

CLIENT ALERT

MARCH 14, 2022

Biden Administration Issues Executive Order on Ensuring Responsible Development of Digital Assets

a. Introduction

On March 9, 2022, U.S. President Biden issued an “Executive Order on Ensuring Responsible Development of Digital Assets,” which establishes a government-wide approach to address the potential risks and benefits of digital assets.¹ While the Executive Order itself does not reference Russia by name, it notes that “[d]igital assets may also be used as a tool to circumvent United States and foreign financial sanctions regimes and other tools and authorities.”²

b. Key Takeaways:

Most notably, the Executive Order requests assessments of the potential benefits and risks of a U.S. Central Bank Digital Currency (“CBDC”). Regarding the assessment of CBDCs, the Executive Order states the following:

- “Within 180 days of the date of this order, the Secretary of the Treasury ... shall submit to the President a report on the future of money and payment systems, including the conditions that drive broad adoption of digital assets; the extent to which technological innovation may influence these outcomes; and the implications for the United States financial system, the modernization of and changes to payment systems, economic growth, financial inclusion, and national security.”³
- “Within 180 days of the date of this order, the Secretary of the Treasury ... shall submit to the President a report, or section of the report required by section 4 of this order, on the implications of developments and adoption of digital assets and changes in financial market and payment system infrastructures for United States consumers, investors, businesses, and for equitable economic growth.”⁴

¹ Executive Order on Ensuring Responsible Development of Digital Assets (hereafter, “Executive Order”), White House, Mar. 9, 2022, available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/>.

² Executive Order, Sec. 2(c).

³ Executive Order, Sec. 4(b).

⁴ Executive Order, Sec. 5(b)(i).

- “Within 120 days of the date of this order, the Secretary of the Treasury ... shall establish a framework for interagency international engagement with foreign counterparts and in international fora to, as appropriate, adapt, update, and enhance adoption of global principles and standards for how digital assets are used and transacted, and to promote development of digital asset and CBDC technologies consistent with our values and legal requirements.”⁵

In addition, the Executive Order sets out six key objectives: (1) to protect consumers, investors, and businesses in the United States, (2) to protect United States and global financial stability and mitigate systemic risk, (3) to mitigate the illicit finance and national security risks posed by misuse of digital assets, (4) to reinforce United States leadership in the global financial system and in technological and economic competitiveness, (5) to promote access to safe and affordable financial services, and (6) to support technological advances that promote responsible development and use of digital assets. According to a White House Fact Sheet, the six objectives include:⁶

1. Protecting U.S. Consumers, Investors, and Businesses:

- The Executive Order directs the Department of the Treasury to assess and develop policy recommendations to address the implications of the growing digital asset sector and changes in financial markets for consumers, investors, businesses, and equitable economic growth.
- The Executive Order also encourages regulators to ensure sufficient oversight and safeguard against any systemic financial risks posed by digital assets.

2. Protecting U.S. and Global Financial Stability and Mitigating Systemic Risk:

- The Executive Order encourages the Financial Stability Oversight Council (“FSOC”) to identify and mitigate economy-wide (i.e., systemic) financial risks posed by digital assets, and to
- Develop appropriate policy recommendations to address any regulatory gaps.

⁵ Executive Order, Sec. 8(b)(i).

⁶ FACT SHEET: President Biden to Sign Executive Order on Ensuring Responsible Development of Digital Assets, White House, Mar. 9, 2022, available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/09/fact-sheet-president-biden-to-sign-executive-order-on-ensuring-responsible-innovation-in-digital-assets/>.

3. Mitigating the Illicit Finance and National Security Risks Posed by the Illicit Use of Digital Assets:
 - The Executive Order directs unprecedented focus of coordinated action across all relevant U.S. Government agencies to mitigate these risks.
 - The Executive Order directs agencies to work with our allies and partners to ensure that international frameworks, capabilities, and partnerships are aligned and responsive to risks.
4. Promoting U.S. Leadership in Technology and Economic Competitiveness to Reinforce U.S. Leadership in the Global Financial System:
 - The Executive Order directs the Department of Commerce to work across the U.S. Government to establish a framework to drive U.S. competitiveness and leadership in, and leveraging of, digital asset technologies.
 - This framework will serve as a foundation for agencies and integrate this structure as a priority into their policy, research and development, and operational approaches to digital assets.
5. Promoting Equitable Access to Safe and Affordable Financial Services:
 - The Executive Order affirms the critical need for safe, affordable and accessible financial services as a U.S. national interest that must inform our approach to digital asset innovation, including disparate impact risk.
 - The Secretary of the Treasury, working with all relevant agencies, is directed to produce a report on the future of money and payment systems, to include implications for economic growth, financial growth and inclusion, national security, and the extent to which technological innovation may influence that future.
6. Supporting Technological Advances and Ensuring Responsible Development and Use of Digital Assets:
 - The Executive Order directs the U.S. Government to take concrete steps to study and support technological advances in the responsible development, design and implementation of digital asset systems.
 - The Executive Order prioritizes privacy, security, combating illicit exploitation and reducing negative climate impacts.

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