

Akin

CryptoLink



July 2024

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

The Senate has yet to take action on the 21st Century Act (FIT21) ([H.R.4763](#)) which passed the House by a comfortable margin of 279-136 on May 22, 2024. FIT21 is a proposed landmark piece of legislation that would enact a comprehensive regulatory framework for the digital assets industry. Sens. Cynthia Lummis (R-WY) and Kirsten Gillibrand's (D-NY) Lummis-Gillibrand Responsible Financial Innovation Act ([S.2281](#)) also awaits consideration in the Senate. On July 10, 2024, the Senate Agriculture, Nutrition, and Forestry Committee held a [hearing](#) titled "Oversight of Digital Commodities" during which Chair Debbie Stabenow (D-MI) [stated](#) that she intends to "advance bipartisan legislation that would give the CFTC regulatory authority over digital commodities." On July, 8, 2024, the Republican Party released their [2024 Platform](#) with a section on cryptocurrency stating, "Republicans will end Democrats' unlawful and unAmerican Crypto crackdown and oppose the creation of a Central Bank Digital Currency. We will defend the right to mine Bitcoin, and ensure every American has the right to self-custody of their Digital Assets and transact free from Government Surveillance and Control." Trump, who once criticized digital assets as being "based on thin air," has recently become one of the technology's biggest advocates, [claiming](#) that he would turn the U.S. into the "crypto capital of the planet." On July 21, 2024, President Biden ended his reelection campaign, opening the door for Vice President Kamala Harris to become the new Democratic nominee. Vice President Harris and her new running mate, Gov. Tim Walz, have not been especially active on crypto, but reports [suggest](#) that with Biden exiting the race, Democrats may be poised to move in a pro-crypto direction.

Meanwhile, on July 22, 2024, the SEC gave official approval for Ethereum (ETH) spot exchange-traded funds (ETFs), giving investors exposure to the world's second-largest cryptocurrency via traditional markets. Back in January 2024, the SEC issued its landmark approval of the first U.S.-listed ETFs to track bitcoin. The ETH ETFs represent a significant step towards further legitimizing the broader digital asset industry by offering yet another way to buy and sell digital assets in mainstream markets. Notably, the new ETH products are defined in filing documents as commodity-based trusts. To date, the SEC has not explicitly said that ether is a commodity—but we expect this will be debated, and could become the subject of future regulatory scrutiny.

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Key Developments

First Interagency Fraud Disruption Conference Focuses on Combatting Crypto Schemes Commonly Known as “Pig Butchering”

On July 11, 2024, the Commodity Futures Trading Commission (CFTC) and the U.S. Department of Justice’s (DOJ) Computer Crime and Intellectual Property Section’s National Cryptocurrency Enforcement Team (NCET) announced they convened the first Fraud Disruption Conference to work on efforts to combat a type of fraud commonly known as “pig butchering.” It is estimated that Americans are scammed out of billions per year, making pig butchering a top law enforcement priority. This was the first of a series of Fraud Disruption conferences the CFTC will host with these and other partners to discuss various financial frauds, and explore new avenues to combat or disrupt the scams.

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

Key Enforcement Actions

Ripple Ordered to Pay \$125 Million Penalty and SEC’s Request for Disgorgement Denied

On August 7, 2024, U.S. District Judge Analisa Torres of the U.S. District Court for the Southern District of New York ordered Ripple Labs Inc. to pay a civil penalty of approximately \$125 million and further enjoined Ripple from future violations of securities law. The order follows the SEC’s motion for remedies and entry of judgment on Ripple’s violations of Section 5 of the Securities Act of 1933 with regard to certain institutional sales of its XRP token. More specifically, the SEC had sought a final judgment against Ripple that (i) permanently enjoined it from future violations of Section 5 and from conducting an unregistered offering of XRP in institutional sales, (ii) ordered Ripple to pay approximately \$876 million in disgorgement and \$198 million in prejudgment interest, and (iii) ordered Ripple to pay approximately \$876 million as a civil penalty. In response to the SEC’s motion, Ripple had contended that an injunction and disgorgement were unwarranted, and that any civil penalty should not exceed \$10 million. In denying disgorgement, Judge Torres relied on the recent Second Circuit decision in *SEC v Govil*, which the Court found barred disgorgement of Ripple’s profits, including as the SEC offered only “speculative evidence” that the institutional buyers did not receive the return on investment contemplated and the SEC did not “establish that Ripple would have, in fact, offered any additional discounts to investors had it complied with Section 5’s registration requirements”. Although the Court denied disgorgement, Judge Torres did grant the SEC’s request for a permanent injunction against future securities laws violations by Ripple and also imposed a \$125 million civil

