

# DOJ Announces New Digital Asset Enforcement Priorities

On April 7, 2025, the Office of the Deputy Attorney General issued a memorandum with the subject “Ending Regulation By Prosecution” (the “April 7 Memo” or “memo”) setting out new enforcement priorities for digital asset-related investigations and prosecutions by the U.S. Department of Justice (“DOJ” or the “Department”).

The April 7 Memo directs prosecutors not to “target virtual currency exchanges, mixing and tumbling services, and offline wallets for the acts of their end users or unwitting violations of regulations”. DOJ will instead prioritize cases against individuals who cause financial harm to digital asset investors and consumers and/or use digital assets in furtherance of other criminal conduct. The memo represents a notable shift in the Department’s focus away from digital asset exchanges and mixing and wallet services, and from enforcing registration requirements, and toward the individuals who may use such platforms and services to commit criminal offenses, consistent with the policy directives of the President’s Executive Orders to build investor confidence in and support the growth of the digital assets industry.

## NEW ENFORCEMENT PRIORITIES

The April 7 Memo explains that the Department will prioritize investigations and prosecutions involving two types of conduct: (i) “conduct victimizing investors” and (ii) “use of digital assets in furtherance of [other] unlawful conduct”, citing Executive Orders 14178 and 14157, respectively.<sup>1</sup>

The memo provides several non-exhaustive examples of “conduct victimizing investors”:

- Embezzlement and misappropriation of customers’ funds on exchanges;
- Digital asset investment scams;

- Fake digital asset development projects (such as rug pulls);
- Hacking of exchanges and decentralized autonomous organizations resulting in the theft of funds; and
- Exploiting vulnerabilities in smart contracts.

According to the memo, pursuing this type of conduct is important “to restoring stolen funds to customers, building investor confidence in the security of digital asset markets, and the growth of the digital asset industry”.

Regarding the second type of conduct, the April 7 Memo explains that the Department is prioritizing investigation and prosecution of digital asset use “in

furtherance of unlawful activity” by cartels, Transnational Criminal Organizations, Foreign Terrorist Organizations and Specially Designated Global Terrorists, and specifically notes that digital assets are often used in connection with fentanyl production. While DOJ “will pursue the illicit financing of these enterprises”, it “will not pursue actions against the platforms that these enterprises utilize to conduct their illegal activities.”

By contrast, the memo makes explicit that prosecutors should not devote resources toward the investigation and prosecution of exchanges, mixers, tumblers, offline wallets and other platforms for the activities of their end users or for criminal regulatory registration violations that do not meet a heightened willfulness standard. The memo directs prosecutors to close any ongoing investigations and rescind any existing policies and directives that are “inconsistent” with the Department’s new priorities.

## NEW CHARGING CONSIDERATIONS

The April 7 Memo explains that prosecuting individuals engaged in conduct victimizing investors or the use of digital assets in furtherance of other unlawful conduct “deters future illegal activity, compensates victims, and promotes the public’s confidence in the digital asset markets and broader industry”. The memo further notes that, on the contrary, “criminal matters premised on regulatory violations resulting from diffuse decisions made at lower levels of digital asset companies often fail to advance” the Department’s priorities.

In addition to identifying the prioritized types of conduct, the memo explains more generally that prosecutors should not charge “regulatory violations” in digital assets cases, and provides specific, non-exclusive examples of violations that should not be charged, absent evidence of a knowing and willful violation:

- Unlicensed money transmitting business violations<sup>2</sup>;
- Bank Secrecy Act (“BSA”) violations;
- Unregistered securities offering violations;
- Unregistered broker-dealer violations; and
- Other violations of registration requirements under the Commodity Exchange Act (“CEA”).

Separately, the memo provides that prosecutors should not charge violations of the Securities Act of 1933, the Securities Exchange Act of 1934 or the CEA, or the regulations promulgated thereunder, if the charge would require the Department “to litigate whether a digital asset is a ‘security’ or ‘commodity’”, and there is an “adequate alternative” criminal charge available. The only stated exceptions to this charging limitation are prosecutions (i) that would require the Department to take the position that bitcoin or ether is a “commodity” under the CEA or (ii) where the security underlying a securities fraud charge is the equity or stock in a digital asset company; all other exceptions must be approved by the Deputy Attorney General or his designees.

