

March 9, 2022

Executive Order on Digital Assets

The Order Aims to Align the U.S. Government’s Approach to Digital Asset Regulation and Requests Assessment of U.S. Central Bank Digital Currency.

SUMMARY

Earlier today, President Biden issued an “Executive Order Ensuring Responsible Development of Digital Assets” setting forth a “whole-of-government approach” to address the potential risks and benefits of digital assets and their underlying technology. Noting the rapid growth of digital assets, the Executive Order outlines six priorities for a coordinated federal framework for the regulation of digital assets: (1) consumer and investor protection; (2) financial stability and systemic risk; (3) prevention of illicit finance and national security; (4) U.S. leadership in the global financial system and economic competitiveness; (5) financial inclusion; and (6) responsible innovation. The Executive Order requires various government entities to coordinate with one another, to submit reports on these and other topics and to suggest next steps for regulatory and legislative action. Although the Executive Order does not provide for any immediate actions, it reflects the White House’s desire for a coordinated and proactive approach to digital asset regulation.

THE EXECUTIVE ORDER

The Executive Order¹ requires various government entities to submit reports to the President, within specified time frames, which are summarized in the Appendix to this memorandum.

Key aspects of the Executive Order include:

- Policy and actions related to a United States Central Bank Digital Currency (“CBDC”): The Executive Order requests assessments of the potential benefits and risks of a CBDC with respect to consumers, investors, and businesses; financial stability and systemic risk; payment systems; national security; the ability to exercise human rights; and financial inclusion and equity.² The Executive Order further requests consideration of the potential benefits and risks under various designs of a CBDC “to ensure that the United States remains a leader in the international financial system.”³ The Executive Order also requests an evaluation of the

technological infrastructure, capacity, and expertise that would be necessary to facilitate and launch a United States CBDC, and whether any legislative changes would be necessary to issue a United States CBDC.⁴

- Measures to protect consumers, investors, and businesses: In order to protect against “undue risks” posed by digital assets and to “expand access to safe and affordable financial services,” the Executive Order requests further study of: (i) the role of law enforcement in “detecting, investigating, and prosecuting criminal activity related to digital assets”; (ii) any effects on competition policy; (iii) privacy and consumer protection measures; (iv) investor and market protection measures; and (v) climate change and other environmental impacts.⁵ The Executive Order also encourages the SEC, CFTC, Federal Reserve, FDIC, and OCC to consider the extent to which existing investor and market protection measures within their respective jurisdictions may be used to address the risks of digital assets and whether additional measures may be needed.⁶
- Actions to promote financial stability, mitigate systemic risk, and strengthen market integrity: Treasury is required to convene the Financial Stability Oversight Council, whose members include the SEC, CFTC, CFPB, and federal banking agencies, to identify financial stability risks and regulatory gaps posed by various types of digital assets and provide recommendations to address such risks.⁷
- Actions to limit illicit finance and associated national security risks: The Executive Order requires relevant government entities to offer their views on illicit finance-related risks posed by digital assets in connection with the National Strategy for Combating Terrorist and Other Illicit Financing and develop a coordinated action plan to mitigate such risks.⁸
- Policy and actions related to fostering international cooperation and United States competitiveness: The Executive Order directs various government entities to continue to engage with international partners, on a bilateral and multilateral basis, on a variety of digital asset topics.⁹

The order assigns an overall coordinating role to the Assistant to the President for National Security Affairs (“APNSA”) and the Assistant to the President for Economic Policy (“APEP”), who are instructed to convene 17 other agencies in an interagency process to coordinate the executive branch actions necessary to implement the order. Representatives of the independent agencies, including the federal banking agencies, CFPB, FTC, SEC, and CFTC, “may be invited” to participate in this interagency process, “with due respect for their regulatory independence.”¹⁰

OBSERVATIONS AND IMPLICATIONS

The Executive Order highlights that the White House believes digital assets and underlying blockchain technology can play a valuable role in the U.S. and global financial systems and in advancing other governmental policy objectives. It also reflects an important step toward coordinating the approach to digital asset regulation across the full range of applicable federal government agencies.¹¹ In doing so, the Executive Order calls for studies and proposals from, and coordination amongst, regulators, suggesting that the White House believes that existing agencies can adequately regulate digital assets, rather than creating a new government entity to regulate digital assets.

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Because the Executive Order requires various government entities to study and provide reports and recommendations for further action on topics within their expertise, it signals a focus on developing and tailoring a coordinated and forward-looking regulatory framework for digital assets. Presumably, the Executive Order should discourage unilateral approaches by individual agencies pending fulfillment of relevant mandates set forth in the Executive Order.

