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CryptoLink



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*Washington is in a period of closely divided government. The Democrats have the White House; the Republicans have a bare majority in the House; and Democrats have a bare majority in the Senate. In practice, this means policy gridlock absent serious bipartisan work. It remains the case that policy around digital assets and cryptocurrency does not break down on traditional partisan lines, leaving some optimistic that bipartisan legislation could come together providing greater regulatory clarity to the industry. As was the case last year, there are two distinct paths for legislation around digital assets: (i) stablecoin legislation and (ii) market structure legislation (providing clear authority to the Commodity Futures Trading Commission (CFTC) to regulate spot markets for crypto commodities).*

*As the U.S. congressional year passes, the House Financial Services Committee is turning its attention to digital assets. Chairman of the Committee Patrick McHenry (R-NC) mentioned earlier in the year that he wanted to pass stablecoin and digital assets legislation; primarily due to the failures of Silicon Valley Bank, Signature Bank and Silvergate, negotiations have substantially implicated policy considerations around digital assets. Chairman McHenry is a close confidant of the Speaker of the House, and he works well with the Democratic Ranking Member on his committee, Maxine Waters. While enacting any law is a challenge in the U.S. system, his relationships and commitment to compromise bode well for his crypto efforts. He has stated that minimally he would like to get his stablecoin legislation through his committee by the end of June, while also working on a bipartisan market structure bill.*

*In the Senate, the path is more challenging. Even though crypto policy has not been completely infected by partisanship, it remains the case that progressive Democrats (led by Elizabeth Warren from Massachusetts and her "anti-crypto army") are generally hostile to crypto on consumer protection grounds. This is the posture of Senate Banking Committee Chairman Sherrod Brown. Still, a number of Democratic Senators (Kirsten Gillibrand, Kyrsten Sinema and Debbie Stabenow) are working hard to put together comprehensive crypto legislation, and if the House of Representatives is able to pass bipartisan legislation it will give the efforts in the Senate a better chance at success.*

*Meanwhile, the industry waits to see what happens with the Wells process currently underway with respect to the U.S. Securities and Exchange Commission's (SEC) likely upcoming enforcement action against Coinbase. Coinbase recently went on the offensive by*

*filing an action in the U.S. Court of Appeals in Philadelphia seeking a writ of mandamus regarding its request last year to the SEC for administrative rulemaking regarding digital assets by the SEC. While the outcomes of the Coinbase/SEC disputes remain to be seen, it is clear that the SEC will continue to push to retain significant control over digital asset regulation in the United States.*

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## Spotlight on Virtual Assets in the UAE

The United Arab Emirates (UAE) has become an increasingly appealing place to do business for cryptocurrency and virtual asset companies. Akin has prepared a guide for companies which includes a broad introduction to the UAE's Virtual Assets regime, which is ideal for service providers and intermediaries who are beginning to consider the UAE as a potential site for expansion. The focus of this guide is on the three jurisdictions in the UAE (Abu Dhabi Global Market (ADGM), Dubai International Financial Centre (DIFC) and Dubai) that have the most advanced virtual assets regulations, which are discussed in more detail in our report. The guide covers key aspects of the UAE's virtual assets regime including:

1. Virtual Asset Jurisdictions in the United Arab Emirates.
2. Why the United Arab Emirates/Market Overview.
3. Licensing Process, Timeline and Cost
4. Comparison of Permitted/Recognized Virtual Assets in ADGM, DIFC and Dubai

To read the report, please click [here](#).

## Key Developments

### **McHenry, Thompson, Hill and Johnson Issue Statement on Joint Efforts to Create Clear Rules for Digital Assets**

On April 27, 2023, Chairman of the House Financial Services Committee Patrick McHenry, the Chairman of the House Agriculture Committee Glenn Thompson, the Chairman of the Digital Assets, Financial Technology and Inclusion Subcommittee French Hill, and the Chairman of the Commodity Markets, Digital Assets and Rural Development Subcommittee Dusty Johnson, issued a joint statement regarding upcoming digital asset hearings and efforts to develop a comprehensive regulatory framework for the digital asset ecosystem. The statement noted that the House Agriculture and Financial Services Committees “are embarking on an

unprecedented joint effort to pass and sign into law clear rules of the road for the digital asset ecosystem.”

The joint statement can be found [here](#).

### **Coinbase Introduces International Exchange**

On May 2, 2023, Coinbase announced that it had launched Coinbase International Exchange, which would enable institutional users in eligible jurisdictions outside of the United States to trade perpetual futures (which, according to Coinbase’s press release, accounted for almost 75% of global crypto trading volume in 2022) in Bermuda.

