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Crypto remains a hot topic among lawmakers and regulators in Washington. Bipartisan efforts to address the relationship between digital assets and illicit financial activity are longstanding, and reports over the role crypto assets played in the recent financing of Hamas have bolstered the efforts of lawmakers like Sen. Elizabeth Warren (D-MA), who has been working with Sen. Roger Marshall (R-KS) on their Digital Asset Money Laundering Act. Another proposed bill, the Crypto-Asset National Security Enhancement and Enforcement Act (**CANSEE**), garnering even broader bipartisan support, would attempt to shoehorn decentralized finance (**DeFi**) services into the anti-money laundering (**AML**) and economic sanctions compliance obligations imposed on traditional finance companies. Still, imminent congressional action on this front remains unlikely.

Even lighter-touch efforts have failed to get much traction. Earlier this fall, Sens. Cynthia Lummis (R-WY) and Kirsten Gillibrand (D-NY) included an amendment in the Senate-passed National Defense Authorization Act (**NDAA**) that would have required regulators to set examination standards for financial institutions engaged in crypto asset activities and for the Treasury Department to make recommendations to Congress regarding crypto asset mixers. Yet this fairly thin standard-and-recommendation approach was ultimately dropped from the final House-Senate NDAA. Meanwhile, House Financial Services Committee Chairman Patrick McHenry (R-NC) has drawn a hard line, stating that crypto legislation cannot simply focus on illicit finance. Rather, those efforts must be coupled with serious consideration of his committee's efforts to enact a regulatory framework for stablecoins and a new market structure bill.

Deputy Secretary of the Treasury Wally Adeyemo recently spoke at an industry confab in Washington, and his remarks were far less hostile than the rhetoric most have come to be expect from Securities and Exchange Commission (**SEC**) Chair Gary Gensler, giving reasonable hope to those seeking guardrails for the industry in the United States. Though broad legislation is currently at a standstill, the Treasury's desire to address both illicit finance and the lack of a regulatory regime for stablecoins points the way toward a bipartisan negotiation in 2024.

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Spotlight on Binance

Binance and CEO Plead Guilty to Federal Charges in \$4+ Billion Resolution

On November 21, 2023, the U.S. Department of Justice (DOJ) announced that Binance Holdings Limited (Binance), the entity that operates the world's largest digital asset exchange, pleaded guilty and agreed to pay over \$4 billion to resolve the DOJ's charges. Binance separately has also reached agreements with the Commodity Futures Trading Commission (CFTC), the Financial Crimes Enforcement Network (FinCEN) and the Office of Foreign Assets Control (OFAC) (see further below). The DOJ will credit approximately \$1.8 billion toward those resolutions.

Department of Justice Enforcement Action

The DOJ's charges against Binance focused on the exchange's failure to maintain an effective AML program in violation of the Bank Secrecy Act (BSA), its failure to register as a foreign-located money services business (MSB), and its willful violation of U.S. sanctions tied to the International Emergency Economic Powers Act.

Changpeng Zhao, Binance's founder and CEO, also pleaded guilty to failing to maintain an effective AML program, in violation of the BSA, and resigned as CEO of Binance. Zhao founded Binance in June 2017, and admitted in the plea that he understood that Binance was required to register with FinCEN as an MSB and implement an effective AML program. Binance failed to (1) correct or verify "know your customer" (KYC) information from a large share of its users; (2) systematically monitor transactions; and (3) file suspicious activity reports with FinCEN, as required by the BSA. As a result of Zhao's willful failure to implement an effective AML program, Binance processed transactions involving proceeds of illegal activity and caused transactions between U.S. persons and persons in jurisdictions that are subject to comprehensive U.S. sanctions, including Iran, Cuba, Syria and the Ukrainian regions of Crimea, Donetsk and Luhansk.

As part of the plea agreement, Binance has agreed to forfeit over \$2.5 billion and to pay a criminal fine of over \$1.8 billion for a total financial penalty of over \$4.3 billion. Binance has also agreed to retain an independent compliance monitor for three years and remediate and enhance their anti-money laundering and sanctions compliance programs. Binance received partial credit for its cooperation and the DOJ disclosed that the total criminal penalty reflects a 20% reduction off the bottom of the applicable U.S. sentencing guidelines fine range. Binance did not receive full credit for its cooperation because it delayed producing relevant evidence, including recorded meetings in which Binance executives discussed U.S. legal requirements, and did not make a timely and voluntary disclosure of wrongdoing.

