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Future-Proofing Your Business in Anticipation of Regulatory Change

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Future-Proofing Your Business in Anticipation of Regulatory Change

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In the 18 years since the publication of Satoshi Nakamoto's original whitepaper, U.S. regulators have struggled with how best to regulate digital assets. Digital assets are not quite like anything that proceeded them. For years, regulators treated them with suspicion, discouraging innovation by refusing to provide clear regulatory guidance, choosing instead to file aggressive lawsuits aiming to stymie the industry, an approach that has been commonly dubbed "regulation by enforcement." While that era is now over, it is unclear how long the current pro-crypto innovation climate will remain in place.

Despite the uncertainty, there are still steps firms can take to prepare for a range of potential outcomes. Firms should proactively reach out to regulators for guidance, develop agile business plans that can pivot as the regulatory climate changes, and adopt a robust, forward-thinking approach that takes into account an ever-changing regulatory environment.

Why Blockchain Matters

Blockchain is a technology that can be thought of as infrastructure—unlocking innovative new functionality, as the internet, Bluetooth, or GPS did—and it is being built into many applications and services that ordinary people use and regularly rely on.

A key innovation of blockchain is that it allows anyone to verify and record ownership of an asset globally, without a central authority. Prior to the advent of blockchain, it was difficult to prove ownership of purely digital assets. For instance, a person could own a *copy* of a file (for example, a copy of an image file), but that copy was identical to every other copy. Proving ownership of the underlying image required someone or something else. Blockchain solves that problem. It allows recording of ownership on a shared, secured, and often public ledger. Once a transaction of an asset is recorded on a blockchain, it cannot, as a practical matter, be altered or deleted.

And just as GPS technology can be used in a variety of products and services, blockchain technology can be used to build a diverse range of applications and systems. It is a technological innovation that is increasingly woven into the fabric of existing financial systems to enhance and streamline services that ordinary consumers regularly use and rely upon.

For instance, blockchain technology is now used by well-known banks (such as Citibank and JPMorganChase), as well as financial services companies (like Visa and CME Group).[1] Financial services companies are also starting to use federally-regulated stablecoins, which are digital assets backed by real-world assets like Treasuries and pegged to the value of the U.S. Dollar.[2] These stablecoins will provide people outside the U.S. with access to dollars, even if they don't own U.S. dollar-based accounts.[3] In 2025, JPMorganChase announced a partnership which allows its account holders to purchase or sell stablecoins directly from their account.[4]

Blockchain Innovation is Unlocking Bipartisan Support for the Regulation of the Industry

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[1] *See* Billy Bambrough, *Visa, Mastercard, JPMorgan And Citi Reveal Crypto Plan for 'Mass Institutional Adoption'*, Forbes (May 11, 2024), https://www.forbes.com/sites/digital-assets/2024/05/11/visa-mastercard-jpmorgan-and-citi-reveal-game-changing-crypto-plan-for-mass-institutional-adoption-after-bitcoin-ethereum-and-xrp-price-pump; *see also,* Press Release, CME Group, CME Group to Launch 24/7 Cryptocurrency Futures and Options Trading on May 29 (Feb. 19, 2026), https://www.cmegroup.com/media-room/press-releases/2026/2/19/cme_group_to_launch247cryptocurrencyfuturesandoptionstradingonma.html

[2] *See, e.g.,* Stripe, *Stripe Accelerates the Utility of AI and Stablecoins with Major Launches* (May 7, 2025), https://stripe.com/newsroom/news/sessions-2025

[3] *See, e.g.*, Oliver Wyman, *How Deposit Tokens are Changing the Digital Money Ecosystem* (Feb. 2023), https://www.oliverwyman.com/our-expertise/insights/2023/feb/deposit-token-a-foundation-for-stable-digital-money.html.

[4] *See, e.g.*, JPMorganChase, *JPMorganChase and Coinbase Launch Strategic Partnership to Make Buying Crypto Easier than Ever* (Jul. 30, 2025), https://www.jpmorganchase.com/newsroom/press-releases/2025/jpmc-coinbase-partnership.

