

Crypto in the Courts: Five Cases Reshaping Digital Asset Regulation in 2025

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There has rarely been a larger or more widely distributed financial market that existed in a more uncertain regulatory context than cryptocurrencies and decentralized finance (DeFi) at the start of 2025. In the past several years, the regulatory status of this asset class in the United States has been at the center of a concerted effort by the US Securities Exchange Commission (SEC) to apply the regime applicable to securities to diverse crypto instruments and methods of exchange and transfer. (Although the Commodity Futures Trading Commission (CFTC) has also consistently enforced its regulations on products it deems to be commodities, that effort has not led to the widespread litigation that is likely to define the regulatory status of these products.)

The SEC's effort is now in jeopardy. As we begin 2025, the legal landscape surrounding digital assets stands at a critical inflection point, with several watershed cases poised to reshape how these assets will be governed, traded, and regulated in the United States. The convergence of these cases — spanning securities law, administrative procedure and federalism — presents opportunities to clarify how traditional legal frameworks apply to digital assets. Further, the Trump administration has promised that it will be a “pro-crypto” administration — driving the SEC towards a friendlier stance with the cryptocurrency industry and having cryptocurrency rules and regulations “written by people who love [the] industry, not hate [the] industry”¹ — and that the United States will become the “crypto capital of the world.”² President Donald Trump has nominated Paul Atkins, a former SEC Commissioner, to become the next SEC chairperson, stating in his announcement that Mr. Atkins “recognizes that digital assets & other innovations are crucial to Making America Greater than Ever Before.”³ The Trump administration's announced intention to change the course of cryptocurrency regulation and the selection of an SEC chairperson who is an avowed advocate for innovation through blockchain technologies raise questions about the future of the pending litigation at the center of this industry.

This article examines five cases that may define the future of digital asset regulation in the United States and sets out the issues at stake in those cases. These cases are the Second Circuit's review of *SEC v. Ripple Labs, Inc.*, the interlocutory appeal in *SEC v. Coinbase, Inc.*, and three cases representing the industry's shift toward offensive litigation against federal agencies — *Blockchain Association v. IRS*, *Bitnomial Exchange, LLC v. SEC*, and *Kentucky et al. v. SEC*. The purpose of this article is not to predict how those cases will progress — that determination is going to lie in the hands of the courts and policymakers — but rather to make clear what is at stake, especially in light of an anticipated shift in regulatory priorities regarding digital assets with the Trump administration, which could decide to no longer support the government's positions in these cases.

¹ MacKenzie Sigalos, *Here's What Trump Promised the Crypto Industry Ahead of the Election*, CNBC (Nov. 6, 2024), <https://www.cnbc.com/2024/11/06/trump-claims-presidential-win-here-is-what-he-promised-the-crypto-industry-ahead-of-the-election.html>.

² Mauricio Di Bartolomeo, *Trump's Top 3 Bitcoin Promises and Their Implications*, FORBES (Nov. 7, 2024), <https://www.forbes.com/sites/mauriciodibartolomeo/2024/11/07/trumps-top-3-bitcoin-promises-and-their-implications/>.

³ Rafael Nam, *Trump Picks Crypto Backer Paul Atkins as New Securities and Exchange Commission Chair*, NPR (Dec. 4, 2024), <https://www.npr.org/2024/12/04/g-s1-36803/trump-crypto-paul-atkins-sec-chair>.

SEC v. Ripple Labs, Inc. (2d Cir.)

The SEC's appeal in *SEC v. Ripple Labs, Inc.* follows a July 2023 ruling in the Southern District of New York that began when the SEC charged Ripple Labs, Inc. (Ripple) with conducting an unregistered securities offering through sales of its XRP token. The SEC argued that the offer and sale of XRP tokens constituted an offer and sale of investment contracts under *SEC v. W.J. Howey*, which provides that an "investment contract" is a contract, transaction, or scheme whereby a person: (1) "invests his money" (2) "in a common enterprise" and (3) "is led to expect profits solely from the efforts of the promoter or a third party."⁴ In response, Ripple advanced an "essential ingredients test," arguing that in addition to the three-part Howey test, investment contracts must also contain "essential ingredients": (1) "a contract between a promoter and an investor that establishe[s] the investor's rights as to an investment," which contract (2) "impose[s] post-sale obligations on the promoter to take specific actions for the investor's benefit" and (3) "grant[s] the investor a right to share in profits from the promoter's efforts to generate a return on the use of investor funds."⁵

