

CryptoLink

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

Akin Gump
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This December issue of Crypto Link covers the significant developments surrounding FTX Trading Ltd. (**FTX**), including its bankruptcy filing and the charges against and arrest of its CEO, Samuel Bankman-Fried. In the midst of the parallel enforcement actions taken by the Securities and Exchange Commission (**SEC**), the Commodity Futures Trading Commission (**CFTC**) and the United States Attorney's Office for the Southern District of New York, Sam Bankman-Fried and his alleged illicit dealings have similarly sparked the interest of both the public and lawmakers. Although the mainstream and crypto-specific press suggest that current legislative efforts to solidify a crypto regulatory regime will be substantially set back because of the FTX bankruptcy, the exact opposite seems to be the case. Bipartisan and bicameral support for two broad crypto-related regulations – CFTC regulation of crypto spot markets (minimally for Bitcoin and Ethereum) and the federal regulation of stablecoins – remain largely intact. If anything, the FTX scandal seems to have only encouraged members of Congress and agency leadership in their effort to properly regulate digital assets in a manner that provides certainty to a growing industry and protection for consumers. Despite Congress's efforts, SEC Chair Gary Gensler has emphasized that he and the SEC have all of the tools they need to get crypto under control, notwithstanding his apparent acknowledgement that legislation is necessary for stablecoins and Congress's overall dissatisfaction with his "regulation by enforcement" approach. Those who are 'crypto-hostile' in Congress and the Administration remain so, and while emboldened by recent events, they will probably be on the 'outside looking in' at any serious legislative effort. It is not going too far to conclude that the coming year could be a "Crypto Congress," with the stage set for establishing a meaningful and lasting legal and regulatory regime for the growing digital asset industry.

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FTX Files for Bankruptcy, CEO Bankman-Fried Steps Down and Binance Announces Intention to Acquire FTX

On November 11, 2022, FTX announced that it and approximately 130 additional affiliated companies (**the FTX Group**) had commenced voluntary proceedings under Chapter 11 of the U.S. Bankruptcy Code in the District of Delaware. On the same date, Samuel Bankman-Fried (**Bankman-Fried**) resigned from his role as CEO as John J. Ray III was appointed as the new CEO of the FTX Group. On November 2, 2022, CoinDesk had reported on a leaked document that showed that Alameda held a large amount of a digital currency called FTT created by FTX, following which Changpeng “CZ” Zhao, CEO of Binance, announced on November 6, 2022 that his company would sell their FTT tokens – an announcement which led to the price of FTT dropping significantly. The sharp price drop resulted in many FTX customers seeking to withdraw their assets from the platform (amounting to an estimated \$6 billion over three days) and on November 8, 2022, FTX stopped allowing its customers to withdraw money from the platform.

On November 8, 2022, Binance stated that it had reached an agreement to fully acquire FTX which Bankman-Fried similarly confirmed as a “strategic transaction”. However, only a day later, Binance confirmed that “as a result of corporate due diligence”, news reports concerning “mishandled customer funds and alleged U.S. agency investigations”, and “issues beyond [their] control or ability to help”, Binance had decided against pursuing the acquisition of FTX. The FTX Group’s bankruptcy filing followed only days later.

FTX’s statement can be found [here](#), CoinDesk’s article can be found [here](#), CZ’s posts can be found [here](#) and [here](#), Bankman-Fried’s post can be found [here](#), Binance’s post can be found [here](#) and further media coverage can be found [here](#) and [here](#).

U.S. Attorney’s Office Charges and Arrests Samuel Bankman-Fried in an Eight-Count Indictment with Fraud, Money Laundering and Campaign Finance Offenses

On December 13, 2022, the U.S. Attorney’s Office for the Southern District of New York announced the unsealing of an indictment charging Bankman-Fried with conspiracy to commit securities fraud, conspiracy to commit money laundering and conspiracy to defraud the Federal Election Commission and commit campaign finance violations. According to the U.S. Attorney’s Office press release, the charges arise from an “alleged wide-ranging scheme” by Bankman-Fried to misappropriate billions of dollars of customer funds deposited with FTX, the crypto trading platform of which he was the CEO and co-founder, and mislead investors and lenders to FTX and to Alameda Research LLC (**Alameda**), his privately-held crypto hedge fund. The announcement confirmed that Bankman-Fried was arrested on December 12, 2022 in the Bahamas on the aforementioned charges. Damian Williams, the U.S. Attorney for the Southern District of New York, noted that the charges relate to the “phenomenal downfall” of FTX and the charges make clear that “this was not a case of mismanagement or poor oversight, but of intentional fraud”.

