

CLIENT ALERT

New Reports Outline Recommendations to Advance Comprehensive Framework for Regulation of Digital Assets

October 3, 2022

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Executive Summary

Following President Biden's call for a whole-of-government approach to digital assets last March, several government departments and offices have begun to issue many of the reports contemplated under Executive Order 14067 (the "Order").¹ On September 16, the U.S. Department of the Treasury ("Treasury") issued three such reports, and the U.S. Department of Justice ("DOJ") issued one report. These reports add to various other reports that have been issued to date.² Concurrent with the release of its report, DOJ also announced the establishment of the nationwide Digital Asset Coordinator ("DAC") Network to address the "growing threat posed by the illicit use of digital assets to the American public."³ Together, these developments demonstrate that a comprehensive framework for the regulation of digital assets remains a key initiative for the Biden Administration, but many questions remain, and the reports do not provide significant

¹ Please see the Willkie client alert discussing the Order [Biden Administration Calls for Whole-of-Government Review of Approach to Digital Assets](#).

² Specifically, reports have been issued by DOJ on June 6, Treasury on July 7, the Office of Science and Technology Policy on September 8 and September 16, and the U.S. Department of Commerce on September 16. The Order requests additional reports and studies that have yet to be published.

³ Justice News, Department of Justice Office of Public Affairs, Justice Department Announces Report on Digital Assets and Launches Nationwide Network, Sept. 16 2022, available [here](#).

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clarity about how U.S. authorities intend to regulate digital assets in the comprehensive manner contemplated by the Order.

Below we discuss the Treasury and DOJ reports in greater detail and provide related takeaways.

Treasury Reports

On September 16, Treasury published reports focused on key issues surrounding the responsible development of digital assets for financial services.⁴ Specifically, the reports address the future of money and payment systems, consumer and investor protection, and illicit finance risks. In a press statement accompanying their release, Secretary of the Treasury Janet L. Yellen described the reports as identifying “the real challenges and risks of digital assets used for financial services” along with the “significant opportunities” they present.⁵

I. Treasury: The Future of Money and Payments Report

Treasury’s report entitled “*The Future of Money and Payments Report Pursuant to Section 4(b) of Executive Order 14067*” provides an overview of the current U.S. system of money and payments, including developments in instant payments and stablecoins, and makes four key recommendations designed to improve that system:⁶

1. Advance work on a possible U.S. Central Bank Digital Currency (“**CBDC**”), in case one is determined to be in the national interest;
2. Encourage the use of instant payment systems;
3. Establish a federal framework for payments regulation to protect users and the financial system, while supporting responsible innovations in payments; and
4. Prioritize efforts to improve cross-border payments, both to enhance payment system efficiency and protect national security.

The report also describes potential design choices for a U.S. CBDC and calls for more engagement on CBDC systems.

II. Treasury: Implications for Consumers, Investors, and Businesses Report

A second Treasury report, “*Crypto-Assets: Implications for Consumers, Investors, and Businesses*” (the “**Consumer Report**”), reviews the current digital asset markets and trends that inform potential opportunities and risks associated with

⁴ All three Treasury reports are available [here](#).

⁵ Department of the Treasury, Statement from Secretary of the Treasury Janet L. Yellen on the Release of Reports on Digital Assets, Sept. 16 2022, available [here](#).

⁶ Department of the Treasury, The Future of Money and Payments Report Pursuant to Section 4(b) of Executive Order 14067, Sept. 16 2022, available [here](#).

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their use.⁷ The Consumer Report focuses specifically on “crypto-assets” (*i.e.*, all digital assets that are not CBDCs), which “are currently at the center of the consumer and investor experience,” and characterizes most crypto-assets as products primarily used to trade, lend, and borrow other crypto-assets. Consistent with the objective of protecting consumers, investors, and businesses, as well as promoting responsible development of payment innovations and digital assets, the Consumer Report recommends a number of steps that relevant agencies should take to address risks associated with the crypto-asset sector. This includes a recommendation for agencies to continue to issue supervisory guidance and rules to address current and emerging risks in crypto-asset products and services.

III. Treasury: Action Plan

The “*Action Plan to Address Illicit Financing Risks of Digital Assets*” report (the “**Action Plan**”)⁸ responds to the Order’s call for the development of a coordinated interagency action plan for mitigating the digital asset related illicit finance and national security risks as identified in the U.S. government’s National Strategy for Combating Terrorist and Other Illicit Financing (“**Illicit Financing Strategy**”). The Illicit Financing Strategy outlines priorities to ensure that the U.S. government adapts its anti money laundering/countering the financing of terrorism (“**AML/CFT**”) regime to an evolving threat environment and accounts for structural and technological changes in financial services and markets. The Action Plan identifies certain priority actions in support of uncovering and mitigating the misuse of digital assets, including: monitoring risks; working with international partners to improve cooperation on, and implementation of, international, AML/CFT standards; strengthening regulations and frameworks; and improving private sector compliance and information sharing.

In addition, on September 19, Treasury filed a Request for Comment seeking feedback from the public on the illicit finance and national security risks posed by digital assets and requesting input on what actions Treasury should take to mitigate these risks.⁹

DOJ Report

DOJ’s report, “*The Role of Law Enforcement in Detecting, Investigating, and Prosecuting Criminal Activity Related to Digital Assets*,” (the “**DOJ Report**”) discusses ways in which illicit actors exploit digital assets. The DOJ Report also identifies three proposals as priorities for regulatory and legislative action:

1. Expanding to virtual asset service providers the laws preventing financial institution employees from tipping off suspects to ongoing investigations;
2. Strengthening the law criminalizing the operation of unlicensed money transmitting businesses; and

⁷ Department of the Treasury, *Crypto-Assets: Implications for Consumers, Investors, and Businesses*, Sept. 16 2022, available [here](#).

⁸ Department of the Treasury, *Action Plan to Address Illicit Financing Risks of Digital Assets*, Sept. 16 2022, available [here](#).

⁹ Press Release, U.S. Department of the Treasury Office of Public Affairs, *Treasury Seeks Public Input on Illicit Finance, National Security Risks Posed by Digital Assets*, Sept. 19 2022, available [here](#).

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3. Extending the statute of limitations of certain statutes to account for the complexities of digital assets investigations.

The DOJ Report also announced the launch of the Criminal Division's DAC Network, which was established to ensure that DOJ continues to meet the challenges posed by the illicit use of digital assets. The DAC Network is composed of designated federal prosecutors from U.S. Attorneys' Offices nationwide and DOJ's litigating components and serves as a forum for prosecutors to obtain and disseminate training, technical expertise, and guidance about the investigation and prosecution of digital asset crimes. The creation of the DAC Network builds on previous steps by DOJ to combat digital asset misuse.

The reports discussed above assess a broad range of risks and potential benefits in the digital assets space from considerations of equity and inclusion to privacy, national security, and global leadership. We will continue to keep our clients apprised and informed as additional reports are issued pursuant to the Order.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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