

SEC Advises Companies to Disclose Crypto Market Exposure

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On December 8, the Securities and Exchange Commission (SEC) issued new [guidance](#) for publicly traded companies, advising them to disclose their exposure and risk in the cryptocurrency market to investors.

The Guidance

The guidance urges companies to evaluate, and potentially disclose, their exposure to crypto assets — specifically, “with a view towards providing investors with specific, tailored disclosure about market events and conditions, the company’s situation in relation to those events and conditions, and the potential impact on investors.” The guidance is accompanied by a sample letter that companies may receive, as the SEC seeks additional disclosures about companies’ exposure to crypto bankruptcies, asset volatility, and other crypto market developments.

For example, the first question in the sample letter asks companies to disclose “any significant crypto asset market developments material to understanding or assessing your business, financial condition and results of operations, or share price since your last reporting period, including any material impact from the price volatility of crypto assets.” The letter further asks companies if they face any risks to their businesses “due to excessive redemptions, withdrawals or a suspension of redemptions or withdrawals, of crypto assets.”

Although publicly traded companies are already subject to disclosure requirements regarding financially material information, the SEC has now deemed it necessary to highlight the relationship between those pre-existing disclosure obligations and the recent turmoil in the cryptocurrency market. “In meeting their disclosure obligations, companies should consider the need to address crypto asset market developments in their filings generally, including in their business descriptions, risk factors, and management’s discussion and analysis.”

Background

This new guidance comes in the wake of the disastrous crashes of crypto firms like FTX and BlockFi Inc. In November, FTX, one of the world’s largest cryptocurrency exchanges, filed for bankruptcy after loaning customer funds to a trading company founded by FTX’s former CEO Sam Bankman-Fried (SBF).^[1] FTX’s collapse has had spillover effects throughout the cryptocurrency industry with the prices for BitCoin and Ethereum — which are often used to gauge the overall crypto market — plunging.

Cryptocurrency lender BlockFi — which had received a large loan from FTX earlier this year — filed for bankruptcy itself on November 14, citing the FTX collapse as the reason for its own filing. Venture capital firms, pension funds,

and other FTX investors have also announced significant losses as a result of the exchange's downfall. Indeed, several U.S.-listed firms have already announced their exposures to the FTX crash, including Coinbase (COIN) and Silvergate Capital (SI).

In light of these events, the SEC is leaving no doubt as to its directed focus on the risk that cryptocurrency investments can pose. As the SEC stated in the sample letter, “[r]ecent bankruptcies and financial distress among crypto asset market participants have caused widespread disruption in those markets,” and “[c]ompanies may have disclosure obligations under the federal securities laws related to the direct or indirect impact that these events and collateral events have had or may have on their business.” On Wednesday, December 7 — prior to the SEC’s issuance of this new guidance — SEC Chair Gary Gensler [addressed](#) accusations that the SEC was failing its duty to protect investors from the conflicts and illicit lending practices that are now commonplace in the crypto market, and indicated that the SEC would take more enforcement actions if firms fail to comply with existing rules. And in November, immediately following the FTX crash, Gensler [stated](#) that crypto investors are in need of better protection.

Takeaways

The SEC is on notice that the crypto market can have, and has already had, a significant — and more recently disastrous — impact on investors. As a result, the SEC is working to address the problem head-on and taking steps within its existing statutory scheme to protect investors. Publicly traded firms must be ready to disclose to their investors any exposure they have resulting from the volatile crypto asset market, including depreciated stock prices, loss of customer demand, and risk of legal proceedings. In making this disclosure determination, companies should consider their specific circumstances and obtain legal advice as early as possible to comply with SEC guidance and to avoid SEC scrutiny. Members of the Troutman Pepper team are available to assist on any and all SEC developments.

[1] On December 13, the [SEC](#) and the [CFTC](#) each initiated actions against SBF for defrauding investors in connection with the FTX crash. The SDNY U.S. Attorney’s Office also unsealed an eight-count [indictment](#) against SBF on December 13, in a parallel action.

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