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CryptoLink



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In the House, lawmakers continue to make progress on the Clarity for Stablecoins Act (H.R. 4766). On March 19, at a press event hosted by Punchbowl News on the policy landscape for digital payments, outgoing House Financial Services Chair Patrick McHenry (R-NC) said that he and Committee Ranking Member Maxine Waters (D-CA) would be able to secure passage of his stablecoins bill if they had a legislative vehicle. The comments build on similarly optimistic assessments McHenry made in February on the state of a nascent deal over the legislation, including that he and Waters had come to terms and were just awaiting Biden administration buy-in. Later at the same Punchbowl News event, McHenry praised the long-standing bipartisan effort by his Senate colleagues Kirsten Gillibrand (D-NY) and Cynthia Lummis (R-WY) to whip support for their crypto bill, the Lummis-Gillibrand Responsible Financial Innovation Act (S.2281). McHenry said the bill - which was re-introduced in 2023 after being initially introduced in the 117th Congress and would provide regulatory guardrails for the industry, enhanced consumer protections and beefed up anti-money laundering (AML) tools to combat illicit finance - was one he took quite seriously. McHenry stated that "We've got a good understanding across the Capitol" on the two parallel crypto bills.

Also on March 19, the Senate Banking Committee extended an invitation to Treasury Deputy Secretary Wally Adeyemo to testify as part of a hearing on illicit finance in April. Senate Banking Chair Sherrod Brown (D-OH), who is up for re-election this year and has been the target of considerable opposition funding from crypto-industry PACs, has been in talks with Committee Ranking Member Tim Scott (R-SC) over his own illicit finance package, which would surely include provisions targeting illicit finance in the digital assets space.

March brought significant milestones in cryptocurrency enforcement. *First*, in the *SEC v. Coinbase* litigation, where the SEC alleged Coinbase operated its crypto asset trading platform as an unregistered national securities exchange, broker and clearing agency among other charges, Judge Failla issued a ruling on Coinbase's motion for judgment on the pleadings. Judge Failla largely denied Coinbase's motion, allowing most of the SEC's case to proceed to the discovery phase of litigation. Judge Failla found that, assuming the SEC's factual allegations are true, the SEC plausibly alleged that some of the crypto-asset-related "transactions" on Coinbase involve investment contracts and, therefore, securities. *Second*, one-time crypto mogul Sam Bankman-Friedman was sentenced to 25 years in federal prison for defrauding customers and investors in crypto exchange FTX. This is the most substantial

sentence that anyone charged with fraud in the crypto industry has been given to date. *Third*, the SEC’s action against Terraform Labs and its founder, Do Kwon, proceeded to trial. The SEC claimed that Terraform and Kwon defrauded investors by misleading investors regarding the stability of the TerraUSD stablecoin, which led to approximately \$40 billion in losses. On April 5, 2024, the jury found Terraform and its founder, Do Kwon, liable for securities fraud.

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Crypto Litigation in the Federal Courts

Jury Reached a Verdict in Terraform’s Civil Fraud Trial in the SDNY

On April 5, 2024, the jury in the *SEC v. Terraform Labs* case found the cryptocurrency startup and its founder, Do Kwon, liable for securities fraud in the trial that proceeded in the Southern District of New York (SDNY). The U.S. Securities and Exchange Commission (SEC) alleged that Terraform, which is currently operating in bankruptcy, made false representations regarding its cryptocurrencies, UST (TerraUSD) and LUNA. Terraform claimed that UST was “stable” and pegged to the value of the U.S. dollar, but the SEC alleged that a secret capital infusion assisted UST’s dollar peg. The SEC also claimed that Terraform falsely represented LUNA coins being in heavy use, when in fact, they facilitated transactions through an e-commerce app by mirroring regular-currency transactions on its blockchain. After the UST plunged far below its \$1 peg, holders of UST and its floating sister currency, LUNA, lost around \$40 billion in market value. Kwon was arrested in Montenegro last year during a reported attempt to flee using allegedly fake passports. Just days before the trial began, Kwon was released from the Montenegro prison. Both South Korea and the United States have requested his extradition, but Montenegro’s high court, on April 5, 2024, overturned a decision to extradite him to South Korea. The trial against Kwon proceeded in his absence, providing a potential basis for appeal.

