Cooley

Crypto Shake-Up: Narrowing Risks, From Securities Scrutiny to Consumer Claims

April 23, 2025

Crypto is now in Washington's good graces – or at least that's how it may seem. The return of the Trump administration has injected new energy into the crypto asset space, with sweeping rhetoric about "unleashing innovation" and a flurry of early moves that **suggest a dramatically more hands-off regulatory approach**. The president's appointment of pro-crypto voices to key posts at the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission, along with the rescission of several aggressive enforcement policies, has crypto advocates optimistic about a long-awaited turn in the tide.

One of the most consequential shifts? A growing recognition that many types of crypto asset transactions are not securities transactions. The SEC has issued separate notices clarifying that transactions involved in crypto-mining operations, fiat-backed stablecoins, and meme coins lacking a central issuer or profit-sharing mechanism do not fall under the scope of federal securities laws. Although SEC guidance is not legally binding on courts, this emerging clarity has removed a significant cloud of regulatory uncertainty. Crypto companies can now operate with more assurance, knowing that routine activities are less likely to trigger registration violations or SEC scrutiny.

But don't pop the champagne just yet. The plaintiffs' bar is already pivoting – and where there are allegations of fraud, securities laws are just one arrow in the quiver. Even if certain crypto asset transactions are not securities transactions, crypto defendants remain vulnerable to lawsuits under state consumer protection statutes, deceptive trade practices acts and common law tort theories, like fraud and misrepresentation.

Take *Rojas v. Kelsier Ventures LLC*, No. 650201/2025 (N.Y. Sup. Ct., filed January 10, 2025), a case that captures this evolving playbook. The complaint alleges that Kelsier Ventures, KIP Protocol, Meteora and their principals orchestrated a hype-driven scheme around the $LIBRA meme coin – infamously promoted by Argentine President Javier Milei – that led to a rapid boom and bust, wiping out millions in token purchases. The plaintiffs bring no securities claims. Instead, the suit relies entirely on New York's consumer protection law, along with claims for negligent misrepresentation and unjust enrichment.

This alert explores how crypto litigation risks are narrowing from federal securities class actions to state-law consumer protection claims – and what that means for crypto companies. The alert walks through the practical implications of this trend and the new focus on state-law litigation dynamics companies must prepare for in a post-SEC-dominated landscape.

From securities to consumer law: What's changing?

The narrowing of potential claims to consumer protection lawsuits brings a new focus for crypto companies, but not without some silver linings. Securities claims, particularly under the Securities Act of 1933, often turn on technical violations, such as a failure to register a token offering, even when no fraud is alleged. For example, in *Samuels v. Lido Dao*, No. 23-CV-06492 (N.D. Cal.), the plaintiffs asserted claims solely based on the unregistered sale of tokens, without alleging that the tokens were misrepresented or fraudulently promoted. In such cases, plaintiffs frequently seek rescission – a potent remedy that allows them to unwind the transaction and recover their initial investment in full, regardless of whether they incurred any actual financial loss. This theory also underpinned the claims in *In re Uniswap Labs Litigation*, No. 22-cv-02780 (S.D.N.Y.), where users sought rescission for token purchases made through decentralized exchanges.

But while the above may seem like a win for defendants, the move away from securities law also strips away several established procedural protections that have long served to deter frivolous suits and streamline complex litigation. Under the Private Securities Litigation Reform Act (PSLRA), for instance, discovery is automatically stayed while a motion to dismiss is pending. This stay is critical: It prevents plaintiffs from using the burdens and costs of early discovery as leverage to force settlements, and it gives courts the chance to weed out weak claims before defendants are dragged into expensive, open-ended discovery.

The PSLRA also mandates a lead plaintiff process, which effectively appoints the investor with the largest financial stake in the litigation to act as the lead plaintiff in consolidated cases. This helps to centralize case control, reduce duplicative filings and prevent a race to the courthouse by competing law firms. The result is a more orderly litigation process with fewer contradictory outcomes and a more manageable defense burden.

Consumer claims: A different litigation landscape

Defending against state consumer protection and fraud claims is a different animal than traditional securities litigation. The familiar safeguards of the PSLRA, like automatic discovery stays and early consolidation of parallel cases, often do not automatically apply. For example, while defendants can still seek a stay of discovery pending a ruling on a motion to dismiss, they often have to affirmatively request a stay.

Moreover, because consumer protection laws are primarily state-based, plaintiffs' lawyers are more often able to engage in forum shopping, selecting jurisdictions with plaintiff-friendly statutes or case law based on the particular facts at issue. This jurisdictional variability creates more unpredictability than the more uniform body of federal securities law. It also opens the door for a broader set of plaintiffs' attorneys to get involved. Securities cases often require particular experience in financial disclosures, market practices and PSLRA pleading standards, which historically limited the pool of lawyers willing to bring them. But consumer protection laws often draw a wider array of trial lawyers, which means there very well may be a surge of new entrants into crypto litigation. In addition, crypto companies are likely to litigate a higher volume of cases in the long run because state-law claims are often more likely to survive a motion to dismiss and proceed into an expansive discovery process.

Defendants also may find themselves fighting on multiple fronts. Because consumer cases often define classes by state of residence, it is not uncommon to see parallel complaints filed in different jurisdictions – say, one in New York for New York residents and another in California for California residents – asserting similar theories of liability. This splintering adds a layer of complexity absent from securities class actions, where related cases are typically consolidated in a single federal court.

What comes next?

This evolving litigation landscape ensures that crypto companies are not out of the legal crosshairs just because securities claims are falling out of favor. As long as token holders claim to have suffered losses, especially in volatile or hype-fueled markets, plaintiffs will likely try to find creative and expansive legal theories to pursue recovery under state law.

For companies navigating this new terrain, the takeaway is clear: Companies need to do more than focus solely on securities law compliance. Consumer protection statutes and common law fraud doctrines are likely to become just as important, if not more so, in shaping legal risk. Companies should familiarize themselves with the nuances of consumer litigation and retain counsel with experience in both crypto and consumer class actions, because the next wave of crypto lawsuits is already here – and it is now coming from a different direction.

attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

William K. Pao Los Angeles	wpao@cooley.com
Alexander G. Galicki Los Angeles	agalicki@cooley.com +1 213 561 3203
Michelle Doolin San Diego	mdoolin@cooley.com +1 858 550 6043
Rodrigo Seira Miami	rseira@cooley.com +1 206 452 8832
Derek Colla Miami	dcolla@cooley.com +1 305 724 0529