

CryptoLink

A Digital Assets Newsletter Regarding Key Regulatory Developments, Enforcement Actions and Other Resources

Akin Gump
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Whether or not there is a thaw in the long “crypto winter,” U.S. policymakers seem determined to bring some regulatory certainty to the industry. And, contrary to claims that the dramatic events of last fall would undercut the likelihood of legislation passing the House and the Senate, key lawmakers in both parties remain committed to action this year.

Progressive members of Congress, including the Chairman of the Senate Banking Committee, remain extremely skeptical of the industry. Along with Chairman Gensler and others in the administration, they view digital assets largely through the lens of illicit activity, risk to the larger financial system, and consumer protection. While not denying these genuine concerns, there is growing bipartisan support for legislation that would address these issues while creating a U.S. regulatory regime that would make the United States a hub for digital asset innovation. If anything, recent turmoil in the industry has only encouraged these pro-crypto lawmakers to double down on their legislative efforts.

New House Financial Services Chairman Patrick McHenry (R-NC) clearly has digital assets near the top of his committee’s agenda, going so far as to create a Digital Assets subcommittee, chaired by French Hill (R-AR). In particular, we should expect McHenry to continue his bipartisan work on stablecoin legislation. While Chairman Sherrod Brown (D-OH) in the Senate Banking Committee has promised to engage more deeply on digital assets, given his hostility to the industry and crypto more broadly, it seems unlikely that legislation will emerge from his committee. The Senate Agriculture Committee seems far more likely to produce legislation, building on its efforts in the 117th Congress to establish a broad regulatory framework for crypto assets that would largely settle the question of who should be regulating the industry.

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Senate Agriculture, Nutrition and Forestry Committee Holds Hearing on FTX Collapse

On December 1, 2022, the Senate Agriculture, Nutrition and Forestry Committee held a hearing titled “Why Congress Needs to Act: Lessons Learned from the FTX Collapse,” receiving testimony from the Commodity Future Trading Commission (**CFTC**) Chairman Rostin Behnam. Senate Agriculture Chair Debbie Stabenow and ranking Republican John Boozman reiterated their support for the Digital Commodities Consumer Protection Act (**DCCPA**) (the bipartisan legislation that would grant the CFTC the authority to regulate digital commodities and digital asset markets). In her opening statement, Chairwoman Debbie Stabenow noted that the DCCPA “does not take authority away from other financial regulators” but that the “crisis created by FTX further confirms the need for a whole-of-government approach to regulating this market”.

A live video of the hearing can be found [here](#), CFTC Chairman Rostin Behnam’s testimony can be found [here](#) and Chairwoman Debbie Stabenow’s opening statement can be found [here](#).

Crypto Bank Silvergate Questioned by U.S. Senators Over FTX

On December 5, 2022, U.S. Senators Elizabeth Warren, John Kennedy and Roger Marshall issued a letter to Silvergate Capital Corporation seeking information regarding the relationship between Silvergate Bank and several crypto firms founded by Sam Bankman-Fried. According to the letter, Silvergate provided banking services to both Alameda Research and FTX, “raising questions about the bank’s role in facilitating the improper transfer of FTX customer funds to Alameda.” The senators requested that Silvergate respond to a list of queries, including whether Silvergate was aware that FTX was directing its customers to wire money to Alameda’s account with their bank and whether Silvergate flagged as suspicious the movement of funds to or between Alameda accounts and FTX or FTX-affiliated accounts.

The letter to Silvergate can be found [here](#).

Bankman-Fried Rejects Senate Banking, Housing and Urban Affairs Committee Subpoena

On December 12, 2022, U.S. Senator Sherrod Brown, Chairman of the Senate Committee on Banking, Housing and Urban Affairs (**Banking Committee**), and U.S. Senator Pat Toomey, Ranking Member of the Senate Banking Committee, released a statement regarding the Banking Committee’s request that Sam Bankman-Fried testify on FTX’s collapse. According to the statement, the Banking Committee had offered Bankman-Fried two different dates for providing testimony before the Banking Committee and were also willing to accommodate virtual testimony but he “has declined in an unprecedented abdication of accountability.” The statement added that since Bankman-Fried’s counsel stated they are unwilling to accept service of a subpoena, the Banking Committee would “continue to work” to have him appear before the Banking Committee as he “owes the American people an explanation.”

