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CryptoLink



August 2024

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CryptoLink is a compilation of news stories published by outside organizations. Akin aggregates the stories, but the information contained in them does not necessarily represent the beliefs or opinions of the firm. Akin's August CryptoLink update includes developments and events that occurred between July 2024 and August 2024.

The Senate has yet to take action on the 21st Century Act (FIT21) ([H.R.4763](#)) which passed the House by a comfortable margin of 279-136 on May 22, 2024. FIT21 is a proposed landmark piece of legislation that would enact a comprehensive regulatory framework for the digital assets industry. Sens. Cynthia Lummis (R-WY) and Kirsten Gillibrand's (D-NY) Lummis-Gillibrand Responsible Financial Innovation Act ([S.2281](#)) also awaits consideration in the Senate. On August 14, at an event titled "Crypto4Harris," a number of high-ranking Democrats including Senate Majority Leader Chuck Schumer expressed support for crypto. Majority Leader Schumer also said that he believes a crypto bill can pass the Senate this year, a signal that Democrats are steadily moving in a pro-crypto direction. Following the Democratic National Convention which ran from August 19 to August 22, Vice President Kamala Harris is now officially the Democratic nominee for President. Vice President Harris and her running mate, Minnesota Governor Tim Walz, have not been especially active on crypto to date. In contrast with the 2024 Republican Platform, the [2024 Democratic Platform](#), which was released on August 19, also did not mention crypto or digital assets.

In August, there were several updates in connection with cryptocurrency litigation and regulatory enforcement actions that have been brought by U.S. regulators against digital asset companies. First, in late August, in connection with the SEC's ongoing litigation against the crypto platform, Kraken, which the SEC originally filed in November 2023, the Court denied Kraken's motion to dismiss the SEC's complaint. With parallels to the Ripple case, the Court found that none of the tokens trading on Kraken are per se securities, but agreements associated with a token could be. Next, on August 28, 2024, OpenSea, one of the largest NFT marketplaces, announced that it received a "Wells notice" from the SEC alleging that OpenSea is operating as an unregistered digital asset platform because at least some of the NFTs it markets could constitute securities. This year, the SEC has sent numerous Wells notices to crypto firms, including UniSwap Labs and Robinhood Crypto, the financial services company's crypto arm. Last, cryptocurrency settlements have led to record-high judgments—illustrated most recently by the CFTC's announcement of the \$12.7 billion judgment against FTX and Alameda.

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Key Developments

South Korea Enacts Comprehensive Regulation on Virtual Assets

On July 17, 2024, the South Korea Financial Services Commission announced that the Act on the Protection of Virtual Asset Users (the Act), which intends to establish a sound order in the virtual asset market and ensure protection for users, would take effect on July 19, 2024. The Act contains provisions protecting users' deposits and virtual assets, and investigating and taking appropriate actions against those engaging in unfair trading activities. The Act also regulates unfair trading activities, such as price manipulation, and authorizes financial regulators to supervise, inspect and sanction virtual asset service providers.

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

US Senator Introduces Strategic Bitcoin Reserve Legislation

On July 31, 2024, U.S. Sen. Cynthia Lummis (R-WY) introduced the Boosting Innovation, Technology and Competitiveness through Optimized Investment Nationwide (BITCOIN) Act in the U.S. Senate. The BITCOIN Act establishes a strategic Bitcoin reserve to serve as an additional store of value to bolster America's balance sheet and ensure the transparent management of Bitcoin holdings of the federal government. According to Lummis, "it is time for us to take bold steps to create a brighter future for generations to come by creating a strategic Bitcoin reserve". According to Sen. Lummis's press release, the legislation would establish a decentralized network of secure Bitcoin vaults operated by the U.S. Department of the Treasury with statutory requirements ensuring the highest level of physical and cybersecurity for the nation's Bitcoin holdings, implement a 1-million-unit Bitcoin purchase program over a set period of time to acquire a total stake of approximately 5% of total Bitcoin supply, be paid for by diversifying existing funds within the Federal Reserve System and the Treasury, affirm self-custody rights of private Bitcoin holders and emphasize that the strategic Bitcoin reserve shall not infringe upon individual financial freedoms.

Sen. Lummis's press release can be found [here](#) and the full text of the BITCOIN Act can be found [here](#).

