



Akin™

CryptoLink



October 2023

[Subscribe](#) | [Share this](#)   

*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 October CryptoLink update includes developments from September and October of 2023.*

## In this issue

- [Spotlight on FTX](#)
- [Key Developments](#)
- [Key Enforcement Actions](#)

## Spotlight on FTX

### Samuel Bankman-Fried Trial Concludes with Guilty Verdict

On November 2, 2023, following just four hours of jury deliberations, Samuel Bankman-Fried was convicted of two counts of wire fraud conspiracy, two counts of wire fraud and one count of conspiracy to commit money laundering, each of which carries a maximum sentence of 20 years in prison. He was also convicted of conspiracy to commit commodities fraud and conspiracy to commit securities fraud, each of which carries a maximum sentence of five years in prison. We set out below a summary of the trial against Bankman-Fried, which took place between October 3 and November 3, 2023.

On October 3, 2023, Samuel Bankman-Fried's trial began with jury selection. On October 4, 2023, Bankman-Fried's college friend Adam Yedidia, who worked as a developer at FTX and a trader at Alameda Research, took the witness stand. This followed, on October 5, 2023, with former chief technology officer Zixiao 'Gary' Wang (the first of three government cooperators) taking the stand and testifying to implementing features into FTX's code which allowed Alameda to incur a significant line of credit and maintain a negative balance on the exchange, each at the direction of Bankman-Fried.

On October 10, 2023, Caroline Ellison, the former chief executive officer of Alameda Research and Bankman-Fried's former girlfriend, provided testimony, including statements regarding Alameda's methods of allegedly drawing on customer funds and the loans provided

to Bankman-Fried and other FTX insiders by Alameda. Ellison had previously pled guilty to several criminal fraud and conspiracy counts under a cooperation agreement with the government. Ellison's testimony alleged that Bankman-Fried had directed each of her illegal actions. She discussed their professional and personal relationship. Ellison was subject to an extensive cross-examination by Bankman-Fried's attorneys.

On October 12, 2023, the founder of BlockFi Inc., Zac Prince, provided testimony regarding the money owed by Alameda to BlockFi, noting that it was a result of FTX and Alameda's bankruptcies that BlockFi was forced into bankruptcy. The trial continued with testimony provided by FTX's former engineering director Nishad Singh, who also pled guilty and was cooperating with prosecutors in the case. During his testimony, Singh described how bank accounts were used to funnel Alameda funds to political candidates and reported on Bankman-Fried's apparently reckless spending.

Following Singh's cross-examination, on October 17, 2023, FBI special agent and cell site analyst Richard Busick provided testimony regarding the location of cell phone usage by Bankman-Fried to demonstrate that Bankman-Fried was within the Southern District of New York for part of his alleged criminal scheme.

On October 18, 2023, the eleventh day of the trial continued with former FTX government lobbyist Eliora Katz and FBI forensic accountant Paige Owens providing testimony. Prosecutors further produced Twitter direct messages between Bankman-Fried and a journalist following FTX's collapse which were alleged to show that Bankman-Fried admitted he had lied to customers.

On October 19, 2023, the jury heard from Can Sun, the former general counsel of FTX, during which he noted that Bankman-Fried had requested that he find legal justifications for missing money. Sun had entered into a non-prosecution agreement with the government and maintained that he did know of Alameda's improper use of customer deposits. The prosecutors then called the former director of Third Point Management, Robert Boroujerdi, to provide testimony regarding Third Point's investment in FTX; Boroujerdi confirmed that although Third Point invested \$60 million in FTX, the current value of the investment was currently nil. The twelfth day of the trial was followed by an intermission until October 26, 2023.

The trial resumed on October 26, 2023, with FBI agent Marc Troyano providing testimony regarding Bankman-Fried's devices. Judge Kaplan rejected the defense attorney's request for a motion for acquittal, which the defense made on the basis that they argued the government did not have sufficient evidence to sustain the seven counts charged. The first witness for Bankman-Fried, Bahamian attorney Krystal Rolle, took the stand on October 26, 2023.

