

Akin

CryptoLink



October 2024

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Election Spotlight: Updates and Impact on Crypto



The incoming Trump administration is widely anticipated to take a new legislative, regulatory and policy approach to cryptocurrency and other digital assets in the U.S. President-elect Trump and Vice President-elect Vance have positioned themselves as openly pro-crypto, promising on the campaign trail to create a strategic national Bitcoin stockpile, establish a Bitcoin presidential advisory council and nominate a new Chair of the U.S. Securities and Exchange Commission (SEC), the regulator that most prominently at the forefront of enforcement efforts in the crypto space. The SEC [recently announced](#) that current Chair Gensler will be stepping down on January 20, 2025, the day of President-elect Trump's inauguration, a departure that follows the exit of Enforcement Division director Gurbir Grewal from the SEC in October 2024. This allows President-elect Trump the opportunity to appoint a more crypto-friendly SEC Chair, foreshadowing what could be significant changes to the SEC's enforcement-heavy regulatory approach. Trump's reelection will also likely lead to the appointment of a new Chair of the U.S. Commodity Futures

Trading Commission (CFTC). With new leaders at the helm of the SEC and the CFTC, the regulatory enforcement environment towards crypto in the U.S. could change considerably.

The path forward in regulating digital assets and cryptocurrency will also be shaped by a reconfigured Congress, including a change in party control of both the U.S. House of Representatives and Senate, an open Chair position in the Senate Committee on Banking, Housing and Urban Affairs likely to be filled by Ranking Member Tim Scott (R-SC) and the addition of several pro-crypto candidates such as blockchain entrepreneur Senator-elect Bernie Moreno (R-OH). Currently, 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. Meanwhile, Senators Cynthia Lummis (R-WY) and Kirsten Gillibrand's (D-NY) Lummis-Gillibrand Responsible Financial Innovation Act (S.2281) also awaits consideration in the Senate. With the election over, Congress will return to D.C. for the Lame Duck session. Members' attention will be focused on the National Defense Authorization Act (NDAA) and fiscal year 2025 appropriations, likely leaving comprehensive crypto legislation to be handled in the next Congress. Nevertheless, obstacles remain in place that could stymie crypto legislation efforts given the slim political margins in both houses of Congress and the filibuster in the Senate.

Spotlight on Celsius

Akin litigators [Mitchell Hurley](#), [Lizzy Scott](#) and [Michael Stanley](#) secured a significant win at the U.S. Bankruptcy Court in the Southern District of New York (SDNY) on behalf of the Litigation Administrator for Celsius Network LLC and its affiliated debtors, in connection with certain adversary proceedings arising in or relating to *In re Celsius Network LLC, et al.*, No. 22-10964 (MG) (Bankr. S.D.N.Y.).

The Litigation Administrator seeks to claw back transfers of digital assets worth in excess of \$15 million that were made to digital wallets with otherwise unidentified owners. On October 24, 2024, Chief Judge Martin Glenn of the SDNY granted Akin's motion to serve complaints concerning the transfers by airdropping non-fungible tokens (NFTs) into the transferee's digital wallets—a service method the court described as “innovative.” The airdropped NFTs will include a hyperlink in the name of the token that, when clicked, will bring the user to a website with the relevant complaint and summons. Judge Glenn ruled that this manner of service comports with due process because the defendants are likely to receive the summons and complaint via NFT and website since the NFT will be airdropped into the wallets used by the defendants to receive the fraudulent transfers at issue in the complaints. Based on evidence submitted by the Litigation Administrator, the Court was satisfied that the owner of a wallet is unlikely to have changed hands since the fraudulent transfers occurred.

In addition to Mr. Hurley, Ms. Scott and Mr. Stanley, the Akin team included paralegal [Risa Slavin](#) and docketing analyst [Candy Liang](#).

Key Developments

European Banking Authority Issues Final Guidelines for Redemption Plans of Asset-Referenced and E-Money Tokens

On October 9, 2024, the European Banking Authority (EBA) issued guidelines for issuers of asset-referenced tokens (ARTs) and e-money tokens (EMTs) under the Markets in Crypto-Assets Regulation (MiCAR). The guidelines specify the content of the redemption plan to be developed by issuers of ARTs and EMTs, including the liquidation strategies of the reserve of assets, the mapping of critical activities, the content of the redemption claims, the main steps in the redemption process and the elements that may lead to the trigger of the plan by the competent authority. The guidelines will apply beginning two months after the date of publication on the EBA's website in all European Union official languages.