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

SEC Charges Samuel Bankman-Fried with Defrauding Investors in Crypto Asset Trading Platform FTX

On December 13, 2022, the same date that the U.S. Attorney’s Office charged Bankman-Fried, the SEC charged Bankman-Fried with orchestrating a scheme to defraud equity investors in FTX. According to the SEC’s complaint, since at least May 2019, FTX raised more than \$1.8 billion from equity investors, including approximately \$1.1 billion from approximately 90 U.S.-based investors.

The SEC’s complaint alleged that despite Bankman-Fried promoting FTX as a safe, responsible crypto asset trading platform, in reality, Bankman-Fried orchestrated a years-long fraud to conceal from FTX’s investors: (1) the undisclosed diversion of FTX customers’ funds to Alameda; (2) the undisclosed special treatment afforded to Alameda on the FTX platform, including providing Alameda with a virtually unlimited “line of credit” funded by the platform’s customers and exempting Alameda from certain key FTX risk mitigation measures; and (3) undisclosed risk stemming from FTX’s exposure to Alameda’s significant

holdings of overvalued, illiquid assets such as FTX-affiliated tokens. In addition, the SEC's complaint alleged that Bankman-Fried used commingled FTX customers' funds at Alameda to make undisclosed venture investments, lavish real estate purchases and large political donations.

Investigations as to other securities law violations and into other entities and persons relating to the alleged misconduct are ongoing.

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

CFTC Charges Samuel Bankman-Fried and Alameda with Fraud and Material Misrepresentation

On December 13, 2022, the same date that the U.S. Attorney's Office and the SEC charged Bankman-Fried, the CFTC announced the filing of a complaint in the U.S. District Court for the Southern District of New York against Bankman-Fried, FTX and Alameda. The complaint charges all three defendants with fraud and material misrepresentations in connection with the sale of digital commodities in interstate commerce and further asserts that the defendants' actions caused the loss of over \$8 billion in FTX customer deposits.

The CFTC's complaint alleges that from at least May 2019 through November 11, 2022, Bankman-Fried controlled both FTX and Alameda and that, without disclosing the following to the public, (i) FTX customer assets were held by and commingled with Alameda's funds, (ii) Alameda, Bankman-Fried and others appropriated customer funds for their own operations and activities, including "luxury real estate purchases, political contributions, and high-risk, illiquid digital asset industry investments", and (iii) FTX employees, at Bankman-Fried's direction, created features in the FTX code that favored Alameda and allowed it to execute transactions even when it did not have sufficient funds available (including an effectively limitless line of credit that allowed Alameda to withdraw billions of dollars in customer assets from FTX).

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

SEC Charges Caroline Ellison and Gary Wang with Defrauding Investors in FTX

On December 21, 2022, the SEC charged Caroline Ellison (Ellison), the former CEO of Alameda, and Zixiao (Gary) Wang (**Wang**), the former Chief Technology Officer and co-founder of FTX, for their roles in a "multiyear scheme to defraud equity investors" in FTX. According to the SEC's complaint, between 2019 and 2022, Ellison, at the direction of Bankman-Fried, furthered the scheme by manipulating the price of FTT (an FTX-issued exchange crypto security token), causing the valuation of Alameda's FTT holdings to be inflated.

The SEC's complaint further alleges that, among other things, (i) Bankman-Fried and Wang improperly diverted FTX customer assets to Alameda, (ii) Ellison and Wang were active participants in the scheme to deceive FTX's investors and engaged in conduct that was critical to its success, (iii) Wang created FTX's software code that allowed Alameda to divert FTX customer funds, (iv) Ellison used misappropriated FTX customer funds for Alameda's trading activity, and (v) even as it became clear that Alameda and FTX could not make customers whole, Bankman-Fried, with the knowledge of Ellison and Wang, directed hundreds of millions of dollars more in FTX customer funds to Alameda.