The potential innovations offered by the application of blockchain technology has spurred widespread, bipartisan support for the development and regulation of the digital asset industry in the United States. For example, the GENIUS Act places regulatory guardrails on "stablecoins," requiring them to be fully backed by liquid assets and subjecting issuers to both federal and state oversight.[5] And the CLARITY Act, which would provide a comprehensive regulatory framework for certain digital assets and clarify jurisdiction among federal agencies, is garnering bipartisan support in both the House and Senate.[6]

These pieces of legislation, however, do not guarantee smooth sailing for crypto companies and their partners. Even if the CLARITY Act passes, regulatory clarity will not be instantaneous. And innovators in the industry need to be wary of potential pitfalls and make contingency plans for the turbulent sea of piecemeal regulation that awaits them.

To Predict the Future, Look to the Past

If the CLARITY Act passes, firms can expect a protracted rulemaking process in which key lines will remain undrawn for years to come. The regulatory aftermath of Dodd-Frank offers the clearest parallel to what the industry can expect if the CLARITY Act passes.[7] In fact, the CLARITY Act draws on the existing regulatory scheme to frame the regulation of digital assets, which provides some initial indication of how oversight would function in practice.[8] More significantly, however, both regimes share a defining structural feature: the authority to enact rules and issue guidance is distributed across a multiplicity of regulators, each with overlapping and

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[5] 12 U.S.C. § 5901-16
[6] *See, e.g.,* Reuters, *The Clarity Act and the Future Digital Asset Market* https://www.reuters.com/legal/legalindustry/clarity-act-future-digital-asset-market--pracin-2026-03-31/; The Digital Market Clarity Act, H.R. 3633, 119th Congress
[7] 12 U.S.C. § 5491
[8] The Digital Market Clarity Act, H.R. 3633, 119th Congress

sometimes competing jurisdictional claims.[9] Should the CLARITY Act fail to advance, the fragmented and protracted regulatory history that followed Dodd-Frank's enactment offers an even more instructive preview of the legal compliance challenges that the crypto industry may face in the years ahead.

The enactment of the Dodd-Frank Act on July 21, 2010, represented the most sweeping and ambitious overhaul of the United States financial regulatory architecture since the legislative flurry of the New Deal in the 1930s.[10] Precipitated by the 2007–2008 global financial crisis, the statute was designed as a comprehensive response to the systemic vulnerabilities that the crisis had exposed.

The passage of the 848-page statute was not, however, the culmination of financial reform, but merely its turbulent genesis. Recognizing the sheer complexity of modern global finance, Congress constructed a vast statutory framework that relied almost entirely on the delegation of highly technical legislative detail to a fragmented constellation of federal regulatory agencies.[11] The Dodd-Frank Act mandated or authorized hundreds of separate rulemakings, dozens of independent studies, and the creation of entirely new regulatory bureaucracies, most notably the Consumer Financial Protection Bureau (CFPB).[12]

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[9] *Id.*
[10] Britannica Money, *Dodd-Frank Wall Street Reform and Consumer Protection Act*, https://www.britannica.com/money/Dodd-Frank-Act
[11] *Id.*
[12] *Id.*; 12 U.S.C. § 5491

This extensive reliance on ex-post administrative rulemaking generated a prolonged era of profound market uncertainty. Between 2010 and 2015, and in many cases extending well beyond, financial institutions operated in a state of regulatory limbo.[13]

The current draft of the CLARITY Act, for its part, attempts to avoid repeating the mistakes of its predecessor. Nevertheless, the draft still leaves considerable discretion in the hands of the CFTC, SEC, Treasury, and other regulators, and the risk of a protracted, multi-agency rulemaking process — with all the compliance uncertainty that entails — has not been fully eliminated.[14]

Compliance in the Current Regulatory Landscape

There is no guarantee that the CLARITY Act will pass. While market participants await further regulatory direction, they must focus on complying with rules and guidance as they exist today. To bridge the gap, and potentially to fill the void if the CLARITY Act does not pass, with the SEC and CFTC issued the joint guidance earlier this year.

