

# CryptoLink

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

**Akin Gump**  
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This edition of CryptoLink follows the 2022 U.S. midterm elections, and lawmakers in Congress are now outlining ambitious agenda priorities for next Congress, putting digital assets near the top of the list. Following the FTX collapse and other high-profile liquidity-related issues in the crypto markets, U.S. investigators have re-doubled enforcement efforts and multiple congressional committees of jurisdiction have scheduled or expressed interest in hearings to address the continued volatility and recent business failures. On the legislative front, it is widely expected that the Stabenow-Boozman Digital Commodities Consumer Protection Act (DCCPA) will serve as the primary basis for crypto legislation in the new Congress, which officially begins on January 3, 2023. The DCCPA identifies the Commodity Futures Trading Commission (CFTC) as the primary regulator for the cryptocurrency space. It is probable that the bill is significantly modified in the new Congress and may include key provisions of the Lummis-Gillibrand Responsible Financial Innovation Act (RFIA). It is expected that the Senate Agriculture Committee will be the main Committee for legislative activity in the 118th Congress, increasing the likelihood that the CFTC will be chosen as the chief regulator in any legislation. Additionally, both the House Financial Services Committee (HFSC) and Senate Banking Committee (SBC) may focus their legislative efforts on stablecoin regulations, following the announcement of bipartisan efforts by Sens. Cynthia Lummis (R-WY), Kirsten Gillibrand (D-NY), retiring SBC Ranking Member Pat Toomey (R-PA), current HFSC Chairwoman Maxine Waters (D-CA) and Ranking Member Patrick McHenry (R-NC) to craft such bills before the end of the year.

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## KEY DEVELOPMENTS

### Financial Stability Oversight Council Releases Report on Digital Asset Financial Stability Risks and Regulations

On October 3, 2022, the Financial Stability Oversight Council (FSOC) released its Report on Digital Asset Financial Stability Risks and Regulations (the Report), which was issued in response to Executive Order 14067 on Ensuring Responsible Development of Digital

Assets. The Report reviews financial stability risks and regulatory gaps posed by the different types of digital assets and further provides recommendations to address such risks. For example, in the Report, the FSOC recommends the passage of legislation providing for rulemaking authority for federal financial regulators over the spot market for crypto assets that are not securities.

The Report can be found [here](#), the corresponding press release can be found [here](#) and the associated fact sheet can be found [here](#).

### Statement by Securities and Exchange Commission Chair on Crypto Markets

On October 3, 2022, Chair of the Securities and Exchange Commission (SEC) Gary Gensler made a statement at the FSOC open meeting where he noted that he believes that the vast majority of crypto tokens are securities, and therefore crypto intermediaries are transacting in securities and must register with the SEC. Gensler further stated that there is significant non-compliance with securities laws in the crypto market and the SEC is therefore working towards enhancing investor protection and the resilience of the crypto market.

SEC Chair Gary Gensler's statement can be found [here](#).

### Nasdaq Reported to Wait for Regulation Prior to Launching Crypto Exchange

On October 4, 2022, *Bloomberg* reported that Nasdaq Inc.'s executive vice president and head of North American markets Tal Cohen had stated that Nasdaq would likely wait until there was greater regulatory certainty and institutional adoption in respect of crypto exchanges prior to debuting any plans to launch its own, and would instead focus on its crypto custody services in the digital asset sector.

*Bloomberg's* news article can be found [here](#).

### Mastercard Launches New 'Crypto Secure' Software

On October 4, 2022, Mastercard announced the launch of Crypto Secure, a novel technology solution aimed at bringing additional security and trust to the crypto ecosystem. According to Mastercard, the platform will allow card issuers to better assess the risk profile of virtual asset service providers and to decide which purchases of cryptocurrency to approve. Mastercard's new software will help banks identify and cut off transactions from fraud-prone crypto exchanges and comes at a time when illicit transactions using cryptocurrency have surged.

Mastercard's press release can be found [here](#) and additional information can be found [here](#).

### European Union Issues Updated Draft of Regulation on Markets in Crypto Assets

On October 5, 2022, the Council of the European Union (EU) issued an updated draft of the Markets in Crypto Assets (MiCA) Regulation, one of the first attempts globally at comprehensive regulation of cryptocurrency markets.

The updated draft of MiCA can be found [here](#).

### EU Implements Ban on Provision of Crypto Services to Russian Persons as Part of Sanctions Package

On October 6, 2022, the Council of the EU announced the imposition of a new package of economic and individual sanctions against Russia. As part of the comprehensive package, the EU imposed a full ban on the provision of crypto-asset wallet, account or custody services to Russian persons and residents, irrespective of the total value of such crypto assets.

The Council of the EU's press release can be found [here](#).