Brown and Toomey’s statement can be found [here](#).

Senate Banking Committee Holds Hearing on FTX Collapse

On December 14, 2022, the Senate Banking Committee met in an open session to conduct a hearing entitled “Crypto Crash: Why the FTX Bubble Burst and the Harm to Consumers.” The witnesses were Professor Hilary J. Allen, American University Washington College of Law; Mr. Kevin O’Leary, Investor; Ms. Jennifer J. Schulp, Director of Financial Regulation Studies, Center for Monetary and Financial Alternatives, Cato Institute; and Mr. Ben McKenzie Schenckan, Actor and Author.

A live video of the hearing can be found [here](#).

FTX Seeks Automatic Stay Against BlockFi Over Robinhood Shares

On December 22, 2022, in a motion filed in the U.S. Bankruptcy Court for the District of Delaware, FTX Trading Ltd., Alameda Research Ltd. and their affiliated debtors-in-possession (the **Debtors**) sought to enforce an automatic stay against BlockFi with respect to approximately 56 million shares of Robinhood Markets, Inc. (**Robinhood Shares**) held by Alameda. According to the court documents, since the commencement of the Chapter 11 proceedings, three different competing stakeholders had filed court actions in different jurisdictions to gain control of the Robinhood Shares.

The Debtors' motion can be found [here](#).

Bankman-Fried Pleads Not Guilty to Criminal Charges

On January 3, 2023, Sam Bankman-Fried pleaded not guilty to criminal charges over the collapse of FTX. The plea was entered in a Federal District Court in the Southern District of New York, mere weeks after Bankman-Fried had been arrested in the Bahamas at the request of U.S. federal prosecutors. In late December, after Bankman-Fried's extradition to the U.S., he appeared in court and was granted bail under highly restrictive conditions (including the requirement to stay confined to his parents' Palo Alto home). At the hearing on January 3, 2022, Judge Kaplan authorized prosecutors' request for a new bail condition prohibiting Bankman-Fried from transferring any funds controlled by FTX or Alameda Research. The tentative start date for a four-week trial is October 2, 2023.

News articles regarding the not guilty plea can be found [here](#) and [here](#).

SEC Reportedly Probing FTX Investors' Due Diligence

On January 5, 2023, Reuters reported that the U.S. Securities and Exchange Commission (**SEC**) is seeking details about FTX investors' due diligence. In particular, according to Reuters, the SEC is asking financial firms what diligence policies and procedures they had in place, if any, and whether any such policies and procedures were followed when electing to invest in FTX. Reuters suggested that the SEC's inquiries may mean the venture capital firms and investment funds that invested in FTX could face regulatory scrutiny, even though they may be considered victims of the alleged fraudulent scheme.

The Reuters article can be found [here](#).

U.S. Department of Justice Seizes Over \$456 Million in Robinhood Shares

On January 6, 2023, the U.S. Department of Justice filed a notice of asset seizures in the U.S. Bankruptcy Court, District of New Jersey, in relation to the seizure of 55,273,469 Robinhood Shares linked to FTX pursuant to judicially authorized seizure warrants issued in the Southern District of New York. According to the court filing, the seizures were effected pursuant to criminal and civil statutes as the seized assets constitute property involved in violations of U.S. law and/or are the proceeds of such violations.

The filing before the U.S. Bankruptcy Court can be found [here](#).

KEY DEVELOPMENTS

U.S. Federal Trade Commission Investigating Crypto Firms for Misconduct

On December 6, 2022, Reuters reported that the U.S. Federal Trade Commission (**FTC**) had confirmed it had investigations open into several cryptocurrency firms for possible misconduct concerning digital assets. According to Bloomberg, the investigation is linked to misleading advertising.

