

Unchained:

The SEC's Evolving Stance Toward Cryptocurrencies





Changes in regulatory approaches encouraged by the Trump administration have led to some uncertainty about the status and future regulation of cryptocurrencies at the federal and state levels, including in Wisconsin. This article discusses the U.S. Securities and Exchange Commission's evolving stance and the regulation of cryptocurrencies by Wisconsin law.

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Federal and state securities laws have failed to establish clear guidelines for regulation of cryptocurrencies and non-fungible tokens. With the appointment of a “crypto czar,” dismissal of enforcement actions against cryptocurrency issuers and exchanges, and recommendations from a newly created task force on an appropriate regulatory approach, the Trump administration is signaling changes on the federal level.

What regulations might emerge to clarify cryptocurrency's status under federal law and identify which regulatory body will be tasked with oversight? What does this mean for Wisconsin cryptocurrency “investors” who are already using popular tools such as Coinbase and Kraken?

Breaking Down the Blockchain

Cryptocurrencies Defined. Cryptocurrencies are open-source virtual currencies that function as a medium of exchange without the backing of a central bank or issuer.¹ To regulate the creation of units and verify transfers, cryptocurrencies often rely on encryption technology.² A well-known cryptocurrency is Bitcoin, which can be used as a form of payment for goods and services. Bitcoin is decentralized, and every transaction is recorded on the blockchain, which is analogous to a bank's ledger.³ Several other cryptocurrencies exist, including utility tokens. One index identified over 10,000 distinct cryptocurrencies in existence as of early 2025.⁴

Non-Fungible Tokens. Non-fungible tokens (NFTs) are “blockchain-based digital assets that represent ownership or proof of authenticity of unique items or digital content.”⁵ NFT ownership

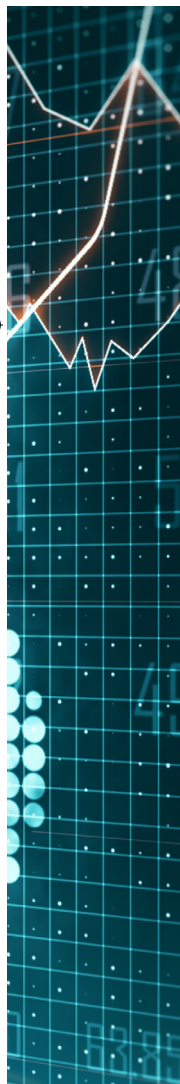
is analogous to ownership of a unique collectible or a one-of-a-kind piece of art. Although there may be multiple variations of the subject matter of an NFT, each specific NFT held by its owner is unique. NFTs soared to popularity in 2020, with \$82 million in sales.⁶ Sales grew to over \$17.6 billion in 2021.⁷

Utility Tokens. Utility tokens are a specific type of NFT that provide access to a product or service within a specific blockchain ecosystem, in contrast to security tokens, which represent ownership in an asset. For example, the cryptocurrency storage network Filecoin offers its own utility token, FIL. Users pay in FIL to purchase storage space on the Filecoin network. Storage providers earn FIL for providing storage capacity and offering reliable service. Under current law, security tokens are subject to federal securities regulations; utility tokens are not.

Initial Coin Offerings. The initial coin offering (ICO) is a common way for new cryptocurrency projects and companies to raise funds from investors.⁸ Similar to a crowdfunding campaign or an IPO, in an ICO, project founders offer their crypto tokens (coins or tokens) in exchange for investment.⁹

Investors interested in a high-potential project with the goal of making quick or long-term profits can participate in an ICO to buy tokens using cryptocurrencies such as Bitcoin or Ethereum.¹⁰

Different types of ICO tokens offer different features and benefits.¹¹ A utility token, for instance, grants access to a specific project or platform being developed by the token creator.¹² In addition, investors benefit from the increase over time in the value of the purchased tokens.¹³



A Primer on Federal Securities Law and the Challenges Presented to ICOs

Definition of "Security" and the Howey Test.

