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CryptoLink



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CryptoLink is a compilation of news stories published by outside organizations. Akin aggregates these 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 from July and August of 2023.

August was a relatively quiet month on Capitol Hill, with Congress out on August recess. Regulators from across the Biden administration, however, remained active, setting expectations for industry players, shutting down a bank implicated in the FTX scandal, and proposing new regulations for digital assets, a move which sparked reactions from lawmakers on Capitol Hill.

The Federal Reserve (the **Fed**), via two separate letters from senior officials, outlined supervisory expectations for banks interested in engaging in activities involving digital assets. Responding to novel crypto activities from many financial institutions the Fed oversees, Michael Gibson, director of the Division of Supervision and Regulation, and Eric Belsky, director of the Division of Consumer and Community Affairs, announced in a co-written letter that state-chartered banks must receive a written notification of supervisory non-objection from the Fed before issuing, holding or transacting in stablecoins, to demonstrate they can safely and soundly engage in such novel activities. Gibson also announced in a separate letter that the Fed had set up a program to strengthen oversight of activities involving digital assets and blockchain technology. Both letters and the actions they detailed serve as a clear signal that the United States central bank is increasing its scrutiny of financial institutions entering the digital assets space. They also drew the ire of Republican lawmakers.

In a separate, but related move to Gibson and Belsky's guidance, the Federal Reserve Board in August announced an enforcement action against Farmington State Bank, a small rural bank in Washington State, which would see the bank wind down its operations. The enforcement action alleges that Farmington's crypto business plan included work with an unnamed third party to develop technology infrastructure to facilitate the issuance of stablecoins. Since Farmington did not receive written approval from Fed officials or other Washington regulators to do so, the Fed shut it down. The enforcement action demonstrates the Fed's willingness to enforce its guidance regarding issuing written notifications of supervisory non-objections to state-charted banks seeking to enter the crypto space.

Interestingly, it was not the Federal Reserve's actions related to digital assets in August that drew the attention of lawmakers, but those of the Treasury Department and the Internal Revenue Service (**IRS**). The Treasury and the IRS jointly released proposed regulations on the sale and exchange of digital assets by brokers, designed to crack down on tax evasion and

help taxpayers determine how much they owe after selling or exchanging digital assets. The regulations are part of a broader effort at Treasury to address tax evasion risks posed by digital assets. Republicans in Congress were quick to criticize the proposed rulemaking. House Financial Services Committee Chair Patrick McHenry (R-NC) issued a statement “slamming” the move, stating that the “Biden administration must end its effort to kill the digital asset ecosystem in the U.S. and work with Congress to finally deliver clear rules of the road.”

In the latest example of the Securities and Exchange Commission's (SEC) active enforcement in the space, the SEC brought its first enforcement action involving the lucrative non-fungible token (NFT) market. The SEC brought charges against Impact Theory, a media company, for the sale of its KeyNFTs, which the SEC found to be in violation of Section 5 of the Securities Act (which prohibits the sale of unregistered securities). This case marks the first time the SEC has extended its jurisdictional reach further into the NFT space. Two Commissioners dissented in part to the SEC's decision to assert jurisdiction over NFTs through an enforcement action and argued that the SEC should have offered guidance to the market when NFTs first started proliferating. Lastly, the crypto industry - and regulators, for that matter - continued to react to the split decision in *SEC v. Ripple*. Coinbase filed a motion to dismiss a SEC lawsuit against it in federal court in Manhattan, arguing the SEC has no authority over its activities. In filing the motion, Coinbase cited the *SEC v. Ripple* ruling that Ripple Labs' XRP was not a security when sold on exchanges. In a court filing, the SEC filed a motion for leave to file an interlocutory appeal in its case against Ripple Labs, and Judge Analisa Torres of the Southern District of New York subsequently granted the SEC leave to file a motion requesting an appeal.

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Key Developments

McHenry Delivers Remarks at Markup of Stablecoin Legislation

On July 27, 2023, House Financial Services Committee Chairman Patrick McHenry delivered the opening remarks at the markup of the Clarity for Payment Stablecoins Act in which he expressed “disappointment” that he and Ranking Member Maxine Waters had not reached an agreement on stablecoin and noted that it was the “White House’s unwillingness to compromise that has once again brought negotiations to a halt”.

