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Blockchain+ Bi-Weekly; Highlights of the Last Few Weeks in Web3 Law: February 14, 2025

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The first weeks of February have been eventful for digital asset regulation, with major policy shifts, legal battles and legislative initiatives shaping the future of Web3. The SEC's formation of a dedicated crypto rulemaking task force, Coinbase's latest legal maneuvering, the CFTC's scrutiny of sports-related prediction markets, and Senate hearings on stablecoins signal an evolving regulatory landscape. Key developments include renewed scrutiny over bank relationships with crypto firms and the SEC's shifting stance on spot crypto ETFs. As the U.S. government reassesses its approach to digital asset oversight, key figures in Congress, and the SEC have signaled a strong desire for reforms and meaningful legislation. However, significant hurdles remain—not least of which is the relatively short window Congress has to pass legislation before the election cycle takes over.

These developments and a few other brief notes are discussed below.

SEC Forms Crypto Rulemaking Task Force: January 21, 2025

Background: On his first day as acting SEC Chair, Mark Uyeda announced that the SEC has "launched a crypto task force dedicated to developing a comprehensive and clear regulatory framework for crypto assets." Commissioner Peirce has been tapped to lead the task force, which according to SEC press release, "will collaborate with Commission staff and the public to set the SEC on a sensible regulatory path that respects the bounds of the law." Further, its focus will be "to help the Commission draw clear regulatory lines, provide realistic paths to registration, craft sensible disclosure frameworks and deploy enforcement resources judiciously." The task force has since solicited comments by e-mailing crypto@sec.gov and setting up a meeting request form here.

Analysis: Commissioner Peirce's *Token Safe Harbor Proposal 2.0* from 2021 remains one of the most well-structured and thoughtful regulatory approaches to digital assets from any regulator, making her an ideal choice to lead this task force. While it is unclear how this initiative will interplay with the Third Circuit's recent rulemaking ruling, it seems increasingly likely that some form of crypto regulation will emerge from the SEC in the coming months or years. The challenge ahead is significant—defining 'decentralization,' ensuring oversight to prevent fraud and abuse and fostering innovation without stifling legitimate actors is a delicate balance. If anyone is equipped to navigate this, it’s Commissioner Peirce.

Coinbase Files Petition for Permission to Appeal at Second Circuit: January 21, 2025

Background: The lower court in the *SEC v. Coinbase* matter previously stayed the matter and granted permission for Coinbase to ask the Second Circuit to hear its interlocutory appeal of matters decided on its Motion for Judgment on the Pleadings. The Second Circuit still has to agree to hear the matter, and in its opening brief, Coinbase implores the appellate court to weigh in on whether digital asset transactions in secondary markets are investment contract transactions.

Analysis: Amicus filed by the Blockchain Association and the Chamber of Commerce also encouraged the appellate court to take up this issue. Newly appointed Chair of the Senate Finance Services Digital Asset Subcommittee, Senator Lummis, also weighed in, asking for the Second Circuit to take up the issue. Administrations come and go, but case law is enduring, so this is still a very important case and will set legal precedent for years to come. The “ecosystem theory” provided by the SEC and endorsed by the lower court makes no sense. Bitcoin, Ether and other assets that the SEC had admitted are not securities have gigantic “ecosystems,” and it also makes no sense as to how an “ecosystem” can register with the SEC. Strong appellate case law on these issues would alleviate the need to rush into expansive legislation that could have unknown externalities (including benefitting incumbents to the detriment of new entries), even if they do provide a level of clarity.

Joint Press Conference Held on Bipartisan Roadmap to Digital Asset Legislation: February 4, 2025

Background: “Crypto and AI Czar” David Sacks held a press conference with Senate Banking Chair Tim Scott, House Financial Services Chair French Hill, House Agriculture Chair Glenn “GT” Thompson and Senate Agriculture Chair John Boozman to discuss the previously issued Executive Order titled Strengthening American Leadership in Digital Financial Technology and how the Executive and Legislative branches planned to work together in establishing a clear framework for U.S. digital assets and their issuers.

Analysis: The main takeaway seemed to be that stablecoin legislation is on the immediate horizon, which is discussed below as well as related to Senator Hagerty’s GENIUS Act being released the same day as the press conference. It also appears that FIT 21 (passed through the House last year) will be the starting point for a market structure bill, but as I have previously covered, there are still significant hurdles to overcome to make that market structure bill fit for purpose. There was recognition by all the speakers that digital assets are going to be foundational in financial services for the foreseeable future, so creating a framework to ensure U.S. dominance in the sector will be crucial in maintaining the current dominance of American financial markets.

CFTC and SEC Announce Digital Asset Agendas: February 4, 2025

Background: In a statement titled “The Journey Begins,” Commissioner Peirce put forward her plans as the leader of the newly formed SEC Crypto Task Force. While at the CFTC, Acting Chair Pham announced a plan to “Refocus on Fraud and Helping Victims, Stop Regulation by Enforcement” and various task force realignments at the agency. Both seem intent to remain focused on bringing actions against fraudsters or bad actors while removing enforcement focus from good actors who are attempting to abide within the bounds of commodities and securities laws when applied to blockchain-enabled cryptographic technologies.

Analysis: Commissioner Peirce's statement is especially well done. "In this country, people generally have a right to make decisions for themselves, but the counterpart to that wonderful American liberty is the equally wonderful American expectation that people *must* decide for themselves, not look to Mama Government to tell them what to do or not to do, nor to bail them out when they do something that turns out badly." The Digital Chamber, Blockchain Association and others have already announced organized working groups to assist the agencies in reaching sound policies that protect against fraud while preserving American freedoms and innovations. There seems to be renewed hope that a sensible and transparent framework for operating a digital asset company in the United States is feasible in the next few years.

