



Sydney Johnson and Calvin Koo with Coindesk: The SEC's Retreat From Crypto Enforcement May Invite More Private Lawsuits

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Policy change at the U.S. Securities and Exchange Commission (SEC) does not bind courts from analyzing the key question of whether certain crypto transactions are covered by federal securities laws. Kobre & Kim's Calvin Koo and Sydney Johnson explore how private plaintiffs may take advantage in a piece for *CoinDesk*.

Until the new presidential administration took office, the digital asset industry was embroiled in an existential showdown with the SEC. Under new leadership, the regulation-by-enforcement campaign against the industry and its most-used platforms has ended. The SEC has confirmed the end of the regulation-by-enforcement era and taken significant steps to progress its policy goals, including a focus on prosecuting bad actors and fraud in the digital asset space. The most significant regulatory shifts include the formation of a "Crypto Task Force," the dismissal of nearly all non-fraud cases concerning allegations that a defendant failed to register as an exchange or broker-dealer, and the replacement of the Crypto Assets and Cyber Unit with the Cyber and Emerging Technologies Unit.

While this shift has dramatically reduced (though not eliminated) exposure to regulatory suits by the agency, the industry must prepare for private plaintiffs to exploit the enforcement void. In the digital asset space, private plaintiffs may still use the federal securities laws as a basis to bring a variety of allegations. Although the SEC's new interpretation of the securities laws is more aligned with industry thinking, it does not bind courts analyzing the question of whether a digital asset is a security. Lower courts will continue to lack guidance from a higher court on that issue, leaving private plaintiffs free to argue that the federal securities laws apply. As a result, companies should expect an increase in private litigation, and businesses and their founders re-evaluating their legal risk should confer with their legal teams on whether they may be targets of increased private litigation, so they can create strategies to mitigate such exposure.

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