McHenry’s speech can be found [here](#).

IRS Confirms Rewards from Crypto Staking are Gross Income

On July 31, 2023, the IRS clarified in Revenue Ruling 2023-14 that if a cash-method taxpayer stakes cryptocurrency native to a proof-of-stake blockchain and receives additional units of cryptocurrency as rewards when validation occurs, the fair market value of the validation rewards received is included in the taxpayer’s gross income in the taxable year in which the taxpayer gains dominion and control over the validation rewards. The fair market value is

determined as of the date and time the taxpayer gains dominion and control over the validation rewards. According to the ruling, the same is true if a taxpayer stakes cryptocurrency native to a proof-of-stake blockchain through a cryptocurrency exchange and the taxpayer receives additional units of cryptocurrency as rewards as a result of the validation.

The IRS' ruling can be found [here](#).

U.S. Senators ask Treasury to Stop North Korea's Crypto Dependency

On August 3, 2023, U.S. Sens. Elizabeth Warren, Tim Kaine and Chris Van Hollen issued a letter to Treasury Under Secretary for Terrorism and Financial Intelligence Brian Nelson and National Security Advisor Jake Sullivan expressing concerns “about the national security threat posed by North Korea’s reliance on digital assets to circumvent international sanctions and embargoes and fund its illegal weapons programs.” In the letter, the Senators requested that, given the pressing nature of the threat, the Administration should “provide details on its plan to stop North Korea and its “digital bank-robbing army” from using digital assets to evade harsh sanctions and support its ambitions to project geopolitical power through nuclear weapons and ballistic missiles.”

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

FDIC Demands Unbanked, Inc. Cease Making False or Misleading Representations about Deposit Insurance

On August 4, 2023, the Federal Deposit Insurance Corporation (FDIC) demanded Unbanked, Inc. (Unbanked), as well as certain of the company’s officers, cease and desist from making false and misleading statements about FDIC deposit insurance and to immediately correct these statements. According to the FDIC, Unbanked made false representations on its website, in promotional materials, and on social media platforms stating or suggesting its crypto-related products and services are FDIC-insured. These representations included claims that Unbanked offered FDIC-insured “crypto accounts,” without any disclaimer that cryptocurrency is not FDIC-insured or guaranteed. The FDIC noted that Unbanked’s statements represent or imply that FDIC insurance is available for cryptocurrency, and FDIC insurance would protect against cryptocurrency-related losses. In reality, however, the FDIC noted that FDIC insurance does not cover cryptocurrency or digital assets and the FDIC only insures deposits held in FDIC-insured financial institutions and only protects against losses caused by the failure of an FDIC-insured financial institution.

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

Federal Reserve Board Provides Guidance on its Program to Supervise Novel Activities including Crypto Assets

On August 8, 2023, the U.S. Federal Reserve Board of Governors provided additional information through two Supervision and Regulation Letters on its program to supervise novel activities in the banks it oversees. According to the press release, novel activities include complex, technology-driven partnerships with non-banks to provide banking services to customers and activities that involve crypto-assets, distributed ledger or “blockchain” technology. The first Supervision and Regulation Letter pertained to the creation of a novel activities supervision program, and noted that the program shall focus on activities such as crypto-asset custody, crypto-collateralized lending, facilitating crypto-asset trading and engaging in stablecoin/dollar token issuance or distribution. The second Supervision and Regulation Letter related to the non-objection process for state member banks seeking to engage in certain activities involving dollar tokens.

The press release can be found [here](#) and the Supervision and Regulation Letters can be found [here](#) and [here](#).

Republican Members of House Financial Services Committee Issue Letter to FINRA and SEC Querying New License to Crypto Company

On August 9, 2023, Republican members of the House Financial Services Committee (the **Committee**) issued a letter to the Financial Industry Regulation Authority (FINRA) regarding the introduction of a new class of special purpose broker-dealers (SPBDs) by the SEC and approval by FINRA of Prometheus Ember Capital LLC (**Prometheus**) as the first and only entity operating under the SPBD framework. In the letter, the Committee raised questions regarding the “timing and circumstances surrounding the approval of Prometheus as the first SPBD”, because of concerns that approval “was aimed at demonstrating that legislation is not needed because there is a workable regulatory framework for the custody of digital asset securities”. The Committee requested that in order to better understand the process for approving Prometheus as a SPBD, as well as the steps FINRA took (if any) to assess risks associated with Prometheus’s close ties to the Chinese Communist Party, FINRA provide a briefing to Committee staff by August 22, 2023, together with a written response to a number of questions.