Bankman-Fried then took the stand on October 26, 2023, but only after Judge Kaplan had dismissed the jury for the day as he asked to hear Bankman-Fried's testimony before he decided how much of it could go to the jury. During his provisional testimony, Bankman-Fried discussed, among other things, Alameda's borrowing of funds, the auto-deletion of certain FTX messages, and the decision to create a bank account in the name of an Alameda subsidiary and to begin taking in FTX customer money there. On October 27, 2023, Bankman-Fried proceeded to provide testimony before the jury following various rulings by Judge Kaplan as to what matters Bankman-Fried's testimony could cover. During his testimony, Bankman-Fried denied defrauding any person, although he acknowledged there had been significant oversights in the management of FTX. Bankman-Fried testified that he believed Alameda was properly allowed to borrow money from FTX through the exchange's spot-margin lending program. Bankman-Fried also discussed his relationship with Ellison and sought to rebut Singh's testimony regarding his allegedly reckless spending. In particular, Bankman-Fried denied the allegations that his spending was funded by stolen customer

deposits and that he directed the political donations made by Singh and Ryan Salame. He further sought to blame Ellison for Alameda's losses and alleged she drove the process of doctoring Alameda's balance sheets to lenders.

On October 30, 2023, Bankman-Fried continued to provide testimony, followed by a scathing cross-examination by the government. During his testimony, Bankman-Fried suggested he had been focused on expanding FTX's capacity, was travelling significantly to support the business, and that a day after declaring bankruptcy he had commenced working with the Bahamian regulators. In cross-examination, Bankman-Fried was questioned in relation to the money owed to FTX by Alameda and FTX's role in permitting Alameda to incur a negative balance as it continued to borrow on a line of credit. On October 31, 2023, the government's cross-examination of Bankman-Fried continued, including the government questioning Bankman-Fried's relationship with politicians in the Bahamas, Bankman-Fried's level of involvement in the FTX business and the recording from an Alameda staff meeting in November 2022 (in which Ellison admitted to working with Bankman-Fried, Wang and Singh to siphon off customer funds). On redirect, Bankman-Fried attempted to address certain apparent inconsistencies raised during the government's cross-examination, such as those relating to his luxurious private jet travels. The government did not follow with a re-cross examination, the defense rested and the government opted not to call any rebuttal witnesses, which concluded the presentation of evidence in the case.

Closing arguments took place on November 1, 2023, and, in a significant decision following just four hours of jury deliberations, on November 2, 2023, Bankman-Fried was found guilty on all counts.

U.S. Attorney General Merrick B. Garland of the U.S. Department of Justice (DOJ) issued a statement following the jury's conviction stating that "Sam Bankman-Fried thought that he was above the law. Today's verdict proves he was wrong. This case should send a clear message to anyone who tries to hide their crimes behind a shiny new thing they claim no one else is smart enough to understand: the Justice Department will hold you accountable."

U.S. Attorney Damian Williams also issued a statement noting that Bankman-Fried perpetrated "one of the biggest financial frauds in American history - a multibillion-dollar scheme designed to make him the King of Crypto - but while the cryptocurrency industry might be new and the players like Sam Bankman-Fried might be new, this kind of corruption is as old as time. This case has always been about lying, cheating, and stealing, and we have no patience for it. ... This case is also a warning to every fraudster who thinks they're untouchable, that their crimes are too complex for us to catch, that they are too powerful to prosecute, or that they are clever enough to talk their way out of it if caught. Those folks should think again, and cut it out. And if they don't, I promise we'll have enough handcuffs for all of them."

U.S. Attorney General Merrick B. Garland's statement can be found [here](#) and U.S. Attorney Damian William's statement can be found [here](#).