Coinbase’s press release can be found [here](#).

### **New York Attorney General Proposes Regulations on Cryptocurrency Industry**

On May 5, 2023, New York Attorney General Letitia James announced landmark legislation to tighten regulations on the cryptocurrency industry. According to the press release, Attorney General James’ program bill titled the “Overview of the Crypto Regulation, Protection, Transparency and Oversight (CRPTO) Act,” which “proposes the strongest and most comprehensive set of regulations on cryptocurrency in the nation,” would promote transparency, remove conflicts of interest and implement measures to protect investors. The bill would, among other things, require independent public audits of cryptocurrency exchanges and increase the New York State Department of Financial Services’ regulatory authority of digital assets.

The New York Attorney General’s press release can be found [here](#).

### **Bittrex Files for Chapter 11 Bankruptcy**

On May 8, 2023, cryptocurrency trading platform Bittrex filed for Chapter 11 bankruptcy protection in the District of Delaware. The filing follows Bittrex’s announcement that, effective April 30, 2023, it would be winding down its U.S. operations and, on April 17, 2023, the SEC’s announcement that it had charged Bittrex and its former CEO for operating an unregistered exchange, broker and clearing agency.

The Chapter 11 filing can be found [here](#).

### **U.S. Chamber of Commerce Criticizes SEC’s Crypto Regulatory Efforts**

On May 9, 2023, the U.S. Chamber of Commerce filed an amicus brief in the Re: Coinbase, Inc. proceedings before the U.S. Court of Appeals for the Third Circuit in which it noted that the SEC’s refusal to respond to Coinbase’s rulemaking petition or otherwise engage in rulemaking has destabilized the regulatory environment for digital assets. According to the filing, the Chamber of Commerce maintained that the SEC has “deliberately muddied the waters by claiming sweeping authority over digital assets while deploying a haphazard, enforcement-based approach” and the SEC’s attempt to “pocket veto Coinbase’s petition is just the latest example of its broader obfuscating strategy.”

The amicus brief can be found [here](#).

### **CFTC Commissioner Announces Proposed Work Program for Global Markets Advisory Committee**

On May 15, 2023, the CFTC announced the 2023-2025 proposed work program for the CFTC’s Global Markets Advisory Committee, including the Digital Asset Markets Subcommittee. The

2023-2025 proposed work program for the Digital Asset Markets Subcommittee includes providing recommendations for industry standards and best practices for tokenized asset markets (including (i) digital assets taxonomy, (ii) pre-trade, execution and post-trade requirements and (iii) governance, risk and control frameworks) and for the regulation of non-fungible tokens and utility tokens, and also identifying other issues to address in digital finance and tokenization of assets, non-financial activities and Web3, and blockchain technology.

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

## **EU Announces New Tax Transparency Rules for Crypto Asset Sector**

On May 16, 2023, the European Commission announced that it welcomed the political agreement reached by European Union Finance Ministers on new tax transparency rules for all service providers facilitating transactions in crypto assets for customers resident in the EU. According to the European Commission's proposal, the new rules complement the Markets in Crypto Assets (MiCA) Regulation and Transfer in Funds Regulation, impose new reporting requirements on crypto assets, e-money and central bank digital currencies (which will enter into force on January 1, 2026) and will improve member states' abilities to detect and counter tax fraud.

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

## **FTX Leadership Bankman-Fried, Zixiao Wang and Nishad Singh Sued Over Embed Acquisition**

On May 17, 2023, Alameda Research, West Realm Shires Inc. and West Realm Shires Services Inc. filed a complaint in the U.S. Bankruptcy Court for the District of Delaware handling the FTX bankruptcy. The complaint alleges that Samuel Bankman-Fried, Caroline Ellison, Nishad Singh and Zixiao ("Gary") Wang orchestrated a series of self-dealing transactions pursuant to which West Realm Shires Services, Inc. paid the holders of Embed equity \$248,010,467.02 of misappropriated FTX group funds to acquire their equity interest on September 30, 2022, despite having allegedly performed "almost no due diligence" on the platform. Following FTX's filing for bankruptcy, the bankruptcy judge approved the sales of Embed and other assets of FTX, but the highest bidder for the platform offered only \$1 million. The complaint noted that the top bidder for the platform offered just \$1 million, and that the bidders had determined that neither the FTX group nor the aforementioned FTX personnel "bother[ed] to assess prior to the Embed acquisition, namely, that Embed's vaunted software platform was essentially worthless."