Abu Dhabi Global Market Issues Proposed Regulatory Framework for Issuance of Fiat-Referenced Tokens

On August 20, 2024, the Financial Services Regulatory Authority (FSRA) of Abu Dhabi Global Market (ADGM) published Consultation Paper No. 7 of 2024 containing proposals to enhance its regulatory framework to allow the issuance of Fiat-Referenced Tokens (FRTs) from the ADGM. The consultation paper is open to public feedback and comment until October 3, 2024. According to the ADGM's press release, the FSRA is proposing to adopt a risk-based and proportionate approach to FRT issuance in response to industry demand, based on appropriate regulatory requirements that incorporate the necessary safeguards to ensure

that FRT issuers operate in a safe and sound manner and are informed by current practices in leading jurisdictions.

The ADGM’s press release can be found [here](#) and the consultation paper can be found [here](#).

Key Enforcement Actions

OpenSea Receives Wells Notice from the SEC

On August 28, 2024, Devin Finzer, CEO of non-fungible token (NFT) marketplace OpenSea, announced on social media platform X that OpenSea had received a Wells notice from the SEC “threatening to sue [OpenSea] because they believe NFTs on [OpenSea’s] platform are securities.” In his post, Finzer noted that he was “shocked” the SEC would take such a “sweeping move” against creators and artists and expressed that OpenSea were “ready to stand up and fight”. Finzer further pledged \$5 million to help cover the legal fees of any NFT creators and developers that also received a Wells notice. In addition to highlighting the positive impact of NFTs on people’s lives, Finzer stated that the SEC’s targeting of NFTs would serve to stifle innovation and place at risk thousands of online creators and artists. Furthermore, Finzer stated that digital art should not be regulated in the same manner as collateralized debt obligations as NFTs are “fundamentally creative goods” and it would be “terrible outcome” if creators stopped making digital art due to “regulatory saber-rattling”.

Finzer’s post can be found [here](#).

Artists Sue SEC Over Status of NFTs

On July 29, 2024, Jonathan Mann and Brian L. Frye filed a complaint before the U.S. District Court for the Eastern District of Louisiana against the U.S. Securities and Exchange Commission (SEC), questioning whether art should be regulated by the SEC. In the complaint, the plaintiffs seek a declaratory judgment that their proposed non-fungible tokens (NFT) projects do not violate U.S. securities laws as they would not be engaging in the offer and sale of securities by merely publicly offering and selling their art as NFTs, attaching royalties to the NFTs and/or marketing the NFTs and their personal artistic endeavors to the public.

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

Charges Against Crypto Recovery Website Scammer

On August 5, 2024, a Homeland Security Investigations (HSI) New York task force investigation resulted in charges against Michael Lauchlan for stealing from customers of Coin Dispute Network (CDN), his sham cryptocurrency asset recovery business. CDN claimed it could trace and recover cryptocurrency in exchange for a fee. As alleged, Lauchlan and CDN not only kept the fee but extracted additional Ethereum cryptocurrency from at least three customers by making false promises of asset recovery and creating false blockchain tracing reports. Lauchlan is charged in a Manhattan Criminal Court Complaint with grand larceny in the third and fourth degrees and two counts of scheme to defraud in the first degree. Since launching the investigation, investigators identified approximately \$14,000 of cryptocurrency belonging to CDN users that was transferred to CoinEx, a cryptocurrency exchange.

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

CFTC Obtains \$12.7 Billion Judgment Against FTX and Alameda

On August 7, 2024, 21 months after FTX's collapse, the U.S. District Court for the Southern District of New York (SDNY) entered a consent order of permanent injunction and other equitable relief against FTX Trading Ltd. and Alameda Research LLC, ordering them to pay \$12.7 billion in monetary relief (consisting of \$8.7 billion in restitution and \$4 billion in disgorgement) to FTX customers and victims of FTX's fraud. This is the largest recovery for victims in Commodities Future Trading Commission (CFTC) history. In addition to the significant monetary penalty, the order also found that FTX had violated the Commodity Exchange Act and certain CFTC regulations, and imposed injunctions against future violations and trading and registration prohibitions. CFTC Chairman Rostin Benham was quoted saying that the uncovering of FTX's fraud is "just the tip of the iceberg" as the absence of digital assets legislation has enabled entities to "operate in the shadows." FTX and Alameda agreed to liability on two counts of fraud and material misrepresentations in connection with the sale of digital assets. The consent order resolves the CFTC's litigation against FTX and Alameda.

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

CFTC Awards Over \$1 Million to Whistleblower Who Aided a Digital Assets-Related Investigation

On August 8, 2024, the CFTC announced an award of over \$1 million to a whistleblower who provided significant information and assistance that led the CFTC to bring an enforcement action connected to digital asset markets. Director of Enforcement Ian McGinley noted that during "the last fiscal year, digital asset cases accounted for almost 50% of the CFTC's docket, and the majority of whistleblower tips that year were related to digital assets." According to the CFTC's press release, the CFTC based its enforcement action on whistleblower-provided information about improper trading that was unknown to the CFTC.