The district court, in its July 2023 ruling, rejected Ripple's novel "essential ingredients" test, noting that "in the more than seventy-five years of securities law jurisprudence after *Howey*, courts have found the existence of an investment contract even in the absence of Defendants' 'essential ingredients,' including in recent digital asset cases in this District."⁶ Nevertheless, the district court found that, while Ripple's institutional sales violated securities laws, the company's programmatic sales (sales of XRP on digital asset exchanges) and other distributions (such as employee compensation and third-party development incentives) did not constitute securities offerings — marking the first major setback to the SEC's digital asset enforcement initiative.⁷ Crucially, the district court distinguished between XRP sales based on their economic reality: institutional sales to sophisticated buyers under written contracts were deemed securities transactions because buyers reasonably expected profits from Ripple's efforts, while programmatic sales on exchanges were not because buyers could not know they were purchasing from Ripple. The court also found that other distributions failed to meet the basic requirements of an "investment of money" since recipients did not provide payment to Ripple.

The SEC filed a notice of appeal on October 4, 2024, and Ripple has cross-appealed. This will likely be the first appellate court to consider how *Howey* applies to digital assets unless the Trump administration determines to freeze the litigation.⁸ The SEC filed its appellate brief on January 15, 2025, arguing that the district court erred in concluding that programmatic sales to retail investors were not offers or sales of investment contracts under *Howey* because "investors were led to expect profits" based on the efforts of Ripple.⁹ The SEC also argued that other distributions of XRP were also offers or sales of investment contracts because Ripple the "recipients provided tangible and definable consideration in return for Ripple's XRP."¹⁰ Ripple will likely challenge whether digital assets are ever securities under the *Howey* framework.

The SEC maintains that the district court's decision "conflicts with decades of Supreme Court precedent and securities laws."¹¹ If the SEC persists in this appeal, it will likely be the first appellate court to consider how *Howey*

⁴ *SEC v. W.J. Howey*, 328 U.S. 293 (1946).

⁵ *SEC v. Ripple Labs, Inc.*, 682 F. Supp. 3d 308, 322 (S.D.N.Y. July 13, 2023).

⁶ *Id.*

⁷ *Id.*

⁸ Hanna Lang and Chris Prentice, *Trump's New SEC Leadership Poised to Kick Start Crypto Overhaul, Sources Say*, REUTERS (Jan. 15, 2025), <https://www.reuters.com/world/us/trumps-new-sec-leadership-poised-kick-start-crypto-overhaul-sources-say-2025-01-15/> (noting top Republican official at the SEC are "reviewing some crypto enforcement cases pending in the courts").

⁹ Brief for SEC at 27-28, *SEC v. Ripple*, No. 24-2648 (2d Cir. Jan. 15, 2025) ("Ripple publicly promised that it would create a rising tide that would lift the price of XRP for all investors, whether having purchased from Ripple, its affiliates, or a third party.").

¹⁰ *Id.* at 49-50 (citing *Intl. Teamsters v. Daniel*, 439 U.S. 551, 560 n. 12 (1979) for the proposition that an "investment of money" under *Howey* includes "goods and services" so long as the investor provides "some tangible and definable consideration.").

¹¹ Nikhilesh De, SEC Files Notice of Appeal in Case Against Ripple (Oct. 2, 2024), COINDESK, <https://www.coindesk.com/policy/2024/10/02/sec-files-notice-of-appeal-in-case-against-ripple>.

applies to particular types of primary sales of digital assets and, more broadly, how securities laws are to be applied to the digital asset economy. The appeal's resolution will provide important clarity on how federal securities laws apply to various types of primary sales of digital assets.

SEC v. Coinbase, Inc. (2d Cir.)