The Reuter's article can be found [here](#).

SEC Issues Sample Letter to Companies Regarding Recent Developments in Crypto Asset Markets

On December 8, 2022, the SEC Division of Corporation Finance (the **Division**) issued an illustrative letter containing sample comments that the Division may issue to companies in respect of their disclosure obligations under the Securities Act of 1933 and the Securities

Exchange Act of 1934. The sample comments focus on the need for clear disclosure about the material impacts of crypto asset market developments. The Division urged companies to take the sample comments into consideration as they prepare disclosure documents that may not typically be subject to review by the Division before their use.

The SEC's sample letter can be found [here](#).

UAE Issues New Cabinet Resolution on the Regulation of Virtual Assets

On December 12, 2022, the United Arab Emirates (**UAE**) Government issued Cabinet Resolution No. 111 of 2022 on the regulation of Virtual Assets and Service Providers (the **Cabinet Resolution**), which entered into force on January 14, 2023, and applies to providers of virtual asset services in the UAE (excluding the financial free-zones and certain activities regulated by the Central Bank of the UAE and the UAE Securities and Commodities Authority (**SCA**)). The Cabinet Resolution specifies certain activities that require licensing from the SCA or from a local licensing authority, including the holding and controlling of virtual assets and the operating of a crypto exchange. Entities subject to the Cabinet Resolution have three months from its entry into force to comply with its provisions. The primary objective of the Cabinet Resolution is to, among other things, develop the regulatory infrastructure for the virtual assets sector in the UAE.

The Cabinet Resolution is published in Arabic in Issue No. 741 of the UAE *Federal Gazette*.

Hong Kong Securities and Futures Commission Issues Statement on Virtual Asset Arrangements

On December 13, 2022, the Hong Kong Securities and Futures Commission (**SFC**) issued a statement reminding investors of the risks associated with virtual asset platforms offering virtual asset deposits, savings, earnings or staking services to investors in Hong Kong in light of "recent events in the virtual asset industry." In particular, the SFC highlighted that investors may suffer "significant or even total loss" in the event of fraud or collapse of a virtual asset platform and that while certain virtual asset arrangements are commonly marketed as deposits or savings products they are not regulated and the vast majority of virtual asset platforms offering virtual asset arrangements remain unregulated.

The SFC's statement can be found [here](#).

Senators Warren and Marshall Introduce Bipartisan Legislation to Crack Down on Cryptocurrency Money Laundering

On December 14, 2022, U.S. Senators Elizabeth Warren and Roger Marshall introduced the Digital Asset Anti-Money Laundering Act of 2022 (the **Act**), bipartisan legislation that would "mitigate the risks that cryptocurrency and other digital assets pose" to U.S. national security. The proposed Act would extend Bank Secrecy Act responsibilities (including know-your-customer requirements) and rules regarding reporting of foreign bank accounts to use digital assets, address a major gap regarding "unhosted" digital wallets, prohibit financial institutions from using or transacting with digital asset mixers, strengthen enforcement of compliance with the Bank Secrecy Act, and mitigate the illicit finance risks of digital asset ATMs.

The text of the bill can be found [here](#) and the corresponding press release can be found [here](#).

Cryptocurrency Operator Circle Internet Financial Terminates SPAC Deal

On December 15, 2022, Circle Internet Financial and Concord Acquisition Corp, a publicly traded special purpose acquisition company, announced the mutual termination of their proposed business combination. Concord had until December 10, 2022, to consummate the business combination, but the SEC had not declared the S-4 registration statement for the business combination effective.

Circle's press release can be found [here](#).

New York State Department of Financial Services Issues Guidance on Virtual

Currency Activities and Requires Prior Approval

On December 15, 2022, the New York State Department of Financial Services (the **Department**) issued guidance in the form of an industry letter to all New York banking organizations (as well as all branches and agencies of foreign banking organizations licensed by the Department) conveying the Department's expectations for covered institutions that wish to engage in virtual currency-related activity. According to the letter, a covered institution should seek the Department's prior approval before commencing any new or significantly different virtual currency-related activity. The letter further details the approval process and information requirements.