### **Government Seeks Forfeiture of Two Corporate FTX Jets**

On October 4, 2023, U.S. Attorney Damian Williams filed the government's Forfeiture Bill of Particulars before the U.S. District Court for the Southern District of New York in which the government gave notice that the property subject to forfeiture as a result of the criminal proceedings against Bankman-Fried included two corporate jets.

The Forfeiture Bill of Particulars can be found [here](#).

## **FCA Issues 146 Alerts in First 24 Hours of New Crypto Marketing Regime**

On October 9, 2023, the U.K. Financial Conduct Authority (FCA) announced that it had issued 146 alerts about crypto asset promotions on the first day of the new regime in the United Kingdom. Since October 8, 2023, firms wishing to promote crypto assets in the United Kingdom must, by law, be authorized or registered by the FCA, or have their marketing approved by an authorized firm. Under FCA rules, promotions must also be clear, fair and not misleading, labeled with prominent risk warnings and must not inappropriately incentivize people to invest. The FCA noted that consumers should check the Warning List before making any investment in crypto and the FCA expect businesses including social media platforms, app stores, search engines, domain name registrars and payments firms to consider the alerts issued by the FCA. The FCA further reminded consumers that “purchasing crypto assets remains high-risk and that they should be prepared to lose all their money.”

The FCA’s announcements can be found [here](#) and [here](#).

## **California Governor Signs New Crypto Licensing Regime into Law**

On October 13, 2023, Governor Gavin Newsom (D-CA) signed a bill into law to prohibit “engaging in digital financial asset business activity” unless registered with the Department of Financial Protection and Innovation (DFPI). The “Digital Financial Assets Law” goes into effect on and after July 1, 2025. In the announcement issued by the Office of the Governor to the Members of the California State Assembly, Governor Newsom noted that the bill requires the DFPI to create a robust regulatory framework “including licensure and enforcement authority” for certain crypto activities. Governor Newsom further stated that the bill provides the DFPI with rulemaking authority and an 18-month implementation date to ensure the regulatory framework can be “thoughtfully tailored to address industry trends and mitigate consumer harm.”

The bill can be found [here](#) and the announcement can be found [here](#).

## **SEC Division of Examinations Releases 2024 Priorities Report Including Crypto Assets**

On October 16, 2023, the U.S. Securities and Exchange Commission (SEC) Division of Examinations released its 2024 examination priorities report to inform investors and registrants of the key risks, examination topics and priorities that the Division of Examinations plans to focus on in the upcoming year. The 2024 examination priorities report specifically lists crypto assets and emerging financial technology as risk areas impacting various market participants. In particular, the report notes that the Division of Examinations continues to “observe the proliferation of certain types of investments, including crypto assets and their associated products and services, and emerging financial technology, such as broker-dealer mobile applications and advisers choosing to provide automated investment advice to their clients.” The report states that given the continued volatility of, and activity around, the crypto asset markets, the Division of Examinations will continue to monitor and, when appropriate, conduct examinations of registrants.

The SEC’s press release can be found [here](#) and the 2024 examination priorities report can be found [here](#).

## **Government of Australia Proposes Regulatory Framework for Digital Asset Platforms**

On October 16, 2023, the government of Australia announced its intention to introduce a regulatory framework to address consumer harms in the crypto ecosystem while supporting innovation and issued a proposal paper outlining the objectives of the reforms, the proposed regulatory framework for digital asset facilities and the licensing obligations that would apply to service providers in relation to digital asset facilities. The government of Australia requested views from interested parties on the proposed framework for regulating digital asset platforms, with specific consultation questions outlined within the paper.

The press release can be found [here](#) and the proposal paper can be found [here](#).

## **Basel Committee Consults on Disclosure of Banks' Crypto Asset Exposures**

On October 17, 2023, the Basel Committee on Banking Supervision published a consultative document to follow on from its prudential standard on the treatment of crypto asset exposures. The consultative document proposes a standardized disclosure table and set of templates for banks' crypto asset exposures, with a proposed implementation date of January 1, 2025. The Basel Committee has requested comments on the proposed disclosure requirements by January 31, 2024.

