

New Executive Order Outlining National Policy for Digital Assets

March 14, 2022

On March 9, 2022, President Biden signed an [Executive Order on Ensuring Responsible Development of Digital Assets](#) (the “Order”) outlining, as described in the accompanying [Fact Sheet](#), a “whole-of-government approach” to harness the benefits, and address the potential risks, of digital assets, including risks to consumers, financial stability, national security and the climate. The Order acknowledges the explosive growth in non-state-issued digital assets and the rapid development of central bank digital currencies (“CBDCs”) worldwide, recognizing that digital assets have become integral to U.S. and global financial systems. The Order is a first step in the Administration’s national policy for digital assets, largely directing relevant agencies to develop reports and frameworks instead of requiring immediate regulatory action.

Recent geopolitical developments, such as the conflict in Ukraine, have also brought renewed attention to the importance of the U.S. role in the global financial system. The Order cites several policy objectives but notably emphasizes the need to “reinforce United States leadership in the global financial system and in technological and economic competitiveness,” which will “sustain United States financial power and promote United States economic interests.” The Order recognizes that the “United States derives significant economic and national security benefits from the central role that the United States dollar and United States financial institutions and markets play in the global financial system.” These objectives seem to dovetail with the urgency placed by the Order (discussed below) on consideration for a U.S. CBDC. The assertion of American leadership is also striking in the context of foreign government actions with regard to digital assets and growing European Union (“EU”) activity in this space (a vote by the Monetary Committee of the EU parliament on the EU’s proposed Markets in Crypto Assets legislation is scheduled for today, Monday, March 14).

A New National Policy for Digital Assets. Below, we briefly summarize the main points of the Order. The Order outlines a number of objectives (in Section 2) as well as policies and actions (in Sections 4-8) for the overall national policy for digital assets:

- CBDC. The Order outlines the Administration policy on a U.S. CBDC in Section 4 and “places the highest urgency” on research and development for a possible U.S.

CBDC. The Order expresses that the Administration sees “merit” in the U.S. demonstrating “leadership” in the fora of international CBDC and that a U.S. CBDC supporting low-cost, cross-border transactions could “support the continued centrality of the United States within the international financial system, and help to protect the unique role that the dollar plays in global finance.” The Order directs the Department of the Treasury (“Treasury”), the Board of Governors of the Federal Reserve System (the “Federal Reserve”) and the Department of Justice (the “DOJ”), in consultation with other agencies, to prepare reports on the potential issuance of a U.S. CBDC. The Order appears to lean more favorably towards a potential U.S. CBDC than previous analysis published by the Federal Reserve, which took an explicitly neutral stance. For further discussion on the Federal Reserve’s work thus far on a U.S. CBDC, see our blog post [here](#).

- Consumer and investor protection. One key priority in the Order, detailed in Section 5, is to protect U.S. consumers, investors and businesses by putting in place appropriate safeguards to ensure protection for sensitive financial data and custody of assets and funds as well as ensuring appropriate risk disclosure. Among other requirements, the Order directs Treasury and other agency partners to prepare a report, including policy recommendations, to address the implications of the growing digital asset market and “changes in financial market and payment system infrastructures for United States consumers, investors, businesses, and for equitable economic growth.”
- Financial stability. In Section 6, the Order highlights the potential financial stability risks of the digital asset sector and states that digital asset companies (including digital asset issuers, exchanges and trading platforms, as well as relevant intermediaries) that engage in activities that could increase risks to financial stability could potentially be subject to the regulatory and supervisory standards that govern traditional finance, “in line with the general principle of ‘same business, same risks, same rules.’” The Order suggests that the unique uses and functions that digital assets can facilitate may require an “evolution” to a regulatory approach that adequately addresses those risks. The Order also directs the Secretary of the Treasury to convene the Financial Stability Oversight Council and produce a report “outlining the specific financial stability risks and regulatory gaps posed by various types of digital assets and providing recommendations to address such risks.” This report may include recommendations to address gaps in regulation and supervision, potentially including proposals for new legislation. The Order directs the agencies to consider prior assessments on this topic, including from the President’s Working Group on Financial Markets, which issued a report last year on stablecoins (summarized in our blog post [here](#)).
- Illicit finance. Noting that digital assets can present significant illicit finance risks (such as money laundering, cybercrime and ransomware, narcotics and human