The Department's industry letter can be found [here](#).

Basel Committee Finalize and Governors and Heads of Supervision Endorse Crypto Exposure Standards

On December 16, 2022, the Basel Committee on Banking Supervision (the primary global standard setter for the prudential regulation of banks) (the **Basel Committee**) finalized prudential standards (the **Standards**) on banks' exposures to crypto assets, including tokenized traditional assets, stablecoins and unbacked crypto assets. The Standards are in the form of a new chapter of the consolidated Basel Framework (SCO60: Cryptoasset exposures) that the Basel Committee has agreed to implement by January 1, 2025. On December 16, 2022, the Group of Central Bank Governors and Heads of Supervision (**GHOS**), the oversight body of the Basel Committee on Banking Supervision, endorsed the Standards and the Basel Committee's work program and strategic priorities for 2023-2024. According to the GHOS press release, the finalized prudential standards will "provide a robust and prudent global regulatory framework for internationally active banks' exposures to crypto assets that promotes responsible innovation while preserving financial stability". GHOS members have also agreed to implement the standards by January 1, 2025.

The Standards can be found [here](#) and the GHOS press release can be found [here](#).

Binance Joins the Chamber of Digital Commerce To Support Building a Regulatory Framework for Crypto

On December 20, 2022, Binance, one of the world's largest cryptocurrency exchanges, announced that it had joined the Chamber of Digital Commerce, a leading blockchain and cryptocurrency trade association, in order to "move the blockchain industry forward alongside other industry players."

Binance's press release can be found [here](#).

California Federal Judges Finds CFTC Successfully Served Decentralized Autonomous Organization

On December 20, 2022, Judge William H. Orrick in the U.S. District Court for the Northern District of California found that the CFTC had successfully served the decentralized autonomous organization Ooki DAO, rejecting the arguments from various crypto-focused entities that filed amicus briefs. As noted in the order, the amici had argued that, among other things, Ooki DAO can neither be served nor stand as a defendant in this case because it is a technology, not an entity and even if Ooki DAO is an unincorporated association and subject to enforcement, it was not properly served under federal or state service provisions. According to the order concluding that service had been achieved, the CFTC had used all of the information reasonably at its disposal to serve Ooki DAO and it was clear that Ooki DAO had actual notice.

The order can be found [here](#) and further information can be found [here](#).

Senator Toomey Introduces Legislation to Guide Future Stablecoin Regulation

On December 21, 2022, U.S. Senate Banking Committee Ranking Member Pat Toomey introduced legislation that would establish the first federal regulatory framework for payment stablecoins and guide Congress towards a "path for sensible regulation of cryptocurrencies". The Stablecoin Transparency of Reserves and Uniform Safe

Transactions Act of 2022 (or Stablecoin TRUST Act of 2022) would, among other things, encourage competition by authorizing several types of regulated entities to issue payment stablecoins, enhance financial stability by requiring that all payment stablecoins are fully backed by high quality liquid assets, and establish transparency by subjecting all payment stablecoin issuers to standardized disclosure requirements.

The full text of the bill can be found [here](#) and the corresponding press release can be found [here](#).

KEY RECENT ENFORCEMENT ACTIONS

Federal Court Orders Rhode Island Man to Pay More than \$2.8 Million in Restitution for Virtual Currency Fraud

On December 1, 2022, the CFTC announced the U.S. District Court for the Southern District of New York entered a consent order for a permanent injunction, restitution and equitable relief against Jeremy Spence of Rhode Island. The consent order followed a CFTC action filed against Spence alleging that he operated a virtual currency Ponzi scheme in which he fraudulently solicited individuals to invest in digital assets. According to the order, from approximately December 2017 through April 2019, (i) Spence operated a Ponzi scheme in which he fraudulently solicited and obtained more than \$5 million of digital assets from customers, (ii) Spence's trading resulted in significant trading losses and his payouts of supposed profits to customers were actually misappropriated funds from other customers, and (iii) Spence engaged in efforts to conceal his misconduct (including misrepresenting his trading profitability, misappropriating customer funds and issuing false performance statements). The order requires Spence to pay \$2,847,743 in restitution to victims of the fraudulent scheme.