On November 21, 2023, Attorney General Merrick B. Garland stated: "In just the past month, the Justice Department has successfully prosecuted the CEOs of two of the world's largest cryptocurrency exchanges in two separate criminal cases. The message here should be clear: using new technology to break the law does not make you a disruptor, it makes you

a criminal.” Garland further noted that while “criminal and civil enforcement actions are subject to different legal standards, this collective effort represents the whole of government approach that we are taking to combat corporate crime.”

The same day, Deputy Attorney General Lisa O. Monaco stated: “[t]oday is a watershed moment. The Department of Justice and its partners are holding accountable the world’s largest cryptocurrency exchange and the CEO who ran it, for their criminal conduct.” The charges and guilty pleas, combined with a more than \$4 billion financial penalty, demonstrate the DOJ’s “commitment to corporate accountability”; and send an “unmistakable message to crypto and defi companies: if you serve U.S. customers, you must obey U.S. law.”

Notably, the government settlements did not include the SEC’s fraud-related claims stemming from the SEC’s lawsuit against Binance.US, which is ongoing. The judge presiding over the SEC’s case against Binance.US has asked the parties to resolve the dispute by December 15, 2023.

CFTC Enforcement Action

On November 21, 2023, the CFTC announced that Zhao and his companies Binance Holdings Limited, Binance Holdings (IE) Limited and Binance (Services) Holdings Limited (together, the **Binance Entities**) agreed to a proposed consent order for permanent injunction, civil monetary penalty and equitable relief to resolve the charges the CFTC brought against Zhao and the Binance Entities for knowingly disregarding provisions of the Commodities Exchange Act (**CEA**) to profit from their operation of an illegal digital assets derivative exchange. The proposed consent order requires the Binance Entities to disgorge \$1.35 billion of ill-gotten gains and pay a \$1.35 billion civil monetary penalty and requires Zhao to pay a \$150 million civil monetary penalty. Furthermore, the order permanently enjoins Zhao and the Binance Entities from willfully evading the CEA, acting as an unregistered futures commission merchant, operating an illegal digital asset derivatives exchange and failing to have adequate KYC compliance controls among other illegal activities in the order. According to the CFTC’s press release, the defendants must also certify that certain remedial measures have been implemented and the Binance Entities must certify it will take certain remedial steps in the future, including no longer allowing “sub-accounts” to circumvent Binance’s newly implemented compliance controls.

The CFTC’s proposed order stems from the CFTC complaint filed March 27, 2023, against the Binance Entities, Zhao and Binance’s former chief compliance officer Samuel Lim. The proposed settlement and remedies are subject to court approval.

CFTC Chairman Rostin Behnam stated that where an entity is “deliberately avoiding to employ meaningful access controls, intentionally avoiding knowing customers’ identities, and actively concealing the presence of U.S. customers on its platforms, there is no question that the CFTC will strike hard and aggressively.”

Department of the Treasury Enforcement Action

On November 21, 2023, the U.S. Department of the Treasury (**Treasury**), through the FinCEN, OFAC and the Criminal Investigation (CI) arm of the Internal Revenue Service (**IRS**), took “unprecedented action” to hold Binance accountable for violations of the U.S. AML and sanctions laws. Binance settled with FinCEN and OFAC for violations of the BSA and violations of multiple sanctions programs. According to the Treasury’s press release, the violations include failure to implement programs to prevent and report suspicious transactions with terrorists, ransomware attackers, money launderers, and other criminals, as well as matching trades between U.S. users and those in sanctioned jurisdictions. By failing to comply with AML and sanctions obligations, the Treasury found that Binance

“enabled a range of illicit actors to transact freely on the platform.” Secretary of the Treasury Janet L. Yellen stated that the “historic penalties and monitorship to ensure compliance with U.S. law and regulations mark a milestone for the virtual currency industry.”