On August 9, 2023, a second letter was issued to the SEC similarly raising questions regarding the approval of Prometheus as the first SPBD. The letter requests that, pursuant to the Committee’s oversight authority of the SEC, a copy of all documents and communications between SEC employees related or referring to Prometheus’s application to become a SPBD by August 22, 2023.

The letter to FINRA can be found [here](#) and the letter to the SEC can be found [here](#).

Coinbase Secures Approval to Bring Federally Regulated Crypto Futures Trading to Eligible US Customers

On August 16, 2023, Coinbase issued a blog post announcing that Coinbase Financial Markets, Inc. secured regulatory approval from the National Futures Association (NFA), a U.S. Commodity Futures Trading Commission (CFTC) designated self-regulatory organization, to operate a Futures Commission Merchant (FCM) and offer eligible U.S. customers access to crypto futures. According to the blog post, this “is a critical milestone” and Coinbase Financial Markets will “now be the first crypto-native leader to offer access to regulated, leveraged and cash-settled crypto futures.”

Coinbase’s blog post can be found [here](#).

Key Recent Enforcement Actions

Litigation Against Samuel Bankman-Fried Continues

On July 28, 2023, the Government sent a letter to Judge Lewis A. Kaplan in the matter of *United States v Samuel Bankman-Fried* writing in further support of its motion for Samuel Bankman-Fried’s bail to be revoked and for the court to enter an order of detention. According to the Government, Bankman-Fried’s “attempts to tamper with witnesses and interfere with the Government’s and public’s right to a fair trial and the due administration of justice, and his pattern of circumventing his bail conditions in that pursuit, demonstrate

that no set of pretrial release conditions can adequately assure the safety of the community and that the defendant is unlikely to fully abide by any conditions of release.”

Subsequently, on August 1, 2023, counsel for Bankman-Fried responded to the Government’s letter, arguing that (i) the Government has repeatedly jumped to conclusions about Bankman-Fried’s conduct that are not based in fact, (ii) the Government’s proffer does not support revocation of Bankman-Fried’s bail under the Bail Reform Act, (iii) the Government’s expectations regarding communications with the press are incompatible with the First Amendment, (iv) if he were detained, Bankman-Fried would be unable to prepare for trial and (v) the least restrictive remedy is to impose the Court’s temporary order.

On August 11, 2023, Judge Kaplan ordered that Bankman-Fried be jailed ahead of his trial on October 2, 2023.

On August 14, 2023, U.S. Attorney Damian Williams filed a superseding indictment in the matter of *United States v Samuel Bankman-Fried* in which the Government alleged that Bankman-Fried misappropriated and embezzled FTX customer deposits and used billions of dollars in stolen funds for a variety of purposes, including, among other things, “to help fund over a hundred million dollars in campaign contributions to Democrats and Republicans to seek to influence cryptocurrency regulation”.

On August 16, 2023, Genesis Global Holdco, LLC, Genesis Global Capital, LLC, and Genesis Asia Pacific Pte. Ltd. (together the **Genesis Debtors**) filed a motion in the U.S. Bankruptcy Court for the Southern District of New York for entry of an order approving a settlement agreement with FTX Trading Ltd. The settlement agreement seeks to resolve, on a global basis, all claims asserted or held by the relevant FTX entities against the Genesis entities. The settlement agreement provides that, among other things, Alameda Research Ltd. shall receive an allowed general unsecured claim of \$175,000,000, the relevant FTX and Genesis entities shall not object to any chapter 11 plan in the other parties’ chapter 11 case that is not inconsistent with the terms of the settlement agreement, and the relevant FTX and Genesis entities shall irrevocably release each other from any claim that such party may have against the other.

