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Don’t Celebrate Just Yet – Potential Litigation Risks Under the Trump Administration

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The inauguration of President Donald J. Trump has been widely celebrated as the dawn of the first pro-crypto presidential administration – a dramatic shift from the Biden administration’s antagonistic stance on crypto. But the road ahead might not be as smooth as it seems.

Sure, there’s reason for optimism. The excitement around Trump’s new approach reached its current peak when he unveiled his very own memecoin – $TRUMP – at the inaugural “Crypto Ball” in Washington, DC, on the night before his inauguration. And his early actions seem to back up the hype. He has replaced Gary Gensler, who became infamous in the crypto community for his enforcement-heavy approach as Securities and Exchange Commission (SEC) chair, with Paul Atkins, a crypto-friendly former SEC commissioner who served as an advisor to the Digital Chamber of Commerce. Reports also suggest that the SEC is now drafting new, more supportive guidance and considering how to scale back or drop crypto cases that don’t involve fraud.

But while these moves might seem like a green light for the industry, it’s still far too early to declare victory. For one, private plaintiffs’ attorneys aren’t taking their foot off the gas; new lawsuits continue to pop up, raising aggressive arguments to challenge new crypto projects. State attorneys general – especially in places like California and New York – also are poised to ramp up enforcement. And even a more friendly federal government is unlikely to give crypto projects a pass if they are viewed as a threat to national security or financial stability.

So, while the change in tone from the new administration is promising, crypto companies should remain cautious and proactive. In this article, we explore recent litigation trends and offer practical strategies for navigating the shifting litigation landscape under the new administration.

Memecoins

Memecoins, in their simplest form, aren’t much like securities. They lack practical utility and are more like collectibles that capture the latest cultural zeitgeist – akin to Beanie Babies, for example. They may hold value and foster community but clearly aren’t securities under the *Howey* test. However, where the issuer of a memecoin goes heavy on marketing, works to get the tokens listed on secondary markets or holds onto a significant stash of tokens on the company balance sheet,[1] plaintiffs’ lawyers may argue that purchasers are relying on the issuer to drive profits.

Just before Trump’s inauguration, the plaintiffs’ firm Burwick Law filed two class action lawsuits targeting major memecoin projects. This could signal a new wave of memecoin litigation yet to come.

Hawk Tuah Girl and $HAWK token

Web personality Haliey Welch, better known as the “Hawk Tuah Girl,” rose to prominence following a viral video in June 2024. On December 4, 2024, Welch and some affiliates launched the $HAWK memecoin. While the token quickly gained traction on Solana-based decentralized exchanges, within hours the market capitalization collapsed by more than 90%.

On December 19, 2024, purchasers of the memecoin filed a class action lawsuit in the US District Court for the Eastern District of New York against Tuah The Moon Foundation, overHere Limited and its founder Clinton So, which launched the memecoin, and social media influencer Alex Larson Schultz, who promoted it online. (See *Albouni et al. v. Schultz et al.*, EDNY, No. 1:24-cv-08650.) The lawsuit

alleges that the “Hawk Tuah” cryptocurrency sellers and promoters did not register the $HAWK memecoin with the SEC in violation of Sections 5 and 12(a)(1) of the Securities Act, resulting in plaintiffs’ loss of more than $151,000.

Pump.fun

Launched on January 19, 2024, Pump.fun is an application built on Solana that enables users to create memecoins and trade them. It is one of the most successful crypto/Web3 projects of the last year, with the platform surpassing $15 million in daily revenue on January 1, 2025.

On January 16, 2025, the same lawyers who represent the plaintiffs in the $HAWK token litigation filed a class action lawsuit against Pump.fun in the US District Court for the Southern District of New York. (See *Carnahan v. Baton Corp. Ltd.*, SDNY, No. 1:25-cv-00490.) The lawsuit alleges that Pump.fun has been offering and selling unregistered securities, promotes pump-and-dump schemes and lacks proper user protections, specifically naming the sale of popular memecoin Peanut the Squirrel (PNUT) as unlawful. The sole named plaintiff, Kendall Carnahan, claims to have bought PNUT via three transactions on November 4, 2024, and that a day later, they sold it all at a loss of $231. PNUT then skyrocketed more than 4,134% over the coming nine days to a $2.4 billion market cap. The complaint asserts two federal claims: One count against Baton Corporation (the UK corporation that owns and operates Pump.fun) for violations of Sections 5 and 12(a)(1) of the Securities Act based on the defendants’ failure to register the PNUT token as a security with the SEC, and one count against Pump.fun’s founders for violations of Section 15 of the Securities Act as control persons jointly and severally liable with the Baton Corporation.

Even with a more crypto-friendly SEC, unless Congress passes new laws or case law takes a sharp turn, aggressive plaintiffs’ lawyers will continue to file new lawsuits alleging violations of federal securities laws.

NFTs

Non-fungible token (NFT) projects, which had their shining moment in the last market cycle, have found themselves in the crosshairs of bold plaintiffs’ lawyers bringing claims under state law, instead of the typical federal securities claims.

OpenSea

Founded in 2017, OpenSea (Ozone Networks) is a US-based NFT marketplace headquartered in Miami, Florida. OpenSea grew exponentially during the COVID-19 pandemic, with roughly 85% of all NFT transactions occurring on OpenSea during the second half of 2021. On September 19, 2024, plaintiffs filed a class action lawsuit against OpenSea for their offer and sale of NFTs, which the plaintiffs alleged are unregistered securities. Notably, the plaintiffs did not assert any federal securities claims, instead asserting deceptive act, breach of warranty, unjust enrichment and securities claims under New York and Florida state law. On October 30, 2024, the court ordered bifurcated briefing, giving OpenSea until November 14, 2024, to file its anticipated motion to compel arbitration. On November 7, 2024, however, the plaintiffs filed a notice of voluntary dismissal without prejudice – presumably because the parties agreed to proceed in arbitration – which the court granted on November 12, 2024.