Sam Bankman-Fried Sentenced to 25 Years for His Orchestration of Multiple Fraudulent Schemes

Throughout late February and March, FTX founder Sam Bankman-Fried and his federal prosecutors submitted sentencing memoranda arguing for their proposed sentences for Bankman-Fried’s fraud conviction. Bankman-Fried’s memorandum, filed on February 28, 2024, noted that he is a first-time, non-violent offender, who was joined in the conduct at issue by at least four other culpable individuals and noted that “a sentence that returns Sam promptly to a productive role in society would be sufficient, but not greater than necessary, to comply with the purposes of sentencing.”

On March 15, 2024, federal prosecutors issued a separate sentencing memorandum arguing that Bankman-Fried should spend 40 to 50 years in prison for his involvement in the FTX fraud. Prosecutors argue that Bankman-Fried was “convicted of orchestrating one of the largest financial frauds in history, and what is likely the largest fraud in the last decade.”

On March 28, 2024, Judge Lewis L. Kaplan of the SDNY sentenced Bankman-Fried to 25 years in federal prison, three years of supervised release, and ordered to pay \$11 billion in forfeiture for his orchestration of multiple fraudulent schemes. Bankman-Fried was previously found guilty on two counts of wire fraud, two counts of conspiracy to commit wire fraud, one count of conspiracy to commit securities fraud, one count of conspiracy to commit commodities fraud and one count of conspiracy to commit money laundering, following a one-month trial before U.S. District Judge Lewis A. Kaplan. Judge Kaplan authorized the government to use the funds recovered through the forfeiture process to provide compensation to victims of Bankman-Fried’s crimes.

U.S. Attorney Damian Williams of the SDNY noted that Bankman-Fried’s “sentence will prevent the defendant from ever again committing fraud and is an important message to others who might be tempted to engage in financial crimes that justice will be swift, and the consequences will be severe.”

Bankman-Fried’s sentencing memorandum can be found [here](#), the prosecutor’s memorandum can be found [here](#) and the U.S. Department of Justice’s press release regarding the sentencing can be found [here](#).

Coinbase Court Embraces ‘Ecosystem’ Approach to Identifying Crypto-Asset Securities

On March 27, 2024, Judge Katherine Polk Failla of the SDNY largely rejected Coinbase’s motion for judgment on the pleadings in a case brought by the SEC alleging numerous violations of the federal securities laws. In an 84-page opinion, taking the SEC’s factual allegations, the court concluded that the SEC had plausibly alleged crypto-asset transactions involving investment contracts under SEC v. Howey and, therefore, involving “securities” for purposes of its claims under the Securities Act of 1933 and the Securities Exchange Act of 1934. Notably, Judge Failla agreed with SEC Chair Gary Gensler’s publicly stated view on using the Howey test to identify crypto-asset securities, stating that “the challenged transactions fall comfortably within the framework that courts have used to identify securities for nearly eighty years.” In doing so, the court embraced Judge Rakoff’s approach to analyzing crypto-asset transactions in the Terraform litigation and rejected the Ripple court’s manner-of-sale approach, holding that whether a transaction involves an investment contract is a question of reasonable investor expectations understood from the objective circumstances. The bulk of the SEC’s case will now proceed to discovery.

Our client alert on the Coinbase decision can be found [here](#).

Key Developments

CFTC Commissioner Advances New Recommendations for Digital Assets Classification and Taxonomy

On March 7, 2024, the Commodity Futures Trading Commission’s (CFTC) Global Markets Advisory Committee advanced a recommendation by the Digital Asset Markets Subcommittee regarding the classification and taxonomy of digital assets. The recommendation “aims to

set out consistent language for participants in the digital asset ecosystem to promote innovation, identify and address risk considerations, and enable effective regulatory understanding.” The recommendation classifies and defines various digital assets, including cryptocurrencies, stablecoins and other key terms related to the digital assets space.

