



U.S. Crypto & Digital Assets

## D&O Advisory

**2025 was a landmark year for U.S. digital asset regulation** — but a paradigm shift in Washington has not eliminated D&O risk. Federal enforcement has receded, yet private litigation has surged to fill the void. With the GENIUS Act enacted, new SEC and CFTC frameworks advancing, and courts reshaping personal liability doctrine, companies operating in or around digital assets enter 2026 in a materially changed – and still uncertain – legal environment.

### 2025 U.S. Regulatory Developments

**SEC 'Project Crypto' Launched.** Acting Chairman Uyeda stood up the SEC Crypto Task Force, held five roundtables on token classification and safe harbor design, and dismissed all enforcement actions against crypto exchanges and issuers — over 60% of new actions dropped, versus 4% for non-crypto matters.

**SAB 121 Rescinded (January 2025).** SAB 122 removed the primary barrier to bank-scale digital asset custody. The OCC, FDIC, and Federal Reserve withdrew post-FTX restrictive guidance; the OCC conditionally approved five national trust bank charters for digital asset firms by year-end.

**GENIUS Act Enacted.** The first federal digital asset statute established a payment stablecoin framework: 1:1 reserve requirements, segregated and audited reserves, PPSI registration, and federal supervision for issuers above \$10B. Stablecoins are excluded from securities and commodities definitions.

**CFTC Crypto Sprint.** The CFTC's August fast-track program expanded digital commodities oversight and permitted futures commission merchants to accept tokenized assets as collateral — a significant expansion of institutional DeFi access.

**SEC/CFTC Joint Statement (September).** Chairs Atkins and Pham memorialized coordinated efforts to harmonize digital asset regulation, previewing expanded trading hours, joint margin rules, and innovation exemptions for peer-to-peer spot crypto trading.

**Token Taxonomy Emerging.** Chair Atkins' November speech introduced a framework treating investment contracts as time-limited: tokens may cease to be securities as issuer influence dissipates. A formal innovation exemption was previewed for early 2026, delayed by the government shutdown.

**DTC Tokenization Pilot (December).** The SEC issued a no-action letter permitting a three-year pilot tokenizing DTC-custodied securities on supported blockchains, with launch targeted for H2 2026.

### 2025 U.S. Litigation Trends

**Private Suits Surge.** With federal enforcement cutting back, plaintiff's counsel accelerated private litigation — dozens of new class actions filed in the first eight months alone. Unregistered securities claims require no fraud allegation and carry favorable class certification standards. You do not need to have done anything wrong to be named.

**Key 2025 Settlements.** BlockFi's D&O litigation settled for \$13.3M in August. An NFT issuer and promoter settled for \$11M in April. Multiple matters resolved in the \$3–10M range, setting benchmarks for future plaintiff demands.

**Arbitration Defenses Falter.** In *Houghton v. Polychain Alchemy* and *Young v. Solana Labs* (Ninth Circuit, October 2025), courts found waiver of arbitration rights where defendants delayed raising the issue and rejected estoppel arguments where defendants were non-signatories.

**Centralized vs. Decentralized Liability.** The Second Circuit held centralized exchanges may face primary liability for unregistered securities sales; decentralized exchanges face narrower — but not eliminated — exposure. *Risley v. Universal Navigation* reinforced this distinction.

**DAO Participant Exposure.** In *Samuels v. Lido DAO* (N.D. Cal., September 2025), governance token holder liability claims proceeded — treating participants as de facto general partners. If your organization participates in DAO governance, your personal exposure is broader than you may realize.

**Bankruptcy & Compute North.** A December 2025 ruling established that in crypto insolvencies, your D&O policy becomes one of the estate's most valuable assets — pursued simultaneously by trustees and creditors. Defense costs alone can exhaust policy limits before any judgment is entered.

**Crypto Treasury D&O Risk.** When digital asset values drop and create liquidity stress, courts readily reframe treasury and governance decisions as breaches of fiduciary duty. Document your risk policies and board oversight now — not in hindsight.

## 2026 Outlook & what it means for your coverage

### 2026 REGULATORY WATCH



**Innovation Exemption:** The SEC's time-limited securities waiver — previewed for early 2026 — will redefine the safe harbor boundary for token issuers and DeFi participants, directly determining what conduct can trigger personal liability.



**Market Structure Legislation:** The CLARITY Act passed the House and awaits Senate action. It would classify most tokens as commodities and reduce SEC jurisdiction — but DeFi and non-custodial software treatment remains unresolved.



**GENIUS Act Rulemaking:** Treasury, OCC, FDIC, and the Fed will issue implementing rules throughout 2026. Compliance failures under those rules — still being written — are the next frontier of regulatory exposure for stablecoin-adjacent boards.



**DOJ & State AML Activity:** Federal fraud, manipulation, and sanctions enforcement remains fully intact. State regulators are filling the federal vacuum with a patchwork of obligations varying significantly by jurisdiction.

### WHAT TO WATCH IN YOUR POLICY

#### Regulatory Investigation Coverage.

Many policies only respond once formal charges are filed - by then you may have spent hundreds of thousands in legal fees.

#### Insured vs. Insured Exclusions.

Standard IVI exclusions are often problematic in bankruptcy scenarios - exactly when you need it most.

#### Conduct & Fraud Exclusions.

Conduct exclusions continue to be problematic given the allegations in typical claims.

#### Side A DIC Coverage.

Adequate indemnification language and making sure your program is properly structured is important in ensuring you are covered personally.

#### Crypto Treasury Exposure?

Ambiguous language can create an uncovered gap.

### Bottom line

The regulatory environment has improved — but your personal exposure as a director or officer has not. Private litigation is more active than at any point during the SEC enforcement era. The GENIUS Act, the forthcoming innovation exemption, and new court precedents are redrawing the lines of personal liability in real time. Now is the moment to review your D&O program, close coverage gaps, and ensure the protection you think you have will actually be there when you need it. Contact your advisor to get started.

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