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

## **U.K. Treasury Committee Suggests Consumer Cryptocurrency Trading Should Be Regulated as Gambling**

On May 17, 2023, the U.K. Treasury Committee issued a report noting that "cryptocurrencies such as Bitcoin have no intrinsic value and serve no useful social purpose, while consuming large amounts of energy and being used by criminals in scams, fraud and money laundering" and given "retail trading in unbacked crypto more closely resembles gambling than a financial service, the MPs call on the Government to regulate it as such." According to the press release, the Treasury Committee expressed concern that regulating consumer crypto trading as a financial service will create a 'halo' effect, leading consumers to believe this activity is safe and protected (when, in their view, it is not).

The Treasury Committee's press release can be found [here](#) and the full report can be found [here](#).

## Crypto Company Ripple Acquires Custody Provider Metaco for \$250 Million

On May 17, 2023, Ripple, a leader in enterprise blockchain and crypto solutions, announced that it had acquired Metaco, a Swiss-based provider of digital asset custody and tokenization technology. The acquisition serves to diversify Ripple into custody solutions.

The joint press release can be found [here](#).

## Hong Kong Securities and Futures Commission Concludes Consultation on Regulation of Virtual Asset Trading Platforms

On May 23, 2023, the Hong Kong Securities and Futures Commission (SFC) released the conclusions of its consultation on the proposed regulatory requirements for virtual asset trading platform operators licensed by the SFC. The SFC's announcement confirmed that the Guidelines for Virtual Asset Trading Platform Operators will become effective on June 1, 2023, and shall set out, among others things, safe custody of assets, segregation of client assets, avoidance of conflicts of interest and cybersecurity standards and requirements expected of licensed trading platforms. Furthermore, the SFC confirmed that operators of virtual asset trading platforms who are prepared to comply with the SFC's standards are welcome to apply for a license and those who cannot comply "should proceed to an orderly closure of their business in Hong Kong."

The SFC's press release can be found [here](#) and the conclusions of the consultation can be found [here](#).

## ESMA Highlights Risks Arising from Investment Firms Providing Unregulated Products and Services

On May 25, 2023, the European Securities and Markets Authority (ESMA), the European Union's financial markets and securities regulator, issued a public statement to warn investors of risks that arise when investment firms offer both regulated and unregulated products and/or services. Among other things, ESMA's public statement noted that unregulated products such as crypto assets or non-transferable securities "may present a higher level of risk for clients." The statement further noted that while the MiCA is close to adoption, crypto assets offered by investment firms will continue to be unregulated in most jurisdictions until MiCA applies. ESMA's statement included recommendations on how to mitigate risks, including clearly disclosing to clients when regulatory protections do not apply to the product or service provided.

ESMA's statement can be found [here](#) and press release can be found [here](#).

## Key Recent Enforcement Actions

### North Korean Foreign Trade Bank Representative Charged in Crypto Laundering Conspiracies

On April 24, 2023, the U.S. Department of Justice (DOJ) announced that two federal indictments were unsealed in the District of Columbia charging Sim Hyon Sop, a North Korean Foreign Trade Bank representative, for his role in separate money laundering conspiracies designed to generate revenue for the Democratic People's Republic of Korea through the use of cryptocurrency. Sim Hyon Sop is charged with allegedly conspiring with over-the-counter cryptocurrency traders to use stolen funds to buy goods for North Korea

and for conspiring with North Korean IT workers to generate revenue through illegal employment at blockchain development companies in the United States.

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

### **Individual Pleads Guilty to Defrauding Banks and Cryptocurrency Exchange of More Than \$4 Million**

On April 26, 2023, the U.S. Attorney's Office for the Southern District of New York announced that Esteban Cabrera Da Corte pled guilty to participating in a scheme to steal millions of dollars' worth of cryptocurrency and "trick" U.S. banks into refunding the millions used to purchase that cryptocurrency, partially through using personal identifying information stolen from other people. According to the indictment and statements made in court, Da Corte and his co-conspirators engaged in a scheme to deceive U.S. banks and a leading cryptocurrency exchange by purchasing more than \$4 million in cryptocurrency and then falsely claiming that the cryptocurrency purchase transactions were unauthorized, deceiving the U.S. banks and the cryptocurrency exchange into reversing those transactions and redepositing the money into the bank accounts that the defendants controlled.

The U. S. Attorney's Office press release can be found [here](#).

