



Benjamin Sauter on SEC's Aggressive Response to Coinbase's Lend Program

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The U.S. Securities and Exchange Commission's (SEC) aggressive response to Coinbase's proposed digital currency lending program has sparked criticism over its use of enforcement, rather than public notice and rulemaking, to engage with the crypto industry, including from Kobre & Kim's Benjamin Sauter when he spoke with *Law360*.

Coinbase had attempted to engage with the SEC prior to releasing its program to allow customers to lend their stablecoins in return for 4% interest, according to the company, but the agency's response was to launch a formal investigation and threaten legal action via a Wells notice. Mr. Sauter, who represents clients in the crypto industry against government enforcement actions, questioned whether this was the right signal for the SEC to send when there are still "valid legal arguments in favor of the lending programs."

"I think it would promote basic principles of democratic governance if these legal debates took place in the open, through notice and comment rulemaking, rather than through non-public Wells notices and privately negotiated settlements," Mr. Sauter explained. "So much of the law in this area gets developed by regulatory ipse dixit, at least until someone is willing to challenge the regulatory overreach in court."

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