The Government’s letter can be found [here](#), Bankman-Fried’s letter can be found [here](#), the superseding indictment can be found [here](#), the Genesis Debtors’ motion can be found [here](#), and further information can be found [here](#) and [here](#).

SEC Charges Hex Founder Richard Heart with Misappropriating Millions of Dollars of Investor Funds from Unregistered Crypto Asset Securities Offerings

On July 31, 2023, the SEC charged Richard Heart and three unincorporated entities that he controls, Hex, PulseChain and PulseX, with conducting unregistered offerings of crypto asset securities that raised more than \$1 billion in crypto assets from investors. The SEC also charged Heart and PulseChain with fraud for misappropriating at least \$12 million of offering proceeds to purchase luxury goods including sports cars, watches and a 555-carat black diamond. According to the SEC’s complaint, Heart and Hex allegedly offered and sold Hex tokens in an unregistered offering, collecting more than 2.3 million Ethereum (ETH), and Heart orchestrated two additional unregistered crypto asset security offerings that each raised hundreds of millions of dollars more in crypto assets. The complaint further alleges that Heart attempted to evade securities laws by calling on investors to “sacrifice” their crypto assets in exchange for PLS and PLSX tokens.

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

Bitfinex Hacker and Wife Plead Guilty to Money Laundering Conspiracy

Involving Billions in Cryptocurrency

On August 3, 2023, the U.S. Department of Justice (DOJ) announced that Ilya Lichtenstein and Heather Morgan pled guilty to money laundering conspiracies arising from the hack and theft of approximately 120,000 bitcoin from global cryptocurrency exchange Bitfinex. The married couple were arrested in February 2022 after the government seized approximately 95,000 of stolen bitcoin from cryptocurrency wallets in the defendants' control. At the time of the seizure, the recovered funds were valued at approximately \$3.6 billion. Since their arrests, the government has seized another approximately \$475 million tied to the hack. According to court documents, Lichtenstein used a number of advanced hacking tools and techniques to gain access to Bitfinex's network. Once inside their systems, Lichtenstein fraudulently authorized more than 2,000 transactions in which 119,754 bitcoin was transferred from Bitfinex to a cryptocurrency wallet in Lichtenstein's control. Following the hack, Lichtenstein allegedly enlisted the help of his wife, Morgan, in laundering the stolen funds.

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

SEC Obtains Emergency Relief to Halt Utah-Based Company's Crypto Asset Fraud Scheme Involving 18 Defendants

On August 3, 2023, the SEC announced that it obtained a temporary asset freeze, restraining order, and other emergency relief against Digital Licensing Inc., (a Utah based entity doing business as DEBT Box) as well as the company's four principals, Jason Anderson, his brother Jacob Anderson, Schad Brannon and Roydon Nelson, and 13 other defendants in connection with a fraudulent scheme to sell crypto asset securities to hundreds of U.S. investors that raised approximately \$50 million and unspecified amounts of Bitcoin and Ether. According to the SEC's complaint, since March 2021, the defendants sought to sell unregistered securities (called **node licenses**) and informed investors that the node licenses would generate various crypto asset tokens through crypto mining activity and ultimately result in exorbitant gains for investors. In reality, however, the SEC alleges that the node licenses were a sham intended to obscure the fact that the total supply of each token was created by DEBT Box instantaneously using code on a blockchain. The Director of the SEC's Salt Lake Regional Office stated that the emergency action as filed "to protect the victims of the defendants' unlawful actions and stop further harm."

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

SEC Settles Crypto Claim Against Singer Austin Mahone

On August 4, 2023, the U.S. District Court for the Southern District of New York issued a final judgment in the SEC's litigation against singer Austin Mahone in which he consented to pay approximately \$46,000 after he failed to disclose that he was paid \$7,500 to tweet in support of allegedly fraudulent and unregistered crypto tokens.

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

SEC Requests Permission to Appeal Ripple Ruling

On August 9, 2023, the SEC issued a letter to U.S. District Judge Analisa Torres in which it set out its basis for its anticipated motion for leave to file an interlocutory appeal as to the two adverse liability determinations in the July 13, 2023 order granting summary judgment to defendants. According to the SEC, interlocutory review is warranted because the issues involve controlling questions of law on which there is substantial ground for differences of opinion and timely appellate review is warranted given the number of actions currently pending that may be affected by how the Court of Appeals resolves the relevant issues. The SEC further noted that interlocutory review would aid the Court and

parties in simplifying any possible trial and avoiding the possibility of two trials and related piecemeal litigation.

