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Trump Administration's Landmark Report on Digital Assets

WRITTEN BY

Ethan G. Ostroff | Genna Garver | Kim Phan | Keegan T. McCoy | David Madrazo | James Shreve | Peter E. Jeydel | Yulian Y. Kolarov

The Report authored by the Presidential Working Group on Digital Assets Markets (PWG), titled "Strengthening American Leadership in Digital Financial Technology," along with the accompanying fact sheet, outlines several key objectives aimed at positioning the U.S. as a leader in digital asset markets. Among its objectives are reinforcing the role of the U.S. dollar, modernizing Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) rules for the digital assets ecosystem, and ensuring fairness and predictability by establishing clear regulatory oversight.

On January 23, President Donald Trump signed Executive Order 14178, "Strengthening American Leadership in Digital Financial Technology," establishing the PWG. The PWG, comprised of cabinet members and federal agency officials, was tasked with producing a report highlighting regulatory and legislative proposals to advance digital assets.

Below, our team highlights key themes from the PWG's Report with a focus on digital asset market structure, banking, privacy and cybersecurity, tax classification, and financial crimes compliance.

Digital Asset Market Structure and Regulatory Clarity

The Report acknowledges that the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) are the main federal agencies overseeing secondary digital asset markets, while criticizing how these regulators have mostly relied on enforcement actions to regulate digital assets instead of creating a proper regulatory framework. The Report urges these agencies to use their current powers to quickly allow digital asset trading at the federal level.

The Report suggests a new way to categorize digital assets, splitting them into three groups:

- Security Tokens: Digital assets that qualify as securities because they represent things like equity, bonds, or investment contracts. Security tokens also include tokenized securities.
- Commodity Tokens: Digital assets that aren't securities, like network tokens tied to decentralized networks or protocols. Examples include bitcoin and ether.
- Tokens for Commercial and Consumer Use: Digital assets used to access goods, services, or privileges and are subject to commercial transaction laws. This group includes non-fungible tokens for things like identity credentials or event tickets.

The Report emphasizes that the existing rules from the Securities Act of 1933 apply to security tokens, including those considered "investment contracts" under the *Howey* test. It also notes that intermediaries functioning as brokers or dealers in digital assets that qualify as securities must register with the SEC and follow its regulations.

The Report suggests the SEC and CFTC should use their rulemaking powers to clarify regulations around digital assets, covering areas like registration, custody, trading, and recordkeeping. It also recommends that these agencies work together on any new rules. Specific suggestions include creating exemptions for digital asset offerings, setting up registration systems for trading platforms and other market players, and tailoring disclosure requirements to fit digital assets. The Report also calls for changes to allow registrants to combine trading and custody or exchange and broker services, paving the way for "super apps." Lastly, it urges Congress to give the SEC and CFTC more regulatory power where needed.

Subsequent to the publication of the Report, SEC Chairman Paul Atkins launched "Project Crypto" to modernize securities rules and help financial markets move on-chain, while CFTC Acting Chairman Caroline Pham announced a "crypto sprint" to start implementing the Report's ideas.

Banking

The Report highlights a distinct divergence in the approach of the federal banking regulators toward digital asset activities under the Biden administration, which predominantly involved advising caution to banks regarding engagement in such activities, as opposed to the approach under the Trump administration. Under the latter, federal banking regulators have rescinded prior guidance issued during the Biden administration, promulgated new guidance, and issued public statements acknowledging the permissibility of certain digital asset activities.

The Report advocates for enhanced clarity from regulators concerning the permissible scope of digital asset activities and the supervisory expectations associated with such activities for both federally chartered and state-chartered banks and credit unions. This includes, but is not limited to, the following areas:

- Custody of digital assets, specifically guidance on technical best practices;
- Utilization of third parties as infrastructure providers or for other digital asset services;
- Holding stablecoin reserves as deposits;
- Permissibility of depository institutions to hold digital assets on balance sheets and any associated safety and soundness concerns;
- Capacity for depository institutions to engage in pilots and experiments related to digital assets;
- Tokenization activities by banks, particularly concerning deposits; and
- Utilization of permissionless blockchains.

