



Kobre & Kim's Government Enforcement Defense Team

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Shifts in U.S. Crypto Enforcement May Spark Wave of Private Lawsuits



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founders or company leadership

Businesses in the digital asset sector re-evaluating their legal risk should confer with their legal teams about whether they may be targets of private or public litigation by considering the following proactive strategies:

The U.S. Securities and Exchange Commission (SEC) has recently shifted its approach to regulating the digital asset industry. This change has resulted in the dismissal or suspension of several high-profile cases against major cryptocurrency businesses. However, this regulatory retreat does not preclude private plaintiffs in the digital asset space from using the federal securities laws as a basis to bring a variety of allegations.

This summarizes an article coauthored by Kobre & Kim's Sydney Johnson and Calvin Koo published by CoinDesk. [Click here to read the full article.](#)

The U.S. Securities and Exchange Commission (SEC) has recently shifted its approach to regulating the digital asset industry, moving away from aggressive enforcement actions towards establishing clearer regulatory guidelines. This change has resulted in the dismissal or suspension of several high-profile cases against major cryptocurrency businesses, including Coinbase, Kraken, and Cumberland DRW LLC, for whom Kobre & Kim secured a favorable resolution with no financial penalties to the client.

However, this regulatory retreat does not preclude private plaintiffs from pursuing legal action. With no pending appellate-level cases to establish binding precedent on the application of federal securities laws to particular digital asset transactions, the legal interpretative landscape remains ambiguous. As a result, private plaintiffs in the digital asset space can still use the federal securities laws as a basis to bring a variety of allegations, including:

- Selling unregistered securities
- Engaging in the sale of securities through a prospectus (e.g., white paper) containing untrue statements or omissions of material facts
- Committing securities fraud or engaging in other misconduct, including schemes like rug pulls or pump-and-dump operations
- Violations committed by individuals with decision-making authority over the seller, including

1. **Understand the Landscape.** In the absence of binding decisions from appellate courts, grasping the key authorities in relevant districts is crucial. Analyzing how previous cases in lower courts align with the SEC's current interpretative guidelines can provide persuasive support for a legal theory, especially as the SEC reduces its enforcement activities.
2. **Be Prepared.** Companies should keep accurate records of trades, investment strategies, and other business factors. As private litigation increases, having clear documentary evidence and justifications becomes crucial when facing decreased regulatory enforcement or ambiguous interpretations.
3. **Be Proactive.** While recent shifts indicate a decline in SEC enforcement in the digital asset space, Commissioner Hester Peirce has stated that the shift in priorities and resources is not an end to SEC enforcement. Businesses should develop a strategy that addresses authorities' potential questions and helps regulators gain a deeper understanding of their business and the market context. Fostering constructive dialogue and consideration of diverse market perspectives may yield positive results given the new SEC administration's stated openness for such discussions.

About Kobre & Kim

Kobre & Kim is a global law firm focusing on cross-border disputes and investigations, often involving fraud and misconduct.

The firm:

- Focuses on assisting clients in realizing value from their claims by developing investigative, enforcement, and defense strategies for civil litigation.
- Has served as lead counsel in prominent enforcement actions, including those involving cryptocurrency enforcement, securities law, market manipulation, bribery and corruption, antitrust and competition, economic sanctions, asset forfeiture, money laundering, extradition, fraud and other misconduct.
- Brings together roughly a dozen former U.S. government lawyers based globally, including former prosecutors from the U.S. Department of Justice (DOJ) and UK Serious Fraud Office (SFO).