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The Cryptocurrency Industry Breathes a Sigh of Relief Following President Biden's Executive Order

*By Alexandra C. Scheibe, Joseph B. Evans and Rachel Rosen**

President Joe Biden's Executive Order on Ensuring Responsible Development of Digital Assets is referred to as the "first-ever, whole-of-government approach" to the cryptocurrency industry. The authors of the article discuss the Order's six key priorities and exploration of a U.S. Central Bank Digital Currency.

President Joe Biden signed an unprecedented executive order directing federal agencies to coordinate their approach to clarifying cryptocurrency regulations. Sighs of relief were heard across the industry from those who feared a major blow from the White House.

THE ORDER

The Executive Order on Ensuring Responsible Development of Digital Assets (the "Order") is referred to as the "first-ever, whole-of-government approach" to the cryptocurrency industry. It lays out a national policy across six key priorities:

1. Promote U.S. competitiveness within the global cryptocurrency market;
2. Protect consumers and investors;
3. Promote financial stability;
4. Combat illicit finance;
5. Promote financial inclusion; and
6. Promote responsible innovation.

In addition to the priorities listed above, the Order also calls for the exploration of a U.S. Central Bank Digital Currency ("CBDC").

The Order was issued for the stated purpose of "addressing the risks and harnessing the potential benefits of digital assets and their underlying technology."

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U.S. LEADERSHIP IN THE GLOBAL FINANCIAL SYSTEM AND ECONOMIC COMPETITIVENESS

The Order includes a section that focuses on gaining “United States competitiveness” globally regarding the development of cryptocurrency. The Biden administration has directed the U.S. Department of Commerce to work with relevant federal agencies to reinforce U.S. leadership both in the global financial system and in technological and economic competitiveness to sustain U.S. financial power and promote U.S. economic interests. The Order also tasks the U.S. State Department to develop ways to cooperate with international authorities to collectively promote robust standards and a level playing field in the cryptocurrency sector.

This is perhaps the most important portion of the Order. Because of the current patchwork of regulations in the United States, many cryptocurrency market participants opt to avoid the United States entirely. For this reason, the United States has not yet realized its maximum potential in the cryptocurrency space. It is hoped that this portion of the Order will ultimately result in workable regulations that fit cryptocurrency market participants of all sizes. This would welcome new market participants and put the U.S. cryptocurrency market on an equal playing field with the rest of the world.

CONSUMER AND INVESTOR PROTECTION

In furtherance of the stated goal of protecting consumers, investors and businesses, the Order directs a series of regulatory agencies and other appointees to issue reports within the next 180 days. The required reports cover virtually all aspects of consumer protection, including ensuring “affordable financial services” and “cybersecurity.” President Biden is requesting “policy recommendations, including potential regulatory and legislative actions” across a broad spectrum. The Order also addresses technical issues and asks certain agencies to address the “effect of cryptocurrencies’ consensus mechanisms on energy usage.”

Consumer protection has appeared to be a primary regulatory focus of the cryptocurrency industry. We anticipate that these reports will suggest some regulatory enhancements in the areas of cybersecurity and customer protection issues.

FINANCIAL STABILITY

The Order directs the U.S. Department of the Treasury (“Treasury”) to develop a report on the future of money and payment systems, with an eye on protecting both U.S. and global financial stability and mitigating systemic risk.

The Order repeats the general principle of “same business, same risks, same rules” and suggests that there may be increased regulatory and licensing requirements for cryptocurrency exchanges and issuers. The Order also requires reports to address “financial stability risks” and “regulatory gaps.” While the Treasury has provided some of the clearest guidance on certain regulatory regimes, such as which cryptocurrency market participants need to register as a money service business, we anticipate that these reports may provide further clarification.

ILLICIT FINANCE

Additionally, the Order includes a focus on eradicating illegal cryptocurrency activity. The Biden administration has called for an “unprecedented focus of coordinated action” from federal agencies in mitigating illicit finance and national security risks posed by cryptocurrencies. Federal agencies are directed to scrutinize how cryptocurrencies may undercut U.S. sanctions and efforts to fight money laundering. The Order requires the US Attorney General, in coordination with relevant agencies, to study and report on the role law enforcement agencies may have in detecting and prosecuting criminal activity and provide recommendations on regulatory or legislative actions. The Order also urges international collaboration.

FINANCIAL INCLUSION

Another key objective of the Order is to reduce inefficiencies that currently exist in the US payments system while boosting financial inclusion for those who are typically underserved by the traditional banking system. The order directs the Treasury to work with relevant agencies to promote equitable access to safe, affordable and accessible financial services as a national interest.

PROMOTE RESPONSIBLE INNOVATION

The Biden administration stated that it aims to direct the U.S. government to take concrete steps to support “technological advances” in developing the cryptocurrency industry. However, the Biden administration also stated that it will prioritize privacy, security, combating illicit exploitation and reducing negative climate impacts.

EXPLORATION OF A CENTRAL BANK DIGITAL SECURITY

The Biden administration will also formally consider the creation of a possible U.S. digital currency, or a CBDC backed by the Federal Reserve

System, similar to the digital currencies that were developed in other countries. While CBDCs have the potential to accelerate the settlement of payments, issues concerning financial stability and privacy remain. The Order directs the U.S. government to assess the risks, benefits, technological infrastructure and capacity needs for such CBDCs in a manner that would protect Americans' interests while also providing immense benefits to U.S. communities who have suffered from insufficient access to financial services. The Federal Reserve System began working on exploring the issuance of a CBDC late last year but has yet to take a position on whether it believes the United States should issue such digital currency.

CONCLUSION

While some in the cryptocurrency industry were concerned when anticipating President Biden's Order, it primarily calls upon certain regulators to focus on this sector. The industry will determine its true effects when these reports are delivered, and regulations are subsequently enacted. For now, the Order signifies the Biden administration's goal to adopt regulation without frustrating innovation and to facilitate the United States' development as a market leader in the crypto space.