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

Crypto Asset Trading Platform Bittrex and Former CEO to Settle SEC Charges for Operating an Unregistered Exchange, Broker, and Clearing Agency

On August 10, 2023, the SEC announced that crypto asset trading platform Bittrex Inc. and its co-founder and former CEO, William Shihara, agreed to settle charges that they operated an unregistered national securities exchange, broker and clearing agency. Bittrex Inc.'s foreign affiliate, Bittrex Global GmbH, also agreed to settle charges that it failed to register as a national securities exchange. According to the SEC's complaint (filed in April 2023 in U.S. District Court for the Western District of Washington), Bittrex acted as an unregistered broker, exchange and clearing agency by providing services to U.S. investors in connection with crypto assets that the SEC's complaint alleges were offered and sold as securities. The complaint further alleges that Bittrex and Shihara (the company's former CEO), directed issuers who sought to have their crypto assets made available for trading on Bittrex's platform to first delete from public channels certain "problematic statements" that Shihara believed would lead a regulator to investigate whether the crypto asset was offered and sold as a security. As part of the settlement, the defendants neither admit nor deny the SEC's allegations.

On August 15, 2023, the SEC obtained a final judgment against Bittrex Inc., Shihara and Bittrex's foreign affiliate, Bittrex Global GmbH (**Bittrex Global**). As part of the settlement, the defendants consented to entry of final judgments that permanently enjoin Bittrex and Shihara from violating certain provisions of the Securities Exchange Act of 1934 and enjoin Bittrex Global from violating Section 5 of the same Act. In addition, under the terms of the judgment, Bittrex and Bittrex Global will pay, on a joint and several basis, disgorgement of \$14.4 million, prejudgment interest of \$4 million and a civil penalty of \$5.6 million, for a total monetary payment of \$24 million.

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

CFTC Charges Four Individuals in Ongoing Cryptocurrency and Precious Metals Fraud

On August 11, 2023, the CFTC announced it has filed a complaint in the U.S. District Court for the Middle District of Florida charging Rene Larralde, Juan Pablo Valcarce, Brian Early, Alisha Ann Kingrey and their unincorporated entity, Fundsz, with fraudulent solicitation from clients to purportedly trade in cryptocurrencies and precious metals. According to the complaint, since approximately October 2020, the defendants (i) solicited participants with claims that Fundsz had historically produced over 3% returns per week using a "proprietary algorithm" for trading cryptocurrencies and precious metals, (ii) claimed they made "on time and accurate payments" for seven years and that a one-time \$2,500 contribution to Fundsz could be expected to grow to \$1 million within 48 months with no additional deposits and (iii) pitched Fundsz as if it had a charitable purpose. In reality, the complaint alleges that Fundsz did not trade customer funds at all, and any customer gains were illusory, as the defendants simply made up fictional weekly returns to report to customers.

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

Federal Judge Confirms Tornado Cash Can be Designated by OFAC

On August 17, 2023, U.S. District Judge Robert Pitman in the Western District of Texas found that crypto mixer service Tornado Cash could be sanctioned, and upheld the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) decision to place the entity on the Specially Designated Nationals and Blocked Persons (SDN) List. Plaintiffs had contended that Tornado Cash was a decentralized, open-source software project comprised of a subset of smart contracts, or "pools," on the Ethereum blockchain and that OFAC's designation of Tornado Cash exceeded statutory powers because Tornado Cash was not a foreign "national" or "person." In contrast, the Government maintained that Tornado Cash was an organization that ran a cryptocurrency mixing service. The Court found that Tornado Cash was an entity that may be properly designated as a person under the International Emergency Economic Powers Act (IEEPA), that it was an association within the ordinary meaning of the term and is therefore an entity that may be designated per OFAC regulations, and further that OFAC's designation of Tornado Cash did not exceed its statutory powers and is not plainly inconsistent with its regulations.

