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Joshua C. Zive, senior principal in Bracewell's Policy Resolution Group, and Kyle J. Spencer, a PRG principal, discuss the potential impact of the 2024 elections on digital asset policy.

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Transcript:

Josh Zive: Today we're diving into the potential impact of the 2024 elections on digital asset policy, and by this, we mean everything from regulatory expectations to implication for America's competitive edge in the global market. Kyle and I are here to impact what this election outcome could mean for the entire future of digital assets.

Let's start with a little level setting. What do we mean when we say digital assets? Because I certainly know this is not a phrase I was terribly familiar with until I started doing this work. But simply, digital assets can be anything from online documents to media files to social media accounts to more complicated things like crypto currency or non-fungible tokens, NFTs. These types of assets either have intrinsic value or commercial value, and unlike traditional assets, these assets require special legal considerations because they exist solely in the digital world. This means there's special issues surrounding ownership, sales, transfer and the ability to access these digital assets. And as these industries grow and as more personal and business transactions move online, the legal landscape for managing and protecting these digital assets has become both increasingly complex and more important to the US and global economies. So understanding how to navigate this terrain is crucial for both protecting digital holdings and ensuring compliance with these emerging regulations for businesses in a whole wide range of industries, but particularly those that part of the digital asset industry.

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So with that said, we had big elections, and we're trying to figure out what this means. You know, why it's important and why it's particularly important in the context of digital assets? So, let me turn to Kyle. Kyle, why is this important?

Kyle Spencer: To understand the implications of yesterday's election, it's helpful to quickly zoom out and describe why Washington has been talking about digital assets, what problems lawmakers and regulators are trying to solve. First, it's clear that digital assets are here to stay, and there is a general recognition that the current regulatory regime around this technology is rife with overlapping mandates, misaligned objectives that has resulted in a patchwork of regulations that not only fails to protect the public, a la Silicon Valley Bank and FTX, but it also chills the development of this market.

Josh Zive: Well, and of course, a huge additional burden to this market developing over recent years, and particularly during the Biden administration, is what observers would call regulatory uncertainty if they were being nice and if they were being mean, they would call it arbitrary or overreaching SEC enforcement. Now, with the election of Donald Trump, we know that the current chair of the SEC, Gary Gensler, is not going to be in that position much longer, and Donald Trump has been very vocal about his intentions to replace Gensler, even pledging him to fire him on "day one." While it's customary for the SEC chair to step down following a presidential transition, Trump's approach is particularly stark because it's underscoring his commitment to focusing the SEC on reshaping their approach to digital assets. And whomever Trump appoints to the SEC is expected to gain approval, is expected to work very hard, and their position to be based on approval from the cryptocurrency community and other players in the digital asset industry. This is a clear departure from Gensler's approach, and indicates why companies need to be watching this very close. But it also begs the question, if SEC overreach is a problem, what the heck is Congress going to do about it? So that then leads one to ask, how are members of Congress, how are the lawmakers actually talking about this? What are they thinking about doing, and is there any chance for actual legislation on this?

Kyle Spencer: If Republicans do end up winning both chambers, and that certainly seems like the most probable outcome right now, we'll likely see a shift away from some of Senate Majority Leader Schumer's year-end legislative agenda, which included a potential crypto market structure legislation package in a must pass vehicle like NDAA. Of course, there's always some uncertainty around his ability to push this type of package through, and Republicans now have a much stronger posture from which they can negotiate in the lame duck session. Now, Democrats could still attempt to reach some compromises on certain policy priorities, but it's clear that Republicans will take a more restrained approach in the coming months, as they prepare to set their own agenda in 2025. Now looking ahead to 2025 and in the 119th Congress, there will be significant changes in committee leadership that will shape the approach to digital assets and regulation. Among the most notable departures are Senate

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Agriculture Committee Chair Debbie Stabenow and House Financial Services Committee Chair Patrick Henry, who both have been prominent voices in developing crypto market structure proposals, as you know Josh. The Senate Banking Committee will also see major changes in the wake of Democrat Sherrod Brown's defeat by challenger Bernie Moreno in Ohio. Brown has been a staunch opponent of crypto legislation, and his departure paved the way for Republican Tim Scott's ascension to the top post of the Senate Banking Committee. Moving to the House side, the top Republican on House Financial Services will likely be French Hill of Arkansas, who currently chairs the digital assets subcommittee and has been an outspoken advocate for crypto legislation in the past couple of months. Lastly, current House Agriculture chair GT Thompson will continue to lead the Republican side. His main focus will be, of course, traditional agriculture priorities like the farm bill, but he's had a working relationship with HFSC Chair Patrick McHenry, and he's co-sponsored the FIT 21 Act, which has been a prominent piece of legislation over the past couple of months here in Washington. So speaking of priorities and outlook, I just want to turn it back over to you, Josh, to close us out on what companies, either established or emerging in this space, can do to get ahead of the curve and position themselves to be successful in 2025.

Josh Zive: What you pointed out is the conditions that companies in the sector really need to be sensitive to, which is that it's very easy to get cynical about Washington, DC and say they don't ever get any big legislation done. In a broad sense, that may be a true statement, but when you look at specifics what you're looking for, what are the conditions where big legislation actually does get done, and when those conditions require economic significance, legal or regulatory uncertainty, such that it creates a push from industry for the passage of legislation, constituent interests from members that drive it, and public pressure, on top of all of that, on an issue and digital assets has reached now those watermarks across a bunch of those variables. There's pressure from inside the industry and outside the industry, from the public and from participants, in order to really legislate. What that means for companies who care about this is you have to get involved. Which is that, as this legislation regulations are being drafted, as the old saying goes, you're either at the table or you're for dinner. This is that type of legislation. You're either going to be part of this process or you're going to be sacrificed to this process, because it's such a big sector, and there's a lot of work to do. So, if you're an industry that cares about it, right now is the time to get involved in Washington, DC, and to also consider getting involved with public interactions through using a strategic communications plan to be able to explain to the public both what it is you do and why it's important. So that's what I would say to anyone who cares about this issue. If you aren't already fully engaged in Washington, give us a call, because you need to be in order to protect the interests of your company, of your customers and of a community that you likely serve.

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