

March 10, 2022

## U.S. Executive Order on the Development of Digital Assets

On March 9, 2022, President Biden signed an [Executive Order](#) entitled “Executive Order on Ensuring Responsible Development of Digital Assets” (the “Executive Order”) that outlines a whole-government strategy to ensure responsible innovation in digital assets, including cryptocurrencies. The Executive Order identifies six principal policy objectives regarding digital assets: protect U.S. consumers, investors and businesses; protect U.S. and global financial stability; mitigate illicit finance and national security risks; reinforce the United States as a leader in the global financial system; promote equitable access to safe and affordable financial systems; and support innovation that promotes responsible development and use of digital assets. The Executive Order further emphasizes the need to explore innovations surrounding digital assets in order to drive U.S. technological competitiveness, while identifying and addressing the global and domestic risks posed by digital asset technology. The Executive Order is also notable in that it directs extensive interagency consultation and cooperation with respect to all of the policy objectives outlined in it, including cooperation with regulatory bodies outside of the executive branch such as the Securities and Exchange Commission and Commodity Futures Trading Commission. Additionally, the Executive Order directs the creation of a framework for interagency international engagement on these issues.

Companies involved in the digital asset sector, including firms issuing, holding, trading or investing in digital assets, do not need to take any current action related to the Executive Order. Instead, the Executive Order should be viewed as a signal that the U.S. Government views the digital asset sector as a significant and permanent fixture in the global economy, and as establishing a roadmap of the areas where future regulatory efforts are likely to be directed.

Certain aspects of each of the six policy objectives and related actions called for in the Executive Order are highlighted and summarized below. All time frames noted below are from the date of the Executive Order.

### Protect Consumers, Investors, and Businesses in the United States

The Executive Order directs multiple U.S. regulatory agencies to assess and develop new policies to address the implications of the growing digital asset sector and ensure sufficient safeguards are established to protect consumers, investors and businesses in the United States.

In particular, the Executive Order provides that, within 180 days:

- the Secretary of the Treasury must submit to the President a report “on the implications of developments and adoption of digital assets and changes in financial market and payment system infrastructures for U.S. consumers, investors, businesses, and for equitable economic growth.”
- the Director of the Office of Science and Technology Policy and the Chief Technology Officer of the United States must submit to the President “a technical evaluation of the technological infrastructure, capacity, and expertise that would be necessary at relevant agencies to facilitate and support the introduction of a U.S. Central Bank Digital Currency (a “CBDC”) system.”
- the Attorney General must submit to the President a report “on the role of law enforcement agencies in detecting, investigating, and prosecuting criminal activity related to digital assets” and “any recommendations on regulatory or legislative actions, as appropriate.”
- the Director of the Office of Science and Technology Policy must submit to the President a report “on the connections between distributed ledger technology and short-, medium-, and long-term economic and energy transitions; the potential for these technologies to impede or advance efforts to tackle climate change at home and abroad; and the

impacts these technologies have on the environment.” This report must also address the effect of cryptocurrency-related consensus mechanisms on energy usage, including potential mitigating measures and alternative mechanisms.

### **Protect U.S. and Global Financial Stability and Mitigate Systemic Risk**

The Executive Order states that digital asset issuers, exchanges and trading platforms, and certain intermediaries should be subject to regulatory standards governing traditional market infrastructure and financial firms, as applicable, consistent with the principles of “same business, same risks, same rules.”

Within 210 days, the Secretary of the Treasury should convene the Financial Stability Oversight Council and provide a report on specific financial stability risks and regulatory gaps related to digital assets, along with recommendations to address such risks.

### **Mitigate the Illicit Finance and National Security Risks Posed by the Illicit Use of Digital Assets**

The Executive Order highlights the risks of illicit finance relating to digital assets, including money laundering, cybercrime and human trafficking, among others.<sup>1</sup> It further states that, while the United States has been a leader in setting relevant international standards, there may be significant risks associated with the inadequate implementation of such standards abroad.

The Executive Order provides that the Secretary of the Treasury must develop an action plan for mitigating the illicit finance related to digital assets identified in the National Strategy for Combating Terrorist and Other Illicit Financing within certain specified time frames.

### **Promote U.S. Leadership in Technology and Economic Competitiveness to Reinforce U.S. Leadership in the Global Financial System**

The Executive Order affirms the United States’ economic and national security interests in remaining a leader for responsibly developing and designing digital assets and the underlying technology. The Executive Order encourages the continued participation by the United States in international organizations addressing digital assets, including the Financial Action Task Force, the G7 Digital Payments Experts Group, the G20 and the international Financial Stability Board.

Within 120 days, the Secretary of the Treasury must establish a framework for interagency international engagement with foreign counterparts and international organizations to adapt, update and enhance the adoption of global standards for using and transacting in digital assets, and to promote developing digital assets and CBDC technologies consistent with U.S. values and legal requirements.

Within 180 days, the Department of Commerce must establish a framework for improving the U.S. “economic competitiveness in, and leveraging of, digital asset technologies,” which will be integrated as a priority into U.S. agencies’ policy, research, and developmental approaches to digital assets.

Within 90 days, the Attorney General must submit to the President a report on how to strengthen cooperation of law enforcement to detect, investigate, and prosecute criminal activity related to digital assets.

### **Promote Equitable Access to Safe and Affordable Financial Services**

The Executive Order affirms the need for safe, affordable, and accessible financial services in the U.S. As noted above, the Executive Order directs the Secretary of the Treasury, working with additional agencies, to produce a report on the

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<sup>1</sup> Separately, on March 7, the US Financial Crimes Enforcement Network (FinCEN) issued an alert for financial institutions providing “red flags” of potential sanctions evasion activity using cryptocurrencies particularly in light of the latest global sanctions on Russia. This follows on from increasing regulatory focus on potential misuse of digital assets see our previous Alert [here](#).

future of money and payment systems that addresses, among other topics, the implications for economic growth, financial inclusion and national security and the influence of technological innovation.

### **Support Technological Advances and Ensure Responsible Development and Use of Digital Assets**

The Executive Order affirms its position to support technological advances and the development of digital asset systems while prioritizing privacy and security, combating illicit activities, and reducing negative climate impacts.

### **Explore a U.S. Central Bank Digital Currency**

The Executive Order places urgency on the research and development of potential options for a U.S. CBDC and the assessments of the possible benefits and risks for relevant actors of deploying a CBDC.

Under the Executive Order, within 180 days, the Secretary of the Treasury must submit a report to the President on the future of money and payment systems. Also under the Executive Order, within 180 days, the Attorney General must provide to the President an assessment of whether issuing a U.S. CBDC would require legislative changes and, within 210 days of the Executive Order, a corresponding legislative proposal.

If you would like to learn more about the issues in this Alert, please contact your usual Ropes & Gray attorney contacts.