FinCEN

FinCEN’s settlement agreement assesses a civil money penalty of \$3.4 billion, imposes a five-year monitorship and requires significant compliance undertakings, including to ensure Binance’s complete exit from the United States. FinCEN’s historic \$3.4 billion settlement is the largest penalty in Treasury and FinCEN history. According to the Treasury’s press release, Binance admitted that it willfully operated as an unregistered money services business while obscuring its ties to the U.S. and maintaining its most commercially important U.S. customers, and further admitted that it willfully failed to establish, implement and maintain an effective AML program. Binance has agreed to a lookback to identify and report to FinCEN the suspicious transactions that it processed and willfully failed to report.

OFAC

Between August 2017 and October 2022, Binance executed more than 1.67 million virtual currency trades (totaling approximately \$706 million) on its Binance.com platform between U.S. persons and users in sanctioned jurisdictions and blocked persons. According to the Treasury’s press release, as early as mid-2018 “Binance knew or should have known that enabling such activity would result in violations of sanctions” and the “historic sum of OFAC’s action reflects the egregious nature of Binance’s conduct, the high volume of its transactions, and senior management’s involvement.” OFAC’s settlement agreement assesses a penalty of \$968 million and requires Binance to abide by a series of robust sanctions compliance obligations, including full cooperation with the monitorship overseen by FinCEN.

Binance could face exposure up to billions of dollars in further penalties if it materially breaches its compliance commitments as described under the agreement. In addition, Treasury will retain access to books, records, and systems of Binance for five years through a monitor. Failure to live up to these obligations could expose Binance to substantial additional penalties, including a \$150 million suspended penalty, which would be collected by FinCEN if Binance fails to comply with the terms of the required compliance undertakings and monitorship.

CI (IRS)

The IRS’ CI special agents led the criminal investigation into Binance and its founder that served as the basis for criminal charges and civil penalties. According to the Treasury’s press release, evidence gathered as part of the investigation proved the company and its founder did not have an effective AML program in place, the company did not register as a money transmitter as required by federal law and the company willfully violated U.S. sanctions tied to the International Emergency Economic Powers Act.

The DOJ’s press release can be found [here](#), Attorney Garland’s remarks can be found [here](#), Deputy Attorney General Lisa O. Monaco’s remarks can be found [here](#). The CFTC’s press release can be found [here](#). The Treasury’s press release can be found [here](#), the FinCEN consent order can be found [here](#), the FinCEN press release can be found [here](#), the OFAC Settlement Agreement can be found [here](#), OFAC’s press release can be found [here](#) and OFAC’s enforcement release can be found [here](#).

Binance Former Chief Compliance Officer Agrees to Pay \$1.5 Million in CFTC Enforcement Action

On November 21, 2023, the CFTC announced former Binance Chief Compliance Officer Samuel Lim agreed to a proposed consent order for permanent injunction, civil monetary penalty and equitable relief to resolve all charges the CFTC brought against Lim for violating the CEA and willfully aiding and abetting Binance's violations of the CEA. The proposed settlement and remedies are subject to court approval. The proposed order stems from the CFTC complaint filed on March 27, 2023, against numerous Binance-affiliated defendants including Lim. According to the CFTC's press release, the proposed order states Lim (i) had a role in undermining Binance's internal control environment in connection with the company's strategic effort to retain lucrative U.S.-based customers, (ii) aided and abetted Binance's numerous violations of the CEA, and (iii) aided and abetted Binance's many supervisory failures.

CFTC Commissioner Pham issued a statement noting that the consent order related to Binance is the "first time that the CFTC is charging a compliance officer with individual liability" and the charges "emphasize the critical necessity of having a robust compliance program that is adequately resourced with personnel that have the requisite character, expertise, and experience."

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

Zhao Released From Custody on \$175 Million Bond

On November 21, 2023, Zhao was released from custody after agreeing to a personal recognizance bond of \$175 million and agreeing to return to the United States for his February 23, 2024, court appearance.

Further information can be found [here](#).

