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Digital Asset Businesses Amp Up Their Compliance Measures To Avoid Insider Trading Actions

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Several employees of digital asset platforms unexpectedly found themselves the focus of insider trading actions brought by the [Department of Justice](#) (DOJ) and the [Securities and Exchange Commission](#) (SEC) earlier this summer. While some would say digital assets fall outside the government's jurisdiction, the government actions highlight the pressing need for digital asset businesses to create robust policies and procedures to prevent prohibited trading activity on their platforms, systems, and interfaces.

Given the government's enhanced scrutiny of digital assets, businesses and providers must be extra vigilant to ensure that their internal policies, procedures, training, and monitoring are sufficient to cover cryptocurrency and better train staff and monitor employee trading activity.

Historically, insider trading violations in the financial world were limited to traditional securities products, usually equities. With these recent actions, however, [regulators have signaled their intent](#) to address all manner of

trading activity they believe violates traditional notions of fairness or perpetuates fraud, irrespective of the regulatory status of underlying assets, protocols, or transactional networks.

Representatives from both the DOJ and SEC have highlighted the commitment of both agencies to target prohibited activities even where those activities are accomplished using novel media, or concern assets, instruments, or markets not previously subject to enforcement action.

In a statement, U.S. Attorney for the Southern District of New York Damian Williams commented that the DOJ's charges demonstrate its commitment "to stamping out insider trading – whether it occurs on the stock market or the blockchain." Williams went on to note, "NFTs might be new, but this type of criminal scheme is not."

Similarly, SEC Director of Enforcement Gurbir Grewal commented that, "We are not concerned with labels, but rather the economic realities of an offering. . . . Rest assured, we'll continue to ensure a level playing field for investors, regardless of the label placed on the securities involved."

Wherever it occurs, the government has always considered insider trading to be a serious infraction of the federal securities laws, and the penalties imposed in such cases are therefore typically stiff. Insider trading violations may result in criminal and civil liability (including jail time), monetary fines, lifetime industry bars for the entities and individuals involved, and increased regulatory scrutiny of the digital platforms on which the trading occurs.

Consequently, digital asset businesses, platforms, and service providers must take seriously the new reality of increased government oversight and take steps to maintain robust policies and procedures to prevent prohibited insider activity and fraud relating to their products and services.

The recent DOJ and SEC cases make apparent that digital asset businesses and service providers cannot assume that the nascent or non-traditional nature of their products precludes regulators from using their traditional anti-fraud authority to police digital platforms, products, and services.