The Basel Committee's press release can be found [here](#) and the consultative document can be found [here](#).

## **FDIC Agrees to Take Corrective Actions to Address Crypto-Asset Risks**

On October 18, 2023, the Office of Inspector General of the Federal Deposit Insurance Corporation (FDIC) issued a report on "FDIC Strategies Related to Crypto-Asset Risks." The report recommended that the FDIC (i) establish a plan with timeframes for assessing risks pertaining to crypto-related activities, and (ii) update and clarify the supervisory feedback process related to its review of supervised institutions' crypto-related activities. The FDIC concurred with both recommendations and proposed corrective actions to address them, which it plans to have completed by January 30, 2024. According to the FDIC's press release, until the FDIC assesses the risks of crypto activities and provides supervised institutions with effective guidance, the FDIC and certain FDIC-supervised institutions may not take appropriate actions to address the most significant risks posed by crypto assets.

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

## **UAE Emirate Launches New Digital Asset Free Zone**

On October 19, 2023, H.H. Sheikh Saud bin Saqr Al Qasimi, Supreme Council Member and Ruler of the Emirate of Ras Al Khaimah, delivered a keynote address at the official launch event for RAK Digital Assets Oasis, the world's first free zone dedicated to digital and virtual assets companies, stating that the initiative represents the Emirate's growing status as a global hub for innovation and technology. According to the RAK Digital Assets Oasis website, the free zone is solely dedicated to non-regulated digital and virtual asset companies innovating in new and emerging sectors.

The keynote speech can be found [here](#) and the freezone website can be found [here](#).

## **SEC Chair Makes Speech Regarding Crypto Asset Securities**

On October 25, 2023, SEC Chair Gary Gensler made a speech at the 2023 Securities Enforcement Forum in which he noted that "the vast majority of crypto assets likely meet the investment contract test, making them subject to the securities laws" and, therefore,

“most crypto intermediaries—transacting in these crypto asset securities—are subject to the securities laws as well.” Chair Gensler further stated that this is an area rife with fraud, scams, bankruptcies and money laundering, and the SEC has brought numerous enforcement actions against actors in this space.

The text of Chair Gensler’s speech can be found [here](#).

### **FCA Warns About Common Issues with Crypto Marketing**

On October 25, 2023, the FCA issued a statement in which it noted that, since October 8, 2023, the FCA has identified three common issues with crypto asset financial promotions, including: promotions making claims about the “safety,” “security” or ease of using crypto asset services without highlighting the risk involved; risk warnings not being visible enough due to small fonts, hard-to-read coloring or non-prominent positioning; and firms failing to provide customers with adequate information on the risks associated to specific products being promoted.

The FCA’s statement can be found [here](#).

### **Taiwan Proposes Crypto Legislation in Parliament**

On October 27, 2023, Taiwan introduced the Virtual Asset Management Ordinance Draft bill into Parliament. The bill would require permits for crypto platforms operating in Taiwan and empower regulators to impose penalties.

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

### **CFTC Releases Enforcement Results for Fiscal Year 2023**

On November 7, 2023, the U.S. Commodity Futures Trading Commission (CFTC) released its enforcement results for fiscal year 2023, which included 47 actions involving conduct related to digital asset commodities, representing more than 49% of all actions filed during the period. According to the results, the CFTC’s Division of Enforcement filed 96 enforcement actions resulting in over \$4.3 billion in penalties, restitution and disgorgement in a range of markets, including the digital assets and swaps markets. The CFTC’s actions related to digital assets in 2023 included: (i) charging Bankman-Fried, FTX, Alameda, Wang, Ellison and Singh for an alleged fraudulent scheme involving digital asset commodities; (ii) charging Binance, its founder, and a former chief compliance officer with (among other things) operating an illegal digital asset derivatives exchange; (iii) obtaining a “groundbreaking” alternative service motion and subsequent default judgment order against the Ooki DAO (a decentralized autonomous organization) in relation to the operation of an illegal trading platform and unlawfully acting as a futures commission merchant; and (iv) charging Avraham Eisenberg for a fraudulent and manipulative scheme to unlawfully obtain over \$110 million in digital assets from Mango Markets using a “complex manipulation strategy.” CFTC Director of Enforcement Ian McGinley stated that the results “demonstrate the CFTC’s relentless commitment to accountability, deterrence, customer protection, and ensuring market integrity,” while CFTC Chairman Rostin Behnam noted that the Division of Enforcement’s work in the digital assets space has resulted in a “record number of cases.” According to the CFTC’s press release, in the 2023 fiscal year, the CFTC “cemented its reputation as a premier enforcement agency in the digital asset space,” filing high-profile complaints and obtaining first-of-its-kind and innovative litigation victories.