The SEC's press release confirmed that Ellison and Wang have consented to bifurcated settlements, which are subject to court approval, under which they will be permanently enjoined from violating the federal securities laws, certain conduct-based injunctions, and officer and director bars. Upon motion of the SEC, the court will determine whether and what amount of disgorgement of ill-gotten gains plus prejudgment interest and/or a civil penalty is appropriate, as well as the length of the officer and director bar and the conduct-based injunction imposed against Wang.

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

CFTC Charges Ellison and Wang with Fraud

On December 21, 2022, the same date that the SEC charged Ellison and Wang, the CFTC filed fraud charges against Ellison and Wang in an amended complaint filed in the U.S. District Court for the Southern District of New York. The CFTC initially filed the fraud action on December 13, 2022 against Bankman-Fried, FTX and Alameda. The amended complaint charges (i) Ellison and Wang with engaging in a fraudulent scheme, (ii) Ellison with fraud and material misrepresentations in connection with the sale of digital asset commodities in interstate commerce, and (iii) Wang with fraud in connection with the sale of digital asset commodities in interstate commerce.

According to the CFTC's press release, Ellison and Wang do not contest their liability on the CFTC's claims and both have agreed to the entry of consent orders of judgment as to their liability for engaging in fraud under the applicable laws.

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

U.S. Attorney's Office Announces Extradition Of Bankman-Fried To The U.S. And Guilty Pleas Of Ellison and Wang

On December 22, 2022, Damian Williams, the U.S. Attorney for the Southern District of New York, and Michael J. Driscoll, the Assistant Director in Charge of the New York Field Office of the Federal Bureau of Investigation (**FBI**), announced the extradition of Bankman-Fried from the Bahamas on December 21, 2022. The U.S. Attorney's Office further unsealed the guilty pleas of Ellison and Wang, both of whom pled guilty before U.S. District Judge Ronnie Abrams on December 19, 2022, to charges "arising from their participation in schemes to defraud FTX's customers and investors, and related crimes".

U.S. Attorney Damian Williams confirmed that the "investigation is very much ongoing, and it's moving very quickly" and FBI Assistant Director Michael J. Driscoll further noted that the "FBI will continue to seek justice for the victims of this case" and will "make every effort to ensure those responsible for the scheme are held accountable in our criminal justice system."

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

KEY DEVELOPMENTS

OFAC Updates FAQs to Address Tornado Cash Sanctions

On November 8, 2022, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) announced that it had simultaneously delisted and redesignated Tornado Cash (an entity providing virtual currency mixing services through smart contracts) under Executive Order 13722 and 13694 (as amended) for its support of activities by the Democratic People's Republic of Korea (**DPRK**). According to OFAC, Tornado Cash was delisted and redesignated for "having materially assisted, supported, or provided financial, material, or technological support for, or goods or services to or in support of" the Government of the DPRK and cyber-enabled activity originating from persons located outside the U.S. that is reasonably likely to result in or contribute to a significant threat to the U.S. OFAC further issued a new FAQ and also updated its existing FAQs to provide additional compliance advice in respect of Tornado Cash.

OFAC's announcement can be found [here](#), the new FAQ can be found [here](#) and the updated existing FAQs can be found [here](#).

Consumer Financial Protection Bureau Releases Analysis of Consumer Crypto Asset-Related Complaints

On November 10, 2022, the Consumer Financial Protection Bureau (**CFPB**) issued its Complaint Bulletin in which it analyzed crypto asset-related complaints submitted by individual consumers through the CFPB's complaints portal. According to the bulletin, more than 8,300 complaints related to crypto assets had been submitted from October 2018 to September 2022 (although it noted the majority of the complaints received were submitted

over the last two years) and the most common issue selected was fraud and scams. Following an analysis of the complaints, the CFPB set out a list of steps that consumers can take to protect themselves.

The CFPB's Complaint Bulletin can be found [here](#).

SEC Announces Enforcement Results for Fiscal Year 22

On November 15, 2022, the SEC announced that it had filed 760 total enforcement actions in fiscal year 2022, a 9 percent increase from the previous year. The SEC's announcement confirmed that enforcement "remains focused on the rapidly evolving crypto asset securities space". The SEC highlighted three significant enforcement actions in the crypto space, namely the SEC's charges against (i) BlockFi Lending LLC for failing to register the offers and sales of its retail crypto lending product and for violating the relevant registration requirements (in what the SEC termed a "first-of-its-kind action against crypto lending platforms"), (ii) 11 individuals for their alleged roles creating and promoting Forsage, a fraudulent crypto pyramid and Ponzi scheme, and (iii) Ishan Wahi and his associates for insider trading.

