Client Alert:

The Executive Order on Digital Assets and the Future of Regulation and Oversight

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Last week, President Biden issued an Executive Order on Ensuring Responsible Development of Digital Assets to align the U.S. government's regulatory approach in response to the ever-growing development and adoption of digital assets and blockchain technology. The Order acknowledges the significant benefits and opportunities these technologies can bring, from financial gain through investment or faster, cheaper cross-border settlements, to socially minded issues like financial inclusion, but warns against the equally significant, if not greater, economic, security and environmental dangers.

The U.S. policy regarding digital assets will focus on six primary objectives:

- **Protect consumers and investors.** Ensure digital asset service providers have processes in place to protect sensitive data, safeguard consumer and investor assets, and sufficiently disclose the risks of investment or use.
- **Protect financial stability.** Promote compliance with existing regulations that govern traditional financial markets by providers with activities that pose increased risk to financial stability and determine whether the unique uses and characteristics of digital assets create gaps requiring additional or revised legislation.
- **Mitigate financial and security risks.** Ensure controls are in place to address risks to economic or national security through the abuse and illicit use of digital assets and the significant increase in decentralized and

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peer-to-peer platforms and promote global standards and transparency that counter illicit activities globally.

- **Reinforce the U.S.'s position as an economic leader and at the forefront of technological development.** Drive global policy and standards that promote U.S. democratic values.
- **Promote financial inclusion.** Promote innovation that allows for greater access to financial services, products, and markets, and mitigates risk of exclusion due to bias and economic disparities.
- **Support and promote the responsible development and use of digital assets.** Ensure technologies and the digital asset ecosystem are developed and implemented responsibly, and address the specific risks to privacy, security, illicit gain or exploitation, and the potentially high negative impact to the climate.

The Order also illustrates the Administration's current policy and objectives related to the possibility of a U.S.-issued central bank digital currency, or CBDC. The order asks Treasury, in consultation with other relevant agencies, to submit a report within six months that studies the potential implications of a U.S. CBDC to national security, economic growth, and financial stability, as well as how a CBDC could improve payment systems' efficiency and affordability.

Key Takeaways

- Notably, the Order recognizes the importance of the role that digital assets and CBDCs do and will continue to play in the global financial markets, and the necessity of continued U.S. leadership in studying and developing the technology, as well as setting regulatory and enforcement standards that align with U.S. values and further national interest. Through the forward-looking approach of the policy, the Administration signals that digital assets, at least in some form, are not a fad and hold a place in the future landscape of the global economy.
- Perhaps in response to some of the perceived turf fights between certain regulatory agencies, the Order also lays out and calls for an aligned, interagency approach and requires near-term assessments, reports, and recommendations. Interestingly, while the Order does cite "inconsistent controls to defend against certain key risks" as a primary driver for the need for a coordinated U.S. approach, the Order does not suggest any urgency for new regulations or an overhaul of existing regulations over financial markets. Instead, it points to and recommends compliance with existing legislation and regulatory standards related to financial markets, products, and infrastructure, and that the forthcoming studies may illustrate regulatory gaps to address.
- As an example, the Order "encourages," but does not require, the SEC, CFTC, Federal Reserve, FDIC, and OCC to "consider the extent to which investor and market protection measures within their respective jurisdictions may be used to address the risks...and whether additional measures may be needed." So, while it is possible that additional or revised frameworks may be required, there should not be an expectation that those regulations will happen anytime soon.
- Sentiment over the low likelihood of new regulations may be split among service providers and operators in this space. On one hand, new rules would likely require new or updated controls or compliance programs, new surveillance or monitoring

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tools, and/or increased reporting obligations, and therefore potential significant increases in the cost of compliance. On the other hand, companies are still not clear whether or how they fit into existing regulatory frameworks and therefore whether they are compliant with whichever regulator claims jurisdiction. Similarly, the Order also requires a coordinated action plan to mitigate illicit financial and national security risks, including money laundering, cybercrime, terrorism, sanction evasion and human rights violations, and requires a plan to increase digital asset service providers' compliance with AML and CFT laws and regulations. However, it does not suggest the need, or immediate need, of new or revised guidelines or compliance frameworks for these service providers.

Conclusion

The Executive Order is a significant step forward. Although the Order does not specifically call for any new regulations or compliance frameworks, it does clearly signal the importance and sustainability of digital assets and that the U.S. intends to remain firmly out front with respect to the development, standard setting, and enforcement of digital assets and blockchain technology.

Companies operating in the digital asset ecosystem should take comfort that the Administration appears to have a vested interest in the overall success of the industry. Uncertainty will likely remain, however, regarding where they stand from a compliance perspective. As such, these providers will need to continue to find their place within the existing regulations and frameworks.

About the Author

Kyla Curley, a Partner with StoneTurn, has over 20 years of experience investigating and making sense of complex and sensitive issues involving financial fraud, misuse, and misappropriation, as well as analyzing the flow of funds and other transactional reviews for organizations, counsel, and other stakeholders.

Kyla's experience includes investigations into the flow and usage of funds, and transaction lifecycle reviews of institutional and private investments, acquisitions, and other significant activity. Kyla is also experienced with cryptocurrencies and blockchain technology and transactions. Certified by the Blockchain Council as a Certified Cryptocurrency Auditor, Kyla conducts reviews into digital asset lifecycles to assist investors, law enforcement professionals, or other stakeholders to identify and isolate digital assets, and to assist with recovery, when applicable.