The guidelines can be found [here](#) and further information can be found [here](#).

Denmark's Tax Council Proposes Legislation to Tax Unrealized Crypto Currency Gains

On October 23, 2024, in a 93-page report on crypto asset taxes, Denmark's Tax Law Council proposed a bill that may introduce taxes on unrealized gains and losses from crypto assets held by Danish crypto investors, potentially commencing as early as 2026.

The full text of the report can be found [here](#).

Key Enforcement Actions

Justice Department Seizes Web Domains for Multiple International Illicit Crypto Exchanges

On September 26, 2024, the U.S. Department of Justice (DOJ) announced actions to combat Russian money laundering operations that were coordinated with the Department of State, the Department of the Treasury and other federal and international law enforcement partners. The actions involved the unsealing of an indictment charging Sergey Ivanov, a Russian national, with his involvement in operating multiple money laundering services that catered to cybercriminals, together with the seizure of websites associated with three illicit cryptocurrency exchanges. Together with the Dutch authorities, the DOJ shut down Cryptex, an illicit crypto exchange, and recovered millions of dollars in cryptocurrency. According to court documents, Ivanov was charged with one count of conspiracy to commit and aid and abet bank fraud and one count of conspiracy to commit money laundering. Ivanov allegedly created and/or operated Russian payment and exchange services UAPS, PinPays and PM2BTC, which provided money transfer and laundering services directly to criminals. As part of the coordinated actions, the Dutch authorities seized the servers hosting PM2BTC and Cryptex. Those servers have been taken offline at various locations around the world, and the Dutch authorities have seized cryptocurrency from those servers worth over \$7 million.

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

SEC Charges Entities Operating Crypto Asset Trading Platform Mango Markets

for Unregistered Offers and Sales of the Platform’s “MNGO” Governance Tokens

On September 27, 2024, the SEC settled charges involving Mango DAO and Blockworks Foundation for engaging in the unregistered offer and sale of crypto assets called “MNGO” tokens. The SEC also settled charges against Blockworks Foundation and Mango Labs LLC for engaging in unregistered broker activity in connection with various crypto assets being offered and sold as securities on the Mango Markets platform. The SEC’s complaint alleges that by skirting the SEC’s registration provisions, Mango DAO, Blockworks Foundation and Mango Labs deprived investors of critical protections afforded by the federal securities laws. Without admitting or denying the allegations, Mango DAO, Blockworks Foundation and Mango Labs agreed to settle the SEC charges, consenting to injunctions and orders to collectively pay nearly \$700,000 in civil penalties. They have also agreed to destroy their MNGO tokens, to request the removal of MNGO tokens from trading platforms and to refrain from soliciting any trading platform to allow trading in or offering or selling MNGO tokens. The settlements are subject to court approval.

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

SEC Obtains Summary Judgment in Rivetz Litigation

On September 30, 2024, the U.S. District Court for the District of Massachusetts issued an order on cross motions for summary judgment granting the SEC’s motion in a case alleging that a startup founder illegally sold millions in cryptocurrency tokens. The SEC filed an action against Rivetz Corp, Rivetz Int’l SEZC and Stephen K. Sprague, alleging they offered and sold unregistered securities, in violation of the Securities Act of 1933 when they conducted a 2017 initial coin offering (ICO) for a token on the Ethereum blockchain called the Rivetz token (RvT token). Sprague contended the RvT token was a functional software product, not an investment contract (and, thus, the ICO did not involve the sale of securities subject to registration requirements under the Securities Act). The parties filed cross motions for summary judgment. The court agreed with the SEC that the undisputed facts demonstrated that the RvT tokens lacked any function beyond other generic tokens and the economic substance of the ICO met the “Howey” test.

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

Former FTX Executive Caroline Ellison Agrees to Give Up Assets in Bankruptcy Settlement Agreement

On October 7, 2024, the Debtors in the FTX bankruptcy filed a motion requesting that the U.S. Bankruptcy Court for the District of Delaware authorize the entry into a settlement agreement with Caroline Ellison through which she agreed to turn over to the Debtors “substantially all of her assets.” On July 20, 2023, FTX Trading Ltd., Alameda Research LLC, Alameda Research Ltd., North Dimension Inc., Cottonwood Grove Ltd. and West Realm Shires, Inc. (collectively with their affiliated debtors and debtors-in-possession, the Debtors) filed a 48-count complaint against various former FTX executives and officers, including Ellison, alleging, among other things, breaches of fiduciary duties, aiding and abetting breaches of fiduciary duties and waste of corporate assets.