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

United Kingdom and Singapore Deepen Collaboration in FinTech and Strengthen Financial Cooperation

On November 25, 2022, the United Kingdom (**UK**) and Singapore held the 7th UK-Singapore Financial Dialogue, during which both countries shared their "strong agreement on the need to support the safe development of a digital assets ecosystem while ensuring that risks posed by digital assets are consistently managed". According to HM Treasury and the Monetary Authority of Singapore's joint statement, both the UK and Singapore will continue to actively participate in the shaping of robust global regulatory practices in the crypto asset sector through engagement within international multilateral fora, including the Financial Stability Board.

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

BlockFi Declares Bankruptcy

On November 28, 2022, BlockFi Inc., a major crypto lending platform, announced that it had voluntarily filed a petition for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court for the District of New Jersey. According to BlockFi's announcement, the filing followed the "shocking events surrounding FTX" and it maintained the filing will enable BlockFi to stabilize the business and consummate a reorganization plan to maximize value for its stakeholders.

BlockFi's filing can be found [here](#) and its announcement can be found [here](#).

Senate Finance Chair Questions Crypto Exchanges on Consumer Protections

On November 29, 2022, Senate Finance Chair Ron Wyden sent letters to six of the largest crypto exchanges (namely Binance, Bitfinex, Coinbase, Gemini, Kraken and KuCoin) on the risks consumers face when investing on their platforms, including enquiring about their organizational structure, balance sheets and real estate acquisitions. Wyden requested answers to his questions by December 12, 2022. According to the press release, Senator Wyden's inquiry follows the bankruptcy of FTX and "news reports indicating widespread mismanagement and misuse of customers' funds held by the company."

For further information see Senator Wyden's press release [here](#).

Senate Banking Chair Calls for Coordinated Effort on Crypto Regulation

On November 30, 2022, Senator Sherrod Brown, Chair of the Senate Banking Committee, sent a letter to the Secretary of the U.S. Department of the Treasury calling for coordination with other financial regulators to work on the recommendations in the Financial Stability Oversight Council Report on Digital Asset Financial Stability Risks and Regulation. In the letter, Senator Brown further urged agencies to "vigorously enforce existing laws to address

financial stability risks and protect consumers”, noting concerns about the risks posed to consumers, investors and the financial system with the collapse of FTX.

Senator Brown’s letter can be found [here](#).

Financial Stability Oversight Council Annual Report

On December 16, 2022, the Financial Stability Oversight Council (**FSOC**) unanimously approved its 2022 annual report. The report notes the importance of agencies continuing to enforce existing rules and regulations applicable to the crypto-asset ecosystem. FSOC recommended the enactment of legislation providing for rulemaking authority for federal financial regulators over the spot market for crypto-assets that are not securities and went on to say that steps should be taken to address regulatory arbitrage, since crypto-asset entities offer services similar to traditional financial institutions but do not have a consistent or comprehensive regulatory framework. FSOC further recommended that an assessment should be made of whether vertically integrated market structures can or should be accommodated under existing laws and regulations. Finally, FSOC suggested that FSOC members should continue to build capacities related to data and the analysis, monitoring, supervision, and regulation of digital asset activities.

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

KEY RECENT ENFORCEMENT ACTIONS

SEC Charges Promoter for Role in Fictitious Crypto Trading Program

On November 3, 2022, the SEC announced that it had filed charges against Jeremy K. Rounsville for violating certain of the registration and antifraud provisions of the federal securities law as a result of his role in offering and promoting a fictitious trading program marketed under the name of Arbitraging.co. Without admitting or denying the SEC’s allegations, Rounsville consented to the entry of a court judgment permanently enjoining him from participating in future securities offerings and ordering him to pay civil penalties in the amount of \$207,183.

