



Insights

Calvin Koo and Evelyn Baltodano Sheehan with Unchained: DOJ to Reassess Crypto Crime Victim Asset Valuation

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The U.S. Department of Justice (DOJ) released a memo in early April saying that it would reconsider the process by which investors in digital assets that become forfeited in fraud and theft cases are repaid to investors at a lower price than the current spot value. Kobre & Kim's Calvin Koo and Evelyn Baltodano Sheehan shared their insight with *Unchained*.

A key challenge in creating a payout system linked to real-time prices is that it requires the court to attempt market timing. "A process that is not anchored to a particular time may be perceived as procedurally 'unfair' because it may depend simply on luck of timing. Or worse, it might cause some victims or those advocating for them to try to influence the timing of distribution based on anticipated or hoped for market changes," Mr. Koo shared. "Ultimately if policymakers create a process that both helps capture gains for victims and is seen to be procedurally 'fair' then I think many will be satisfied. But it may be easier said than done because of logistical challenges outside of the control of the parties involved."

"This potential 'fix' by the DOJ memo would only fix how the DOJ handles asset recoveries for victims of crime," Ms. Baltodano Sheehan explained. "It does not speak to how a bankruptcy trustee would handle the issue and it certainly doesn't speak to how each independent state AG's office would handle the issue." The memo "seems to invite Congress to specifically address the issue by potential changes to a statute, and the DOJ will have to issue regs or amend old regs to address the directive from Congress."

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