CURRENT

THE US DIGITAL ASSET ENFORCEMENT PLAYBOOK

What changed. What still matters.
What operators should test.

DENNIS DROUSHIOTIS
Founder & Principal

2026 / FREE EDITION v2.1
Research cutoff: October 7, 2026
Prepared October 30, 2026

A decision guide for digital-asset businesses

For founders, commercial leaders, operating teams and fund principals. Six parts connect dated public records to evidence, business choices and action.

Read the scope first

This free edition retains the October 7, 2026 research cutoff. Selected source records were rechecked on October 30; this is not a complete update through that date. Links identify the source of factual claims. Later changes may affect the analysis. No registration is required to obtain this report.

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Facts, assessment and illustration

Agency announcements establish what the agency said; settlements and default judgments are identified as such. CURRENT assessments are analysis. Scenarios are hypothetical, not client stories. This is general market and regulatory intelligence, not individualized legal, investment or tax advice.

THE CURRENT VIEW

A change in enforcement policy is not a substitute for a workable market-access structure.

The useful question is no longer simply whether Washington is becoming more receptive to digital assets. It is whether your product, customers, intermediaries and controls fit the permissions you actually have.

A token classification does not approve an exchange. A registered exchange does not approve every intermediary. A terms-of-service restriction does not establish who uses a platform. Those distinctions matter when deciding where to trade, how to distribute a product and what to tell an investor.

This playbook connects the public enforcement record to those decisions. It preserves a simple discipline: establish the facts, identify the applicable requirement, examine the evidence and choose an action that can be implemented.

HOW TO USE THIS

Read Part I for the policy changes and their limits. Use Part II to organize an initial review. Part III explains eight enforcement patterns. Part IV applies them to illustrative business situations. Parts V and VI turn the analysis into questions, owners and actions.

Evidence convention. Dated statements about cases and policy link to official sources. "CURRENT assessment" and "Operator action" identify our analysis or proposed work. A settlement records the agency's findings and agreed resolution; it is not interchangeable with a contested court ruling. A proposal, staff statement or no-action position is not a statute.

Scope. This is selected market and regulatory intelligence, not a complete survey of every federal or state development through the publication date. The CLARITY section identifies the latest legislative event directly verified for this edition rather than implying that a full live legislative docket was accessible. The scenarios are hypothetical illustrations, not accounts of client engagements.

This publication supports business decisions and discussions with counsel. It does not provide a legal opinion on a reader's circumstances.

PART I: THE POLICY MAP

1. The reset is real. Its limits are specific.

The policy shift is visible in the official record. In February 2025, the SEC announced the dismissal of its Coinbase enforcement action. It expressly said the decision reflected its regulatory-policy work, rather than an assessment of the allegations' merits. Its fiscal-year reporting subsequently identified seven dismissed crypto enforcement actions, including Coinbase, Consensys, Kraken and Binance. That does not establish a universal exemption for similar businesses. SEC Coinbase announcement, SEC enforcement results

DOJ's April 7, 2025 memorandum redirected digital-asset enforcement priorities and disbanded the National Cryptocurrency Enforcement Team. It distinguished knowing misconduct from unwitting regulatory violations. The memorandum is an internal charging policy and expressly creates no enforceable right against the government; it does not repeal the underlying statutes. DOJ memorandum

In 2026, the SEC issued a crypto-asset interpretation, accompanied by CFTC guidance. The CFTC also took specific actions on perpetual contracts and self-custodial wallet software. Each has a defined scope, discussed below.

CURRENT assessment. More usable guidance can improve commercial planning. It also makes the quality of a firm's explanation more important: which activity is permitted, under which authority, for which users? Neither "crypto-friendly" nor "offshore" answers those questions.