The CFTC's press release can be found [here](#).

Chief Technology Officer of Blockchain Company Charged with Scheme to Defraud the Company

On December 7, 2022, the U.S. Attorney's Office for the Southern District of New York announced the unsealing of an indictment charging Rikesh Thapa (the co-founder and Chief Technology Officer of the victim company) with operating a scheme to defraud a start-up technology company of over \$1 million worth of U.S. currency, cryptocurrency and utility tokens. According to the press release, Thapa used proceeds of his crime on personal expenses, falsified records and deleted evidence to conceal his theft. Thapa was arrested on December 7, 2022, in the Southern District of California.

The U.S. Attorney's Office for the Southern District of New York's press release can be found [here](#).

SEC Charges Four Individuals in Crypto Pyramid Scheme

On December 14, 2022, the SEC charged Francisley Valdevino Da Silva, Juan Antonio Tacuri Fajardo, Ramon Antonio Perez Arias and Jose Ramiro Coronado Reyes for their roles in creating and promoting Forcount Trader Systems, Inc., a fraudulent crypto asset pyramid scheme that raised more than \$8.4 million from hundreds of retail investors. According to the SEC's complaint (filed in federal district court in the Southern District of New York), from approximately July 2017 to November 2020, the four individuals enticed and defrauded investors out of millions of dollars with the promise of guaranteed returns resulting from investments in "memberships" in Forcount Trader Systems while the defendants knew or were reckless in not knowing that Forcount had no crypto asset trading and mining operations and that the only way the scheme could continue was by increasing the investor base. The defendants allegedly accelerated Forcount's inevitable collapse by misappropriating investor funds to buy themselves homes, cars, and luxury goods.

The SEC's press release can be found [here](#).

U.S. Attorney Announces Fraud and Money Laundering Charges Against the Founders and Promoters of Two Cryptocurrency Ponzi Schemes

On December 14, 2022, the U.S. Attorney's Office for the Southern District of New York announced charges in two separate indictments against the founders and promoters of two cryptocurrency Ponzi schemes known as IcomTech and Forcount. The charges were in relation to a conspiracy to commit wire fraud. U.S. Attorney Damian Williams noted that with these two indictments, "this Office is sending a message to all cryptocurrency scammers: We are coming for you. Stealing is stealing, even when dressed up in the jargon of cryptocurrency."

The U.S. Attorney's Office for the Southern District of New York's press release can be found [here](#).

SEC Charges Issuer, CEO and Former CTO for \$2.6 Million Unregistered Crypto Asset Securities Offering

On December 21, 2022, the SEC announced charges against Thor Technologies, Inc., David Chin, Thor's co-founder and CEO, and Matthew Moravec, Thor's co-founder and CFO, for conducting an unregistered offering of securities through an initial coin offering. According to the SEC's complaint (filed in the U.S. District Court for the Northern District of California), between March and May 2018, the defendants offered and sold crypto assets designated as "Thor Tokens" to the public for the purpose of funding Thor's business and marketed the Thor Tokens as an investment opportunity (by promoting the potential increase in value of the tokens and claiming that the tokens would be made available on crypto asset trading platforms). The SEC's complaint noted that at the time of the offering, no development work had yet occurred on the Thor platform, and there was no other place to use Thor Tokens. Furthermore, the offers and sales of Thor Tokens (which raised approximately \$2.6 million in cash and crypto assets from investors) were not registered with the SEC and did not qualify for any exemption from registration.

The SEC's press release can be found [here](#).

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[Ian McGinley Interviewed on CoinDesk re: Bankman-Fried Case \(December 27, 2022\)](#)

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