### World's Largest Cryptocurrency Exchange Binance Hacked

On October 7, 2022, a number of media agencies reported that Binance, the world's largest cryptocurrency exchange, had been hacked with \$570 million having been stolen in the hack. In a blog post to users, BNB Chain (the blockchain involved) apologized and confirmed a timeline of events and details will be shared with all parties in due course. The blog post confirmed that the hack was through a "sophisticated forging of the low level proof into one common library", but that the vast majority of funds remain under control.

Further information can be found [here](#) and [here](#) and Binance's blog post can be found [here](#).

### OECD Releases Crypto-Asset Reporting Framework

On October 10, 2022, the Organization for Economic Cooperation and Development (OECD) published the final Crypto Asset Reporting Framework (CARF) and Amendments to the Common Reporting Standard. The CARF provides for the reporting of tax information on transactions in crypto assets in a standardized manner, with the objective of automatically exchanging such information with jurisdictions of residence of taxpayers on an annual basis. The CARF comprises rules that address the scope of crypto assets covered, the entities, individuals and transactions subject to the reporting requirements, and the due diligence procedures to identify crypto asset users and controlling persons.

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

### Financial Stability Board Proposes Framework for International Regulation of Crypto Asset Activities

On October 11, 2022, the Financial Stability Board (FSB) published a proposed framework for the international regulation of crypto asset activities. The framework includes proposals in respect of (i) recommendations that promote the consistency and comprehensiveness of regulatory, supervisory and oversight approaches to crypto asset activities and markets, and (ii) high-level recommendations for the regulation, supervision and oversight of global stablecoin arrangements. In its press release announcing the proposed framework, the FSB noted that high regulatory standards should apply to crypto assets that can be used as a means of payment due to the potential risks posed to financial stability

The FSB's press release can be found [here](#) and the proposed framework can be found [here](#).

### European Commissions Calls for Reduced Electricity Consumption of Crypto Asset Actors and Potential Ban on Crypto Asset Mining

On October 18, 2022, in its Q&A on the EU action plan on digitalizing the energy system, the European Commission noted that the energy consumption of cryptocurrency mining had attracted considerable attention, increasing by 900 percent in the last five years and amounting to approximately 0.4 percent of worldwide electricity consumption. The European Commission urged EU member states to implement targeted and ambitious measures to reduce the electricity consumption of crypto asset actors, and further noted that in the event there was a need for load shedding in the electricity systems the member states must "be ready to stop crypto-assets mining". Longer-term, the European Commission noted that it was important to end tax breaks and other fiscal measures benefitting crypto-miners presently in force in certain member states.

The European Commission's Q&A's can be found [here](#).

### CFTC Releases Annual Enforcement Results

On October 20, 2022, the Commodity Futures Trading Commission (CFTC) issued the agency's annual enforcement results for fiscal year 2022. Significantly, in fiscal year 2022, the CFTC:

- Brought 18 actions involving conduct related to digital assets (representing more than 20 percent of all actions filed).
- Found Tether Holdings Limited made untrue or misleading statements of material fact in connection with the U.S. dollar tether token and required Tether to pay civil monetary penalties of \$41 million.

- Found Bitfinex, the cryptocurrency trading platform, had engaged in illegal, off-exchange retail commodity transactions in digital transactions with U.S. persons without the requisite registration.
- Charged defendants with commodity pool fraud following the defendant's acceptance of Bitcoin with a value in excess of \$1.7 billion.

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

### Monetary Authority of Singapore Launches Consultation on Proposed Regulatory Approach for Stablecoin-Related Activities

On October 26, 2022, the Monetary Authority of Singapore (MAS) issued its consultation paper on the 'Proposed Regulatory Approach for Stablecoin-Related activities'. The consultation is open until December 21, 2022. The consultation paper sets out the MAS's thinking regarding the overall regulatory approach on stablecoin-related issuance and intermediation activities and further identifies the key requirements that will be imposed on such activities.

The MAS's consultation paper can be found [here](#).

### Office of the Comptroller of the Currency Announced New Office of Financial Technology

On October 27, 2022, the Office of the Comptroller of the Currency (OCC) announced that it would establish an Office of Financial Technology in early 2023 in order to bolster the agency's expertise and ability to adopt to the "rapidly changing" banking landscape.

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

## KEY RECENT ENFORCEMENT ACTIONS

### SEC Halts Crypto Asset-Related Fraud Victimized Investors

On October 3, 2022, the SEC issued a press release announcing that it had filed, on September 19, 2022, an emergency action in the U.S. District Court for the Southern District of Texas to stop an on-going fraudulent and unregistered crypto asset offering targeting Latino investors, run by Mauricio Chavez and Giorgio Benvenuto (through Chavez's company, CryptoFX, LLC). Following a hearing on September 29, 2022, the court granted the SEC's motion for a receiver and extended the asset freeze. According to the SEC's complaint, Chavez and Benvenuto made approximately \$2.7 million in Ponzi payments while diverting almost \$8 million for their own use.

