

Crypto-assets: Opportunities in the New Regulatory Climate

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If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the last page or call your regular Skadden contact.

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One Manhattan West
New York, NY 10001
212.735.3000

22 Bishopsgate
London EC2N 4BQ
44.20.7519.7000

On 5 February 2025, Skadden hosted a series of panel discussions looking at the evolving EU, U.K. and U.S. crypto-asset landscape. Panellists included Skadden attorneys and industry leaders, including: **Dina White**, general counsel at Zodia Markets; **Perry Scott**, policy and government relations manager at Kraken; **David Unsorfer**, head of non-bank financial institutions at Clear Junction; and **Isabella Chase**, head of policy, EMEA at TRM Labs. The discussion explored how market participants and investors can best anticipate and prepare for changes in governments' crypto-asset policies, emerging regulatory frameworks and enforcement trends.

The sessions addressed:

- i. Navigating anti-money laundering (AML) and sanctions risks in a decentralized environment.
- ii. Regulating crypto-assets under the EU's Markets in Crypto-Assets (MiCA) Regulation and other rules and standards.
- iii. The next wave in digital assets: shifting government policy and the rise of tokenization.

Key Takeaways

The panellists examined a cross section of issues facing the sector in today's regulatory, political and economic climate, including the following key themes.

AML and Sanctions

Enforcement of and compliance with AML rules and sanctions remain a priority.

- Notwithstanding a more supportive regulatory environment for crypto-assets, the Trump administration has signalled a clear intent to focus enforcement efforts on cartels and transnational criminal organizations.
- The U.S., the U.K. and the EU are likely to continue using sanctions to pressure Russia in the near term.
- The expectation is that enforcement agencies and regulators will continue to identify and look to respond with enforcement actions where crypto-assets are used to facilitate money laundering and evade sanctions.
- Market participants in the crypto-asset space should expect their AML programmes to meet continued regulatory scrutiny and potential enforcement actions.

Financial crime compliance extends beyond KYC procedures.

- Transaction monitoring and trade surveillance in the crypto-asset space extend beyond what is available in traditional finance.
- The blockchain allows crypto-asset firms to analyse trading and transaction activity that take place outside of their own platforms.

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- As regulators and enforcement agencies look at what constitutes an effective anti-money laundering program for a crypto-asset firm, regulators and business partners will increasingly expect market participants to leverage the tools available to identify, report and consider suspicious activity regardless of where it is occurring.

It's time to update AML and sanctions compliance programmes.

- Regulators are expected to continue to focus on ensuring that businesses in the crypto-asset industry have effective, risk-based AML and sanctions compliance programmes.
- Businesses should ensure that their AML and sanctions compliance programmes complement one another.
- Recent enforcement actions against both established and challenger financial institutions demonstrate the importance of getting the basics right and ensuring that compliance functions and capabilities grow with the business.
- Businesses in the crypto-asset industry should proactively explore the use of technology to assess and mitigate financial crimes risks. Regulators are familiar with blockchain analytical tools and will expect businesses to utilize them as part of a comprehensive financial crime compliance programme.

Regulating Crypto-assets

MiCA is live.

- Licences are being granted under the EU regulation, with notable activity in Germany and Malta.
- Forum shopping remains a consideration for many crypto-asset providers. This includes consideration of how a particular country's AML/KYC regime is perceived.
- A tension is building between (a) crypto-asset firms seeking a smoother path to authorisation and (b) investors' and consumers' expectations for robust levels of regulatory scrutiny by tried and tested regulators.

A wait-and-see approach to regulation may have benefits.

- Europe is one of the first movers to roll out a broad, EU-wide regulatory framework for crypto-asset providers. But is there an advantage to being a second mover in this space?
- The U.K. Financial Conduct Authority released its crypto roadmap, which intends to establish a U.K.-wide regime, while the White House has issued its executive order launching the development of a U.S. federal regulatory framework for digital assets.

- The industry is bracing itself for the inevitable teething issues and practical challenges in implementing MiCA, creating a competitive advantage for the likes of the U.K., the U.S. and other jurisdictions that are positioned to adapt and navigate their frameworks around hurdles facing the first movers in Europe.

Debanking is a challenge for the crypto-asset sector.

- Access to banking services remains a challenge for crypto-asset firms. For those that have successfully opened accounts with major banks, the risk of account closure is a possibility.
- Limited access to basic banking services is proving to be a significant barrier to growth for crypto-asset providers and a critical challenge for the industry.

Looking Ahead: Government Policy and Tokenization

A second chance for the industry?