The CFTC’s enforcement results can be found [here](#).

## **CFTC Charges Four Individuals and a Seychelles Company with Operating a Fraudulent Digital Assets Trading Scheme and Misappropriation**

On September 29, 2023, the CFTC filed a civil enforcement action in the U.S. District Court for the District of New Jersey charging fraud against Or Patreanu, Snir Hananya, Elijah Samson, Artem Prokopenko and Expected Value Plus Ltd., a Seychelles company (all doing business as Trade2Get, Coinbull, Cryptonxt, Tradenix, Cryptobravos, Nittrex, Pinance and Wobit, collectively, **Cryptobravos**). The CFTC's complaint charges the defendants with fraudulently soliciting and misappropriating tens of millions of dollars from hundreds of individuals in the United States and other countries for Cryptobravos to trade bitcoin and other digital asset commodities for them. The complaint alleges that from approximately January 2017 through October 2021, the defendants (i) operated a global fraudulent scheme, (ii) solicited bitcoin and other funds from people (specifically targeting customers in the U.S.) to establish managed accounts to purchase, sell and trade digital asset commodities (including bitcoin), and (iii) falsely represented they would use customer funds to trade bitcoin and other digital asset commodities for the customers, while in practice Cryptobravos accepted customers' funds and refused to return them.

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

## **SEC Shuts Down Zera Financial LLC Offering Fraud**

On October 3, 2023, the SEC obtained an emergency order to halt an alleged ongoing offering fraud and Ponzi-like scheme by Zera Financial LLC (**Zera**) and its owner, Luis A. Romero, who raised more than \$2.2 million from about 170 investors. As alleged in the SEC's complaint, through a public website, a mobile application, an Instagram account and word of mouth, Zera and Romero promised investors 3% monthly returns, despite Zera having no meaningful business apart from raising money and making Ponzi-like payments to investors. The SEC's complaint alleges that Romero misappropriated and commingled investor funds with his own, deposited hundreds of thousands of dollars in various crypto asset accounts held in his name and spent hundreds of thousands of dollars on personal expenses, including an electric truck, rent and even tropical fish.

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

## **SEC Argues That Tokens on Coinbase Are Securities**

On October 3, 2023, the SEC responded to the motion for a judgment on the pleadings filed by Coinbase, Inc. and Coinbase Global, Inc. (collectively, **Coinbase**) by arguing that tokens on Coinbase met the "essence of an investment contract" by reference to Supreme Court precedent. In its memorandum of law in opposition, the SEC maintained that the case turns on whether Coinbase intermediated transactions in "investment contracts" which would entitle customers to the protections of federal securities laws, including the requirement to register with the SEC. The SEC argued that purchasers on Coinbase's platform were invited by crypto asset issuers to reasonably "expect the value of their investment to increase based on the issuer's broadly-disseminated plan to develop and maintain the asset's value," which is sufficient to constitute an investment contract.

On October 24, 2023, Coinbase filed a reply memorandum of law in support of Coinbase's motion for judgment on the pleadings in which it maintained that Coinbase was entitled to judgment on the pleadings. In particular, Coinbase argued that investment contracts grant

the purchaser a contractual claim related to the future, income, profits or assets of a business enterprise (which makes them securities rather than investments), but that the SEC’s complaint does not “and cannot plead that the simple asset trades it identifies involve ongoing contractual obligations related to a business enterprise.”