Section 2(a)(1) of the Securities Act of 1933¹⁴ (hereinafter the Securities Act) and section 3(a)(10) of the Securities and Exchange Act of 1934¹⁵ (hereinafter the Exchange Act) define the term "security."¹⁶ Commercial arrangements that are not specifically included within the enumerated types of securities in section 2(a)(1) of the Securities Act or section 3(a)(10) of the Exchange Act, including blockchain-based cryptographically secured tokens, might still be treated as securities if these arrangements are deemed to constitute "investment contracts."¹⁷

The test for whether a particular scheme is an investment contract was established by the U.S. Supreme Court in *SEC v. W.J. Howey Co.*¹⁸ The test considers "whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others."¹⁹ "[I]n searching for the meaning and scope of the word 'security' in the Act, form should be disregarded for substance and the emphasis should be on the economic reality."²⁰



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Registration Requirements.

Generally, to comply with federal securities laws, a person selling a security must either 1) "register" the sale with the U.S. Securities and Exchange Commission (SEC) (that is, conduct a public offering), or 2) identify a specific exemption that allows the sale to be conducted without registration. Registration is time-consuming and expensive, and for most small businesses, not a feasible option.

Exemptions From Registration

under the Securities Act of 1933. An offering must qualify for one of several exemptions from registration if the transaction is "not involving a public offering." Most small private company offerings are made under exemptions set forth in Regulation D, particularly rules 504, 506(b) and 506(c). Other common exemptions are set forth in Regulation CF and Regulation A+.

None of these exemptions are ideal for coin offerings, which typically involve sales to numerous investors (both accredited and nonaccredited) and raise amounts that exceed several of the exemptions from registration.²¹ The only available exemption that could accommodate an ICO would be Regulation A+, which requires submission of a Form 1-A to the SEC and a thorough review. Thus, a company seeking to rely upon this exemption for its ICO would be completely at the SEC's mercy.

No-Action Letters. In the absence of registration or reliance upon an exemption from registration, an issuer that is unsure whether a particular product, service, or action would constitute a violation of the federal securities law can request a no-action letter from the SEC staff.²² Most no-action letters describe the request, analyze the particular facts and circumstances involved, discuss applicable laws and rules, and, if the staff grants the request for no action, conclude that the SEC staff would not recommend that the commission take enforcement action against the requester based on the facts and representations

described in the request.

No-action relief is provided to the requester based on the specific facts and circumstances set forth in the request. In some cases, the SEC staff may permit parties other than the requester to rely on the no-action relief to the extent that the third party's facts and circumstances are substantially similar to those described in the underlying request. In addition, the SEC staff reserves the right to change the positions reflected in prior no-action letters.

Whether an ICO involves the issuance of utility tokens (as opposed to security tokens) has been the subject of much discussion and dispute between issuers and the SEC. Given the lack of a suitable exemption from registration, and lacking the resources to pursue a public offering, some issuers have requested no-action letters.²³ Three such letters have been issued. They establish a framework for what constitutes a "utility token" that does not constitute a "security":

- 1) The issuer will not use any funds from sales to develop its platform, which will be fully developed and operational at the time any tokens are sold.
- 2) The tokens will be immediately usable for their intended functionality at the time they are sold.
- 3) The issuer will restrict transfers of tokens to its own wallets and not allow transfers to wallets external to the issuer's platform (that is, tokens cannot be traded on secondary exchanges).
- 4) The issuer will sell tokens at a fixed price per token throughout the life of the program, and each token will represent the issuer's obligation to supply goods or services (as applicable) based on that fixed price.
- 5) If the issuer offers to repurchase tokens, it will only do so at a discount to the face value of the tokens that the holder seeks to resell to the issuer, unless a court within the United States orders the issuer to liquidate the tokens.
- 6) The token is marketed in a manner that emphasizes the functionality of the

token and not the potential for the increase in the market value of the token.

Requirements 1) and 3) present the greatest challenge to a start-up entity seeking to engage in an ICO because the entities cannot use the proceeds from the sale of tokens to develop their platforms nor can they permit holders to trade their tokens on a secondary exchange. These conditions remove the incentive to potential purchasers of tokens.

History of SEC Enforcement Actions

Faced with three equally unpalatable scenarios, several issuers instead chose a “damn the torpedoes” approach: They commenced their offerings, relying on their own steadfast belief that the things they were selling were not securities and daring the SEC to act.

