

The SEC’s Crypto Task Force Maps Its Journey

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On February 4, 2025, SEC Commissioner Hester Peirce published a statement titled “The Journey Begins,” laying out a vision for the new administration’s SEC Crypto Task Force.¹ The statement signals a clean break from the enforcement-centered approach to the digital asset industry taken by former SEC Chair Gary Gensler. Commissioner Peirce compares that past approach to a bad road trip, where the Commission “refused to use regulatory tools at its disposal and incessantly slammed on the enforcement brakes as it lurched along a meandering route with a destination not discernible to anyone.”

Commissioner Peirce paints a rosier picture for the industry going forward. She proposes an incremental approach that focuses on preventing fraud and fostering responsible innovation within the confines of the Commission’s authority. She comments on topics including the approach to ongoing litigation, the status of digital assets under the securities laws, registration and disclosure frameworks for issuers, and new approaches for crypto broker-dealers, investment advisers, lending and staking programs, exchange-traded products, clearing agencies, and transfer agents. The statement takes no immediate action, but calls on stakeholders to engage with the Crypto Task Force on rulemaking going forward.

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¹ “The Journey Begins,” Commissioner Hester M. Peirce, U.S. Securities & Exchange Commission (Feb. 4, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-journey-begins-020425>.



The notable issues addressed by the Statement include:

Litigation

Commissioner Peirce criticizes the Commission's blizzard of enforcement actions in recent years against the digital asset industry, describing them as "marked by legal imprecision and commercial impracticality." The statement signals that at least some of the Commission's ongoing litigation may be dismissed or otherwise resolved, but that some market participants may continue to "remain in limbo" for some period of time. More concrete action on these pending cases may be likely to occur after the expected Senate confirmation of SEC Chair-nominee Paul Atkins.

Going forward, Commissioner Peirce signals more of a focus on individual investor responsibility: If people "buy a token or product that lacks a clear long-term value proposition," they should not look to the Government "to bail them out when they do something that turns out badly." On the other hand, the statement is clear that the Commission will "not tolerate liars, cheaters, and scammers," and will continue to enforce anti-fraud rules.

Digital Asset Offerings

The Task Force "is thinking about the possibility of recommending" a disclosure framework for digital assets to remove the regulatory uncertainty around their status. Under this framework, "the issuing entity or some other entity willing to take responsibility" would make specified periodic disclosures regarding certain digital assets. The digital assets "would be deemed to be non-securities" for registration purposes, but the issuer would agree not to contest the SEC's jurisdiction in the event of a case alleging fraud. The upshot would be that the digital assets could trade freely on secondary market trading platforms that are not registered with the SEC as long as the disclosure is kept up-to-date and accurate. Notably, entities participating in this framework would be entitled to both "prospective and retroactive relief."

Commissioner Peirce contemplates that this framework would be temporary "until a more permanent rule or legislation could be finalized." The short description of this framework raises

several key questions, including the interplay with CFTC regulation, the statutory basis under the securities laws for this hybrid non-security/security framework, and the impact of this framework on whether an asset is deemed to be a security for purposes of criminal and private civil liability. More details are likely to follow as the Crypto Task Force further develops this framework.

Exemptive Relief, No-Action Letters, and Registration Statements

With few exceptions, the previous Commission did not extend exemptive relief or issue no-action letters, and it provided no realistic path to registration for digital asset industry market participants. Commissioner Peirce lays out a markedly different approach where the SEC staff will focus its resources on processing these types of applications. However, she notes that "an uptick in the volume is likely to prove challenging." To avoid delays, applicants will need thoughtful submissions from experienced counsel that anticipate the SEC's questions, with Commissioner Peirce emphasizing that "[a]dherence to technical and legal requirements" and "well-reasoned legal analysis" will make "for a quicker, smoother trip toward the destination of greater regulatory clarity."

Rulemaking

The statement outlines a number of specific areas that will be the subject of the Crypto Task Force's rulemaking efforts, including:

- The status of different types of digital assets under the securities laws;
- Modifying existing paths to registration, including Regulation A and crowdfunding, to provide a viable path for digital asset offerings;
- Expanding the special-purpose broker dealer no-action statement to cover broker-dealers that custody both digital asset securities and digital assets that are not securities;
- Providing a practical regulatory framework for custody solutions for investment advisers;

- Clarifying whether and how crypto-lending and staking programs are covered by the securities laws;
- Providing clarity around the approval process for exchange-traded products, and considering requests to modify existing products to allow staking and in-kind creations and redemptions; and
- Modernizing the application of clearing agency and transfer agent rules in the context of digital assets.

Combined with news reports the same day that the SEC is downsizing the Enforcement Division's Crypto Assets and Cyber Unit,² Commissioner Peirce's statement represents a sea change in the SEC's approach to digital assets. Commissioner Peirce's Crypto Task Force is prioritizing a path to regulatory clarity, taking into account input from digital assets market participants in search of practical solutions. While the end results remain to be seen, and depend in part on parallel efforts in this space by the Executive Branch, Congress, and other regulators, the statement signals a strong desire by the SEC to develop a workable regulatory framework for the digital assets industry.

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² "S.E.C. Moves to Scale Back Its Crypto Enforcement Efforts," *New York Times* (Feb. 4, 2025), available at

<https://www.nytimes.com/2025/02/04/business/sec-crypto-task-force.html>.