The SEC’s memorandum can be found [here](#) and Coinbase’s motion can be found [here](#).

### **Texas State Securities Board Commissioner Stops Crypto Fraud Purportedly Linked to Russian Government Assets**

On October 5, 2023, the Texas State Securities Board (the **Board**) Securities Commissioner Travis J. Iles entered an emergency cease and desist order against BigWhale.io to stop sales of securities tied to a decentralized lending pool deployed on the Binance blockchain. According to the Board’s press release, BigWhale.io allegedly claimed to have raised \$6 million from more than 2,000 investors before a hacker stole the funds and was now threatening to mobilize assets within the Russian government to pursue extrajudicial revenge. According to the order, BigWhale.io was encouraging the public to invest digital assets in its decentralized application, promising to lend these assets to vetted borrowers that would pay interest to BigWhale.io and purportedly using this revenue to pay lucrative interest to its investors. The order found that BigWhale.io used a multilevel marketing scheme that relied on numerous online influencers to promote its decentralized application (with such marketers being promised significant compensation), refused to identify its principals and the location of its offices and failed to disclose its capitalization and provide other information material to its securities offering.

The emergency cease and desist order can be found [here](#) and the Board’s press release can be found [here](#).

### **CFTC and FTC Charges Former CEO of Digital Asset Platform with Fraud in Massive Commodity Pool Scheme**

On October 12, 2023, the CFTC announced it filed a complaint in the U.S. District Court for the Southern District of New York against Stephen Ehrlich, the former chief executive officer of now-bankrupt entities Voyager Digital Ltd., Voyager Digital Holdings, Inc., and Voyager Digital, LLC (collectively, **Voyager**). The CFTC’s complaint charges Ehrlich with fraud and registration failures in connection with the Voyager digital asset platform and Voyager’s operation of an unregistered commodity pool. According to the CFTC’s press release, Ehrlich and Voyager falsely touted the Voyager platform as a “safe haven” to earn high yield returns to induce customers to purchase and store digital asset commodities.

In a parallel action, on the same date, the Federal Trade Commission (**FTC**) announced (i) a settlement with Voyager that will permanently ban it from handling consumers’ assets and (ii) that it is filing suit against its former CEO, Stephen Ehrlich, for falsely claiming that customers’ accounts were insured by the Federal Deposit Insurance Corporation (**FDIC**) and were “safe,” even as the company was approaching an eventual bankruptcy. The FTC’s complaint also names Stephen Ehrlich’s wife, Francine Ehrlich, as a relief defendant. In the proposed settlement with Voyager, the companies agreed to a judgment of \$1.65 billion, which will be suspended to permit Voyager to return its remaining assets to consumers in the bankruptcy proceedings. According to the FTC’s press release, Stephen Ehrlich has not agreed to a settlement and the FTC’s case against him will proceed in federal court.

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

### **CEO Pleads Guilty to Transnational Scheme Involving Foreign Exchange and**



## **Cryptocurrency Futures Contracts in First Criminal Charge for ‘Cherry-Picking’ Scheme**

On October 12, 2023, the DOJ announced that Peter Kambolin, a former chief executive officer of Systematic Alpha Management LLC (SAM), pleaded guilty to a “cherry-picking” scheme, in which he fraudulently misappropriated profitable trades to himself, and “saddled his investors with losses.” According to court documents, between January 2019 and November 2021, Kambolin (who at the time was a commodity trading advisor and a commodity pool operator), engaged in a cherry-picking scheme in which he fraudulently allocated profits and losses from futures trades in a manner designed to benefit his own accounts unfairly at the expense of his clients. The DOJ’s press release further notes that Kambolin misrepresented to his clients that SAM employed trading strategies focused on cryptocurrency futures contracts and foreign exchange futures contracts, when in reality, approximately half of Kambolin’s trading in each pool involved equity index futures contracts. Kambolin pleaded guilty to conspiracy to commit commodities fraud and faces a maximum penalty of five years in prison; a sentencing date has not yet been set.

