Despite SEC Reset, Private Crypto Securities Cases Continue

By **Alexander Drylewski, Lara Flath and Allison Toner** (August 19, 2025)

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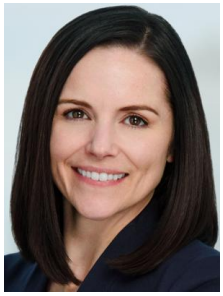

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As crypto industry participants eagerly await legislative action and regulatory guidance, the U.S. Securities and Exchange Commission has departed from its previous enforcement agenda, prioritizing regulatory clarity and terminating numerous litigations and investigations against crypto-related entities.

Notwithstanding this shift in regulatory approach, private securities litigation continues, with plaintiffs pursuing claims on behalf of themselves and putative class members against crypto-asset issuers, investors, promoters and others on a number of novel theories of liability.

In the absence of complete legislative or regulatory clarity — though recent legislative efforts to provide such clarity include the Stablecoin Transparency and Accountability for a Better Ledger Economy, or STABLE, Act and the Digital Asset Market Clarity Act, which both seek to establish a regulatory framework for crypto-assets — these private plaintiffs continue to ask courts to apply the Howey test to determine whether certain crypto-assets are securities.

As a result, unless and until regulatory clarity is achieved, application of U.S. securities laws to crypto-assets will continue to be determined by courts in litigation.

A Friendlier Regulatory Environment

For years, the SEC has actively policed crypto-asset markets, bringing enforcement actions based on the alleged failure to register products and services, and asserted that a wide range of crypto-assets were offered and sold as investment contracts — and thus securities — under the Howey test, derived from the U.S. Supreme Court's 1946 decision in SEC v. W.J. Howey Co.[1] In the absence of express guidance, these actions have led many in the industry — and from within the SEC itself — to criticize the agency for engaging in so-called regulation by enforcement.[2]

The Trump administration has signaled its support of the digital asset industry broadly, announcing key policy shifts in favor of fostering development of crypto technology, revoking Biden-era regulatory policies, establishing a working group focused on digital assets and indicating that the SEC will likely take a lighter touch to regulating the industry.[3]

Following November's election, the SEC has notably departed from its prior enforcement agenda in the crypto industry. The agency launched a crypto task force in January dedicated to providing clearer rules of the road for crypto developers and participants, and to developing the regulatory framework for crypto-assets.[4] Indeed, the agency has provided informal guidance with respect to various digital assets and related activities, including stablecoins, memecoins, and certain mining and staking activities.[5]

Perhaps most notably, the SEC has voluntarily dismissed or terminated a number of investigations and civil enforcement actions against crypto-related entities and intermediaries, including high-profile matters involving Coinbase Inc., Payward Inc. d/b/a Kraken, Binance Holdings Ltd. and Uniswap Labs.[6]

Private Securities Litigation Persists

As welcome as this shift in regulatory approach has been for many in the industry, it has not resolved all securities litigation in the space. Rather, private plaintiffs are still choosing to pursue claims against crypto-asset issuers, investors, promoters and others on a number of novel theories of liability.

For example, large class action litigation continues against a wide swath of defendants relating to the FTX and Voyager collapses.[7] In these suits — In re: FTX Cryptocurrency Exchange Collapse Litigation and Karnas v. Cuban, both in the U.S. District Court for the Southern District of Florida — plaintiffs have asserted claims against investors, banks, accounting firms, promoters, influencers and others, claiming that these parties violated federal securities laws as well as various state securities and consumer protection statutes.

In May, the judge overseeing the FTX multidistrict litigation allowed certain of these claims brought against influencer defendants to proceed while dismissing others.[8]

Private plaintiffs also continue to assert that various crypto-assets are unregistered securities under the Howey test.

As one example, plaintiffs are pursuing a putative class action against the Tron Foundation and others — Clifford v. Tron Foundation in the U.S. District Court for the Southern District of New York — alleging that the TRX token was offered and sold as an unregistered security.

Similarly, private plaintiffs are currently pursuing claims that Solana Labs Inc. promoted and sold SOL tokens as unregistered securities in Young v. Solana Labs in the U.S. District Court for the Northern District of California.[9]

And private plaintiffs continue to pursue claims against crypto trading platforms, alleging that numerous crypto-assets constitute unregistered securities under Howey.[10]

These private actions illustrate the plaintiffs' varied approaches to pursuing potential liability, even for the same fundamental theory that the defendants sold unregistered securities.

For example, the Tron and Solana plaintiffs both allege that the defendants offered and sold unregistered securities in violation of federal securities laws, but the Solana plaintiffs' claims focus on the defendants' alleged promotion of the tokens and active solicitation of sales to establish liability. The FTX plaintiffs propounded additional securities claims, alleging that the various defendants should be held liable for providing material assistance to FTX in violation of state statutes.[11]

Moreover, new actions continue to be filed. For example, on April 25, purported purchasers of nonfungible tokens filed a putative class action against Nike Inc. — Jagdeep Cheema v. Nike, in the U.S. District Court for the Eastern District of New York — alleging that plaintiffs purchased RTFKT NFTs that were offered and sold as unregistered securities under the Howey test.[12] This action follows other putative class actions alleging that certain NFTs

were offered and sold as securities.[13]

Even in actions the SEC has committed to resolving, courts have continued to independently analyze the law as it relates to digital assets.