Following arm’s-length negotiations, Ellison agreed to a settlement of the proceeding and related claims. Under the terms of the settlement, among other things, Ellison agreed to transfer to the Debtors (i) substantially all of her assets not otherwise forfeited to the government in the criminal case or used to pay certain eligible legal fees, any equity,

ownership rights or other interests she may have in any Debtor entity or affiliate and (ii) any rights she may have in any cryptocurrency assets. Ellison further agreed to cooperate extensively with the Debtors in ongoing and prospective investigations and litigation. Following the settlement, Ellison will have no remaining assets other than certain physical personal property. The settlement was signed on September 23, 2024, a day prior to Ellison's criminal sentencing. A hearing on the proposed settlement occurred on November 20, 2024.

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

FTX's Caroline Ellison Starts Two-Year Prison Sentence for Role in FTX Collapse

In September 2024, SDNY Judge Lewis A. Kaplan sentenced Ellison to two years in prison and ordered her to forfeit \$11 billion for her role in the fraud and conspiracy that collapsed FTX. Ellison had pled guilty to conspiracy to commit money laundering, securities fraud, commodities fraud and wire fraud. On November 11, 2024, Caroline Ellison surrendered to authorities and started her prison sentence at the Federal Correctional Institution in Danbury, Connecticut.

Former FTX Executive Nishad Singh Sentenced to Time Served

On October 31, 2024, former FTX executive Nishad Singh was sentenced to time served and three years of supervised release by SDNY Judge Lewis A. Kaplan in the matter of *United States v Nishad Singh*. In his remarks at the sentencing, Judge Kaplan noted that Singh's cooperation with the government was "remarkable."

Prior to Singh's sentencing, on October 23, 2024, prosecutors from the U.S. Attorney's Office of the SDNY issued a memorandum to Judge Lewis A. Kaplan advising the court of Singh's "exemplary cooperation" that was critical to the government's successful prosecutions of Samuel Bankman-Fried, and the recovery of assets stolen during the fraud. The memorandum described Singh's substantial assistance in the investigation of the wrongdoing at FTX, the prosecution and trial of Bankman-Fried and the prosecution of Salame, and requested leniency in the sentencing.

Previously, on October 16, 2024, Singh's attorneys had filed a sentencing submission requesting that his sentence should "reflect who he is and his role in this case" and requesting time served and a period of supervised release. In particular, it was noted that Nishad had a limited role in the charged offenses and it is critical to encourage people in Nishad's position, with lesser levels of culpability, to cooperate with the government.

The memorandum can be found [here](#) and the sentencing submission can be found [here](#).

Additional Former FTX Executive Gary Wang Sentenced to Time Served

On November 20, 2024, a co-founder of FTX and the crypto exchange's former technology chief, Gary Wang, was sentenced to time served by SDNY Judge Lewis A. Kaplan. Wang had pled guilty to four felony counts of fraud and conspiracy, testified as a prosecution witness in the trial against Bankman-Fried and was praised by Judge Kaplan for his cooperation.

On November 13, 2024, prosecutors from the U.S. Attorney's Office for the SDNY issued a memorandum to Judge Lewis A. Kaplan advising the Court of Wang's substantial assistance in the investigation of wrongdoing at FTX and the prosecution and trial of Bankman-Fried.

Prosecutors noted that “at Bankman-Fried’s trial, Wang provided crucial testimony about the special privileges that had been granted to Alameda Research on the FTX exchange, and how Bankman-Fried and others abused those features to steal billions of dollars in customer funds.”

Previously, on November 6, 2024, Wang’s attorneys had filed a sentencing submission requesting that his sentence should be time served, including because he was the first defendant to cooperate with the Government and the named defendant who was involved in the smallest share of misconduct.

The memorandum can be found [here](#) and the sentencing submission can be found [here](#).

