome crypto with open arms, but industry seeks certainty of legislation

By Lene Powell, J.D.

The federal government has dramatically warmed to crypto on regulation and enforcement, but the crypto industry also wants strongly supportive legislation, according to experts at the recent Securities Enforcement Forum Central 2025.

Federal financial regulators including the SEC are following a "top-down mandate" from the Trump administration to reverse "Chokepoint 2.0," an array of what the crypto industry says were hostile actions carried out by the Biden administration. Now, regulators are supporting crypto development with friendly guidance and scaled-back enforcement.

Crypto company IPOs are ticking up and the industry is waiting to see if the SEC will enable crypto investments for retirement investors, which could bring huge inflows of capital. Crypto ETFs are also expected to boom as the industry takes advantage of the SEC's new generic listing standards.

Though more favorable regulatory treatment has helped boost crypto, participants eagerly await pro-crypto legislation to seal the deal. They seek a 'token taxonomy' to clearly classify digital assets as either securities or commodities. They also want federal preemption of state laws as states increasingly assert authority in the space.

While the pro-crypto CLARITY Act has already passed the House, draft Senate legislation has reportedly run into headwinds. But even after legislation passes, a regulatory framework will take time to build, the experts said.

Here's the rundown.

Feds embrace crypto

The federal government has done a complete about-face on crypto, members of the "SEC Crypto Enforcement and Regulation" panel agreed.

> *"Crypto enforcement isn't dead, but I would say right now it's largely moribund at the federal level," said Mariotti*

There has been a "literal 180-degree sea change," said David Hirsch, a partner at McGuireWoods and former SEC crypto enforcement chief. This is the first administration transition he recalls where the SEC has dismissed active litigation in federal courts.

The year began with almost every crypto company in the U.S. in active litigation with the U.S. or being investigated over alleged registration violations, said Robert Musiala, Jr., a partner at Baker-Hostetler. Now, all those actions have been dismissed or dropped.

Renato Mariotti, a partner at Paul Hastings, agreed.

"Crypto enforcement isn't dead, but I would say right now it's largely moribund at the federal level," said Mariotti.

The SEC has also issued a raft of statements that certain crypto activities will not be considered offers and sales of securities, including meme coins, stablecoins, proof-of-work mining, and stake mining.

Together, these actions gave the market comfort, said Musiala.

Another positive for crypto is that SEC Chair Paul Atkins has downplayed decentralization in determining whether a digital asset is subject to SEC jurisdiction.

Musiala said the SEC was previously "hyperfocused" on whether the network on which an asset resides is "decentralized." Now, Atkins has said that "decentralization is a red herring" and "the days of decentralization are over." Atkins also explicitly disagreed with a 2018 speech by William Hinman, former director of the Division of Corporation Finance, said Musiala.

In Musiala's view, whatever framework that SEC crypto rules take will most likely not rely on the concept of decentralization. That shift is interesting, he added, because decentralization is very much a part of some of the legislation currently pending before Congress.

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But that framework may be awhile coming. According to Hirsch, formal rulemaking typically takes at least a year to 18 months.

Beyond the SEC, the Trump administration has issued a top-down mandate to all the federal regulators to undo "Chokepoint 2.0" and create an environment where crypto can thrive, said Katherine Kirkpatrick Bos, general counsel at StarkWare.

According to a fact sheet accompanying the Executive Order "Guaranteeing Fair Banking for All Americans," the digital assets industry has been "the target of unfair debanking initiatives" and the Trump administration is working to end these regulatory efforts.

Crypto market expands

Crypto markets have flourished in the genial new regulatory climate and are poised for further growth.

Bos cited the proliferation of crypto company IPOs like those by Bullish and Circle, with "many on the docket and many more to come."

Musiala agreed that crypto IPOs are a sign that crypto is becoming increasingly mainstream. He also pointed to the increasing use of stablecoins and crypto treasury companies, which buy digital assets as a business strategy.

Looking ahead, Bos believes that the new ETF generic listing standards will trigger an 'enormous boom' in crypto asset ETFs, as they will then be much easier to list. This will give average investors a lot more choices for crypto exposure, she said.

Another potential area for growth is if the SEC effectuates a Trump executive order allowing people to get crypto exposure in their 401(k)s, said Bos. There is also potential discussion of pension funds being able to purchase spot Bitcoin.

Legislation takes shape

While the crypto industry welcomes the SEC's new amenability, it is also avidly pursuing legislation to provide certainty that the SEC cannot give

"We're still in this very confusing state of play," said Bos. "And frankly, what are the parameters of the *Howey* test? Because the issue with *Howey* has always been the benefit is that it's flexible, but the negative is that it's flexible."

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The Digital Asset Market Clarity Act of 2025 (H.R. 3633, Clarity Act) is "very important crypto market structure legislation" that would create a token taxonomy to classify digital assets, said Bos. It passed the House in July by a 294-134 vote, with 78 Democrats supporting.

In contrast, it is "very unclear" whether draft Senate legislation will pass, Bose said. That bill has a "materially different version and likely less support from Democrats."

One reason the GENIUS Act received bipartisan support was a shared sense that the United States needed to support dollar-backed stablecoins to continue global dollar dominance, said Bos. Stablecoins also have a lot of "easily consumable use cases." She added that non-stablecoin crypto assets are volatile in ways that stablecoins are not.

States ramp up

As things take shape on the federal level, states are "incredibly active," said Mariotti.

"State attorneys general really believe that they need to fill the gap that there is right now based on less enforcement going to the federal level," said Mariotti.

Mariotti noted that state regulatory regimes are growing as well. New York and Louisiana already have crypto licensing regimes. The California license will come online in the middle of next year, and Illinois has a license regime that will become effective in 2027.

"They're creating this complete and utter patchwork of laws," said Bos, comparing it to state money transmitter laws. "So, if you're throwing money transmitter laws and various state bit licenses at us, you're also suffocating businesses with these enormous costs that are, again, unique to this asset class."

But federal legislation could preempt state laws—something the crypto industry is very interested in.

"Federal legislation is going to determine the extent of preemption and how much the states are continuing to enforce," said Mariotti.

What's next

All eyes are on Congress as the SEC steps back from crypto oversight and states are ramping up. Federal legislation could create a digital asset taxonomy, divide jurisdiction between the SEC and CFTC, and critically, preempt burgeoning state regulatory regimes.

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