2. Identify the activity before naming the regulator

Authority	First question for the operator	Practical implication
CFTC	Does the activity involve futures, swaps, other commodity derivatives, or covered leveraged retail commodity transactions?	Examine the contract, venue, intermediary and customer category separately.
SEC	Is the instrument a security, or is the transaction an investment contract?	Separate asset classification from offering, trading and intermediary obligations.
DOJ	Do the facts support a criminal offense and its required mental state?	Internal policy priorities are relevant context, not immunity.
FinCEN	Does the business perform a covered financial activity, including money transmission?	Analyze the actual flow of value and applicable exclusions or exemptions.
OFAC	Is there a prohibited transaction, blocked interest or other sanctions nexus?	Screening must be part of a program suited to the business.
States	Which state licensing, securities or consumer-protection requirements apply?	Federal status does not settle every state question.

The CFTC distinguishes its derivatives oversight from its more limited cash-market role, which includes anti-fraud and manipulation authority. FinCEN's virtual-currency guidance is business-model specific. New York DFS separately explains when virtual-currency activity involving New York or its residents requires authorization. Avoid reducing these regimes to one "crypto license." CFTC authority, FinCEN guidance, NYDFS licensing

3. Token classification is the first question, not the last

The SEC's March 17, 2026 interpretation describes five categories: digital commodities, digital collectibles, digital tools, stablecoins and digital securities. It also addresses how a non-security crypto asset may be involved in an investment contract. The CFTC joined with guidance concerning its administration of the Commodity Exchange Act. SEC interpretation announcement

Use the categories to organize the analysis, not to assign an entire business to a single regulator:

Category	Question that remains
Digital commodity	What rules apply to the spot transaction, derivative, venue and access provider?
Digital collectible	Do the sale terms or associated promises create a separate investment-contract issue?

Category	Question that remains
Digital tool	Does the offering match the asset's claimed function?
Stablecoin	Which issuance, reserve, redemption and distribution provisions apply, and when?
Digital security	Who issues it, what rights does it create, and how is it offered, held and traded?

The SEC staff's January 28 statement explains that tokenization does not itself change the application of securities law. A tokenized ownership record and a third-party claim linked to a security also need to be distinguished. Staff FAQs updated September 28 address aspects of the March interpretation and explicitly identify themselves as nonbinding staff guidance. Tokenized-securities statement, September FAQs

Operator action. Document the asset, the transaction and the service separately. "The token is not a security" is not a complete answer to whether a venue, distribution arrangement or leveraged product is permitted.

4. Legislation: enactment, commencement and implementation are different

GENIUS. The GENIUS Act was enacted July 18, 2025. Its general effective-date provision is the earlier of 18 months after enactment or 120 days after the primary federal payment-stablecoin regulators issue final implementing regulations. The Act includes a prohibition on permitted issuers paying interest or yield solely in connection with holding, using or retaining a payment stablecoin. That provision should not be paraphrased as a settled answer to every third-party reward arrangement. Public Law 119-27, sections 4 and 20

September 2026 Federal Register material still included proposed implementation rules. A proposal must be distinguished from a final rule and its operative date. September 29 proposal

CLARITY: verified legislative checkpoint. On September 15, 2026, the Senate rejected cloture on the motion to proceed to H.R. 3633, by 49-50; a motion to reconsider was entered. This was a procedural vote, not final passage or a permanent disposal of the bill. The June draft's forecast of summer passage is therefore obsolete. Congressional Record, September 15

This edition does not rely on CLARITY as enacted authority. Later legislative action was not fully verified from a live official bill-status record during this review. A business relying on a new statutory permission must establish the enacted text, effective date and applicable implementation requirements before using it.

Operator action. Keep two columns in the decision memo: permissions available now, and changes that would become available only after a specified legal event. Budget and launch decisions should make that dependency explicit.