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

## **SEC Drops Claims Against Ripple Executives**

On October 19, 2023, the SEC filed a stipulation of partial dismissal in which it dismissed its claims (without prejudice) against Bradley Garlinghouse, Ripple Labs Chief Executive Officer, and Christian Larsen, Ripple Labs Executive Chairman, following allegations that they had aided and abetted Ripple Labs violating certain provisions of the U.S. Securities Act with respect to Ripple’s offers and sales of XRP. In a statement, Garlinghouse stated that instead of looking, “the SEC went after the good guys - along with our entire company of innovators and entrepreneurs - who are building a regulated business based in the U.S. We look forward to the day this chapter is closed once and for all, now that the SEC has dropped the curtain on their absurd theatrics against Chris and me.”

The stipulation of dismissal can be found [here](#) and further information can be found [here](#).

## **SEC Obtains Judgment Against Issuer and CEO for Unregistered Crypto Asset Securities Offering**

On October 18, 2023, the United States District Court for the Northern District of California entered default judgment against Thor Technologies, Inc. and its CEO and co-founder David Chin for conducting a \$2.6 million unregistered offering of crypto asset securities. The SEC’s complaint, filed on December 21, 2022, against Thor and Chin, alleges that between March and May 2018, the defendants offered and sold crypto assets designated as “Thor Tokens” to the general public for the purpose of funding Thor’s business, marketed the Thor Tokens as an investment opportunity by promoting the potential increase in value of the tokens and claiming that the tokens would be made available on crypto asset trading platforms. According to the complaint, at the time of the offering, no development work had yet occurred on the Thor platform, and there was no other place to use Thor Tokens. The court granted default judgment for the SEC on all charges and further ordered Thor to pay disgorgement of \$744,555 with prejudgment interest of \$158,638.06 and ordered Thor and Chin to each pay penalties of \$150,000.

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

## **New York Attorney General Sues Cryptocurrency Companies Gemini, Genesis and DCG for Defrauding Investors**

On October 19, 2023, New York Attorney General Letitia James filed a lawsuit against cryptocurrency companies Gemini Trust Company (Gemini), Genesis Global Capital, LLC and

its affiliates (**Genesis**), and Digital Currency Group Inc. (**DCG**) for defrauding more than 230,000 investors, including at least 29,000 New Yorkers, of more than \$1 billion. The Office of the Attorney General’s investigation found that Gemini lied to investors about an investment program it ran with Genesis called “Gemini Earn.” Gemini repeatedly assured investors that investing with Genesis through their Gemini Earn program was a low-risk investment. However, the investigation found that Gemini’s internal analyses of Genesis showed that the company’s financials were risky. The lawsuit alleges that Gemini knew Genesis’s loans were under-secured and at one point highly concentrated with one entity, Bankman-Fried’s Alameda, but did not reveal this information to investors. The lawsuit also charges Genesis, its former CEO Soichiro Moro, its parent company, DCG, and DCG’s CEO Barry Silbert with defrauding investors and the public by trying to conceal more than \$1.1 billion in losses, which were borne by investors.

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

### **FinCEN Issues Proposed Rule Regarding Convertible Virtual Currency Mixing**

On October 23, 2023, the Financial Crimes Enforcement Network (**FinCEN**) issued a notice of proposed rulemaking pursuant to the USA PATRIOT Act that proposes requiring domestic financial institutions and domestic financial agencies to implement certain recordkeeping and reporting requirements relating to transactions involving convertible virtual currency mixing. Written comments on the notice of proposed rulemaking must be submitted on or before January 22, 2024.

