

Cabinet News and Views

Informed analysis for the financial services industry



SEC's Division of Corporation Finance Heightens Expectations for Crypto Disclosures



By **Philip Khinda**

Partner | White Collar Defense and Investigations



By **Kendra Wharton**

Associate | White Collar Defense and Investigations

In the wake of mounting crypto bankruptcies and federal investigations into the alleged misappropriation of crypto assets, among other possible wrongdoing by market participants, the U.S. Securities and Exchange Commission's Division of Corporation Finance announced new guidance on December 8 for public company disclosures about the impact of these and other developments.

While the news cycle is currently focused on the arrest of FTX co-founder and former CEO Sam Bankman-Fried, public companies, funds and other institutions with federal disclosure obligations must be mindful of the heightened scrutiny they will receive in the coming months. Many public companies, in particular, may be obligated under the federal securities laws to provide disclosures in their upcoming annual or quarterly filings relating to the impacts of widespread financial distress across the crypto asset markets. Even those facing indirect counterparty risks may be required to make meaningful disclosures.

In its [December 8 guidance](#), the Division of Corporation Finance released a sample letter describing several considerations that public companies should keep in mind as they prepare their disclosures. The Division advised companies to evaluate their disclosures, including Risk Factors and Management's Discussion & Analysis of Financial Condition and Results of Operations, with a view toward providing specific, tailored disclosures about the material impacts of crypto asset market developments.

Among other considerations, the sample letter indicates issuers should carefully evaluate their disclosures of:

- impacts from the price volatility of crypto assets;

- impacts from the bankruptcies of FTX, Voyager, Celsius Network, BlockFi, and other market participants, including whether the business has any material assets that may not be recovered or may otherwise be lost or misappropriated;
- direct or indirect exposure to other counterparties, customers, custodians, or other participants in crypto asset markets known to have experienced insolvency or excessive redemptions, have crypto assets that are unaccounted for, or have experienced material corporate compliance failures;
- if the company holds crypto assets, whether the crypto assets serve as collateral for any loan, margin, rehypothecation, or other similar activities;
- changes to company processes in light of crypto market developments, including steps taken to safeguard crypto assets, and implementation of policies and procedures designed to prevent commingling of assets, self-dealing and other potential conflicts of interest;
- risk management gaps identified by the company's board or management in light of crypto market conditions, as well as changes made to address those gaps;
- reputational harm the company may face in light of recent disruption in the crypto asset markets; and
- potential impacts of regulatory developments, including pending crypto legislation or regulation.

The sample letter follows an [announcement](#) by the Division of Corporation Finance in September that it was adding a dedicated Office of Crypto Assets to its Disclosure Review Program. The new office focuses resources and expertise to address the unique and evolving disclosure issues relating to crypto assets. The Office of Crypto Assets will be ready and willing to refer matters to the Division of Enforcement when it finds that companies failed to provide investors meaningful disclosures about the material impacts of crypto asset market conditions.