### **FBI Searches Home of former FTX Digital Markets Co-CEO**

On April 27, 2023, it was reported that the Federal Bureau of Investigation (FBI) searched the home of former FTX Digital Markets co-CEO Ryan Salame, although the purpose of the search remains unknown. According to news reports, Salame was the beneficiary of a number of suspicious payments that had been provided to top FTX executives.

Further news reports can be found [here](#) and [here](#).

### **SEC Charges CEO and Subsidiary of Coinme Inc. with Securities Fraud**

On April 28, 2023, the SEC announced that it had settled charges against Coinme Inc., its subsidiary Up, Global SEZC and the Chief Executive Officer of both entities, Neil Bergquist, for conducting unregistered offers and sales of securities in the form of a crypto asset called "UpToken," and against Bergquist and Up Global for making false and misleading statements concerning the demand for UpToken and the amount raised in the offering. According to the order, from October 16, 2017, to December 15, 2017, Coinme, Up Global and Bergquist engaged in unregistered offers and sales of crypto asset securities during which, among other things, they marketed the financial benefit that UpToken investors would reap from Coinme purchasing UpToken in the secondary market after the initial coin offering. Up Global agreed to pay a \$3,520,000 penalty, for which Coinme is liable on a joint-and-several basis, Coinme agreed to pay a separate \$250,000 penalty, and Bergquist agreed to pay a penalty of \$150,000.

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

### **U.S. State Regulators Bring Coordinated Action Against TruthGPT Coin**

On May 3, 2023, the Texas State Securities Board (TSSB) announced that it had led a broader group of regulators (including the Alabama Securities Commission, the Montana State Auditor, the Kentucky Department of Financial Institutions and the New Jersey Securities Bureau) in bringing coordinated action against Horatiu Charlie Caragaceanu and his organizations. According to the emergency cease and desist order entered by the TSSB, the organizations were promoting TruthGPT Coin, a cryptocurrency that purportedly uses an artificial intelligence model called 'Elon Musk AI' (which was allegedly able to analyze

various cryptocurrencies, predict future digital asset prices and differentiate profitable investments from scams), TruthGPT Coin and the other investments named in the order have not been registered for sale in Texas, and Horatiu Charlie Caragaceanu and the relevant organizations have not been registered as dealers or agents.

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

### **Former Coinbase Insider Sentenced in First Ever Cryptocurrency Insider Trading Case**

On May 9, 2023, the U.S. Attorney's Office for the Southern District of New York announced that Ishan Wahi, a former product manager at Coinbase Global, Inc., was sentenced by U.S. District Judge Loretta A. Preska to two years in prison for providing Coinbase's confidential business information about upcoming Coinbase crypto asset listings to his brother and his friend so that they could place profitable trades in advance of Coinbase's listing announcements. Wahi previously pled guilty to two counts of conspiracy to commit wire fraud. U.S. Attorney Damian Williams noted that the "sentence should send a strong signal to all participants in the cryptocurrency markets that the laws decidedly do apply to them. The Southern District of New York will hold those who engage in insider trading to full account, regardless of whether their illegal conduct occurs in the equity markets or in the market for crypto assets."

The U.S. Attorney's Office press release can be found [here](#).

### **SEC Obtains Default Judgments Against Unregistered Brokers for Conducting a Fraudulent and Unregistered Offering of Crypto Asset Securities**

On May 10, 2023, the SEC announced that the U.S. District Court for the Northern District of Illinois entered final judgments against Chicago Crypto Capital LLC, its owner Brian Amoah, and former salesman Elbert Elliott, whom the SEC previously charged with violations of the federal securities laws. According to the SEC's complaint, from August 2018 through November 2019, Chicago Crypto Capital LLC, Amoah and Elliott acted as unregistered brokers and conducted an unregistered offering of BXY tokens, illegally raising at least \$1.5 million in proceeds from approximately 100 individuals, many of whom had no experience investing in crypto assets. Furthermore, the SEC's complaint alleged that the defendants made false and misleading statements in the offer, purchase and/or sale of BXY token, certain investors never received their BXY tokens, and all those who invested paid an undisclosed markup on their BXY tokens.

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

### **SEC Charges Operators of Dozens of Websites with Offering Fraud Involving Crypto Assets**

On May 11, 2023, the SEC announced charges against GA Investors and John Does 1-4, alleging that the defendants conducted fraudulent offerings of securities, including crypto asset mining pools, through dozens of websites. Among other emergency relief, the SEC sought an order requiring that defendants' fraudulent websites be taken down immediately. According to the SEC's complaint, among other things, the defendants directed investors to purchase crypto assets from a crypto asset trading platform and transfer those assets to a GA Investors wallet address, and when investors sought to recoup their investments their accounts were frozen and investor funds were misappropriated.