5. Perpetual contracts: a specific path, not blanket permission

On May 29, 2026, the CFTC approved KalshiEX's BTCPERP contract and issued a policy statement on perpetual-contract listings. The statement identifies case-by-case review under Regulation 40.3 as appropriate for underlying asset classes not contemplated by the order. This is more precise than saying all crypto perpetuals received approval. BTCPERP approval, Perpetual-contract policy statement

Foreign access also requires its own analysis. CFTC Part 30 addresses foreign futures and options offered to U.S. customers and recognizes specified registration and exemption routes. "Foreign" and "unlawful" are not synonyms. CFTC foreign-market guidance

CURRENT assessment. The commercial question is whether an available route fits the client's instrument, eligibility, collateral, liquidity and operating needs. A new product approval expands the alternatives to assess. It does not by itself prove that another operator acted willfully, or that every client should migrate immediately.

PART II: FIVE PRIORITY REVIEW AREAS

These are an organizing framework, not a statistical claim that five patterns explain every enforcement action.

1. Claims, omissions and investor communications

Compare what the business says with what it can demonstrate. Useful targets include performance figures, reserves, assets under management, audit descriptions, customer numbers, conflicts and the source of yield.

Operator action. Build a claims register: exact wording, definition, period, evidence, owner and review date. Correct unsupported claims and preserve the history of the correction. Treat assumptions as assumptions rather than presenting them as verified results.

2. Customer access and required permissions

Compare the intended customer base with actual onboarding, account and trading records. Test whether intermediaries, affiliates and support staff apply the same restrictions the legal documents describe. Access questions are not confined to retail clients; Falcon Labs involved U.S. institutional customers.

Operator action. Reconcile customer eligibility, location evidence, actual activity and the legal basis for access. Investigate inconsistencies. An IP signal is evidence to assess, not conclusive proof of nationality, residency or beneficial ownership.

3. AML and money-transmission obligations

A business's classification depends on what it does. Custody, acceptance and transmission of value, brokerage and software provision can involve different analyses. The presence of crypto or a U.S. user alone does not settle the exact obligation. FinCEN business-model guidance

Operator action. Establish which obligations apply, then test the program against them: responsibility, customer due diligence, monitoring, reporting, recordkeeping and independent review where required. A policy document without evidence of operation is an incomplete diligence file.

4. Sanctions exposure

Civil OFAC penalties can arise on a strict-liability basis. Knowledge, controls and other circumstances can nevertheless matter to enforcement treatment. OFAC's virtual-currency guidance addresses management commitment, risk assessment, internal controls, testing and training - not only geofencing. OFAC industry guidance

Operator action. Test the relevant identity, ownership, geographic and transaction controls; investigate matches; document decisions. A screening alert is not automatically a violation. An

absence of alerts is not proof that the controls cover the business. OFAC FAQ 560

5. Market conduct and sensitive information

Review who can influence listings, oracle inputs, trading parameters and material announcements, and who can trade around those decisions. The legal analysis depends on the conduct and instrument; the operating task is to identify conflicts and evidence before an incident.

Operator action. Define access permissions, personal-trading controls, escalation routes and monitoring. Test whether staff can bypass those controls. Preserve records needed to reconstruct an event. The CFTC's published description of its authority expressly includes fraud and manipulation in digital-commodity markets. CFTC digital-asset guidance

PART III: CASE FILES

1. BitMEX - customer access, AML and the subsequent pardons

Public record. DOJ reported that BitMEX's corporate entity pleaded guilty in July 2024 and received a $100 million sentence in January 2025 for a Bank Secrecy Act violation. The same release identifies the earlier executive guilty pleas and sentences. The official clemency record then lists March 27, 2025 pardons for HDR Global Trading Limited and the four named executives. The corporate pardon remits the court-ordered financial penalties specified in that grant. Omitting the pardons leaves the history incomplete. DOJ sentencing release, Clemency record, Corporate pardon

Operator lesson. Compare stated restrictions with how accounts were actually serviced. Read later dispositions alongside the original charges. Neither a corporate structure nor an exceptional clemency outcome is an operating control.

2. Ooki DAO - organizational form did not prevent a case

Public record. In June 2023, the court entered a default judgment against Ooki DAO, including a $643,542 civil penalty and injunctive relief. The court treated the DAO as a person under the Commodity Exchange Act. This was a default judgment; it should not be presented as a fully contested ruling resolving every software developer's or token voter's position. CFTC announcement, Court order

Operator lesson. Identify who operates the service, exercises control and receives the economics. Decentralization is relevant to the facts; the label alone does not decide the result.