The Report underscores the significance of adopting a technology-neutral approach in adapting the current banking regulatory framework. It posits that technological advancements do not inherently alter the risk profile of an activity, and thus, identical business risks should be governed by identical regulations.

The Report also discusses the need for improving the process for eligible institutions to obtain a bank charter or a Federal Reserve master account, thereby enabling access to payment services. This includes the federal banking agencies promulgating regulations to address the expected timelines for decisioning completed applications for

charter licensing requests for a Reserve Bank master account. Among other recommendations, the banking regulators should "confirm that otherwise eligible entities are not prohibited from obtaining bank charters, obtaining federal deposit insurance, or receiving Reserve Bank master accounts or services solely because they engage in digital asset-related activities."

Privacy and Cybersecurity

While the Report asserts an urgency for the U.S. to revolutionize and lead the digital assets and blockchain technologies space, it also admits there are difficulties in balancing privacy, easy access to open public blockchain networks, and national security. The Report stresses concerns in the digital asset sector related to a lack of regulatory transparency and potential cyber threats from hackers, fraudsters, and other bad actors. The Report also identifies several risks inherent in the digital asset ecosystem: intermediaries or custodians that manage digital wallets lack effective cybersecurity protocols; self-custody of digital assets heightens illicit activity; smart contracts are vulnerable to coding risks; and metadata from digital asset transactions is not truly pseudonymous and may be traced back to personally identifying information. The Report warns that an increase in information sharing between the private and public sector will be necessary to flag illicit activity in the digital asset markets.

In addressing these privacy and security concerns, the Report urges the Treasury, SEC, CFTC, and other federal agencies to accept emerging digital asset technologies and provide clearer guidance on how digital assets will fit into existing frameworks, including setting forth standards for cybersecurity practices. In particular, the Report recommends that the Treasury coordinate with the National Institute of Standards and Technology (NIST) to develop NIST-recommended security requirements for digital identity solutions for customer verification that are both privacy-centric and promote the growth of digital assets. The Report also recommends modernizing existing statutes such as the Bank Secrecy Act (BSA), Anti-Money Laundering Act (AML), and Countering the Financing of Terrorism Act (CFT) to cover participants in the digital asset ecosystem (*e.g.*, stablecoin issuers) as "financial institutions." These pre-existing statutes already require institutions to implement cybersecurity measures aimed at protecting the privacy of consumers.

Despite an extensive analysis of the digital asset sector, the Report leaves to regulators much of the detail on how privacy and data security ultimately will be protected. Nevertheless, holders and users of digital assets should find relief in the administration actively determining how to incorporate digital financial technology into existing regulatory frameworks with built-in privacy protections. The Report also indicates which agencies the digital asset ecosystem should look to for upcoming changes, including the Treasury, SEC, and CFTC. In fact, on August 18, in accordance with the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act), the Treasury issued a request for comment on methods and technologies that would protect data privacy while also ensuring traceability in certain contexts to combat cyber threats. Likewise, individuals and institutions should expect that NIST frameworks will influence cybersecurity practices ultimately required in the digital asset arena. Change is incoming, and the Report confirms that privacy and cybersecurity will play a pivotal role in regulations.

Tax Classification of Digital Assets

While privacy and cybersecurity form a foundation for safer adoption of digital assets, the PWG also turned to another unsettled issue with equally broad implications: how these assets should be treated under the tax laws of the U.S.

Commodity vs. Security

Currently, the IRS characterizes digital assets as property, not currency. However, it is unclear whether digital assets are properly classified as a commodity (which is not defined uniformly under the tax law) or alternatively as a security (which also is not defined uniformly under the tax law, and which differs from the meaning of security as the term is used in securities law) for U.S. federal income tax purposes. Classification as a commodity or security is important because it could significantly affect the digital asset's tax treatment.