The Executive Order also reflects the White House's desire for the United States to continue taking an active leadership role in the promotion of international coordination with respect to digital asset regulation. The Executive Order notes that "uneven regulation, supervision, and compliance" across different jurisdictions could allow for arbitrage and risks to financial stability, consumers, investors, businesses, and markets.¹² The Executive Order highlights in particular that "[i]nadequate AML/CFT regulation, supervision, and enforcement" by other countries could challenge the U.S.'s ability to investigate illicit digital asset transaction flows, suggesting that anti-money laundering and sanctions enforcement remains a top priority.¹³

The Executive Order also highlights other topics that have been in focus for this Administration, including understanding and mitigating environmental,¹⁴ cybersecurity¹⁵ and consumer risks.¹⁶ Notably, however, the Executive Order does not address a framework for regulating the spot market in non-security digital assets, and only briefly mentions decentralized finance.¹⁷

Ultimately, although the Executive Order does not require any immediate changes to the digital asset regulatory landscape, such changes could begin in the near term, in connection with the release of the various reports requested by the Executive Order. This is particularly the case in view of concerns that digital assets could be used in an effort to evade global sanctions imposed on Russia in response to its invasion of Ukraine.

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ENDNOTES

- 1 Executive Order Ensuring Responsible Development of Digital Assets (March 9, 2022), *available at* <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/>. The Executive Order sets out the government’s principal policy objectives, which include: (i) protecting consumers, investors and businesses, (ii) protecting the U.S. and global financial stability and mitigating systemic risk, (iii) mitigating illicit finance and national security risks, (iv) reinforcing U.S. leadership in the global financial system and in technological and economic competitiveness, (v) promoting access to safe and affordable financial services and (vi) supporting technological advances that promote responsible development and use of digital assets. *Id.*
- 2 *Id.* at Section 4(i). “CBDC” is defined as “a form of digital money or monetary value, denominated in the national unit of account, that is a direct liability of the central bank.” *Id.* at Section 9(b).
- 3 *Id.* at Sections 4(a)(ii) and (iii).
- 4 *Id.* at Sections 5(b)(ii); 4(d)(i). The Federal Reserve Bank of Boston has been investigating the technical feasibility of a United States CBDC. *See Central Bank Digital Currencies*, Federal Reserve Bank of Boston, *available at* <https://www.bostonfed.org/payments-innovation/central-bank-digital-currencies.aspx>.
- 5 *Id.* at Section 5.
- 6 *Id.* at Section 5(b)(vi).
- 7 *Id.* at Section 6.
- 8 *Id.* at Section 7.
- 9 *Id.* at Section 8.
- 10 *Id.* at Section 3.
- 11 The Executive Order follows initiatives taken by various interested regulators and agencies in the digital assets space. *See, e.g.*, (1) the Federal Reserve’s Discussion Paper on Central Bank Digital Currency (see Sullivan & Cromwell, LLP, “Federal Reserve Discussion Paper on Central Bank Digital Currency: Paper Outlines “Pros and Cons” of a CBDC and Requests Comments from Stakeholders” (January 23, 2022), *available at* <https://www.sullcrom.com/sc-publication-federal-reserve-discussion-paper-on-central-bank-digital-currency>); (2) the OCC’s interpretive letter regarding the authority of banks to engage in cryptocurrency activities (see Sullivan & Cromwell, LLP, “OCC Issues Interpretive Letter Regarding the Authority of Banks to Engage in Cryptocurrency Activities” (December 21, 2021), *available at* <https://www.sullcrom.com/files/upload/sc-publication-occ-issues-interpretive-letter-regarding-authority-of-banks-to-engage-in-cryptocurrency.pdf>); (3) the federal banking regulators’ joint statement on their crypto-asset “policy sprint” (see Sullivan & Cromwell LLP, “Federal Banking Agencies Release Joint Statement on Crypto-Asset ‘Policy Sprint’ Initiative” (November 24, 2021), *available at* <https://www.sullcrom.com/files/upload/sc-publication-federal-banking-agencies-release-joint-statement-crypto-asset-policy-sprint-initiative.pdf>); and (4) the President’s Working Group on Financial Markets’ Report on Stablecoins (see Sullivan & Cromwell LLP, “President’s Working Group on Financial Markets Issues Report on Stablecoins” (November 5, 2021), *available at* <https://www.sullcrom.com/files/upload/sc-publication-presidents-working-group-on-financial-markets-issues-report-on-stablecoins.pdf>).
- 12 *Id.* at Section 8(a)(i).
- 13 *Id.*
- 14 *See, e.g., id.* at Section 5(b)(vii).
- 15 *See, e.g., id.* at Section 5(b)(ii). For example, the SEC proposed additional rules on March 9 regarding cybersecurity. *See Cybersecurity Risk Management, Strategy, Governance, and Incident*