trafficking and terrorism financing) and sanctions avoidance risks, the Order indicates that the United States must ensure that appropriate controls are in place for the monitoring and mitigation of such activities and for law enforcement or other action when appropriate. The Order directs, in Sections 7 and 8, wide-ranging and coordinated efforts across all relevant agencies to limit illicit activities utilizing digital assets and the corresponding national security risks. As is especially relevant in the current climate of sanctions against Russia, the Order directs agencies to work with U.S. allies and partners to ensure international frameworks and partnerships, including those regarding money laundering, terrorist financing and sanctions, holistically address the relevant risks.

- *U.S. leadership in the global financial system and economic competitiveness.* The Order emphasizes, in Section 8, that U.S. policy regarding digital assets must both foster “international cooperation” as well as U.S. “competitiveness” with respect to innovation in the field of digital assets. The Order emphasizes the importance of U.S. leadership, but notes that, without coordination with international organizations (such as the Financial Action Task Force, Financial Stability Board, G7 and G20), the digital assets market may become rife with “arbitrage” and “inefficiencies.” The Order directs Treasury and the Department of Commerce to work across agencies to establish a framework to promote U.S. leadership and competitiveness in digital asset technologies, and the DOJ to prepare a report on strengthening international law enforcement cooperation in the digital assets market.
- *Financial inclusion.* The Order generally prioritizes the importance of promoting safe, accessible and affordable financial services, particularly for underserved communities, as a national interest that should inform U.S. policy with respect to the digital asset industry.
- *Responsible innovation and climate impact.* The Order emphasizes the importance of studying and supporting technological advances in digital assets while ensuring responsible development of digital asset systems, including by prioritizing privacy, national security, the operational security and resilience of financial systems and human rights, as well as by combating illicit finance and minimizing the impact of digital assets on climate change. Consistent with this Administration’s focus on addressing climate change, the Order recognizes and seeks to reduce the “negative climate impacts and environmental pollution, as may result from some cryptocurrency mining.”

We note also that some of the topics discussed in the Order have been debated at recent Congressional hearings on digital assets, which we have covered in prior posts on our Debevoise Fintech Blog, including hearings of the House Financial Services Committee (see our post [here](#)), the Senate Agriculture Committee (see our post [here](#)) and the

Senate Banking Committee (see our post [here](#)), and at certain hearings in 2021 (see our post [here](#)).

Next Steps. In addition to the reports specifically referenced above, the Order requires or requests reports from a number of other government agencies and offices, as well as follow-up reports, annexes or proposals keyed to submission of initial reports. Timeframes vary to some degree, but many of the initial reports are due within 180 days of the date of the Order.

The Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy are charged with coordinating the executive branch actions necessary to implement the Order.

Concluding Thoughts. Although it will take some time to see how policies and regulatory approaches evolve in response to the Order and the required reports, the Order is significant for its recognition of the increasing prominence and importance of the digital asset industry.

At a minimum, the Order recognizes the need for improved coordination among regulatory agencies in their approach to industry oversight. Although it does not expressly indicate that the establishment of a new prudential regulator for the digital asset industry is necessary or advisable, the Order at times hints that regulatory gaps and supervisory gaps could call for updated legislation and, potentially, adjustments to supervision mechanisms or authorities.

Initial industry reaction to the Order is generally positive, with the market recognizing that over the longer term, coordinated regulation and oversight may promote increased acceptance of digital assets and related technologies and improved protection of consumers, investors and developers.

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