Rather than classifying digital assets as either a commodity or a security, the Report recommends treating digital assets as a new and distinct asset class, subject to modified versions of the tax law applicable to securities or commodities. This distinction would allow tax legislation related to digital assets to "consider characteristics of digital assets that are different from those of traditional securities or commodities." The PWG then recommends that certain provisions should apply to this new digital asset class, including (i) the mark-to-market election of Section 475; (ii) the securities trading safe harbor of Section 864; (iii) treatment as a security for securities loan transactions under Section 1058; (iv) the wash sale rules under Section 1091; and (v) the constructive sale rules of Section 1259.

Stablecoins

The classification of stablecoins as debt (generally, an unconditional obligation to pay a sum certain) or currency under tax law is uncertain and is a separate inquiry from characterization as a security or commodity. The Report recommends classifying stablecoins as debt, given stablecoins (i) are often collateralized with high-quality liquid assets, and (ii) have the potential for gain or loss on disposition. In addition to tax considerations, the report addresses the challenges of financial crimes compliance in the evolving digital asset landscape.

Financial Crimes Compliance

The discussion of tax rules underscores the government's effort to give digital assets a place in established legal frameworks. But defining asset classes is only one step; ensuring that these markets operate safely also requires a robust compliance regime, particularly with respect to illicit finance.

In Secretary Scott Bessent's remarks at the Report's release, "countering illicit finance" was the first regulatory focus area he listed, coming before tax, "dollar dominance," and modernizing banking regulation. While this suggests the administration is aware that the long-term success of this industry depends on a strong compliance framework, scratching the surface of the Report reveals a lack of any detailed vision for what this should mean in practice. Many institutions will steer clear of higher-risk initiatives until the government is able to define the rules of the road.

Where the Report provides hints about the future direction of BSA/AML regulation for digital assets, it does not appear entirely coherent. On one hand, the Report calls for "technology-neutral" regulation. On the other, the PWG acknowledges the greater challenges of compliance in this emerging area, including anonymity, speed, and irreversible transactions, and increasingly popular software tools that are immutable or "otherwise technologically incapable of collecting customer information or reporting suspicious activities." With this in mind, the Report recommends more legislative action by Congress to "define with greater certainty the actors in the digital asset

ecosystem that are subject to BSA obligations," including potentially "bespoke digital asset-specific financial institution" types, so the obligations can be "more carefully tailor[ed]". In short, these still nonexistent regulations may be technology-neutral, highly tailored to particular types of technology, or something in between.

These tensions come into focus in particular for DeFi and anonymity-enhancing tools. The PWG makes clear that the government wants to support self-custody, peer-to-peer, privacy, etc. But at the same time, the PWG acknowledges the significant prevalence of illicit finance among users of these tools and offers few answers as to how to balance these goals. One suggestion in the Report is to focus regulation on intermediaries, rather than open-source software or users themselves. But there is recognition that this may mean exchanges, banks, and other regulated entities may need to decline to support users or transactions that aren't adequately verified. The PWG even suggests that smart contracts and other protocols may need such features to be built in, with this burden possibly falling on governance token holders, for example, in the decentralized autonomous organization (DAO) context. The call for user transaction histories to be incorporated into digital credentials could lead to a much-feared scenario of permanent exclusion for some users. The PWG wants Congress to codify the existing standard of whether a money transmission business exercises "total independent control over the value," but the Report does not address the most challenging issues, such as ongoing criminal prosecutions of developers of DeFi protocols even under this administration.

In short, the Report may be interpreted as a sign that the government still has a long way to go before participants in the digital asset sector will have the much-vaunted "clarity" that will be needed to venture outside of the lowest-risk areas.

Conclusion

The PWG's Report is ambitious in scope, signaling that digital assets will play a central role in the U.S. financial system. Yet it also highlights the difficult tradeoffs regulators must navigate: innovation versus security, privacy versus compliance, and technology neutrality versus tailored oversight.

For market participants, the message is clear, change is coming. Congress, along with federal agencies such as the SEC, the CFTC, and the Treasury, will continue to be active in shaping new frameworks in privacy, taxation, and financial crimes compliance. While the path forward remains uncertain, the Report marks the beginning of a significant regulatory shift that will define how the digital asset ecosystem develops in the years ahead.

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