ENDNOTES (CONTINUED)

- Disclosure*, Securities and Exchange Commission (March 9, 2022), available at <https://www.sec.gov/rules/proposed/2022/33-11038.pdf>.
- ¹⁶ See, e.g., *id.* at Section 2(e) (“The United States also has an interest in ensuring that the benefits of financial innovation are enjoyed equitably by all Americans and that any disparate impacts of financial innovation are mitigated.”). Relatedly, on March 8, the Treasury Department launch a consumer education effort regarding digital assets. See *Treasury Launches Consumer Education Effort on Digital Assets* (March 8, 2022), available at <https://home.treasury.gov/news/press-releases/jy0642>.
- ¹⁷ Executive Order, Section 2(c).

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Appendix

United States CBDC				
<u>EO Section</u>	<u>Type</u>	<u>Timeline¹</u>	<u>Agencies/Departments Involved</u>	<u>Objective</u>
4(b)	Report	180 days	<ul style="list-style-type: none"> - Secretary of the Treasury - Secretary of State - Attorney General - Secretary of Commerce - Secretary of Homeland Security - Director of the Office of Management and Budget - Director of National Intelligence - Heads of other relevant agencies 	Report on the future of money and payment systems, including the conditions that drive broad adoption of digital assets; the extent to which technological innovation may influence these outcomes; and the implications for the United States financial system, the modernization of and changes to payment systems, economic growth, financial inclusion, and national security.
4(d)(i)	Assessment	180 days	<ul style="list-style-type: none"> - Attorney General - Secretary of the Treasury - Chairman of the Federal Reserve 	Assessment of whether legislative changes would be necessary to issue a United States CBDC, should it be deemed appropriate and in the national interest.
4(d)(ii)	Legislative Proposal	210 days	<ul style="list-style-type: none"> - Attorney General - Secretary of the Treasury - Chairman of the Federal Reserve 	Legislative proposal, based on considerations of the report submitted by the Secretary of Treasury regarding the future of money and payment systems, as well as any additional materials developed by the Chairman of the Federal Reserve in the same time period.
5(b)(ii)	Technical Evaluation	180 days	<ul style="list-style-type: none"> - Director of the Office of Science and Technology Policy - Chief Technology Officer of the United States - Secretary of the Treasury - Chairman of the Federal Reserve - Heads of other relevant agencies 	Technical evaluation of the technological infrastructure, capacity, and expertise that would be necessary at relevant agencies to facilitate and support the introduction of a CBDC system should one be proposed. The evaluation should specifically address the technical risks of the various designs, including with respect to emerging and future technological developments, such as quantum computing. The evaluation should also include any reflections or recommendations on how the inclusion of digital assets in federal processes may affect the work of the United States Government and the provision of government services, including risks and benefits to cybersecurity, customer experience, and social safety net programs.

Consumer and Investor Protection Measures				
<u>EO Section</u>	<u>Type</u>	<u>Timeline</u>	<u>Agencies/Departments Involved</u>	<u>Objective</u>
5(b)(i)	Report	180 days	<ul style="list-style-type: none"> - Secretary of the Treasury - Secretary of Labor - Heads of other relevant agencies, including the FTC, the SEC, the CFTC, federal banking agencies, and the CFPB 	Report on the implications of developments and adoption of digital assets and changes in financial market and payment system infrastructures for United States consumers, investors, businesses, and for equitable economic growth. Must address the conditions that would drive mass adoption of different types of digital assets and the risks and opportunities such growth might present to United States consumers, investors, and businesses, including a focus on how technological innovation may impact these efforts and with an eye toward those most vulnerable to disparate impacts. Reporting must include policy recommendations, including potential regulatory and legislative actions.
5(b)(iii)	Report	180 days	<ul style="list-style-type: none"> - Attorney General - Secretary of the Treasury - Secretary of Homeland Security 	Report on the role of law enforcement agencies in detecting, investigating, and prosecuting criminal activity related to digital assets. The report must include any recommendations on regulatory or legislative actions, as appropriate.
5(b)(vii), (viii)	Report	180 days + Update report after one year	<ul style="list-style-type: none"> - Director of the Office of Science and Technology Policy - Secretary of the Treasury - Secretary of Energy - Administrator of the Environmental Protection Agency - Chair of the Council of Economic Advisers - Assistant to the President and National Climate Advisor - Heads of other relevant agencies 	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. The report should address the effect of cryptocurrencies' consensus mechanisms on energy usage, including research into potential mitigating measures and alternative mechanisms of consensus and the design tradeoffs those may entail.