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

## **Former Chief Financial Officer Indicted for Using \$35 million in Company Cash to Invest in Cryptocurrency Venture**

On May 17, 2023, the U.S. Attorney's Office for the Western District of Washington announced that Nevin Shetty, a former Chief Financial Officer, was indicted in the U.S. District Court in Seattle for wire fraud for taking and misusing approximately \$35 million from his employer. According to the indictment, Shetty moved \$35 million in company funds to a cryptocurrency platform he controlled as a side business; the company reported the embezzlement to the FBI who launched an investigation.

The U.S. Attorney's Office press release can be found [here](#).

## **New York Attorney General Secures \$4.3 Million from Cryptocurrency Company for Defrauding Investors**

On May 18, 2023, New York Attorney General Letitia James secured \$4.3 million from Coin Cafe, a cryptocurrency trading platform that allowed investors to store their Bitcoin in a Coin Cafe account, for defrauding investors. The Office of the Attorney General's investigation found that Coin Cafe routinely charged and increased its fees without properly informing investors. Following the settlement, Coin Cafe agreed to pay restitution to all investors who were misled, including more than \$508,000 to more than 340 New York investors who were charged fees without their knowledge.

The New York Attorney General's press release can be found [here](#).

## **Man Charged for Alleged Participation in \$45 Million CoinDeal Investment Fraud Scheme Involving Over 10,000 Victims**

On May 19, 2023, the DOJ announced that Bryan Lee had been charged for his alleged participation in CoinDeal, an investment fraud scheme that defrauded more than 10,000 victims of over \$45 million. Lee allegedly conspired with Neil Chandran and others to defraud investors in companies that Chandran controlled, which were supposedly developing virtual-world technologies, including their own cryptocurrency, for use in a metaverse. The DOJ's press release noted that Lee and Chandran allegedly misappropriated millions of dollars of investor funds and spent it on luxury cars and real estate. Lee was charged by indictment with one count of conspiracy, two counts of mail fraud, one count of wire fraud and three counts of engaging in monetary transactions in criminally derived property.

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

## **CFTC Charges Five Defendants with Fraudulent Digital Assets Trading Scheme**

On May 24, 2023, the CFTC filed a civil enforcement action in the U.S. District Court for the Central District of California against David Carmona, Juan Arellano Parra, Moses Valdez, David Brend and Marco A. Ruiz Ochoa, all jointly doing business as Icomtech. The complaint charges the defendants with fraudulently soliciting hundreds of thousands of dollars from more than 170 individuals in the U.S. and other countries for Icomtech to supposedly trade bitcoin and other digital asset commodities for them, and for misappropriating customer funds. According to the CFTC's press release, from approximately August 2018 through December 2019, the defendants and other Icomtech agents falsely represented they would use customer money to trade Bitcoin and other digital asset commodities, that Icomtech would provide "daily returns" of between 0.9% to 2.8% on the customers' money from trading and that Icomtech would double the customers' money in approximately four to eight months. In reality, however, the defendants did not trade Bitcoin or other digital asset commodities for the customers, did not earn daily returns nor double the customers' investments based on trading and instead misappropriated customer funds.



Previously, on October 13, 2022, the U.S. Attorney's Office for the Southern District of New York unsealed an indictment charging Carmona, Arellano, Valdez, Brend and Ruiz with wire fraud in connection with the Icomtech scheme.

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

## SEC Obtains Judgments Against the Hydrogen Technology Corporation and Former CEO for Market Manipulation of Crypto Asset Securities

On May 26, 2023, the SEC announced that it had obtained final consent judgments against The Hydrogen Technology Corporation, its former CEO Michael Ross Kane, and Tyler Ostern, the CEO of Moonwalkers Trading Limited. The final consent judgments conclude the SEC's case against Hydrogen, Kane and Ostern for their roles in effectuating the unregistered offers and sales of crypto asset securities called "Hydro" and perpetrating a scheme to manipulate the trading volume and price of those securities, which yielded more than \$2 million for Hydrogen. Among other relief, the settlement requires Hydrogen and Kane to pay almost \$3 million in disgorgement, prejudgment interest and penalties.

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

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[Hong Kong Court Confirms Cryptocurrency Is "Property" in Landmark Ruling \(May 12, 2023\)](#)



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