Until recently, such an approach was a gamble because the SEC was an active player in the cryptocurrency regulatory arena. In 2023, the SEC brought 47

cryptocurrency-related enforcement actions. In 2024, the SEC brought 33 enforcement actions. Of the 2024 slate of cryptocurrency-related enforcement actions, 73% alleged fraud under applicable federal securities laws, 58% alleged unregistered-securities-offering violations, and 39% alleged both. With the cumulative monetary penalties imposed in 2024 reaching billions, the SEC showed no signs of dialing back cryptocurrency regulatory efforts.²⁴

For 2025, the SEC has signaled a new approach through the dismissal of several key actions lodged against cryptocurrency exchanges. In 2023, the SEC launched an enforcement action against Coinbase, a leading cryptocurrency exchange, alleging that several cryptocurrencies Coinbase offered needed to be registered as securities under federal law. The SEC launched a similar action in 2023 against Kraken, another cryptocurrency exchange. Shortly after

President Trump’s inauguration, the SEC announced the dismissal of the Coinbase action. Shortly thereafter, the SEC dismissed its action against Kraken. The dismissal of both actions is illustrative of the changing regulatory posture taking shape.²⁵

A New Federal Crypto Landscape Emerges

Since Donald Trump took office in January 2025, the Trump administration has taken several crypto-oriented actions. David Sacks, a former PayPal executive, was named the inaugural White House AI and crypto “czar” and was appointed to chair the Presidential Working Group on Digital Asset Markets (hereinafter the Working Group) and to co-chair the President’s Council of Advisors on Science and Technology via an executive order. President Trump directed the Working Group to submit a report “propos[ing] a Federal regulatory



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framework governing the issuance and operation of digital assets, including stablecoins, in the United States.” The executive order states that, “the Working Group’s report shall consider provisions for market structure, oversight, consumer protection, and risk management.”²⁶ The Working Group submitted its report in July, providing a roadmap for federal initiatives to streamline the regulation of cryptocurrencies and encourage more crypto offerings nationwide.

In March, President Trump and Sacks hosted the first-ever White House Digital Asset Summit, which brought together cryptocurrency executives and policymakers. The day before the summit, President Trump signed an executive order establishing a “Strategic Bitcoin Reserve and United States Digital Asset Stockpile.” The digital assets contributed to the reserve and the stockpile consist of digital assets seized by the federal government via seizure or forfeiture actions. The creation of such repositories is intended to create uniformity surrounding the administration, maintenance, and control of federally held digital assets. The Treasury Department is tasked with carrying out the primary goals of the executive order.²⁷

In April, in a clear shift from the Biden administration’s focus on cryptocurrency misconduct, the U.S. Department of Justice (DOJ) disbanded the National Cryptocurrency Enforcement Team. The team, comprised of specialized federal prosecutors, focused on the investigation and prosecution of cryptocurrency crimes. Todd Blanche, the deputy U.S. attorney general, said, “[t]he Department of Justice is not a digital assets regulator.”²⁸ With the DOJ winding down efforts to prosecute cryptocurrency offenses and the SEC dismissing several key cases against cryptocurrency issuers, it appears that a new federal crypto landscape is emerging.

In mid-July, the president signed the GENIUS Act into law.²⁹ The GENIUS Act creates a federal regulatory regime for stablecoins, including reserve backing

requirements and marketing regulations. Stablecoins are cryptocurrencies that are pegged to a recognized currency, for example, the U.S. dollar. Stablecoins are backed by legitimate, tangible assets such as cash or treasuries. The GENIUS Act remains in its infancy, and regulators, including the Treasury Department, are in the early stages of stablecoin rulemaking efforts.

In late July, one day after the release of the Working Group’s report discussed above, Paul Atkins, chair of the SEC, delivered a speech outlining SEC cryptocurrency initiatives.³⁰ Atkins’ speech signaled a tone of slashing red tape and opening the doors to cryptocurrency innovation. The speech announced the launch of “Project Crypto,” the SEC’s “north star” in boosting the status of the U.S. in the cryptocurrency sector, which will develop proposals to implement recommendations from the Working Group’s report and draft clear rules regarding transactions with and holding of cryptocurrencies.

Project Crypto focuses on key initiatives including 1) creating a regulatory framework for the distribution of cryptocurrencies in the U.S., including clear guidelines to determine whether a cryptocurrency is a security or subject to an investment contract; 2) creating exemptions and safe harbors for cryptocurrencies that are deemed securities; 3) modernizing custody requirements for registered intermediaries; 4) streamlining the licensing structure for SEC registrants; 5) permitting various asset classes to be traded in tandem on SEC-regulated platforms; 6) updating rules to support on-chain software systems; and 7) potentially creating an innovation exemption to spur new cryptocurrency solutions without subjecting such solutions to certain existing regulatory requirements.