The CFTC press release can be found [here](#) and the Subcommittee’s recommendations report can be found [here](#).

BlockFi and FTX Strike Deal to Settle Bankruptcy Disputes

On March 6, 2024, BlockFi and FTX reached a settlement to end a number of disputes surrounding both companies’ bankruptcies. According to BlockFi’s plan administrator’s report to creditors, one of the most significant tasks assigned to the plan administrator was resolving BlockFi’s claims against FTX, totaling approximately a billion dollars, and defending against FTX’s hundreds of millions of dollars of avoidance claims and other counterclaims. In its report, the plan administrator announced the successful resolution in principle of all litigation and other disputes between BlockFi and FTX and its affiliated debtors. Subject to court approval, this settlement will allow BlockFi’s claims against the FTX debtors, and BlockFi will receive an allowed customer claim of \$185.2 million against FTX.com on account of its assets on the FTX exchange and a claim of \$689.3 million against Alameda Research on account of BlockFi’s loans to Alameda Research. According to the report, the resolution allows BlockFi to support the proposed plan of reorganization proposed by the FTX debtors, and assist in pushing the FTX case to a close.

The plan administrator’s second status report to creditors can be found [here](#).

FDIC Vice Chair Gives Speech Emphasizing Downsides of Crypto Caution

On March 11, 2024, Travis Hill, Vice Chair of the Federal Deposit Insurance Corporation (FDIC) remarked that the FDIC’s cautious attitude toward cryptocurrency “has contributed to a general public perception that the FDIC is closed for business if institutions are interested in anything related to blockchain or distributed ledger technology.” Hill maintained that the FDIC’s goal should be to provide as much clarity as is feasible regarding what is permissible and what is considered safe in the digital assets sphere. Furthermore, Hill expressed concerns about the SEC’s Staff Accounting Bulletin 121, which provides that an entity that safeguards crypto assets should recognize such an asset on its balance sheet as both an asset and a liability. According to Hill, this treatment sharply departs from how custodians account for all other assets held in custody and makes it prohibitively challenging for banks to engage in this activity at any scale. Hill urged agencies to seek public input before issuing major policy decisions and called for clarification that the SEC’s guidance does not apply to the wider universe of tokenized assets beyond blockchain-native assets.

Hill’s full remarks can be found [here](#).

USPTO and U.S. Copyright Office Release Report to Congress on NFTs

On March 12, 2024, the United States Patent and Trademark Office (USPTO) and the United States Copyright Office released a report to Congress regarding the intersection between Non-Fungible Tokens (NFT) and Intellectual Property (IP). The report, which brought together the viewpoints of a wide range of stakeholders, noted that current IP laws “are adequate to deal with infringement” and that “NFT-specific legislation would be premature at this time and could impede the development of new NFT applications.” The report also acknowledged that NFTs provide certain benefits, such as giving rightsholders greater control of their IP or allowing enforcement to have evidence of the authenticity or registration of a digital asset.

The report can be found [here](#).

DIFC Announces Enactment of New Digital Assets Law

On March 13, 2024, the Dubai International Financial Centre (DIFC) announced the enactment of the Digital Assets Law, or DIFC Law No. 2 of 2024. The enactment follows a thorough review of the approach to digital assets in other jurisdictions and a period of public consultation in 2023. Chief Legal Officer at the DIFC Authority, Jacques Visser noted that the legislation is “groundbreaking as the first legislative enactment to comprehensively set out the legal characteristics of digital assets as a matter of property law, and to provide for how digital assets may be controlled, transferred and dealt with by interested parties.”

The law can be found [here](#) and the DIFC’s press release can be found [here](#).