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

### Kim Kardashian Settles SEC Charges for Unlawfully Touting Crypto Security

On October 3, 2022, the SEC announced that Kim Kardashian agreed to settle charges the SEC had made against her (without admitting or denying the SEC's findings) for promoting a crypto asset security on social media without disclosing the payment she had received for doing so. The settlement amounted to \$1.26 million and related to a \$250,000 payment she had received from EthereumMax to promote EMAX tokens.

The SEC's press release is available [here](#).

### Digitex Founder Charged by CFTC for Multiple Violations of the CEA

On October, 3, 2022, the CFTC filed a complaint in the Southern District of Florida against the founder of the crypto futures and spot market exchange Digitex Adam Todd, and four companies he controlled (Digitex LLC, Digitex Limited, Digitex Software Limited, and Blockster Holdings Limited Corporation). The complaint relates to Todd's failure to register the service with CFTC, and, therefore, the CFTC alleges that he was running an illegal trading platform in contravention of the U.S. Commodity Exchange Act.

The CFTC's press release is available [here](#).

## Financial Crimes Enforcement Network Announces \$29 Million Enforcement Action Against Bittrex.

On October 11, 2022, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) announced that it had imposed a civil money penalty in the amount of \$29,280,829.20 against Bittrex for violations of the Bank Secrecy Act and FinCEN's implementing regulations. FinCEN's investigation into Bittrex found that from February 2014 to December 2018, Bittrex had failed to maintain an effective anti-money laundering (AML) program and to appropriately address the risks associated with the products it offered, including anonymity-enhanced cryptocurrencies. FinCEN's action formed part of a global settlement with the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC).

FinCEN's consent order imposing a civil monetary penalty can be found [here](#) and FinCEN's press release can be found [here](#).

## OFAC Announces \$24 Million Settlement Agreement with Bittrex

On October 11, 2022, OFAC announced a settlement with Bittrex, Inc., a company providing an online virtual currency exchange and hosted wallet service. As part of the settlement, Bittrex agreed to remit \$24,280,829.20 to settle its potential civil liability for 116,421 apparent violations of sanctions against Cuba, Ukraine-related, Iran, Sudan and Syria. According to OFAC, due to deficiencies in Bittrex's sanctions compliance procedures, Bittrex failed to prevent persons located in certain sanctioned jurisdictions from using its platform to engage in more than \$263,000,000 worth of virtual currency-related transactions. Although Bittrex had reason to know that its users were located in sanctioned jurisdictions (based on IP address information), OFAC found that Bittrex was not screening its customers.

OFAC's press release can be found [here](#) and web notice can be found [here](#).

## Coin Center Commences Litigation Against Treasury Department for Tornado Cash Sanctions

On October 12, 2022, Coin Center (a non-profit organization focused on policy issues facing cryptocurrencies) filed a lawsuit against the Department of the Treasury in the U.S. District Court for the Northern District of Florida to "keep privacy normal, to delist Tornado Cash privacy tools from sanctions, and to enjoin Treasury from enforcing against ordinary Americans exercising their self-evidence and basic rights to privacy."

Coin Center's press release and filing can be found [here](#).

## Texas State Securities Board Investigates FTX

On October 14, 2022 the Texas State Securities Board (TSSB) alleged in a public court filing by the Director of Enforcement of the TSSB in the U.S. Bankruptcy Court for the Southern District of New York that FTX Trading LTD and FTX U.S. may be offering unregistered securities in the form of yield-bearing accounts to U.S. residents and violating Texas securities laws by offering a program through which customers can earn yield by staking their assets held by FTX. The filing confirmed that the TSSB's enforcement division was investigating FTX Trading, FTX U.S. and their principals.

The filing before the U.S. Bankruptcy Court for the Southern District of New York can be found [here](#).

AKIN GUMP ALERTS & PODCAST EPISODES

[Ian McGinley on Smartphone Policing at Work in Bloomberg Law \(October 14, 2022\)](#)

[Private Funds Remain a Top Priority for the SEC in 2022: A Review of Recent](#)

[Cases and Their Implications for Private Fund Managers \(October 26, 2022\)](#)

[EU Close to Introducing Groundbreaking Law to Regulate Crypto \(October 27, 2022\)](#)

[Wall Street Journal Quotes Ian McGinley on NFT Case and Insider Trading \(October 27, 2022\)](#)

[Justin Williams Quoted in Commercial Dispute Resolution on Singapore High Court Ruling \(October 27, 2022\)](#)

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