We expect aggressive plaintiffs' lawyers to keep exploring new theories and claims, particularly if federal securities laws and regulations evolve. For example, if plaintiffs' lawyers cannot argue that purchasers of NFTs are investors under securities law, plaintiffs' lawyers will likely argue that they are consumers under state and federal consumer protection laws. We expect aggressive plaintiffs' lawyers to continue exploring new theories and claims, especially in cases involving alleged fraud.

Civil litigation against DAOs

At its core, a decentralized autonomous organization (DAO) is like a tech-savvy hive mind – an entity without a central authority or leadership, run by an internet-native community united by a common goal. Instead of a traditional management structure, DAOs operate according to rules coded into a blockchain. Decisions are made democratically, with members voting on proposals during specified periods.

But this cutting-edge structure comes with legal headaches. The decentralized nature, community-driven governance and usual lack of formal legal status of DAOs have sparked a flurry of legal questions, including:

1. When can a DAO be treated as a legal person?
2. How do you serve legal papers to an entity without a mailing address or CEO?
3. Who is on the hook when the tech is misused for unlawful purposes?

While these questions have floated around since crypto's early days, courts are now grappling with them head-on. Notably, plaintiffs' firm Gerstein Harrow has filed a string of cases – including *Houghton v. Compound DAO* and *Samuels v. Lido DAO*. Both lawsuits survived motions to dismiss, turning up the heat on DAO token holders by arguing they might be general partners in an unincorporated partnership – a status that could make them jointly and severally liable for damages.

Indeed, in *Lido DAO*, the court recently held that the plaintiffs had plausibly alleged that Lido DAO was a general partnership, and that three out of four major institutional investors in Lido were members of it. According to the court, California partnership law may apply if "some number of people got together and agreed to create and operate an Ethereum staking service because they thought they could make money doing that." While the court stopped short of naming every DAO token holder a partner, it was open to the idea that large Lido DAO (LDO) token holders with voting power might be calling the shots and could be held liable. The court also rejected the defendants' argument that the plaintiff – himself an LDO token holder – was equally responsible for the DAO's alleged missteps, noting there was no evidence the plaintiff "jointly carried on the Lido business."

As these cases unfold, they could set the stage for seismic shifts in the legal risks faced by DAOs, token holders and investors.

Samuels v. Lido DAO

In December 2023, an LDO token holder filed a class action lawsuit against Lido DAO, the governing body of the Lido liquid staking protocol. (See *Samuels v. Lido DAO et al*., ND Cal., 2023, No. 3:23-cv-6492.) The lawsuit alleges that the LDO token was offered and sold in unregistered securities transactions, and that Lido DAO is liable for investor losses due to the token's price decline. Defendants include Lido DAO and affiliates of venture firms Paradigm, a16z, Dragonfly and Robot Ventures.

The complaint claims that Lido DAO initially operated as a "general partnership" of institutional investors but later pursued an "exit opportunity" by selling LDO tokens publicly through centralized exchanges. After listing, plaintiff Andrew Samuels and others purchased tokens, suffering losses as the price fell.

Following the court's approval of alternative service on Lido DAO, the DAO initiated a vote to appoint Dolphin CL, a Delaware LLC, to represent it. On July 11, 2024, Dolphin moved to dismiss the complaint against Lido DAO, arguing:

1. The court lacks subject matter jurisdiction because Lido DAO is not a legal entity.
2. The court lacks personal jurisdiction over Lido DAO.
3. The plaintiff failed to state a claim under Section 12(a)(1) of the Securities Act.

The institutional defendants – including Paradigm, a16z and Dragonfly – also moved to dismiss, asserting the plaintiff had not adequately alleged their liability as general partners.

However, on November 18, 2024, the court denied Dolphin's motion to dismiss and in the process questioned whether Dolphin could appear on Lido DAO's behalf. Further, it denied the motions by the institutional defendants – except Robot Ventures' motion – because the plaintiffs' allegations against Robot Ventures were "much sparser." Subsequently, on December 17, 2024, the plaintiff requested a default entry against Lido DAO for failing to respond. The clerk entered the default on December 18, 2024, and the case remains ongoing.

Conclusion and recommendations

As these cases show, while the crypto industry might face a less aggressive SEC in the second Trump administration, the risk of litigation isn't going anywhere. However, there are plenty of steps crypto projects can take to protect themselves.

- **Update your terms of service**: Your terms of service are more than just fine print – they can be your shield in private litigation. Arbitration clauses, class action waivers, governing law provisions and liability limitations offer significant protections. It's worth reviewing these terms carefully and working with counsel to make sure they are up to date, reducing the risk of costly legal battles down the line.
- **DAO legal wrappers**: DAOs can create a legal entity, like the new Wyoming Decentralized Unincorporated Nonprofit Association, to "wrap" their members and activities. Without one of these legal wrappers, DAOs run the risk of being designated as general partnerships, leaving members vulnerable to personal liability for DAO activities.
- **Watch your marketing and public statements**: Founders and executives should tread carefully when speaking to the public. Loose statements and marketing materials could spark legal claims, so make sure they're thoroughly vetted before going public.
- **Sharpen internal policies and procedures**: Crypto projects should take a hard look at their internal compliance policies, including those around insider trading and the use of company technology. Having clear, effective policies in place can prevent internal issues from turning into full-blown legal headaches.

Notes:

1. See, e.g., *SEC v. LBRY*, No. 21-CV-260-PB, 2022 WL 16744741 (District of New Hampshire, November 7, 2022).

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