- With new legislation being implemented and more pending, many see this moment as something of a second chance for digital assets. It will also make the asset class more palatable for traditional finance (TradFi) institutions — both in developing their own offerings and as investment propositions.
- Today there is greater understanding and regulation of the universe of assets and opportunities in this space: Where previously a lack of understanding and regulation (and potentially a lack of trust) associated with this industry resulted in slow uptake in adoption of new use cases, incoming regulation and a more mature appreciation of the diversity of these assets can now offer greater security in engaging with them in new and innovative ways, and so arguably this may be a moment for opportunity and growth.
- While there have been many instances of “tokenizing for the sake of tokenizing,” there remain a number of use cases for blockchain that have the potential to drive real efficiencies at a significant scale.
- Those discussed during our panel included supply chain management and the ways to bring archaic land registries into the 21st century. Panellists noted already seeing other sectors begin to meaningfully engage with authenticity-based use cases of blockchain.

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Trump 2.0: End of the crypto winter?

- Panellists observed that Trump's second administration is shifting the tone around crypto-assets.
- Staffing changes at the top of the SEC have marked a realignment in strategy intended to support President Trump's stated aim of making the U.S. "the crypto capital of the planet."
- As a result, the SEC is expected to ease its "regulation by enforcement" approach to crypto-assets.

Legislation is coming.

- New regulatory frameworks to facilitate the adoption of cryptocurrencies are expected to be introduced as government and political support for the sector grows.
- Biden-era policies are already being reconsidered with the reversal of SEC Staff Accounting Bulletin No. 121 (which required crypto-assets to be reported as both an asset and liability on a custodian's balance sheet). This shift is expected to thaw the ice that had previously frozen banks from engaging in crypto-asset custody activities.

AI and blockchain could offer compound effects.

- In a world of deepfakes, technologists are trying to use AI to solve the "truth" problem.
- Blockchain offers a potential solution to authenticity issues, as its primary raison d'être is to provide a ledger of authenticity.

Skadden Digital Assets Contacts

Europe



Simon Toms
Partner, London
Fintech
simon.toms@skadden.com



Sebastian Barling
Partner, London
Financial Regulatory
sebastian.barling@skadden.com



Andrew Good
Partner, London
White Collar Defense
andrew.good@skadden.com



Deborah Kirk
Partner, London
IP & Tech
deborah.kirk@skadden.com



Danny Tricot
Partner, London
Capital Markets
danny.tricot@skadden.com



Jonathan Benson
Counsel, London
White Collar Defense
jonathan.benson@skadden.com



James Anderson
Partner, London
Tax
james.anderson@skadden.com



Bruce Macaulay
Partner, London
Litigation & Arbitration
bruce.macaulay@skadden.com



Eva Legler
Eur. Counsel, Frankfurt
Financial Regulatory
eva.legler@skadden.com



Nicola Kerr-Shaw
Counsel, London
Cyber, Data Privacy & AI
nicola.kerr-shaw@skadden.com



Joseph Kamyar
Eur. Counsel, London
Fintech
joseph.kamyar@skadden.com

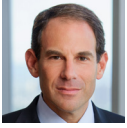


Jonathan Stephenson
Associate, London
IP & Tech
jonathan.stephenson@skadden.com

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Americas



Stuart Levi
Partner, New York
IP & Tech
stuart.levi@skadden.com



Alessio Evangelista
Partner, Washington, D.C.
White Collar Defense
alessio.evangelista@skadden.com



Andrea Griswold
Partner, New York
White Collar Defense
andrea.griswold@skadden.com



Daniel Michael
Partner, New York
White Collar Defense
daniel.michael@skadden.com



Alexander Drylewski
Partner, New York
Litigation & Trials
alexander.drylewski@skadden.com



Adam Cohen
Partner, Washington, D.C.
Financial Regulatory
adam.cohen@skadden.com



Mark Chorazak
Partner, New York
Financial Regulatory
mark.chorazak@skadden.com



Sonia Nijjar
Partner, Palo Alto
Corporate
sonia.nijjar@skadden.com



William Ridgway
Partner, Chicago
Cyber & Data Privacy
william.ridgway@skadden.com

Asia



Jonathan Stone
Partner, Hong Kong
Corporate
jonathan.stone@skadden.com



Steve Kwok
Partner, Hong Kong
Corporate
steve.kwok@skadden.com



Akira Kumaki
Partner, Tokyo
Corporate
akira.kumaki@skadden.com



Ryan Chan
Counsel, Hong Kong
Corporate
ryan.chan@skadden.com