On January 7, 2025, a Southern District of New York court granted Coinbase Inc.'s motion to certify for interlocutory appeal the court's March 2024 order denying in substantial part Coinbase's motion for judgment on the pleadings.¹² The certification permits the Second Circuit to address *Howey's* reach and application to digital assets, particularly in secondary market transactions.

The case arose from the SEC's June 2023 enforcement action, alleging that Coinbase operated as an unregistered national securities exchange, broker and clearing agency by intermediating transactions in 13 digital assets that the SEC claimed were investment contracts and, thus, securities. The district court in March 2024 rejected Coinbase's argument that cryptoasset transactions could not be investment contracts absent post-sale contractual obligations between issuers and purchasers.¹³

In granting Coinbase's motion to certify for interlocutory appeal, the court found that the case presents a "controlling question of law regarding the reach and application of *Howey* to cryptoassets, about which there is substantial ground for difference of opinion."¹⁴ In particular, the court emphasized that applying *Howey* to cryptocurrencies "is itself a difficult legal issue of first impression for the Second Circuit" and questioned the adequacy of the SEC's application of *Howey* to secondary market sales.¹⁵

The grant of interlocutory appeal is significant for several reasons. First, it creates parallel tracks of appellate review in the Second Circuit, as the SEC's appeal in *Ripple Labs* will also be pending. Both cases will allow the Second Circuit to examine how *Howey* applies to digital assets but from different procedural postures — *Ripple Labs* on final judgment and *Coinbase* on interlocutory appeal from a motion for judgment on the pleadings.

Second, the interlocutory appeal addresses a fundamental split in the Southern District of New York regarding whether and how *Howey* applies to secondary market transactions of digital assets. Judge Torres in *Ripple Labs* drew a distinction between Ripple's institutional sales, which satisfied *Howey*, and programmatic sales (i.e., blind bid-ask transactions on exchanges), which did not. In contrast, Judge Rakoff in *SEC v. Terraform Labs* and Judge Failla in *Coinbase* declined to differentiate based on the manner of sale, finding that *Howey* could apply equally to secondary market transactions.¹⁶ The Second Circuit's resolution of this split will have profound implications for all regulatory disputes relating to digital asset trading platforms, as the designation as a security triggers the application of the securities laws for all participants in the industry, including issuers, traders, and trading platforms.

Third, the appeal will address the novel question of how a digital asset's "ecosystem" factors in the *Howey* analysis. The district court in *Coinbase* found that, unlike traditional commodities, cryptoassets lack inherent value absent their digital ecosystem — a distinction that helped justify treating them as securities.¹⁷ However, the district court also recognized in its certification of its appeal that Coinbase raised "substantial ground" to dispute this view of the

¹² *SEC v. Coinbase, Inc.*, No. 1:23-cv-04738-KPF (S.D.N.Y. Jan. 7, 2025).

¹³ *SEC v. Coinbase, Inc.*, 726 F. Supp. 3d 260 (S.D.N.Y. Mar. 27, 2024).

¹⁴ *Supra* note 9 at 12.

¹⁵ *Id.* at 26.

¹⁶ *SEC v. Terraform Labs Pte. Ltd.*, 684 F. Supp. 3d 170, 197 (S.D.N.Y. July 31, 2023) ("It may also be mentioned that the Court declines to draw a distinction between these coins based on their manner of sale, such that coins sold directly to institutional investors are considered securities and those sold through secondary market transactions to retail investors are not."); *Coinbase, Inc.*, 726 F. Supp. 3d at 293 ("Contrary to Defendants' assertion, whether a particular transaction in a crypto-asset amounts to an investment contract does not necessarily turn on whether an investor bought tokens directly from an issuer or, instead, in a secondary market transaction.")

¹⁷ *Coinbase, Inc.*, 726 F. Supp. 3d at 295.

ecosystem, noting Coinbase’s argument that other commodities such as carbon credits, emissions allowances and expired Taylor Swift concert tickets similarly have no inherent value outside of the ecosystem in which they are issued or consumed.¹⁸ The Second Circuit’s treatment of this issue could influence how other courts analyze a wide range of digital assets.

