

## Hester Peirce's Journey and Crypto Task Force

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While some of the crypto developments we have reported on in this edition of *Cabinet News & Views* have had a distinctively partisan bent to them, the departure of Gary Gensler from the Securities & Exchange Commission ("SEC"), the Chairman of the SEC during the Biden administration, has objectively allowed the SEC to take immediate steps to put itself on a more responsible and responsive footing vis a vis the crypto industry. Acting Chairman Mark T. Uyeda **announced the creation of a Crypto Task Force** on January 21, the day after the Inauguration, appointing Commissioner Hester Peirce to lead it. Commissioner Peirce, who has been affectionately called "Crypto Mom" over the years, has had a clear-eyed and supportive view of the crypto industry and was consistently critical of many SEC enforcement actions that were taken against companies engaged in various crypto-related activities over the last four years. The focus of the Crypto Task Force "will be to help the Commission draw clear regulatory lines, provide realistic paths to registration, craft sensible disclosure frameworks, and deploy enforcement resources judiciously."

On February 4, Commissioner Peirce posted a statement called "**The Journey Begins**" that explained her vision for the Crypto Task Force, as well as provided a clear roadmap of its priorities. Stating that she is "hopeful that we will arrive at a place that is better than we could have imagined" compared to where things are after the last four years, noting that during that time, "the Commission's handling of crypto has been marked by legal imprecision and commercial impracticality. Consequently, many cases remain in litigation, many rules remain in the proposal stage, and many market participants remain in limbo." After balancing her optimism for crypto by observing that "spinning up coins and tokens is easy", she reminded that figuring out whether to invest in or use such coins and tokens will still be a situation where folks could lose value. In terms of priorities, Peirce said the first important step was rescinding SAB-121, but then described these next items as part of a list that is intended to be neither exhaustive nor to reflect an order of priority:

1. The **security status of crypto assets** under the securities laws needs to be resolved.
2. **Scoping out areas that fall outside of the SEC's jurisdiction** will also be useful to the industry, as will the issuance of **no-action letters** "addressing specific circumstances . . . under which the staff will not recommend enforcement action."
3. Providing a framework by which **certain coin or token offerings** that are not intended to be investments (e.g., like many non-fungible token (NFT) offerings) could be provided temporary prospective or retroactive relief from registration requirements, as long as they accepted SEC jurisdiction in the case of fraud allegations with the purchase or sale of the asset.
4. Introducing a **viable path for registering token offerings**.
5. **Amending the special-purpose broker dealer no-action statement** to cover those that custody crypto asset securities alongside crypto assets that are not securities.
6. Addressing **crypto custody solutions** for investment advisers.
7. Providing **clarity regarding crypto-lending and staking programs** and whether those are covered by securities laws, or otherwise.
8. In terms of **crypto exchange-traded products**, the task force will work on SRO proposed rule changes to facilitate the approval or disapproval of related applications.
9. Providing clear guidance and direction to the intersection of crypto and **clearing agency and transfer agent rules**.
10. Introducing a **cross-border sandbox** that could allow international experimentation with various crypto projects.

The end of Commissioner Peirce's mission statement encourages interested parties to submit written input on issues the Crypto Task Force should be considering and to request a meeting with the Crypto Task Force to discuss approached related to addressing regulation of crypto assets.