penalty on Ripple (though this was notably less than the almost \$2 billion the SEC had sought).” In the order, Judge Torres noted that a first-tier penalty was appropriate as the case involved no allegations of fraud, deceit or manipulation and no conclusively established deliberate or reckless disregard of a regulatory requirement.

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

Paxful Inc. Co-Founder Pleads Guilty to Conspiracy to Fail to Maintain Effective Anti-Money Laundering Program

On July 8, 2024, the DOJ announced that the co-founder and former chief technology officer of Paxful Inc. pleaded guilty to conspiracy to fail to maintain an effective anti-money laundering (AML) program. According to court documents, from July 2015 to June 2019, Artur Schaback used Paxful Inc. to operate Paxful, an online peer-to-peer virtual currency platform and money transmitting business where customers negotiated for and traded virtual currency for a variety of other items. During this time, Schaback allowed customers to open accounts and trade on Paxful without gathering sufficient know-your-customer (KYC) information; marketed Paxful as a platform that did not require KYC; presented fake AML policies to third parties that he knew were not implemented or enforced at Paxful and failed to file a single suspicious activity report, despite knowing that Paxful users were perpetrating suspicious and criminal activity.

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

Former FTX Executives Sentencing Dates Confirmed

On July 9, 2024, U.S. District Judge Lewis A. Kaplan scheduled an October 30, 2024 sentencing hearing for Nishad Shad, the former engineering director at FTX, and a November 20, 2024, hearing for Zixia (Gary) Wang, the FTX co-founder. Both Shad and Singh had pled guilty and testified against Samuel Bankman-Fried at trial. It remains to be seen how the court will factor in the value of their cooperation at trial in the outcome of the sentencing hearings. The sentencing date for Caroline Ellison, another FTX executive who similarly pled guilty and testified against Bankman-Fried, has not yet been set.

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

SEC Awarded \$1.1 Million Penalty Against Crypto CEO

On July 18, 2024, Judge Ramos in the U.S. District Court for the SDNY ordered Robert Ladd, the CEO of bitcoin mining firm MGT Capital Investment Inc., to pay a \$1.1 million civil penalty for making misstatements in relation to an alleged “pump and dump” scheme to unlawfully inflate MGT’s stock price. On granting the Securities and Exchange Commission’s (SEC) request for a civil penalty, Judge Ramos found that the factors weighed in favor of imposing first, second and third-tier penalties.

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

Gemini Reaches Settlement with IRA Financial Trust

On July 18, 2024, in a filing in the SDNY, Judge Analisa Torres dismissed a case filed by pension account provider IRA Financial Trust with prejudice after the firm and Gemini Trust noted they had agreed on a settlement. The lawsuit, which was initially brought by the IRA in June 2022, alleged that Gemini misrepresented security protections.

The stipulation of dismissal with prejudice can be found [here](#).

UK FCA Takes First Enforcement Action Against Firm Enabling Crypto Asset Trading

On July 25, 2024, the U.K. Financial Conduct Authority (FCA) fined CB Payments Limited (CBPL), part of the Coinbase group, £3,503,546 for repeatedly breaching a requirement that prevented the firm from offering services to high-risk customers. CBPL operates a prominent crypto asset trading platform that is accessible globally. Despite certain restrictions in place, CBPL onboarded and/or provided e-money services to 13,416 high-risk customers. Funds from 31% of these customers were used to make withdrawals and then execute multiple crypto asset transactions via other Coinbase Group entities, totaling approximately USD \$226 million. The FCA's action was taken under the Electronic Money Regulations 2011 and is the first time the FCA has taken enforcement action using these powers. The firm agreed to resolve the matter and qualified for a 30% discount on its fine.