3. Opyn, ZeroEx and Deridex - different activities, different charges

Public record. The September 2023 settlements imposed penalties of $250,000, $200,000 and $100,000 respectively. All three involved illegal leveraged or margined retail commodity transactions. The announcement separately identifies registration and customer-identification charges against Opyn and Deridex. It does not attribute that identical charge set to ZeroEx. CFTC orders announcement

Operator lesson. Read the individual order before borrowing a lesson from a group headline. Product design, control and distribution need their own factual analysis.

The 2026 comparison. Staff's Phantom position concerns specified software activities facilitating access to registered FCMs, introducing brokers and designated contract markets, subject to conditions. It is not general immunity for interfaces. Phantom no-action announcement, Letter 26-09

4. Binance - several legal regimes, one operating record

Public record. Binance's November 2023 criminal resolution exceeded $4 billion and covered BSA, money-transmission and sanctions violations. It formed part of coordinated resolutions with other agencies. The different agencies' figures should not simply be added together without accounting for credits and overlaps. DOJ resolution

Operator lesson. Policies, staff instructions and account behavior must agree. Internal communications can establish knowledge, but the correct response is to fix conduct and preserve records - not to discourage accurate reporting or move conversations off-channel.

5. KuCoin - the settlement included a market exit

Public record. In January 2025, the operating entity pleaded guilty to unlicensed money transmission and agreed to more than $297 million in penalties. The resolution required KuCoin to leave the U.S. market for at least two years and removed two founders from management and operations. DOJ resolution

Operator lesson. Counterparty diligence should include the cost and mechanics of losing a venue. This resolution establishes a market-exit requirement; it does not establish that a particular fund's assets froze. Test withdrawal and transfer risks as scenarios rather than asserting an undocumented outcome.

6. Falcon Labs - assess the intermediary as well as the exchange

Public record. The May 2024 order found that Falcon Labs acted as an unregistered FCM, soliciting or accepting digital-asset derivative orders from U.S. customers and providing exchange access through a main account and sub-accounts. It required $1,179,008 in disgorgement and a $589,504 penalty. The CFTC credited substantial cooperation and remediation. CFTC order summary

Operator lesson. Examine the actual services, permissions and obligations of the access provider. A useful interface or institutional customer base is not evidence that the intermediary's registration analysis is complete. Cooperation credit in one case is not a promised discount in another.

7. Polymarket - distinguish the original platform from the U.S. entity

Public record. The January 2022 CFTC settlement required a $1.4 million penalty and winding down noncompliant markets. Later CFTC records identify QCX LLC doing business as Polymarket US and its designated-contract-market filings. Those records establish a distinct regulated entity and filing history; they do not establish that every product offered under the broader brand is available to every U.S. customer. 2022 settlement, QCX DCM filing, September 2025 product filing

Operator lesson. Verify the contracting entity, product and customer-access conditions. Acquiring or operating regulated infrastructure is a specific route to assess; it does not buy regulatory permanence.

8. The SEC dismissals - policy change is not a merits ruling

Public record. The SEC's Coinbase announcement explicitly separated its dismissal decision from the merits of the case and from its position in other cases. Its subsequent enforcement report documented a broader set of dismissals. Coinbase announcement, Enforcement report

Operator lesson. Update the analysis when policy changes. Do not replace a registration assessment with a headline saying a similar case was dropped. Nor should all registration questions automatically be ranked below conduct issues: the immediate severity depends on the actual activity and exposure.

PART IV: ILLUSTRATIVE SCENARIOS

These are hypothetical situations designed to show a method. Their numbers are assumptions, not observations about named firms or CURRENT clients. Proposed workplans are analytical recommendations, not guaranteed legal outcomes.