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

SEC Charges NovaTech and Its Principals and Promoters with \$650 Million Crypto Fraud

On August 12, 2024, the SEC announced charges against Cynthia and Eddy Petion, along with their company, NovaTech Ltd., for operating a fraudulent scheme that raised more than \$650 million in crypto assets from more than 200,000 investors worldwide. The SEC also charged a number of NovaTech's top promoters (namely Martin Zizi, Dapilinu Dunbar, James Corbett, Corrie Sampson, John Garofano and Marsha Hadley) for their roles in promoting NovaTech to investors. According to the SEC's complaint (filed in the U.S. District Court for the Southern District of Florida), the Petions operated NovaTech as a multi-level marketing and crypto asset investment program from 2019 through 2023 in which they used the majority of investor funds to make payments to existing investors and to pay commissions to promoters. The SEC's complaint seeks permanent injunctive relief, disgorgement of ill-gotten gains and civil penalties.

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

Crypto Owners File Class Action Against Binance

On August 16, 2024, Philip Martin, T.F. (Natalie) Tang, and Yatin Khanna (collectively, Plaintiffs), filed a class action complaint on behalf of themselves and all others similarly situated against defendants Binance Holdings, Ltd. (Binance), BAM Trading Services Inc.

(BAM) and Changpeng Zhao (collectively, Defendants). The Plaintiffs bring claims on behalf of themselves and “all persons or entities in the United States whose cryptocurrency was removed from a non-Binance/BAM digital wallet, account, or protocol as a result of a hack, ransomware, or theft and, between August 16, 2020 and the date of the Judgment ... transferred to a Binance.com account, and who have not recovered all of their cryptocurrency that was transferred to Binance.” According to the filing, the Plaintiffs claim that Binance and Zhao, aided and abetted by BAM, violated federal statutory obligations and engaged in and/or aided and abetted in the conversion of cryptocurrency that belonged to Plaintiffs and the members of the class. The Plaintiffs seek damages and equitable relief, including but not limited to treble their monetary damages; restitution; injunctive relief; damages; costs and expenses, including attorney’s and expert fees; and interest.

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

Former CEO of Failed Bank Sentenced to Prison

On August 19, 2024, the U.S. Attorney’s Office for the District of Kansas announced that Shan Hanes was sentenced to 293 months in prison for using his position as chief executive officer (CEO) of Heartland Tri-State Bank to embezzle tens of millions of dollars in a cryptocurrency scheme which led the bank to fail at a complete loss of equity for investors. Hanes pleaded guilty to one count of embezzlement by a bank officer. As CEO of Heartland Tri-State Bank, Hanes initiated 11 outgoing wire transfers between May 2023 and July 2023 totaling \$47.1 million of Heartland’s funds to a cryptocurrency wallet in a cryptocurrency scheme referred to as “pig butchering.” The funds were transferred to multiple cryptocurrency accounts controlled by unidentified third parties during the time the bank was insured by the Federal Deposit Insurance Corporation (FDIC). The FDIC absorbed the \$47.1 million loss and Hanes’ fraudulent actions caused Heartland Tri-State Bank to fail, and the bank’s investors to lose \$9 million.

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

Investment Fraud Disrupted by Seizure of \$5 Million in Cryptocurrency

On August 22, 2024, the U.S. Attorney for the Eastern District of North Carolina announced the seizure of nearly \$5 million worth of Tether, a cryptocurrency pegged to the U.S. dollar. These seized funds were traced to cryptocurrency addresses allegedly associated with the laundering of criminally derived proceeds stolen from victims of “pig butchering” cryptocurrency investment scams. According to court filings, criminal actors approached and recruited victims through the guise of a romantic relationship to develop their trust, and thereafter introduced their victim to a fictitious cryptocurrency trading platform. Victims were subsequently unable to withdraw funds as their funds were transferred to a cryptocurrency wallet under the scammers’ control and moved through many other wallets to obfuscate the nature, source, control and ownership of those fraud proceeds.

The Eastern District of North Carolina’s press release can be found [here](#).

Former Congressional Candidate Charged with FTX-Related Campaign Finance Charges

On August 22, 2024, the U.S. Attorney for the SDNY announced the unsealing of an indictment charging Michelle Bond with conspiring to cause and causing unlawful campaign contributions in connection with her unsuccessful run for Congress in 2022. Shortly after launching her congressional campaign in May 2022, Bond’s romantic partner, Ryan Salame, then a high-level executive at FTX, orchestrated a sham consulting agreement between Bond and FTX, pursuant to which Bond was paid \$400,000 and then used that money to illegally finance her campaign. Bond is charged with one count of conspiracy to cause

unlawful campaign contributions; one count of causing and accepting excessive campaign contributions; one count of causing and receiving an unlawful corporate contribution; and one count of causing and receiving a conduit contribution. Each of the crimes charged carries a maximum sentence of five years in prison.