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

SEC Charges Georgia Resident in Crypto-Related Affinity Fraud

On August 18, 2023, the SEC announced charges against Keith Crews for conducting an affinity fraud through two entities which he owned and controlled, Stem Biotech LLC and Four (4) Square Biz LLC. According to the SEC's complaint (filed in the U.S. District Court for the Northern District of Georgia), between October 2019 and May 2021, Crews raised at least \$800,000 from as many as 200 investors through the sale of "Stemy Coin," a purported crypto asset. The complaint alleges that Crews made several misrepresentations to investors, including that Stemy Coin was backed by Stem Biotech's stem cell technology and other assets, that Stem Biotech had existing operations, products and partnerships with entities involved in the stem cell industry, and that investment in Stemy Coin would provide substantial dividend returns. According to the SEC, none of these statements were true, and any possible returns on a Stemy Coin investment were highly speculative at best.

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

Pennsylvania Resident Sentenced to Three Years in Prison for Role in Conspiracy to Defraud and Extort Cryptocurrency Executives

On August 18, 2023, the U.S. Attorney's Office for the Northern District of California announced that Anthony Francis Faulk was sentenced by U.S. District Judge William H. Orrick to serve 36 months in prison and ordered to pay nearly \$3 million in restitution for his role in a conspiracy to defraud more than a dozen cryptocurrency owners. The court also ordered forfeiture of numerous assets constituting or derived from proceeds obtained by Faulk's crime. In a written plea agreement filed on March 2, 2023, Faulk acknowledged that from October 2016 through May 2018 he conspired with others to defraud and extort cryptocurrency owners. The scheme involved "SIM swapping"—duping cellphone companies into giving Faulk and his co-conspirators control of victims' cellphone numbers, using that access to hack into email and other victim accounts, and ultimately stealing the victims' cryptocurrency or digital assets.

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

Former Employee of NFT Marketplace Sentenced to Prison in First-Ever Digital Asset Insider Trading Scheme

On August 22, 2023, the U.S. Attorney for the Southern District of New York announced that Nathaniel Chastain, a former product manager at Ozone Networks, Inc. (doing business as OpenSea), was sentenced to three months in prison in connection with a scheme to commit

insider trading in NFTs by using confidential information about which NFTs were going to be featured on OpenSea's homepage for his personal financial gain. Chastain was previously convicted at trial of wire fraud and money laundering. Chastain was also sentenced to three months of home confinement, three years of supervised release, a \$50,000 fine, and ordered to forfeiture the Ethereum he made trading the featured NFTs.

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

SEC and New Jersey Attorney General's Office Charge Former New Jersey Corrections Officer with Crypto Fraud Scheme Targeting Law Enforcement Personnel

On August 23, 2023, the SEC charged former New Jersey State Correctional Police Officer John A. DeSalvo with fraudulently raising funds through the unregistered offering of the Blazar Token, a crypto asset security he created but that collapsed in May 2022. The SEC further charged DeSalvo with misappropriating investor funds, including through sending such funds to his personal crypto asset wallets and using it to pay for a bathroom renovation. According to the SEC's complaint, filed in the U.S. District Court for the District of New Jersey, since November 2021 DeSalvo had raised at least \$620,000 from approximately 220 investors and had targeted law enforcement and first responders in his fraudulent schemes.

On August 24, 2023, the New Jersey Attorney General's Office announced DeSalvo's arrest, after allegedly targeting and defrauding first responders he convinced to invest in a purported new cryptocurrency investment fund. DeSalvo is faced with charges of theft by deception and deceptive business practices. According to the Attorney General's Office, DeSalvo profited from capital raised from victims who would not have provided him with money if they were aware that the Blazar tokens had no value.

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

Tornado Cash Founders Charged with Money Laundering and Sanctions Violations

On August 23, 2023, the U.S. Attorney's Office for the Southern District of New York announced the unsealing of an indictment charging Roman Storm and Roman Semenov with conspiracy to commit money laundering, conspiracy to commit sanctions violations and conspiracy to operate an unlicensed money transmitting business. The charges in the indictment arise from the defendants' alleged creation, operation and promotion of Tornado Cash, a cryptocurrency mixer that facilitated more than \$1 billion in money laundering transactions and laundered hundreds of millions of dollars for the Lazarus Group, the sanctioned North Korean cybercrime organization. Roman Storm was arrested on August 23, 2023, while Roman Semenov remains at large. U.S. Attorney Damian Williams noted that the indictment is a "reminder that money laundering through cryptocurrency transactions violates the law, and those who engage in such laundering will face prosecution."