1. An offshore perpetuals venue with unexplained U.S.-linked activity

Setup. A venue prohibits U.S. users. Internal analytics suggest 9-14% of volume has signals consistent with U.S. access. KYC begins at a withdrawal threshold, and affiliates receive volume-based compensation.

Assessment. The first question is what those signals actually establish. Separate confirmed customer information from location proxies and anomalies. Then compare the activity with the venue's permissions, restrictions and control design. A new U.S. product approval does not automatically establish the intent of this venue's staff.

Decision work. In week one, preserve relevant records and reconcile account, trading, payment and affiliate data. In week two, define the access routes the business can support and identify material gaps with counsel. In weeks three and four, implement prioritized changes, assign owners and test whether restrictions operate in practice.

Work product. A customer-access map, documented exceptions, alternatives, implementation costs and a decision record. A memo supports accountability; it is not a guarantee against enforcement.

2. An RWA issuer marketing income to retail buyers

Setup. A real-estate operator proposes tokens representing economic interests in roughly $10 million of assets. Marketing advertises projected yields of 7-9% and a $100 entry point to a global audience.

Assessment. Start with the legal rights and offering structure, then examine the return model, investor eligibility and distribution. Tokenization does not remove securities-law questions. A projection needs its assumptions, costs and downside cases; deleting a percentage from the website does not resolve an unsuitable offering structure.

Decision work. Compare a registered route and applicable exemptions against the actual target buyer. Rule 506(c), for example, allows general solicitation subject to accredited-purchaser verification and other requirements. Regulation S has separate offshore-offering conditions. Neither is a universal prescription, and neither alone settles every fund, intermediary or local-law issue. SEC Rule 506(c) guidance, SEC Regulation S release

Work product. A rights-and-cash-flow diagram, buyer eligibility map, distribution plan, disclosure requirements and the commercial consequences of each route. Technical transfer controls should implement the chosen rules rather than stand in for them.

3. A U.S.-based front-end team earning transaction fees

Setup. Four people operate an interface to a third-party perpetuals protocol and charge a 10-basis-point fee.

Assessment. Determine what they control, how orders reach the protocol, whether they solicit customers, which customers trade and what contracts they access. "We only host a website" is incomplete, but fees plus a U.S. team are not a complete liability test either.

Decision work. Map the product and user journey. Compare modifications to customer access, product scope and the role of registered providers. Examine whether any relief actually covers the proposed facts. The Phantom letter is a useful comparison, not a transferable license.

Work product. An activity map with named responsibilities, route-specific conditions and an implementation recommendation. Reject an option if its legal or operating requirements cannot be met; retain alternatives that are supported by the facts.

4. A fund using an offshore venue through a sub-account provider

Setup. A U.S. digital-asset fund earns a material share of its returns from perpetuals accessed through an intermediary. Its investment-adviser reporting position has been reviewed, but the venue and intermediary file is incomplete.

Assessment. Treat four questions separately: the fund/operator's status, the intermediary's role, eligibility to access the venue and product, and the custody/withdrawal arrangement. One registration or reporting status does not answer all four. The CFTC's August 2026 proposed CPO/CTA changes are proposals, not permissions on which to rely without checking final action. CFTC proposal

Decision work. Compare the current route with a suitable registered domestic route, an eligible foreign route, and reducing or deferring exposure. Request evidence before assigning a favorable rating.

Comparison dimension	Evidence to obtain
Legal access	Entity, product, customer eligibility and applicable registration or exemption analysis
Custody and control	Account ownership, withdrawal authority, asset location, segregation and insolvency treatment
Economics	Trading fees, intermediary charges, funding, collateral cost and transfer costs
Liquidity	Executable depth at the intended size, stress behavior and position-reduction capacity
Operations	Permissions, reconciliation, monitoring, margin-call response and outage procedures

Comparison dimension	Evidence to obtain
Exit	Transfer restrictions, withdrawal process, close-out terms and fallback arrangements

Work product. A comparative decision memo stating the preferred route, unresolved conditions, costs and circumstances that would change the recommendation. A regulatory label should not substitute for a liquidity or custody assessment. A higher historical return should not substitute for an access assessment.