State Regulation

How does the new federal pro-cryptocurrency agenda affect Wisconsin? The state has acted as both a regulator and a

consumer of cryptocurrencies in recent years. The State of Wisconsin Investment Board, which manages the assets of the Wisconsin Retirement System, recently doubled its holdings in BlackRock’s iShares Bitcoin Trust exchange-traded fund to six million shares, equating to over \$285 million as of April.³¹ Such investment demonstrates an increased appetite for cryptocurrencies among institutional investors.

With the muzzling of the related federal regulatory landscape, consumers of cryptocurrencies in Wisconsin might wonder whom they can turn to for consumer protections customarily associated with investing in registered securities. During 2023 alone, the FBI identified over \$35 million lost by Wisconsinites in cryptocurrency scams.³² The answer, at least in part, is the Wisconsin Department of Justice (DOJ). Although Wisconsin has not enacted specific cryptocurrency regulations, state securities laws have been used to conduct enforcement action against cryptocurrency exchanges.

Coinbase was a focus of the Wisconsin DOJ after an investigation found that the exchange’s staking rewards program violated state securities laws. Staking allows investors to “lock” certain cryptocurrency assets for a period, which helps improve the operations of a blockchain. Participating investors earned additional cryptocurrency assets in exchange for staking their cryptocurrencies, in a similar fashion to earning interest in a bank account. Officials launched an enforcement action against Coinbase, citing the exchange’s failure to register the staking program as a security despite such program qualifying as a security under Wisconsin law.³³ Although the Coinbase action was against a cryptocurrency program, not the asset itself, it is not a far leap to envision a scenario in which a cryptocurrency, such as one issued pursuant to an ICO, could qualify as a security under Wisconsin law, opening the door to certain registration requirements and

bolstered consumer protections.

With a relaxed federal regulatory arena taking shape, Wisconsin has an opportunity to craft cryptocurrency regulations in the consumer protection realm. Wisconsin's Money Transmission Law took effect in early 2025.³⁴ The law regulates licensure and conduct of money transmitters in the state. The law was adopted as part of a nationwide model law initiative but also enabled the Wisconsin Department of Financial Institutions (DFI) to provide regulatory guidance on virtual currency kiosks, which are akin to ATMs but transact in cryptocurrencies. Due to the high level of fraud associated with virtual currency kiosks, the DFI introduced several

anti-fraud measures on virtual currency kiosk operators, including fraud warnings and daily transaction limits. The Wisconsin Senate is reviewing a bill that would codify the DFI regulations under the Money Transmission Law.³⁵

Under the GENIUS Act, states can create regulatory regimes that are substantially similar to the federal regime to regulate certain stablecoin issuers. Wisconsin could create its own stablecoin laws to maintain oversight and protect Wisconsin residents. Wisconsin should continue to closely monitor federal cryptocurrency developments to determine the clearest path ahead for state regulation and to avoid federal preemption.

Conclusion

The Trump administration appears keen to unchain the regulatory constraints imposed on cryptocurrencies in hopes of bolstering the nation's standing in the cryptocurrency sector. With the SEC crafting a streamlined regulatory framework, cryptocurrencies are poised to gain institutional legitimacy as a regulated asset, opening the door to additional use cases. **WL**

ENDNOTES

¹Cryptocurrency, Black's Law Dictionary (12th ed. 2024).

²Id.

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⁴Index of Cryptocurrencies, Investing.com, <https://www.investing.com/crypto/currencies> (last visited Sept. 11, 2025).

⁵What Is an NFT?, Pinata (Oct. 25, 2023), <https://pinata.cloud/blog/what-is-an-nft/>.

⁶Ryan Browne, *Trading in NFTs Spiked 21,000% to More Than \$17 Billion in 2021, Report Says*, CNBC (Mar. 10, 2022), <https://www.cnbc.com/2022/03/10/trading-in-nfts-spiked-21000percent-to-top-17-billion-in-2021-report.html>.

⁷Id.

⁸Atul Mittal, *Shocking ICO Statistics 2025: You Must Know Before Investing*, SAG IPL, <https://blog.sagipl.com/ico-statistics> (last updated May 21, 2025).