UK Financial Regulator Announces New Focus on Crypto Assets

On March 19, 2024, the United Kingdom’s Financial Conduct Authority (FCA) announced new goals for the next 12 months which include tightening its focus against crypto market abuse. The FCA stated that it would continue its “supervision of crypto asset firms’ financial promotions” and generally increase their technological capabilities to identify crypto scams. The FCA’s efforts also include increasing consumer awareness against crypto and other investment scams.

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

Key Enforcement Actions

Fraud Victim Sues Binance and Former CEO with RICO Suit and Second Circuit Revives Investor Suit Against Binance

On February 26, 2024, Leonard Licht, a 75-year-old resident of Texas, filed a complaint pursuant to the federal civil Racketeer Influenced and Corrupt Organizations Act against Binance Holdings Limited, BAM Trading Services, Inc. and Changpeng Zhao. The complaint alleges that Binance and Zhao knowingly and willfully operated the Binance exchange in flagrant violation of United States criminal statutes, including anti-money laundering statutes and statutes prohibiting unlicensed money-transmitting businesses. According to the complaint, Licht lost more than \$2.7 million to a “Pig Butchering” scheme that used the Binance exchange and was facilitated by Binance’s, BAM’s and Zhao’s knowing and willful violations of U.S. law. The complaint notes that it is “time for Binance, BAM, and Zhao to take responsibility, and to be held liable, for the devastating financial harm that their flagrantly unlawful racketeering activity caused at least one of its victims” and seeks a damages award equal to three times the \$2.7 million that the plaintiff had stolen.

The complaint can be found [here](#).

Then, on March 8, 2024, the Second Circuit Court revived a proposed investor class action against Binance and its founder, disagreeing with a lower court’s ruling that the transactions had not occurred in the U.S. The court rejected “Binance’s argument that plaintiffs pled themselves out of court by noting Binance’s intentional efforts to evade the jurisdiction of regulators.” The court highlighted that transactions made in the U.S. and matched on U.S. servers are subject to U.S. securities laws, despite the challenge of determining jurisdiction for a platform like Binance without a physical location.

The Second Circuit's opinion can be found [here](#)

SEC Obtains Default Judgment Against Friend of Former Coinbase Manager for Insider Trading in Crypto Asset Securities

On March 1, 2024, a federal judge entered a final judgment against Sameer Ramani, who was previously charged for engaging in insider trading through a scheme to trade ahead of multiple announcements regarding at least nine crypto-asset securities that would be made available for trading on the Coinbase platform. The SEC alleged that Ramani received tips from his friend Ishan Wahi (a Coinbase product manager involved in coordinating listing announcements), allegedly purchased at least 25 crypto assets (at least nine of which were securities) and then typically sold them shortly after the announcements for a profit. The judgment, entered on the basis of default, prohibits Ramani from violating anti-fraud provisions of the Securities Exchange Act of 1934 and orders him to pay disgorgement of \$817,602 and a civil penalty of \$1,635,204. The court previously entered final judgments against Ishan and Nikhil Wahi, and thus the final judgment against Ramani concludes the litigation in the matter.

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

SEC Charges ShapeShift AG Crypto Platform with Operating as an Unregistered Dealer

On March 5, 2024, the SEC charged ShapeShift AG, a Swiss company formerly based in Colorado, with acting as an unregistered dealer in connection with its operation of an online crypto asset trading platform. ShapeShift agreed to settle the charges by paying a \$275,000 penalty. According to the SEC's order, ShapeShift operated ShapeShift.io, an online platform facilitating the buying and selling of crypto assets from 2014 until early 2021, and some of these crypto assets were considered securities under the Securities Exchange Act of 1934. In January 2021, ShapeShift announced the discontinuation of direct crypto asset exchanges through its platform and ceased acting as the counterparty to customer transactions. Without admitting or denying the SEC's findings, ShapeShift consented to a cease-and-desist order and agreed to pay the penalty.