## OTHER TOPICS

The April 7 Memo briefly addresses victim compensation and DOJ resource allocation relating to digital assets, as well as the Department’s participation in the President’s Working Group on Digital Asset Markets (the “Working Group”).

*First*, the memo notes that under existing law some investor victims of digital asset fraud and theft have only been able to recover the value of their digital assets “at the time the fraud was perpetrated” without being able to benefit from gains that occurred during or after their victimization. To remedy this, the memo directs DOJ’s Office of Legal Policy and Office of Legislative Affairs to evaluate and propose changes to applicable laws and regulations “to address this concern and improve asset-forfeiture efforts in the digital assets space”.

*Second*, and consistent with the “narrowing of the enforcement policy”, the memo directs several changes within DOJ’s Criminal Division: the Market Integrity and Major Frauds Unit will cease cryptocurrency enforcement, the National Cryptocurrency Enforcement Team will disband, and the latter team’s guidance and training responsibilities will be taken over by the Computer Crime and Intellectual Property Section.

*Third*, the memo notes that the Department will participate in the President’s Working Group and in preparing a report to the President “recommending regulatory and legislative proposals that advance the policies and priorities” in Executive Order 14178.

## CONCLUSION

The April 7 Memo is the latest in a series of digital asset-focused policy shifts by the Trump Administration, including, among others, (i) the U.S. Securities and Exchange Commission’s (“SEC”) decision to dismiss its civil enforcement action against Coinbase, Inc. and Coinbase Global, Inc., with the SEC explaining that dismissal would facilitate its efforts to reform and renew its regulatory approach to the crypto industry; (ii) the SEC’s closure of several investigations into digital asset companies without enforcement actions; (iii) the request by SEC Commissioner Hester Peirce—who leads the SEC’s Crypto Task Force—for public input on statutes and rules that may present challenges to innovation with crypto assets and blockchain technology; and (iv) issuance of Executive Order 14233, signed on March 6, 2025, entitled “Establishment of the Strategic Bitcoin Reserve and United States Digital Asset Stockpile”, directing the Secretary of the Treasury to establish an office to administer and maintain control of custodial accounts capitalized with all bitcoin held by the Treasury Department that was finally forfeited in connection with either criminal and civil asset forfeiture or satisfaction of civil money penalties.

As for DOJ, the memo signals that the Department largely does not intend to pursue digital asset exchanges, mixers, tumblers or other services—or their founders, developers and other key figures—for criminal activity conducted on or through their platforms, even if they fail to abide by the BSA, absent egregious, willful conduct. Moving forward, DOJ intends to focus on individuals who use virtual currency to exploit investors or in furtherance of the Department’s prioritized criminal offenses (*e.g.*, narcotics, human trafficking).

It is worth bearing in mind that despite the policy shifts noted above, the scope of the April 7 Memo does not extend to the SEC or other federal civil regulators of digital assets (with the notable exception of the Commodity Futures Trading Commission (“CFTC”), whose Acting Chairman issued a statement last week directing CFTC staff to adhere to the memo’s enforcement priorities and charging considerations). It also does not extend to state regulators, some of whom have recently been signaling ramped-up enforcement. Companies active in the digital asset area will therefore need to continue to monitor regulatory developments, as well as carefully review and update their policies, procedures and controls to ensure compliance with applicable laws and regulations.

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- 1 Executive Order 14178, entitled “Strengthening American Leadership in Digital Financial Technology”, was signed on January 23, 2025; Executive Order 14157, entitled “Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists”, was signed on January 20, 2025.
  - 2 The memo expressly notes that violations of 18 U.S.C. § 1960(b)(1)(C), for transmission of funds known to the defendant to have been derived from a criminal offense or intended to be used to promote or support unlawful activity, fall “outside the scope of this policy”.

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