In SEC v. Ripple, U.S. District Judge Analisa Torres of the Southern District of New York concluded at summary judgment in July 2023 that the crypto-asset at issue, XRP, was not offered or sold in securities transactions in certain circumstances, while in others it was.[14] Following the parties' settlement in 2024, the court ordered, at the SEC's request, a permanent injunction and civil penalty against Ripple.

Earlier this year, and in line with the SEC's shift in approach, the SEC and Ripple entered into a stipulation and made a joint request to the court to vacate the permanent injunction and lower the monetary penalty against Ripple. Notably, however, Judge Torres rejected the parties' request on June 26, opining that the SEC had already made the case in favor of a permanent injunction and substantial civil penalty "not that long ago."[15]

According to the court, the legal determinations that supported the injunction and penalty had not changed, despite the SEC's change in approach. The Ripple situation highlights the fact that, while the SEC may have shifted its views regarding crypto, courts may not always be as willing to follow suit.

Conclusion

Despite the new administration's approach to the crypto industry and the SEC's recent voluntary dismissals of certain enforcement actions, the industry still lacks comprehensive rules of the road.

While this regulatory vacuum persists, private plaintiffs have continued to pursue securities litigation against crypto-related companies, relying on Howey arguments in addition to other novel theories of liability. These actions will allow courts to shape the legal framework for the industry for the time being. And even though the SEC has demonstrated a willingness to revisit enforcement litigation, its prior enforcement decisions — such as those in Ripple — may continue to have force and effect.

Until clearer legislative or regulatory guidance emerges, private securities litigation will continue to move forward and require courts to grapple with novel and important questions regarding the application of U.S. securities laws to crypto-assets.

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[1] S.E.C. v. W.J. Howey Co., 328 U.S. 293 (1946).

[2] See https://www.coindesk.com/video/regulation-by-enforcement-is-not-effective-for-the-crypto-industry-sec-commissioner-peirce.

[3] President Trump recently signed the GENIUS Act into law, which addresses the regulatory framework for payment stablecoins. See Skadden's February 7, 2025, client alert "White House Announces First Steps Toward New Policies Supporting Cryptocurrencies and Digital Financial Technology" (https://www.skadden.com/ insights/publications/2025/02/white-house-announces-first-steps-toward-new-policies-supporting-cryptocurrencies).

[4] See https://www.sec.gov/about/crypto-task-force; see also https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-crypto-roundtable-tokenization-051225-keynote-address-crypto-task-force-roundtable-tokenization.

[5] https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins; https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425; https://www.skadden.com/insights/publications/2025/06/sec-certain-protocol-staking-activities-are-not-securities-transactions; https://www.sec.gov/newsroom/speeches-statements/peirce-statement-protocol-staking-052925.

[6] Securities and Exchange Commission v. Payward, Inc. and Payward Ventures, Inc., No.3:23-cv-06003-WHO (N.D. Cal. filed Nov.20, 2023); Securities and Exchange Commission v. Binance Holdings Limited et al., Case No.1:23-cv-01599 (D.D.C. filed June 5, 2023); Securities and Exchange Commission v. Consensys Software Inc., No.24-cv-04578 (E.D.N.Y. filed June28, 2024); https://www.sec.gov/newsroom/press-releases/2025-47; https://blog.uniswap.org/a-win-for-defi.

[7] See In re FTX Cryptocurrency Exch. Collapse Litig., 677 F. Supp. 3d 1379 (U.S. Jud. Pan. Mult. Lit. 2023); see also Dominik Karnas et al. v. Mark Cuban et al., 1:22-cv-22538-RKA (S.D. Fla.).

[8] In re FTX Cryptocurrency Exch. Collapse Litig., 2025 WL 1341173 (S.D. Fla. May 7, 2025).

[9] Young v. Solana Labs, Inc., 2024 WL 4023087 (N.D. Cal. Sept. 3, 2024).

[10] See Underwood et al v. Coinbase Global, Inc., No. 1:21-cv-08353-PAE (S.D.N.Y. 2023); see also Lee et al. v. Binance et al., No. 1:20-cv-02803-ALC (S.D.N.Y. 2020).

[11] Clifford v. TRON Found., 2020 WL 3577923 (S.D.N.Y. June 30, 2020).

[12] Fernandez et al. v. Nike Inc., No.1:25-cv-02305-PKC-JRC (E.D.N.Y. Apr. 25, 2025).

[13] Friel v. Dapper Labs Inc. et al., No. 1:21-cv-05837 (S.D.N.Y. Oct. 25, 2024); Dufoe v. DraftKings Inc., No. 1:23-cv-10524 (D. Mass. August 4, 2023); Harper et al. v. Shaquille O'Neal et al., 1:23-cv-21912 (S.D.Fla. Aug. 16, 2024).

[14] Sec. & Exch. Comm'n v. Ripple Labs Inc., 682 F. Supp. 3d 308 (S.D.N.Y. 2023).

[15] Order, Sec. & Exch. Comm'n v. Ripple Labs Inc., No. 1:20-cv-10832-AT-SN (S.D.N.Y. 2023), ECF No. 898.