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

Federal Court Orders \$31 Million for Forex and Cryptocurrency Fraud

On July 26, 2024, the CFTC announced Senior Judge David C. Guaderrama of the U.S. District Court for the Western District of Texas entered an order on July 9, 2024, assessing monetary relief totaling over \$31 million against Abner Alejandro Tinoco and his company Kikit & Mess Investments, LLC. The order requires Tinoco and Kikit & Mess to pay, jointly and severally, \$6,203,792.18 in restitution to 199 defrauded victims; \$6,257,904.89 in disgorgement and a \$18,773,714 civil monetary penalty, which is three times the amount of unlawful gains from their fraudulent foreign currency (forex) and cryptocurrency scheme. The initial consent order found the defendants engaged in a fraudulent scheme commencing in September 2020 and accepted more than \$7.2 million of investment funds from clients and paid bogus "investment profits" to other clients in a manner akin to a Ponzi scheme. The order found the defendants did not invest their clients' funds as represented and instead used them to pay Tinoco's personal expenses.

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

SEC and DOJ Charge Nader Al-Naji with Fraud and Unregistered Offering of Crypto Asset Securities

On July 30, 2024, the SEC charged Nader Al-Naji with perpetrating a multimillion-dollar fraudulent crypto-asset scheme involving a social media platform called BitClout and its native token of the same name (BTCLT). According to the SEC's complaint filed in the SDNY, starting in November 2020, Al-Naji raised more than \$257 million from unregistered offers and sales of BTCLT, while falsely telling investors that proceeds would not be used to compensate him or other BitClout employees when, in reality, Al-Naji spent more than \$7 million of investor funds on personal expenditures. The complaint also names Al-Naji's wife, mother and wholly owned entities as relief defendants for the investor funds that Al-Naji transferred to them.

In a parallel action, the U.S. Attorney's Office for the SDNY announced charges against Al-Naji for defrauding a BitClout purchaser by making false and misleading representations disclaiming control over the use of the investment funds. U.S. Attorney Damian Williams said: "BitClout may have been a new token, but Nader Al-Naji's alleged fraud was nothing new. He allegedly lied to get access to millions of dollars, then gave the money away to family and friends. Today's arrest signifies this Office's commitment to holding to account people who use deception to enrich themselves."

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

Manhattan District Attorney Charges Against Man Who Used Scam Crypto Recovery Website to Steal from Hopeful Customers

On August 1, 2024, Manhattan District Attorney Alvin L. Bragg Jr. announced charges against Michael Lauchlan for stealing from customers of Coin Dispute Network (CDN), his “sham” cryptocurrency asset recovery business, which claimed it could trace and recover cryptocurrency in exchange for a fee. According to the District Attorney’s press release, Lauchlan and the company not only kept the fee but extracted additional Ethereum from at least three customers by making false promises of asset recovery and creating false blockchain tracing reports. Lauchlan is charged in a Manhattan Criminal Court Complaint with Grand Larceny in the Third and Fourth Degree, and two counts of Scheme to Defraud in the First Degree.

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

Gemini Seeks Appeal in Ongoing Litigation with CFTC

On August 8, 2024, in its ongoing litigation against the CFTC, Gemini Trust Company, LLC (Gemini) filed a memorandum of law in support of its motion for certification for interlocutory appeal. In particular, in the motion, Gemini requests (i) that the Court include in its anticipated order a certification that the order “involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation,” (ii) that the Court’s June 13, 2024 order be amended to include the same required certification; and (iii) that further proceedings in the Court be stayed pending appeal.

Gemini’s motion can be found [here](#).

Akin Thought Leadership

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

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

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

[Coinbase Court Embraces ‘Ecosystem’ Approach to Identifying Crypto-Asset Securities](#) (April 3, 2024)

[Are Crypto Tokens Securities? Terraform Court Says ‘Yes’ in Extensive Decision](#) (January 12, 2024)

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