The implications for the digital asset industry are substantial. Coinbase represents the largest US digital asset exchange, and the SEC’s theory would subject most major trading platforms to securities regulation. Resolution of the interlocutory appeal could, therefore, provide crucial guidance on whether and when trading platforms must register with the SEC.

Blockchain Association et al. v. IRS (N.D. Tex.)

On December 27, 2024, three blockchain industry organizations filed suit in the Northern District of Texas, challenging Department of the Treasury (Treasury) regulations that would impose “broker” reporting requirements on DeFi participants.¹⁹ The case represents a significant test of Treasury’s authority to regulate the digital asset industry through information reporting requirements.

The challenged regulations implement provisions of the Infrastructure Investment and Jobs Act of 2021 requiring certain digital asset brokers to report transaction information to the Internal Revenue Service (IRS) on Form 1099-DA. The plaintiffs argue that Treasury’s interpretation of who qualifies as a “broker” exceeds its statutory authority. While Congress defined brokers as persons who “effectuate transfers of digital assets” for consideration, Treasury regulations extend to anyone providing “facilitative services” who theoretically could request customer information – potentially including software developers, front-end interface providers and other technology participants who never take custody of assets or directly execute trades.

The complaint raises several significant challenges under the Administrative Procedure Act (APA) and the US Constitution. The plaintiffs argue that the regulations are arbitrary and capricious, violating the APA by failing to engage in reasoned decision-making and ignoring substantial evidence about the practical impossibility of compliance for many DeFi participants. They also contend that the rules violate the Fourth Amendment by compelling warrantless collection of private information and the Fifth Amendment’s due process requirements through unconstitutionally vague standards for determining who qualifies as a broker.

The case has significant implications for the DeFi industry’s future in the United States. According to the IRS’s calculations, compliance with the regulations would cost the industry over \$260 billion annually – a potentially existential burden for many DeFi projects. The plaintiffs argue this would force US-based DeFi participants to either relocate overseas, cease operations or fundamentally alter their business models in ways that undermine decentralization.

The case is part of a recent trend of offensive litigation by the cryptocurrency industry against federal agencies, as the industry increasingly turns to the courts to challenge perceived regulatory overreach. In doing so, litigants can at least initially select the venue of these proceedings, subject to the restrictions of the Federal Rules of Civil Procedure. Venue selection can be critical as certain courts in Texas, and the Fifth Circuit itself, have recently expressed criticism of expansive agency authority. In November 2024, the Northern District of Texas vacated the SEC’s rulemaking, expanding the definition of “dealer” under the Securities Exchange Act of 1934 (Exchange Act).²⁰ The same month, the

¹⁸ *Coinbase, Inc.*, No. 1:23-cv-04738-KPF at *28.

¹⁹ *Blockchain Ass’n et al. v. IRS*, No. 3:24-cv-03259-X (N.D. Tex. Dec. 27, 2024).

²⁰ See *Nat’l Ass’n of Private Fund Managers et al. v. SEC*, No. 4:24-cv-00250 (N.D. Tex. Nov. 21, 2024); *Crypto Freedom All. of Tex. et al. v. SEC*, No. 4:24-cv-00361 (N.D. Tex. Nov. 21, 2024).

Fifth Circuit reversed a decision wherein Treasury imposed sanctions on Tornado Cash, a cryptocurrency software protocol that conceals the origins and destinations of digital asset transfers.²¹ The case remains in its early stages, as the government has yet to respond to the complaint.

Bitnomial Exchange, LLC v. SEC (N. D. Ill.)

Bitnomial Exchange, LLC v. SEC marks a notable offensive litigation against the SEC, with a futures exchange regulated by the CFTC directly challenging the SEC's authority to regulate a cryptoasset security futures product.²² Filed in October 2024 in the Northern District of Illinois, the case stems from Bitnomial's attempt to list XRP futures contracts after completing the CFTC's self-certification process. The complaint seeks both a declaratory judgment that XRP futures are not security futures under the Exchange Act and injunctive relief to prevent SEC oversight of these products.