Congress Holds Hearings on Debanking (Chokepoint 2.0): February 5-6, 2025

Background: The Senate Banking Committee held a hearing titled Investigating the Real Impacts of Debanking in America on February 5, followed shortly thereafter by a House Financial Services Committee hearing titled Operation Choke Point 2.0: The Biden Administration's Efforts to Put Crypto in the Crosshairs on February 6. While both had an aim at determining the scope of debanking and potential solutions to legally operating individuals and companies being refused banking services, the House's hearing focused especially on digital assets and had testimony from Coinbase head of legal Paul Grewal and NYU Professor Austin Campbell, both of whom emphasized the disproportionate impact debanking has had on digital asset participants.

Analysis: Directly before the Senate's hearing, Senator Cramer (R-ND) reintroduced his Fair Access to Banking Act, which would require banks to provide impartial and risk-based explanations for granting or refusing lending or other banking services. The FDIC also released 175 documents related to its supervision of banks that engaged in, or sought to engage in, crypto-related activities before the hearings (previously withheld despite FOIA requests/litigation over those requests; also, read this bench slap transcript in that FOIA action if you are ever having a bad day and need a pick-me-up). This was a great section of the think pieces referenced below about the effect debanking can have on ordinary people and the need for access to DeFi for people that want more control over their own finances.

CFTC Investigates Sports-Related Prediction Market Contracts *(February 9, 2025)*

Background: The CFTC has opened an inquiry into the legality of sports-related prediction market contracts, reinforcing its oversight of event contracts under the Commodity Exchange Act. In a February 9 statement, the agency confirmed it is reviewing the regulatory status of these products and assessing whether they constitute unlawful gaming or derivatives trading. In response, Robinhood preemptively delisted its prediction contracts, citing regulatory uncertainty. However, Kalshi and Crypto.com kept their markets active through and past the Super Bowl, arguing they fall within existing CFTC exemptions.

Analysis: The CFTC's scrutiny signals a potential crackdown on sports-related event contracts, an area that has long existed in a regulatory gray zone. Until last year's case between Kalshi and the CFTC, the agency took the position that betting contracts generally are binary options that are subject to the agency's regulation and oversight. Further, it remains unclear how these fit within the framework of the two federal statutes that explicitly address sports betting, the Wire Act and the Unlawful Internet Gambling Enforcement Act, particularly if the Department of Justice adjusts its interpretation of those laws.

Briefly Noted:

Polsinelli Releases Tech Transaction and Data Privacy Report: The Polsinelli annual Tech Transactions and Data Privacy Report is out, which breaks down the information companies should stay informed on regarding tech and data privacy legal issues for 2025, including a breakdown of Web3 topics to pay attention to.

SEC Pauses Certain Investigations and Cases. On February 11, the SEC and Binance filed a joint motion to stay the agency's lawsuit against Binance for 60 days. The rationale was that the SEC's joint task force is working on regulations that may "impact and facilitate the potential resolution of this case. Additionally, it appears that the SEC has sent a number of close-out letters in recent weeks, formally closing investigations into certain other crypto companies.

Senate Stablecoin Bill Introduced: Senate Banking Committee member Bill Hagerty (R-TN) has introduced a bipartisan Senate stablecoin bill (Senator Gillibrand (D-NY) is a co-sponsor) as a companion to the House bill passed through their financial services committee last year. The House also dropped a discussion draft bill. Bills like this for discrete digital asset issues combined with knowledgeable people in administrative leadership roles make total sense.

SEC Scores Win on Major Question Defense Against Kraken: The SEC successfully struck Kraken's Major Question defense (but since there doesn't need to be discovery on the issue, left open the ability for Kraken to assert again later) but failed to get due process and fair notice defenses tossed.

Senate Confirms Treasury Secretary: Scott Bessent has been confirmed as the new Treasury secretary, replacing Janet Yellen. He is viewed as "pro-crypto," so one can hope for some common sense rulemaking around digital asset tax reporting and compliance during his tenure.

SAB 121 Repealed: The Controversial SEC Staff Accounting Bulletin 121 (SAB 121), which essentially foreclosed publicly traded banks from taking custody of digital assets for their customers by requiring digital assets be listed as liabilities on the banks' balance sheets, has been withdrawn. This comes after both the House and Senate passed a bipartisan resolution to withdraw the rule, which was vetoed by President Biden.

Tornado Cash Sanctions Lifted: It looks like the U.S. government will likely not be appealing the decision that overturned the OFAC sanctions of Tornado Cash, and there is no *en banc* review, so it is heading back to the District Court for either a nationwide vacatur or a more limited ruling. This does not, however, eliminate sanctions against the legal persons who allegedly performed bad acts using Tornado Cash, and wallets believed to be associated with North Korea remain on OFAC's blacklist.

KuCoin Enters Plea Deal: Kucoin agreed to pay $300 million in unlicensed money transmission penalties, and its founders entered deferred prosecution agreements related to operating a digital asset exchange without proper money transmission licenses.

Conclusion:

As regulatory and legislative efforts accelerate, 2025 is shaping up to be a pivotal year for the digital asset industry. The formation of the SEC Crypto Task Force, bipartisan movement on stablecoin and market structure legislation, and ongoing legal challenges against regulatory overreach indicate that the framework governing digital assets is evolving in ways that could significantly impact the industry's trajectory.

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