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

District of Massachusetts Files Forfeiture Action to Recover Cryptocurrency Traceable to Fraud Scheme

On August 24, 2023, the U.S. Attorney's Office for the District of Massachusetts filed a civil forfeiture action to recover cryptocurrency alleged to be proceeds of a business email compromise (BEC) scheme targeting a Massachusetts resident. According to the press release, the government seeks to forfeit 18.836 bitcoin (BTC) (with a current estimated

value of approximately \$500,000) seized from an account located at Binance.US, a cryptocurrency exchange and custodian. As alleged in court documents, a Massachusetts resident was tricked into wiring \$400,000 into a bank account located in California, and some of those funds were subsequently transferred to Binance.US where they were used to purchase 18.836 BTC. Investigators traced the funds to a Binance account, and the BTC was seized in July 2023. The press release confirms that this is the fifth civil forfeiture action the U.S. Attorney's Office has filed seeking to forfeit cryptocurrency traced to fraud schemes targeting Massachusetts victims.

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

SEC Charges Impact Theory for Unregistered Offering of NFTs

On August 28, 2023, the SEC charged Impact Theory, LLC (**Impact Theory**), a media and entertainment company headquartered in Los Angeles, with conducting an unregistered offering of crypto asset securities in the form of purported NFTs. According to the SEC, Impact Theory raised approximately \$30 million from hundreds of investors, including investors across the U.S., through the offering. Pursuant to the SEC's order, from October to December 2021, Impact Theory offered and sold three tiers of NFTs (known as **Founder's Keys**) and encouraged potential investors to view the purchase of a Founder's Key as an investment into the business, stating that investors would profit from their purchases if Impact Theory was successful in its efforts. The SEC's order maintained that the NFTs offered and sold to investors were investment contracts and therefore securities such that Impact Theory violated the federal securities laws by offering and selling these crypto asset securities to the public in an unregistered offering that was not otherwise exempt from registration. Without admitting or denying the SEC's findings, Impact Theory agreed to a cease-and-desist order finding that it violated registration provisions of the Securities Act of 1933 and ordering it to pay a combined total of more than \$6.1 million in disgorgement, prejudgment interest and a civil penalty.

The SEC's press release can be found [here](#), the order can be found [here](#) and our client alert discussing the case can be found [here](#).

Grayscale Wins SEC Lawsuit for Bitcoin ETF Review

On August 29, 2023, crypto asset management firm Grayscale Investments secured a significant victory against the SEC in its efforts to convert its over-the-counter Grayscale Bitcoin Trust (**GBTC**) into a listed Bitcoin exchange-traded fund (**ETF**). In a judgment dated August 29, 2023, U.S. Court of Appeals Circuit Judge Neomi Rao ordered Grayscale's petition for review be granted and the SEC's order to deny the GBTC listing application be vacated. Grayscale's primary claim is that the SEC failed to treat like cases alike by denying the listing of Grayscale's proposed bitcoin exchange-traded products and approving two bitcoin futures exchange-traded products. In the opinion for the Court, Circuit Judge Rao agreed that the "denial of Grayscale's proposal was arbitrary and capricious because the Commission failed to explain its different treatment of similar products." Judge Rao further noted that the SEC failed to adequately explain why it approved the listing of two bitcoin futures exchange-traded products but not Grayscale's proposed bitcoin exchange-traded products and found that in "the absence of a coherent explanation, this unlike regulatory treatment of like products is unlawful."

The judgment can be found [here](#) and the opinion can be found [here](#).



[Judges in the Southern District of New York Divided on Whether a Token Is a Security: SEC v. Terraform Labs and SEC v. Ripple Labs \(August 3, 2023\)](#)

[The SEC's First NFT Enforcement Action: SEC v. Impact Theory \(August 29, 2023\)](#)



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