Bitnomial argues that the SEC has created an impossible regulatory situation by taking the view that XRP futures constitute security futures, requiring both registration of the underlying asset (XRP) as a security and Bitnomial's registration as a national securities exchange. The exchange contends this position is legally untenable, particularly given the court's ruling in *SEC v. Ripple Labs, Inc.* that "XRP, as a digital token, is not in and of itself a 'contract, transaction[,] or scheme' that embodies the Howey requirements of an investment contract," and that anonymous secondary market sales of XRP do not constitute investment contracts.²³

According to the complaint, even if Bitnomial were to accept the SEC's position that XRP futures are security futures, compliance would be impossible because XRP itself is not registered as a security with the SEC — a prerequisite for listing single stock security futures under current regulations. Moreover, Bitnomial, as a trading venue rather than the issuer, lacks the authority to register XRP as a security.

The outcome of the litigation could have far-reaching implications for how digital asset futures products are regulated and traded in the United States. A ruling in Bitnomial's favor would reinforce the CFTC's exclusive jurisdiction over non-security futures products and potentially clear the way for other futures exchanges to list similar products. Conversely, if the SEC prevails, it could effectively prevent the listing of futures contracts on many digital assets, as the vast majority of digital assets are not registered as a security with the SEC and cannot be registered by the exchanges seeking to list futures on them. As cases are litigated across jurisdictions, there is also the possibility of a split in how federal circuits view secondary transfers of digital assets.

Kentucky et al. v. SEC (E. D. Ky.)

In November 2024, 18 states and a blockchain industry association filed a lawsuit against the SEC in the Eastern District of Kentucky, challenging the agency's authority to regulate digital asset trading platforms as securities exchanges. The case, which remains in its initial stages, challenges the SEC's assertion of regulatory authority over digital asset trading platforms, arguing that the agency's approach improperly preempts state money transmitter laws and interferes with state unclaimed property regimes that many states have specifically adapted for digital assets.

The states detail how they have developed specific regulatory frameworks for crypto businesses, including licensing requirements and consumer protection measures. Under the SEC's interpretation that most digital asset transactions constitute securities transactions, platforms facilitating these transactions would be required to register as securities exchanges, brokers or dealers. The states argue that this interpretation would effectively nullify their respective regulatory regimes, as the Exchange Act prohibits states from imposing certain requirements — including licensing

²¹ See *Van Loon v. Department of the Treasury*, No. 23-50669 (5th Cir. 2024).

²² *Bitnomial Exch., LLC v. SEC*, No. 1:24-cv-09904 (N.D. Ill. Oct. 10, 2024).

²³ *Ripple Labs, Inc.*, 682 F. Supp. 3d at 324 (S.D.N.Y. July 13, 2023).

and bonding requirements — on entities that qualify as securities brokers or dealers. For example, states such as Kentucky have issued guidance stating that transmitters of digital assets are money transmitters under state law. Still, this classification would be preempted if these entities must register with the SEC as securities intermediaries.

This case could help resolve a key question underlying several ongoing SEC enforcement actions against major crypto exchanges: whether secondary market transactions in digital assets on trading platforms constitute securities transactions subject to SEC oversight. A ruling that such transactions fall outside the SEC's authority could undermine the agency's enforcement strategy against these platforms. On the other hand, a decision upholding the SEC's interpretation could strengthen the agency's positions in these enforcement actions and potentially impact other trading platforms currently operating in the United States.

The timing of the lawsuit, filed just days after the 2024 presidential election, adds another layer of complexity to the litigation.

Conclusion

The five cases examined above will help define the coming shift in digital asset litigation under the new Trump administration. While the Second Circuit's consideration of *Ripple Labs* and *Coinbase* will determine whether the manner of sale creates meaningful distinctions under *Howey*, the industry-led cases signal an equally important development: the emergence of coordinated challenges to agency authority. The Blockchain Association's challenge to Treasury's broker regulations, Bitnomial's challenge to the SEC's claim of authority over CFTC-regulated futures products, and 18 states' defense of their regulatory frameworks collectively represent sophisticated attempts to define and limit federal oversight of digital assets.

The resolution of these cases, coupled with the anticipated regulatory shifts under the new administration, could fundamentally alter the landscape for digital asset innovation in the United States. Market participants should closely monitor these developments as they may significantly impact operational strategies and regulatory obligations in the digital asset space.

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