New crypto hires insufficient to overcome SEC's resource constraints

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The U.S. Securities and Exchange Commission's cryptocurrencies and cybersecurity enforcement unit will likely be too small to tackle all issues in the sector, even after the addition of 20 new posts.

The team needs hundreds of employees, given the size and exponential growth of crypto markets and ongoing cyberrisks, according to Tyler Gellasch, executive director of Healthy Markets Association, an institutional investor trade group.

The new jobs, announced by the SEC on May 3, will only raise the number of staff in the renamed Crypto Assets and Cyber Unit to 50. Meanwhile, the global cryptocurrency market exceeded $1.2 trillion as of May 12, up from about $264.7 billion two years ago, according to CoinMarketCap, a price-tracking website. And banks and credit unions filed nearly 25,000 suspicious activity reports about cyberattacks in 2021, up from more than 10,000 in 2019.

"You could easily make an argument that the SEC should be dedicating hundreds of millions of dollars and hundreds of staff to digital assets," Gellasch said. This is "largely because the agency had inexplicably failed to meaningfully address these issues for so long."

The SEC unit will add supervisors, investigative attorneys, trial counsels and fraud analysts to help investigate securities law violations in areas including crypto offerings and exchanges, decentralized finance, non-fungible tokens and stablecoins.

The unit, part of the SEC's Division of Enforcement, will likely focus its limited resources on retail-facing crypto companies, particularly ones that are unlicensed and unregulated, according to BTIG Director of Policy Research Isaac Boltansky.

"Retail-facing firms almost always face greater regulatory risk given the combination of higher transaction volumes, greater public awareness, and inherent political considerations," Boltansky added.

The SEC's ability to tackle wider crypto and cyberrisks is curtailed by a reliance on congressional approval for funding. The agency requested about $2.1 billion for fiscal 2023, up from $1.9 billion on an annualized basis in the fiscal 2022 continuing resolution. Its appropriations are offset by transaction fees in order to make its funding deficit-neutral.

"They have a budget, so they just can't hire as many people as they would probably want," said Ian Katz, managing director at Capital Alpha Partners.

Still, the Cyber Unit has brought more than 80 enforcement actions related to fraudulent and unregistered crypto asset offerings and platforms since its formation in 2017, resulting in monetary relief totaling more than $2 billion, according to an **SEC press release**.

"The SEC will be better equipped to police wrongdoing in the crypto markets while continuing to identify disclosure and controls issues with respect to cybersecurity," SEC Chair Gary Gensler said in the press release. An agency spokesperson had no comments about what prompted the hiring beyond the announcement, and spokespeople did not respond to requests for comment on the agency's budget.

The need to be judicious in regulation is nothing new for the SEC, according to Jennifer Schulp, director of financial regulation studies at the Cato Institute's Center for Monetary and Financial Alternatives.

"The SEC makes those choices with respect to all cases that it brings," she said in an interview. "It doesn't mean that there aren't SEC resources also being devoted to that space outside of the specialized unit, so I do think it's a significant addition."

Clearer rules needed

Crypto and cyber oversight would benefit more from clearer rules that address industry concerns about ambiguities than from additional enforcement personnel, Schulp said. A key example is uncertainty about whether digital assets are securities and therefore fall under SEC jurisdiction, she said.

Instead of focusing on rule-writing, the agency is relying on regulation via enforcement, according to Andrew Vollmer, a former deputy general counsel at the SEC. It could clarify its regulations and guidance, using just a small number of additional short-term staff at most, said Vollmer, who is now a senior affiliated scholar at the Mercatus Center.

"The SEC should develop clearer guidance and rules about the application of the securities laws to crypto-currencies and crypto-exchanges," Vollmer wrote in an email, adding that the agency should work with Congress on the issue.

The need for greater regulation and enforcement ultimately reflects the skyrocketing importance of the cryptocurrencies. The global market has surged more than fourfold in just two years. As such the SEC and other regulators will likely continue to boost their focus on the sector in future.

"I would expect the SEC to keep dedicating more resources and effort to crypto," Katz said.