⁹Id.

¹⁰Id.

¹¹Id.

¹²Id.

¹³Id.

¹⁴15 U.S.C. §§ 77a-77aa.

¹⁵15 U.S.C. §§ 78a-78rr.

¹⁶The definition of a security in section 2(a)(1) of the Securities Act is "essentially identical in meaning" to the definition of security in Section 3(a)(10) of the Exchange Act. *SEC v. Edwards*, 540 U.S. 389, 393 (2004). Therefore, the conclusion that tokens are not securities, and the related reasoning, applies to both section 2(a)(1) of the Securities Act and section 3(a)(10) of the Exchange Act.

¹⁷*Edwards*, 540 U.S. at 393 (stating that definition of investment contract "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits").

¹⁸*SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

¹⁹Id.

²⁰*Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967) (citing *W.J. Howey Co.*, 328 U.S. at 298).

²¹For example, a 2020 study cited by SAG IPL indicated that the average ICO received around 4,700 contributors and raised approximately \$12.5 million. See Mittal, *supra* note 8.

²²U.S. SEC, *No Action Letters*, <https://www.investor.gov/introduction-investing/investing-basics/glossary/no-action-letters> (last visited Sept. 11, 2025).

²³The companies that requested and were issued such letters are TurnKey Jet Inc., <https://www.sec.gov/divisions/corpfin/cf-noaction/2019/turnkey-jet-040219-2a1.htm>; Pocketful of Quarters Inc., <https://www.sec.gov/corpfin/pocketful-quarters-inc-072519-2a1>; and IMVU Inc., <https://www.sec.gov/corpfin/imvu-111920-2a1>.

²⁴Cornerstone Rsch., *SEC Cryptocurrency Enforcement 2024 Update* 1, 6 (2025).

²⁵Press Release, SEC, *SEC Announces Dismissal of Civil Enforcement Action Against Coinbase* (Feb. 27, 2025), <https://www.sec.gov/newsroom/press-releases/2025-47>; Press Release, SEC, *SEC Announces Dismissal of Civil Enforcement Action Against Kraken* (Mar. 27, 2025), <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26278>.

²⁶Kif Leswing, *Trump Says Venture Capitalist David Sacks Will be AI and Crypto 'Czar'*, CNBC (Dec. 5, 2024), <https://www.cnbc.com/2024/12/05/trump-david-sacks-billionaire-ai-crypto.html>; Exec. Order No. 14178, 90 Fed. Reg. 8647 (Jan. 23, 2025).

²⁷Exec. Order No. 14233, 90 Fed. Reg. 11789 (Mar. 6, 2025).

²⁸Alan Suderman & Alanna Durkin Richer, *Justice Department Will Disband its Team Focused on Cryptocurrency Crimes*, PBS (Apr. 9, 2025), <https://www.pbs.org/newshour/politics/justice-department-will-disband-its-team-focused-on-cryptocurrency-crimes>.

²⁹Guiding and Establishing National Innovation for U.S. Stablecoins Act, Pub. L. No. 119-27, 139 Stat. 419 (2025).

³⁰Paul S. Atkins, SEC Chair, American Leadership in the Digital Finance Revolution, Address Before the America First Policy Institute Convention (July 31, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125>.

³¹Helene Braun, *Wisconsin More than Doubled BlackRock Bitcoin ETF Holdings to 6M Shares*, Yahoo Finance (Feb. 14, 2025), <https://finance.yahoo.com/news/wisconsin-more-doubled-blackrock-bitcoin-175517344.html>.

³²Aisha Morales, *FBI: Wisconsinites Lost \$35 Million in Cryptocurrency Scams Last Year*, WBAY (Sep. 10, 2024), <https://www.wbay.com/2024/09/10/fbi-wisconsinites-lost-35-million-cryptocurrency-scams-last-year/>.

³³Press Release, Wis. DFI, *DFI Issues Action Against Coinbase Alleging Staking Rewards Program Violates Securities Law* (Jun. 9, 2023), <https://dfi.wi.gov/Pages/About/NewsEvents/NewsReleases/20230609Coinbase.aspx>.

³⁴Wis. Stat. §§ 217.01-217.11.

³⁵Wis. 2025 S.B. 386. **WL**