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

US Trustee Challenges FTX Reorganization Plan

On August 23, 2024, the U.S. Trustee Andrew R. Vara filed an objection to confirmation of the First Amended Joint Chapter 11 Plan of Reorganization of FTX Trading Ltd. and its debtor affiliates (the Plan). The U.S. Trustee stated that the court should deny confirmation of the Plan for 10 separate and independent reasons, including that the Plan imposes non-consensual third-party releases on various entities in contravention of applicable law, enjoins all creditors from enforcing their setoff rights and from asserting recoupment as an affirmative defense in contravention of applicable law, and fails to provide for proper payment of required post-effective date quarterly fees.

The U.S. Trustee's filing can be found [here](#).

Court Denies Kraken's Motion to Dismiss SEC Lawsuit

On August 23, 2024, U.S. District Judge William H. Orrick issued an order denying the motion to dismiss of Payward Inc. and Payward Ventures (collectively doing business as Kraken) in its litigation with the SEC. The SEC allege that Kraken acts as a broker, dealer, exchange and clearing agency with respect to what the SEC refers to as "crypto asset securities" without registering with the SEC. Kraken does not deny it never registered with the agency, but has maintained that it does not need to because the transactions on its platform do not involve securities and do not fall within the SEC's regulatory purview. On the basis that "the SEC has plausibly alleged that at least some of the cryptocurrency transactions that Kraken facilitates on its network constitute investment contracts, and therefore securities, and are accordingly subject to securities laws", the motion was denied. A case management conference has been set for October 15, 2024.

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

SEC Charges Abra with Unregistered Offers and Sales of Crypto Asset Securities

On August 26, 2024, the SEC filed settled charges against Plutus Lending LLC—which does business as Abra—for failing to register the offers and sales of its retail crypto asset lending product, Abra Earn. The SEC also charged Abra with operating as an unregistered investment company. According to the SEC's complaint (filed in the U.S. District Court for the District of Columbia), Abra marketed Abra Earn as a means for investors to earn interest on their crypto assets "auto-magically," and exercised its discretion to use investors' crypto assets to generate income for itself and to fund interest payments. The complaint further alleges that (i) Abra Earn was offered and sold as a security and that the offers and sales did not qualify for an exemption from SEC registration, and (ii) Abra operated for at least two years as an unregistered investment company. To settle the SEC's charges, Abra, without admitting or denying the SEC's allegations, consented to an injunction prohibiting it from violating the registration provisions of the Securities Act and the Investment Company Act and requiring it to pay civil penalties in amounts to be determined by the court.

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

[Akin Launches AI Law & Regulation Tracker](#) (August 1, 2024)

[U.S. Supreme Court to Clarify Securities Fraud Pleading Requirements for Falsity and Scierter During 2024-2025 Term](#) (June 28, 2024)

[Bipartisan Legislation Introduced in the Senate to Establish a Regulatory Framework for Stablecoins](#) (April 22, 2024)

[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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Questions?

If you have any questions, please contact your regular Akin lawyer or advisor or:



Peter I. Altman
[Email](#)
Los Angeles
+1 310.728.3085



Adam Hilkemann
[Email](#)
Dallas
+1 214.969.2867



Mitchell P. Hurley
[Email](#)
New York
+1 212.872.1011



Wael Jabsheh
[Email](#)
Abu Dhabi
+971 2.406.8525



M. Lance Jasper
[Email](#)
Los Angeles
+1 310.552.6442



Brad M. Kahn
[Email](#)
New York
+1 212.872.8121

Jacqueline Yecies

Jean-Pierre Denour



[Email](#)
New York
212.872.7479



[Email](#)
Dubai
+971 4.317.3045



Nicholas R. Lombardi
[Email](#)
Dallas
214.969.2723



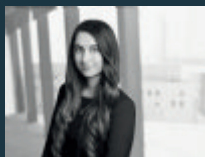
Kate L. Powers
[Email](#)
New York
+1 212.872.8070



Kaitlyn A. Tongalson
[Email](#)
New York
+1 212.872.8106



Samuel J. Olswanger
[Email](#)
Washington, D.C.
+1 202.416.5142



Sahar Abas
[Email](#)
Dubai
+971 4.317.3052



Patrick Gaul
[Email](#)
Washington, D.C.
+1 202.416.5247

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