On March 17, 2026, the SEC and the CFTC jointly issued an interpretive release — styled "Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets" — marking the most significant and comprehensive joint regulatory pronouncement on digital assets in U.S. history.[15] The release represents the SEC's most comprehensive statement to date on the application of the Securities Act of 1933 and the Securities Exchange Act of 1934 to crypto assets, and the CFTC joined to confirm that it will administer the Commodity Exchange Act consistently with the SEC's interpretation.[16] The release

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[13] *See, e.g., MetLife, Inc. v. Fin. Stability Oversight Council,* 177 F. Supp. 3d 219, 233–39 (D.D.C. 2016) (holding Financial Stability Oversight Council's regulatory actions under Dodd-Frank were "arbitrary and capricious" because the agency failed to apply its own rules consistently)

[14] H.R. 3633, 119th Congress

[15] 17 CFR § 231 and 241 (2025)

[16] 17 CFR § 1 (2025)

was the direct product of the SEC-CFTC Memorandum of Understanding signed on March 11, 2026, and the agencies' joint "Project Crypto" initiative, both of which were designed to harmonize federal oversight of the digital asset markets and signal a definitive departure from what Chairman Atkins characterized as more than a decade of regulation by enforcement.[17]

The Interpretation classifies crypto assets into five categories — digital commodities, digital collectibles, digital tools, stablecoins, and digital securities — and analyzes each under the definition of "security."[18]

Notwithstanding the significance of this guidance, material uncertainty persists on several fronts. The agencies acknowledge that some crypto assets may not fit neatly into any of the five categories and that others may exhibit hybrid characteristics spanning multiple categories. Also, while the CFTC joined the Interpretive Release, it did not provide further clarity regarding whether non-security crypto assets would be classified as commodities under the Commodity Exchange Act, leaving a critical jurisdictional question unresolved for digital asset exchanges and intermediaries.

Chairman Atkins himself described the Interpretive Release as "a beginning, not an end," signaling that further rulemaking-including a potential safe harbor for token issuers and exemptive relief for certain offerings--remains forthcoming, meaning that market participants must continue to navigate a landscape in active transition.

That said, the Interpretive Release did not undergo the Administrative Procedure Act notice-and-comment process. It is merely an interpretation of existing law and is not binding on

[17] *See,* SEC and CFTC, *Memorandum of Understanding Between The U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission Regarding Harmonization in Areas of Common Regulatory Interest*, https://www.sec.gov/files/mou-sec-cftc-2026.pdf

[18] 17 CFR § 231 and 241 (2025)

the judiciary, even though courts may find it persuasive. Most importantly, because it is a mere interpretation, the agencies could modify, update, or abandon this framework in the future without initiating a formal APA process.[19] Accordingly, the Interpretative Guidance is best viewed as a regulatory bridge to formal rulemaking or to the CLARITY Act and subsequent rulemaking pursuant to that Act.

Future-Proofing

To a business looking to formulate a strategy that centers around blockchain, the CLARITY Act and Interpretive Release are merely signals of what regulation of digital assets *could* look like. A firm seeking to navigate these murky waters should steer a course that uses these signals as guidance but understands that they are not safe harbors and thus does not completely rely on them as shields.

If the CLARITY Act does not pass, there is significant risk that the Interpretive Release (and subsequent rulemaking) does not live long past the current Administration. Obtaining no-action relief or informal guidance from regulators can be helpful, particularly if a business robustly documents how its strategies rely on that guidance—or, alternatively, on the Interpretive Release.

For many businesses, keeping U.S. operations separate from offshore jurisdictions, with strict geofencing for U.S. persons, is a prudent course. Given that many state regulators have stepped up enforcement efforts in response to the shift in federal enforcement, geofencing to exclude residents of certain states is also a reasonable approach.

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[19] 5 U.S.C. § 553(b)(A) (exempting "interpretive rules, general statements of policy, [and] rules of agency organization, procedure, or practice" from notice-and-comment requirements); *see also Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 97 (2015) (holding that agencies may amend or repeal interpretive rules without notice-and-comment rulemaking because such rules "do not have the force and effect of law").