U.S. Government Files Motion Requesting Zhao Not Be Permitted to Return to the UAE Before Sentencing

On November 22, 2023, DOJ prosecutors filed a motion for review of the November 21, 2023, presentence bond conditions that allow Zhao to return to his home in the United Arab Emirates (UAE) before his sentencing on February 23, 2024. The U.S. government requested that Zhao not be permitted to return to the UAE before his sentencing and remain in the United States on the basis of the "substantial risk of flight" posed by Zhao. According to the government's motion, Zhao cannot "establish by clear and convincing evidence that he is not likely to flee if he is allowed to return to the UAE given his significant assets, his strong ties to the UAE, and the government's inability to extradite him from the UAE."

As of November 27, 2023, the presiding judge found that the condition permitting Zhao to return to the UAE pending sentencing is stayed, meaning that Zhao must remain in the continental U.S. while the Court resolves the government's motion for review.

The U.S. government's motion can be found [here](#) and the Court's ruling can be found [here](#).

Key Developments

U.S. Government Accountability Office Decides Crypto Accounting Guidance from SEC Meets Definition of a Rule and Needed Congressional Review

On October 31, 2023, the U.S. Government Accountability Office (GAO) issued its decision that the SEC's Staff Accounting Bulletin No. 121 (which provided interpretive guidance

regarding how covered entities should account for and disclose their custodial obligations to safeguard crypto assets held for their platform users) is a rule under the Congressional Review Act (CRA) and thus subject to CRA's submission requirement.

The GAO's decision can be found [here](#).

New York State Department of Financial Services Issues Updated Guidance on Cryptocurrencies

On November 15, 2023, the New York State Department of Financial Services (DFS) issued new and updated guidance on the listing of virtual currencies that included enhanced standards for coin listing and delisting policies of DFS-regulated virtual currency entities. The DFS' new guidance supersedes the previous guidance issued in June 2010 regarding the adopting or listing of virtual currencies.

The DFS' guidance can be found [here](#).

Key Enforcement Actions

Cryptocurrency Founder 'Bruno Block' Sentenced To Four Years In Prison

On October 31, 2023, the U.S. Attorney for the Southern District of New York (SDNY) announced that Amir Bruno Elmaani (also known as 'Bruno Block'), the founder of the cryptocurrency Oyster Pearl, was sentenced to four years in prison, the maximum sentence allowed by statute, for tax offenses Elmaani committed in connection with the Pearl token. Elmaani had previously pled guilty on April 5, 2023, and, in connection with his guilty plea, Elmaani admitted that he had secretly minted and sold for his own gain Pearl cryptocurrency tokens, which caused the price of Pearl tokens to plummet, and that he did not pay income tax on certain cryptocurrency profits. Elmaani agreed that he caused a tax loss of over \$5.5 million.

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

Leader of \$70 Million Cryptocurrency and Binary Options Fraud Schemes Extradited to the U.S.

On November 3, 2023, the DOJ announced that Kristijan Krstic had been extradited to the United States, where he faces charges in two separate federal indictments in the Northern District of Texas and EDNY for his alleged participation in coordinated cryptocurrency and binary options schemes. Krstic made his initial appearance in the U.S. District Court for the Northern District of Texas, where he will first face charges before being transferred to face additional charges in the EDNY. In March 2020, a federal grand jury in the Northern District of Texas indicted Krstic for his role in defrauding investors worldwide out of more than \$70 million through fraudulent cryptocurrency and binary options investment platforms. Krstic and more than a dozen other alleged fraudsters were also indicted on charges of conspiracy to commit wire fraud and conspiracy to commit money laundering in the superseding indictment in July 2020.

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

U.S. Treasury Designates Virtual Currency Money Launderer for Russian Elites and Cybercriminals

On November 3, 2023, OFAC sanctioned Ekaterina Zhdanova, a Russian national, for her role in laundering and moving funds using virtual currency on behalf of Russian elites. According to OFAC's press release, this action is consistent with the "G7's commitment to crack down on sanctions evasion and closing loopholes that allow the Russian state, its elites, proxies, and oligarchs to leverage virtual currency to offset the impact of international sanctions." Under Secretary of the Treasury for Terrorism and Financial Intelligence Brian E. Nelson stated that the Treasury "remain focused on safeguarding the U.S. and international financial system against those who seek to exploit this technology, among other illicit finance risks in the virtual assets ecosystem."