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

### **Yuga Labs to Recover \$1.6 Million from NFT Copycats**

On October 25, 2023, the United States District Court for the Central District of California ruled in Yuga Labs favor over the sale of competing tokens which infringed on Yuga Lab’s non-fungible tokens (**NFT**) collection. The copycats utilized identical images despite using different entries on the etherium blockchain. The court found that Yuga Lab’s was entitled to recover \$1,375,362.92 in the defendants’ profits, \$200,000 in statutory damages, a permanent injunction and its attorney’s fees and costs.

The court’s ruling can be found [here](#).

### **SEC Granted Extension of Time in Proceedings Against Impact Theory**

On October 27, 2023, the SEC’s Division of Enforcement submitted an extension order in the administrative proceedings against Impact Theory, LLC in which it requested an extension of time until July 26, 2024 to submit a proposed plan of distribution. The extension request follows the order instituting cease and desist proceedings issued by the SEC on August 28, 2023; in the order, the SEC had found that Impact Theory offered and sold crypto asset securities known as Founder’s Keys in the form of purported NFTs in violation of the U.S. Securities Act and created a fund under which the penalty collected could be distributed to harmed investors. In the request for an extension of time, the SEC stated that additional time was required to complete the fund administrator solicitation and appointment process and prepare a proposed plan of distribution. The order was granted until July 26, 2024 as requested.

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

### **Do Kwon and Terraform Labs Submit Motion for Summary Judgment Against SEC**

On October 27, 2023, Terraform Labs, Pte. LTD. and its co-founder Do Hyeong Kwon (together, the **Defendants**) submitted a memorandum of law in support of a motion for summary judgment against the SEC before the U.S. District Court for the Southern District of New York. In the memorandum of law, the Defendants argued that there was no “genuine dispute as to any material facts” such that the Defendants were entitled to summary judgment as a matter of law. The Defendants maintained that “after two years of investigation, the completion of a discovery period that resulted in the taking of more than 20 depositions, and the exchange of over two million pages of documents and data, the SEC is evidentiarily no closer to proving that the Defendants did anything wrong.” The Defendants went on to state that it is now apparent that no admissible evidence exists in support of the SEC’s claims and further that the SEC “knew some of its allegations were false” when it filed its amended complaint against the Defendants. For the reasons set out in the memorandum of law, the Defendants argued that the SEC cannot carry its burden of proof in the case and requested that the court therefore grant summary judgment in its entirety.

The memorandum of law can be found [here](#).



Learn more about our Digital Assets, Cryptocurrency and Blockchain practice.

[Learn More >](#)

## 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



**Brendan M. Dunn**

[Email](#)

Washington, D.C.

+1 202.887.4230



**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



**Brad M. Kahn**

[Email](#)

New York

+1 212.872.8121

**Jean-Pierre Denour**

[Email](#)

**Kate L. Powers**

[Email](#)



Dubai  
+971 4.317.3045



New York  
+1 212.872.8070



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

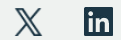


**Sahar Abas**  
[Email](#)  
Dubai  
+971 4.317.3052



**Robert Andrews**  
[Email](#)  
Washington, D.C.  
+1 202.416.5251

[akingump.com](http://akingump.com)



© 2023 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. Attorney advertising. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. Prior results do not guarantee a similar outcome. Receipt of this information does not create an attorney-client relationship. Do not act upon this information without seeking professional counsel. All content is presented by Akin and cannot be copied or rebroadcasted without express written consent. Akin is the practicing name of Akin Gump LLP, a New York limited liability partnership authorized and regulated by the Solicitors Regulation Authority under number 267321. A list of the partners is available for inspection at Eighth Floor, Ten Bishops Square, London E1 6EG. For more information about Akin Gump LLP, Akin Gump Strauss Hauer & Feld LLP and other associated entities under which the Akin network operates worldwide, please see our [Legal Notices](#) page.

[Update Your Preferences](#) | [Subscribe](#) | [Unsubscribe](#) | [Forward to a Friend](#) | [Legal Notices](#) | [Privacy Policy](#)

This email was sent by: 2001 K Street, N.W., Washington, DC 20006-1037