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Unusual Trading Ahead of Crypto-Treasury Deals Draws Scrutiny From U.S. Regulators

SEC, Finra reach out to companies whose shares moved sharply before they announced plans to buy bitcoin, other digital assets.

By Vicky Ge Huang

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The Securities and Exchange Commission in Washington. Photo: Farrah Skeiky for WSJ

Financial regulators have examined unusual trading patterns in the shares of companies that sought to make buying cryptocurrencies their core corporate strategy, people familiar with the matter said.

The Securities and Exchange Commission and the Financial Industry Regulatory Authority have reached out to some of the more than 200 companies that announced this year that they would adopt a crypto-treasury strategy, the people said.

In those conversations and letters, the regulators have raised concerns about what they say were unusually high trading volumes and sharp stock-price gains in the days leading up to the companies' announcements.

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In their outreach, SEC officials have warned companies about potential violations of Regulation Fair Disclosure, some of the people said. Known as Reg FD, the rule prohibits public companies from selectively disclosing material, nonpublic information to investors, analysts and other market participants who might trade on the information.

Such Finra letters often mark the start of deeper inquiries into insider trading, according to lawyers. “When those go out, it really stirs the pot,” said David Chase, a former SEC enforcement lawyer and now SEC defense attorney. “It’s typically the first step in an investigation. Whether it goes full, full length, it’s anybody’s guess.”

It couldn’t be learned whether the regulators are pursuing enforcement actions against any specific company or investor.

In a recent speech, SEC Chairman Paul Atkins criticized the previous approach of the SEC, which he said “weaponized” its enforcement powers to stifle the crypto industry. He stated that the agency will now provide “clear, predictable rules” for the industry.

Crypto-treasury companies have proliferated over the past few months, following the approach pioneered by Strategy, formerly known as MicroStrategy. The playbook: raise money through stock and debt sales to buy bitcoin and other digital tokens. So far this year, 212 new companies have announced plans to raise about $102 billion to buy crypto, according to Architect Partners, a crypto-advisory firm.

For many of these companies, the pivot to crypto treasury often entails contacting a group of outside investors to gauge their interest in privately financing their token purchases. In doing so, though, the investors are expected to keep the companies’ identities confidential—by signing nondisclosure agreements—until they announce their new strategy.

In some cases, this secrecy appears to have been compromised, the people said, with some stocks rocketing higher in the days leading up to the announcement.

Some lawyers who have worked on crypto-treasury deals say information leaks can not only arouse insider trading suspicions but also actually be harmful for pricing transactions.

“If the stock price is highly volatile in the days leading up to pricing a transaction, that could actually make it very difficult to agree on a price for the transaction and put it at risk of execution,” said Justin Platt, a partner at law firm Goodwin.