5. A 30-day review with a usable endpoint

Week 1 - Establish the facts. Inventory products, legal entities, users, asset flows, intermediaries and material public claims. Record which inputs are verified, provided by management or unresolved.

Week 2 - Test the controls. Select the activities with the largest exposure. Compare policy with actual records. Identify missing evidence and avoid treating an absence of data as evidence of compliance or misconduct.

Week 3 - Compare actions. For each material gap, estimate impact, effort, business disruption and dependencies. Distinguish immediate containment from structural changes. Agree how counsel participates where legal conclusions or privilege arrangements are needed.

Week 4 - Deliver the decision. Provide a prioritized action register, owners, dates, evidence requirements and unresolved choices. Management records the decisions and resources committed. Follow-up tests establish whether the actions worked.

The endpoint: a decision the team can execute and a record that supports it - not a binder whose findings nobody owns.

PART V: THE SELF-ASSESSMENT

For each question, record **documented / partial / unknown / not applicable**, then name the evidence, owner and next action. Explain "not applicable." Do not convert the answers into a claim of legal compliance or a percentile ranking.

1. Can you identify your customers' relevant locations and eligibility, and reconcile that with actual use?

2. Is the access basis documented for each product, venue and intermediary?

3. Can you substantiate material public claims about returns, assets, reserves, audits and activity?

4. Have applicable AML obligations been identified, assigned and tested?

5. Are relevant sanctions controls operating, with decisions and exceptions recorded?

6. Can you produce the registration, exemption or other authority analysis for each material activity?

7. Are conflicts and access to sensitive market information controlled and monitored?

8. Does the counterparty review cover custody, collateral, liquidity, operational dependencies and exit?

9. Do actual staff instructions and behavior match the policies shown to clients and regulators?

10. Does someone own the process for assessing changes in rules, relief and material counterparty conditions?

Escalation comes before aggregation. A known material control failure, suspected prohibited transaction, unsupported investor claim or unresolved access basis needs its own assessment and response. Strong answers elsewhere do not cancel it out.

Prioritization. Consider potential impact, scale, immediacy, evidence confidence and ease of containment. Separate an unverified concern from a confirmed failure. Assign a decision-maker rather than issuing an unexplained "green" rating.

PART VI: THE ACTION PLAN

This week

• Build the product/entity/access map and identify material unknowns.

• Check a sample of important public claims against their evidence.

• Review unresolved sanctions, customer-access and transaction-monitoring exceptions with the responsible owners.

Within 30 days

• Complete the priority counterparty and access-route assessment.

• Resolve or assign material control gaps, with resources and deadlines.

• Deliver a decision memo distinguishing verified findings, assumptions and open questions.

Within 60 days

• Test the changes against actual transactions and staff workflows.

• Update client and investor disclosures where the facts require it.

• Complete any chosen offering or access restructuring with the relevant specialists.

Within 90 days

• Review whether the changes reduced the identified exposure.

• Revisit permissions, customer eligibility and operational dependencies that changed.

• Set the next review date around the business's risks and upcoming events.

These are planning intervals, not permission to defer an urgent issue. Adjust them to the findings.

STAYING CURRENT

Keep the record of what changed, its legal status, the affected activity and the decision it requires. Recheck time-sensitive statements before relying on this edition for a live mandate.

CURRENT provides defined research, market-access and investigative work. A mandate can begin with a specific question about a venue, intermediary, product or transaction record.

Discuss a mandate: dennis@currentcrypto.io

ABOUT THE AUTHOR

Dennis Droushiotis is Founder and Principal of CURRENT, the digital-asset research and advisory practice of Current Crypto LLC. Active in digital assets since 2013, his experience spans portfolio management, institutional markets and investigative work. He has worked with lawyers in DOJ- and CFTC-related matters, providing evidence and analysis concerning digital-asset regulation.

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