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

SEC Granted Extension of Time in Stoner Cats 2 Matter

On November 3, 2023, the SEC was granted an extension order until November 20, 2024, to submit a proposed plan of distribution in the matter of Stoner Cats 2, LLC (SC2). Previously, on July 27, 2021, the SEC found that SC2 conducted an unregistered offering of crypto asset securities in the form of non-fungible tokens (NFTs) called Stoner Cats and that SC2 offered and sold the Stoner Cats NFTs "as investment contracts, and therefore securities." On September 13, 2023, the SEC had issued an order instituting cease and desist proceedings against SC2. In its request for an extension of time, the SEC noted that additional time is needed to complete "the fund administrator solicitation and appointment process, develop the distribution methodology, and prepare the proposed plan of distribution."

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

Three Men Arrested For Complex Bank Fraud And Cryptocurrency Laundering Scheme

On November 16, 2023, the U.S. Attorney for SDNY announced the arrests of Zhong Shi Gao, Naifeng Xu and Fei Jiang for charges in connection with a scheme to steal and launder millions of dollars from financial institutions, which resulted in the theft of over \$10 million. According to the allegations in the indictment unsealed on November 16, 2023, between 2018 and 2022, Gao, Xu and Jang participated in a scheme with others to steal millions of dollars from financial institutions by causing transfers of funds between accounts they controlled, then falsely and fraudulently reporting that the transfers were unauthorized, which induced the financial institutions to credit them the amount of the transfers. U.S. Attorney Damian Williams stated that the "charges should serve as a warning to fraudsters and cybercriminals who think they can turn to cryptocurrency to hide their identities - together with our partner agencies, we will find you and hold you accountable for your crimes."

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

SEC Charges Kraken for Operating as an Unregistered Securities Exchange, Broker, Dealer and Clearing Agency

On November 20, 2023, the SEC charged Payward Inc. and Payward Ventures Inc., together known as Kraken, with operating Kraken's crypto trading platform as an unregistered securities exchange, broker, dealer and clearing agency. According to the SEC's complaint (filed in U.S. District Court for the Northern District of California), since at least September 2018, Kraken made hundreds of millions of dollars unlawfully facilitating the buying and selling of crypto asset securities and its alleged failure to register its functions deprived investors of significant protections (such as inspection by the SEC, recordkeeping requirements and safeguards against conflicts of interest). Previously, in February 2023,

Kraken agreed to cease offering or selling securities through crypto asset staking services or staking programs and agreed to pay a civil penalty of \$30 million.

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

Cyber Scam Organization Disrupted Through Seizure of Nearly \$9 Million in Crypto

On November 21, 2023, the DOJ announced the seizure of nearly \$9 million worth of Tether, a cryptocurrency pegged to the U.S. dollar. The seized funds were traced to cryptocurrency addresses allegedly associated with an organization that exploited over 70 victims through romance scams and cryptocurrency confidence scams, which are widely known as “pig butchering.” According to court documents, criminal actors worked together to target victims and convince them to make cryptocurrency deposits by fraudulently representing that the victims were making investments with trusted firms and cryptocurrency exchanges. In reality, the purported firms and cryptocurrency exchanges were non-existent trading platforms. Acting Assistant Attorney General Nicole M. Argentieri stated that the “seizure should also serve as a reminder to cybercriminals that, although the current landscape of the cryptocurrency ecosystem may seem like an ideal way to launder ill-gotten gains, law enforcement will continue to develop the expertise needed to follow the money and seize it back for victims.”

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

Genesis Seeks to Clawback \$689 Million from Gemini

On November 21, 2023, Genesis Global Capital, LLC (**Genesis**) submitted an adversary complaint before the SDNY U.S. Bankruptcy Court to avoid and recover \$689,302,000 in preferential transfers made by Genesis to or for the benefit of Gemini Trust Company, LLC in the months preceding Genesis’ commencement of chapter 11 proceedings.

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



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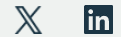
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