That day, Commissioners Hester M. Peirce and Mark T. Uyeda issued a statement noting that the SEC's enforcement action against ShapeShift "is the latest installment in the serial drama of the Commission's poorly conceived crypto policy" and the SEC's order "fails to identify which crypto assets were investment contracts and provides no explanation for its conclusion." The statement continued to note that the enforcement action "underscores the adverse consequences" of the SEC's approach to regulation in the crypto space and "adds to the ambiguity that hangs over the crypto world."

The SEC's press release can be found [here](#), the order can be found [here](#) and the statement from Commissioner Peirce and Uyeda can be found [here](#).

Bitcoin Fog Operator Convicted of Money Laundering Conspiracy

On March 12, 2024, a federal jury in Washington, D.C. convicted Roman Sterlingov in connection with his operation of Bitcoin Fog, the longest-standing bitcoin money laundering service on the darknet. Sterlingov operated the site for 10 years and facilitated the laundering of over 1.2 million bitcoins, valued at approximately \$400 million. According to the U.S. Department of Justice's (DOJ) press release, the service gained notoriety for its role in concealing proceeds from illegal activities such as narcotics, computer crimes, identity theft and child exploitation. The jury convicted Sterlingov of money laundering conspiracy and sting money laundering (each of which carries a maximum sentence of 20 years) and of operating an unlicensed money transmitting business and money transmission

without a license (which each carry maximum sentences of five years). Deputy Attorney General Lisa Monaco noted that the guilty verdict on all counts shows that “if your cryptocurrency service reaches the United States, you must abide by U.S. law.”

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

Dutch Central Bank Announces Administrative Fine on Crypto.com

On March 13, 2024, De Nederlandsche Bank (DNB) announced an administrative fine against Foris DAX MT Limited, also known as Crypto.com. The fine, which was imposed on October 2, 2023, was levied in respect of Crypto.com’s provision of crypto services in the Netherlands without registration with DNB. The fine totaled €2.85 million due to the severity and degree of culpability for the non-compliance.

The DNB’s announcement can be found [here](#), and the decision imposing the fine can be found [here](#).

SEC Charges 17 Individuals in \$300 million Crypto-Asset Ponzi Scheme

On March 14, 2024, the SEC charged 17 individuals for their involvement in a \$300 million Ponzi scheme orchestrated through Texas-based CryptoFX LLC. The Ponzi scheme targeted over 40,000 primarily Latino investors across the U.S. and two other countries. Following a successful emergency action in September 2022 that halted the scheme and charged its main principals, Mauricio Chavez and Giorgio Benvenuto, the SEC alleged that CryptoFX misrepresented itself as a crypto asset and foreign exchange trading platform, promising returns ranging from 15 to 100%. Instead, the funds were allegedly misappropriated to pay returns to earlier investors, commissions, bonuses and personal expenses of the defendants. The SEC’s complaint (filed in U.S. District Court for the Southern District of Texas) also alleged that following the emergency court orders to halting the scheme, some defendants continued soliciting investments, with one defendant allegedly telling investors that the SEC action was fake. Without admitting or denying the allegations in the SEC’s complaint, Serrano and Taffinder consented to the entry of final judgments, subject to court approval, that permanently restrain and enjoin them from violating the securities-registration and broker-registration provisions of the federal securities laws. Serrano and Taffinder also agreed to pay more than \$68,000 combined in civil penalties, disgorgement and interest.

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

Defendants Convicted For Participating In Cryptocurrency Ponzi Scheme “IcomTech”

On March 15, 2024, David Brend and Gustavo Rodriguez were found guilty of conspiracy to commit wire fraud in connection with their involvement in the IcomTech cryptocurrency Ponzi scheme, which “defrauded tens of thousands of people out of tens of millions of dollars.” The scheme offered cryptocurrency mining and trading opportunities and falsely promised guaranteed returns on investments. In reality, IcomTech did not engage in cryptocurrency trading or mining but siphoned the money off for personal use. U.S. Attorney Damian Williams stated that this “verdict should send a clear message to those who engage in Ponzi schemes – whether in the cryptocurrency markets or elsewhere – that this Office is committed to rooting out fraud in all its forms and holding those responsible to full account.” Brend and Rodriguez were each convicted of one count of conspiracy to commit wire fraud, which carries a maximum sentence of 20 years in prison. Brend is scheduled to be sentenced on June 27, 2024, and Rodriguez is scheduled to be sentenced on June 28, 2024.