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

SEC Charges Creator of Global Crypto Ponzi Scheme and Three US Promoters

On November 4, 2022, the SEC announced charges against Douver Torres Braga, Joff Paradise, Keleionalani Akana Taylor and Jonathan Tetreault for their roles in Trade Coin Club, a fraudulent crypto Ponzi scheme that raised more than 82,000 bitcoin, valued at \$295 million at the time, from more than 100,000 investors worldwide. According to the SEC’s complaint filed in the U.S. District Court for the Western District of Washington, Trade Coin Club operated as a Ponzi scheme whereby investor withdrawals stemmed entirely from deposits made by investors and not from any crypto asset trading activities. Furthermore, the SEC alleged that Braga and Paradise made false representations to investors and siphoned off investor funds for their own benefit and a network of worldwide Trade Coin Club promoters.

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

SEC Granted Summary Judgment Against Issuer of Crypto Asset Securities for Registration Violation

On November 7, 2022, the U.S. District Court for the District of New Hampshire granted the SEC’s motion for summary judgment in an enforcement action alleging that defendant LBRY, Inc.’s crypto asset securities (called LBC or LBRY Credits) constituted securities which were sold without the requisite registration (in violation of the U.S. Securities Act). The ruling serves as the SEC’s latest summary judgment success in the digital asset sphere and further demonstrates a willingness by the court to adopt the SEC’s interpretation of the various limbs of the Howey test (SEC v. W.J. Howey Co.).

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

Department of Justice Announces Historic \$3.36 Billion Cryptocurrency Seizure and Conviction in Connection with Silk Road Dark Web Fraud

On November 7, 2022, the U.S. Attorney for the Southern District of New York and the Special Agent in Charge of the Internal Revenue Service announced that on November 4, 2022, James Zhong pled guilty to committing wire fraud in September 2012 when he unlawfully obtained over 50,000 Bitcoin from the Silk Road dark web internet market place. In November 2021, law enforcement seized over 50,000 Bitcoin then valued at over \$3.36 billion, serving as the largest cryptocurrency seizure in the history of the U.S. Department of Justice (**DOJ**) and remaining the second largest financial seizure ever.

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

SEC Institutes Administrative Proceedings against American CryptoFed DAO LLC

On November 18, 2022, the SEC announced that it had instituted administrative proceedings against American CryptoFed DAO LLC, a Wyoming-based organization, in order to determine whether a stop order should be issued to suspend the registration of the offer and sale of two crypto assets. According to the SEC, the Form S-1 registration statement filed by American CryptoFed failed to contain certain required information and contained "materially misleading statements and omissions". The SEC's Enforcement Division noted in the announcement that it was seeking to stop American CryptoFed's registration to protect investors against misleading information.

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

DOJ Arrests Two Estonian Citizens in \$575 Million Cryptocurrency Fraud and Money Laundering Scheme

On November 21, 2022, the DOJ announced that two Estonian citizens were arrested in Estonia on an 18-count indictment for their alleged involvement in a \$575 million cryptocurrency fraud and money laundering conspiracy. The indictment was returned by a grand jury in the Western District of Washington on October 27, 2022 and was unsealed on November 21, 2022. According to U.S. Attorney Nick Brown, the two citizens allegedly defrauded hundreds of thousands of citizens through a multi-faceted scheme and "capitalized on both the allure of cryptocurrency, and the mystery surrounding cryptocurrency mining, to commit an enormous Ponzi scheme". Assistant Director Luis Quesada of the FBI's Criminal Investigative Division noted that the "FBI is committed to pursuing subjects across international boundaries who are utilizing increasingly complex schemes to defraud investors".

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

Settlement Agreement Reached Between OFAC and Kraken

On November 28, 2022, OFAC announced a settlement with Payward, Inc. (doing business as Kraken), a Delaware-incorporated virtual currency exchange. Pursuant to the settlement, Kraken agreed to remit \$362,158.70 to settle its potential civil liability for apparent violations of sanctions against Iran and further agreed to invest \$100,000 in certain sanctions compliance controls. According to OFAC, Kraken did not implement IP address blocking on transactional activity across its platform such that between October 2015 and June 2019, Kraken processed 826 transactions (totaling approximately \$1,680,577.10) on behalf of individuals who appeared to be located in Iran at the time of the transactions.

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

[Ian McGinley Interviewed by Yahoo Finance Live on the Sam Bankman-Fried and FTX Case, \(December 22, 2022\)](#)

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