Actions to Promote Financial Stability, Mitigate Systemic Risk and Strengthen Market Integrity				
<u>EO Section</u>	<u>Type</u>	<u>Timeline</u>	<u>Agencies/Departments Involved</u>	<u>Objective</u>
6(b)	Report	210 days	<ul style="list-style-type: none"> - Secretary of the Treasury - Financial Stability Oversight Council 	Report outlining the specific financial stability risks and regulatory gaps posed by various types of digital assets and providing recommendations to address such risks. The report should consider the particular features of various types of digital assets and include recommendations that address the identified financial stability risks posed by these digital assets, including any proposals for additional or adjusted regulation and supervision as well as for new legislation.
Actions to Limit Illicit Financial and Associated National Security Risks				
<u>Section</u>	<u>Type</u>	<u>Timeline</u>	<u>Agencies/Departments Involved</u>	<u>Objective</u>
7(b)	Supplemental Annex	90 days from the submission to the Congress of the National Strategy for Combating Terrorist and Others Illicit Financing (the "National Strategy")	<ul style="list-style-type: none"> - Secretary of the Treasury - Secretary of State - Attorney General - Secretary of Commerce - Secretary of Homeland Security - Director of the Office of Management and Budget - Director of National Intelligence - Heads of other relevant agencies 	Each agency may submit supplemental annexes, which may be classified or unclassified, to the Strategy offering additional views on illicit finance risks posed by digital assets, including cryptocurrencies, stablecoins, CBDCs, and trends in the use of digital assets by illicit actors.

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7(c)	Coordinated Action Plan	120 days from the submission to the Congress of the National Strategy	<ul style="list-style-type: none"> - Secretary of the Treasury - Secretary of State - Attorney General - Secretary of Commerce - Secretary of Homeland Security - Director of the Office of Management and Budget - Director of National Intelligence - Heads of other relevant agencies 	Agencies must develop a coordinated action plan based on the Strategy’s conclusions for mitigating the digital-asset-related illicit finance and national security risks addressed in the updated strategy. The action plan must address the role of law enforcement and measures to increase financial services providers’ compliance with AML/CFT obligations related to digital asset activities.
7(d)	Rulemaking Consultation	120 days from the completion of the following reports: (i) National Money Laundering Risk Assessment; (ii) National Terrorist Financing Risk Assessment; (iii) National Proliferation Financing Risk Assessment; and (iv) updated National Strategy	<ul style="list-style-type: none"> - Secretary of the Treasury - Relevant agencies 	Secretary of the Treasury must notify the relevant agencies of any pending, proposed, or prospective rulemakings to address digital asset illicit finance risks. The Secretary of the Treasury must consult with and consider the perspectives of relevant agencies in evaluating opportunities to mitigate such risks through regulation.

International Policies				
<u>EO Section</u>	<u>Type</u>	<u>Timeline</u>	<u>Agencies/Departments Involved</u>	<u>Objective</u>
8(b)(i)	Framework	120 days	<ul style="list-style-type: none"> - Secretary of the Treasury - Secretary of State - Secretary of Commerce - Administrator of the United States Agency for International Development - Heads of other relevant agencies 	<p>Framework for interagency international engagement with foreign counterparts and in international fora to, as appropriate, adapt, update, and enhance adoption of global principles and standards for how digital assets are used and transacted, and to promote development of digital asset and CBDC technologies consistent with our values and legal requirements.</p> <p>The framework must include specific and prioritized lines of effort and coordinated messaging; interagency engagement and activities with foreign partners, such as foreign assistance and capacity-building efforts and coordination of global compliance; and whole-of-government efforts to promote international principles, standards, and best practices.</p>
8(b)(ii)	Report	1 year from the establishment of the 8(b)(i) framework	<ul style="list-style-type: none"> - Secretary of the Treasury - Secretary of State - Secretary of Commerce - Director of the Office of Management and Budget - Administrator of the United States Agency for International Development - Heads of other relevant agencies 	<p>Report on priority actions taken under the above-noted framework for interagency international engagement with foreign counterparts and its effectiveness.</p>
8(b)(iii)	Framework	180 days	<ul style="list-style-type: none"> - Secretary of Commerce - Secretary of State - Secretary of the Treasury - Heads of other relevant agencies 	<p>Framework for enhancing United States economic competitiveness in, and leveraging of, digital asset technologies.</p>
8(b)(iv)	Report	90 days	<ul style="list-style-type: none"> - Attorney General - Secretary of State - Secretary of the Treasury - Secretary of Homeland Security 	<p>Report on how to strengthen international law enforcement cooperation for detecting, investigating, and prosecuting criminal activity related to digital assets.</p>

ENDNOTES

¹ Unless otherwise noted, indicates when the deliverable is due in relation to the release date of the Executive Order.