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

Federal Judge Levies Sanctions Against SEC in Debt Box Case

On March 18, 2024, Chief Judge Robert J. Shelby issued a memorandum decision and order in which it sanctioned the SEC over its conduct in a case involving the crypto project DEBT Box. In the 80-page ruling, Judge Shelby found that the SEC had “subjective bad faith” when it made and failed to correct misleading statements and that the conduct was a “gross abuse of the power” and that it had “substantially undermined” the integrity of the case. The misleading statements were made at the outset of the case and allowed the SEC to obtain a temporary restraining order over Debt Box and freeze their assets. The judge noted that this initial misconduct was aggravated when the SEC subsequently defended the misstatement when Debt Box sought to dismiss the restraining order. The SEC was required to pay all attorney’s fees and expenses related to the emergency measures.

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

Genesis Agrees to Pay \$21 Million Penalty to Settle SEC Charges

On March 19, 2024, the SEC announced that Genesis Global Capital, LLC agreed to a final judgment ordering it to pay a \$21 million civil penalty and imposing a permanent injunction to settle charges that it engaged in the unregistered offer and sale of securities through a crypto asset lending program known as the Gemini Earn program. Under the terms of the settlement, the SEC will not receive any portion of the penalty until after payment of all other allowed claims by the bankruptcy court, including claims by retail investors in the Gemini Earn program. Chair Gary Gensler stated that the “settlement builds on previous actions to make clear to the marketplace and the investing public that crypto lending platforms and other intermediaries need to comply with our time-tested securities laws.”

The SEC’s press release can be found [here](#), and the final judgment can be found [here](#).

Judge Rules that Bank Must Face Class Action Suit Brought by FTX Customers

On March 21, 2024, the United States District Court for the Southern District of California denied Silvergate Bank’s motion to dismiss a class action suit brought by victims of the FTX collapse. The lawsuit alleges that Silvergate knowingly facilitated FTX’s misuse of funds before its collapse in November 2022, leading to charges against FTX founder Sam Bankman-Fried. Judge Montenegro disagreed with Silvergate’s argument that it did not owe a duty of care to FTX customers, noting that they were intended beneficiaries of the Silvergate Exchange Network. The judge stated that Silvergate had a strong incentive to continue accepting FTX customer deposits and earned income from transaction fees and interest. Additionally, Judge Montenegro rejected Silvergate’s argument that it lacked “actual knowledge” of FTX’s wrongdoings, stating that the customers adequately alleged Silvergate’s awareness of FTX’s fraudulent scheme.

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

Crypto Industry Group and Apparel Company File Pre-Enforcement Suit Against SEC

On March 25, 2024, DeFi Education Fund and Beba LLC brought a pre-enforcement action against the SEC over its alleged pattern of enforcement against crypto firms. Beba, a small Texas-based apparel company, created a new digital asset called the Beba token, which it planned to distribute through free “airdrops”. In the suit, Beba alleged that the SEC would wrongly “take the position that Beba tokens are investment contracts and that the airdrop is a securities transaction.” This suit challenges the SEC’s policy that “a digital asset itself is

presumptively an “investment contract.” The suit is supported by DeFi as it hopes that this impact litigation can produce regulatory clarity for the crypto industry.

The complaint can be found [here](#).

Akin Thought Leadership

[Coinbase Court Embraces ‘Ecosystem’ Approach to Identifying Crypto-Asset Securities](#) (April 3, 2024)

[Are Crypto Tokens Securities? Terraform Court Says ‘Yes’ in Extensive Decision](#) (January 12, 2024)



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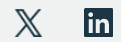


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