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Risk #7: Crypto's Second Act: A Rational Framework or a Regulatory Mirage?

The Capital Commitment on **April 14, 2026**

Many in the crypto space greeted the second Trump Administration with excitement. The first Trump Administration was crypto-friendly, but did not wholly overturn the existing securities framework for crypto assets. The Biden Administration was more skeptical of crypto, with then- Securities and Exchange Commission (SEC) Chair Gary Gensler embracing the *Howey* test for securities. Crypto supporters thought 2025 might bring about the industry's holy grail: a crypto-friendly regulatory framework allowing for crypto trading and offerings without the risk of civil (or criminal) inquiries down the line so long as the framework was followed.

2025 was certainly crypto-friendly. The President pardoned Changpeng Zhao, founder of Binance, after he pled guilty to failing to prevent his platform from laundering money—a common criticism of platforms from crypto opponents. The SEC dismissed a number of crypto-related enforcement cases. The President's media company offered its own cryptocurrency. New SEC Chairman Paul Atkins and staff announced that a host of crypto-related activities and assets did not implicate federal securities laws. And yet, despite what could reasonably be called the "Year of Crypto," and perhaps as a result of the government shutdown, no regulatory framework for crypto had yet begun to emerge in the US in 2025, which seemed to be falling behind. UK regulators, on the other hand, were slowly-but-surely creating their own framework for crypto.

In 2026, the US framework began to take shape. The question, it turned out, is not whether the framework derives from legislation **or** new agency rules, but rather how to employ both working together.

US Regulation and Legislation: Muffled in 2025, Moving in 2026

The 2025 SEC was active on crypto—just not in the way we may have thought. Commissioner Peirce announced in February the ten priorities of the newly-established Crypto Task Force. The SEC's Division of Corporation Finance issued a host of statements finding items and actions *not* to be connected to securities, most notably meme coins, mining cryptocurrency, and dollar-backed stablecoins. After his appointment in August, new Chairman Atkins previewed what could be the SEC's new framework for analyzing crypto-assets. In his new approach, Chairman Atkins would find digital commodities, collectibles, and tools not to be securities while "tokenized securities" would remain true to their name.

Yet these statements were not accompanied by rulemaking or regulations. Why? One thought is that through DOGE and other "efficiency" efforts, the staff who would write these regulations were removed from their positions. And those who remained had to juggle dramatically larger workloads. The reality appeared more banal – the SEC hosted roundtables, lunch-and-learn sessions, and collected written comments, all of which highlighted how complex some aspects of crypto regulation promised to be, technically, commercially, and politically. And, of course, there was also the government shutdown.

Yet Q1 2026 has provided what 2025 lacked: movement and clarity. In mid-January 2026, a group of US senators finally unveiled what could be a comprehensive crypto framework based on the Clarity Act, adopted by the House of Representatives last summer. Beyond defining when crypto tokens are commodities, securities, or something else, it would allow certain hybrid security/commodity digital assets to fall under regulation by the Commodities Futures Trading Commission (CFTC). Digital assets that meet the definition of "securities" (i.e., applying the *Howey* test) would remain subject to traditional SEC regulation of securities. The legislation was expected to pass and become law in January, but was blocked, reportedly on one primary issue – the ability to offer incentives like interest payments when issuing stablecoins. Some believe that such interest/incentives could draw funds away from savings accounts maintained at traditional banks. The bill remains stalled in the Senate Banking Committee, but a tentative agreement in principle between key senators and the White House was made public in mid-March. While there is no such thing as a sure thing, the legislation is expected to pass this year.

On March 17, 2026, the SEC issued an interpretive release generally aligning with the Clarity Act's positioning of crypto assets and filling in some of the legislation's gaps that would require SEC and CFTC regulatory action. In other words, the release anticipated the legislation becoming law. The CFTC joined in the SEC's release. Specifically, the release addressed digital assets that can have components that are not securities; and, over time, can evolve enough that they become solely digital commodities not subject to SEC regulation. More analysis of this recent release and its overlap with the Clarity Act can be found at Proskauer's Regulatory and Compliance blog.

UK Regulation and Legislation: Ripples Across the Pond

Over the past fifteen months, the UK has similarly been in the process of developing its own comprehensive regime governing crypto, which is likely to face fewer barriers to implementation than its US counterpart. Current political zeitgeist is firmly focused on "liberating" the UK financial sector to boost economic growth, with widespread regulatory reform already underway to remove unnecessary red tape and promote innovation. A thriving crypto market is seen as focal to this ambition, and Parliament has already passed legislation recognizing legal proprietary rights over digital assets, expressly to encourage crypto fintechs to operate in the UK.

The proposed regulatory regime reflects the UK's willingness to embrace crypto as a financial asset, and seeks to ensure that the market remains vibrant whilst also maintaining appropriate customer protections.

On December 15, 2025, the UK Government took a key step by publishing draft legislation that would establish a UK crypto regulatory framework. Parliament is expected to complete its legislative review process ahead of the legislation coming into force on October 25, 2027. The draft legislation introduces a range of crypto-related activities subject to Financial Conduct Authority (FCA) regulation, such as issuing stablecoins, operating a crypto trading platform, arranging deals in crypto, and safeguarding and staking activities. The legislation also establishes new regimes governing the content of public advertisements for crypto investments, admissions on trading platforms and market abuse in crypto markets.

The FCA Handbook will set out how crypto-related activities will be regulated in practice, and the FCA was busy consulting on new regulation throughout 2025. Consultations for industry feedback were published in May and September, and the FCA launched fresh consultations on areas of the proposed regime in tandem with HM Treasury's publication of draft legislation in December. A further consultation was published in January 2026. The FCA will publish its finalized rules governing crypto later in 2026, and firms can apply for FCA authorization from September 30, 2026 ahead of the regime coming into force.

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The process for creating a UK regime to harness the economic potential of crypto is already well underway. The US may appear a bit behind, but it seems like a regulatory and legislative framework is just around the corner.

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