Eighteen Individuals and Entities Charged in International Operation Targeting Widespread Fraud and Manipulation in the Cryptocurrency Markets

On October 9, 2024, the U.S. Attorney’s Office for the District of Massachusetts announced the first-ever criminal charges against financial services firms for market manipulation and “wash trading” in the cryptocurrency industry. Eighteen individuals and entities were charged with widespread fraud and manipulation in the cryptocurrency markets. The charges were unsealed against the leaders of four cryptocurrency companies, four cryptocurrency financial services firms (known as “market makers”) and employees at those firms. Four defendants pled guilty, with a fifth anticipated guilty plea forthcoming. Authorities apprehended three other defendants in Texas, the United Kingdom and Portugal. More than \$25 million in cryptocurrency has been seized and multiple trading bots responsible for millions of dollars’ worth of wash trades for approximately 60 different cryptocurrencies have been deactivated.

The cryptocurrency companies allegedly hired the market makers to wash-trade their tokens in exchange for payment. Three market makers—ZM Quant, CLS Global and MyTrade—along with their employees are charged with allegedly wash trading and/or conspiring to wash trade on behalf of NexFundAI, a cryptocurrency company and token created at the direction of law enforcement as part of the government’s investigation. A fourth market maker, Gotbit, its CEO and two of its directors are also charged for perpetrating a similar scheme.

On the same date, the SEC announced fraud charges against three of the companies purporting to be market makers (ZM Quant, Gotbit and CLS Global) and nine individuals for engaging in schemes to manipulate the markets for various crypto assets being offered and sold as securities to retail investors. According to the SEC’s press release, the schemes were intended to induce investor victims to purchase the crypto assets by creating the false appearance of an active trading market for them. According to the SEC’s complaints, crypto asset promoters Russell Armand, Maxwell Hernandez, Manpreet Singh Kohli, Nam Tran and Vy Pham (the Promoters) hired ZM Quant and Gotbit to provide market-manipulation-as-a-service. The SEC also alleged that ZM Quant and CLS Global undertook similar schemes to manipulate the market of a crypto asset offered and sold as a security that was created at the direction of the Federal Bureau of Investigation (FBI) as part of its parallel investigation into potential market manipulation in the crypto-asset industry. The SEC’s complaints seek permanent injunctions, conduct-based injunctions, disgorgement of allegedly ill-gotten gains plus interest and civil penalties against all the defendants, as well as officer and director bars against certain defendants.

The District of Massachusetts’ press release can be found [here](#). The SEC’s press release and associated complaints can be found [here](#).

SEC Charges Cumberland DRW for Operating as an Unregistered Dealer in the Crypto Asset Markets

On October 10, 2024, the SEC charged Chicago-based Cumberland DRW LLC with operating as an unregistered dealer in more than \$2 billion of crypto assets offered and sold as securities, in violation of the registration requirements of the federal securities laws. According to the SEC's complaint filed in U.S. District Court for the Northern District of Illinois, since at least March 2018, Cumberland acted as an unregistered dealer by buying and selling crypto assets offered and sold as securities for its own accounts as part of its regular business, providing liquidity to the market and profiting by, among other things, capturing or earning the spread (or difference) between the purchase and sale prices of the securities or from closing positions that have increased in value. The complaint alleges that Cumberland employs a team of research analysts and relationship managers who publish research reports regarding certain crypto assets offered and sold as securities, characterized as investment opportunities. The complaint charges Cumberland with violating the Securities Exchange Act of 1934 and seeks permanent injunctive relief, disgorgement of ill-gotten gains, prejudgment interest and civil penalties.

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

SEC Charges Rimar Capital Entities and Owner for Defrauding Investors

On October 10, 2024, the SEC announced charges against Rimar Capital USA Inc. (Rimar USA), Rimar Capital, LLC (Rimar LLC), Itai Liptz and Clifford Boro for making false and misleading statements about Rimar LLC's purported use of artificial intelligence (AI) to perform automated trading for client accounts and numerous other material misrepresentations. Without admitting or denying the SEC's findings, Rimar USA, Rimar LLC, Liptz and Boro consented to the entry of an order finding antifraud violations and to cease and desist from violating the charged provisions. Liptz consented to pay disgorgement and prejudgment interest totaling \$213,611, to pay a \$250,000 civil penalty and to be subject to an investment company prohibition and associational bar with the right to reapply in five years. Boro agreed to pay a \$60,000 civil penalty. Rimar LLC consented to be censured. Andrew Dean, Co-Chief of the SEC's Asset Management Unit, noted that as "AI becomes more popular in the investing space, we will continue to be vigilant and pursue those who lie about their firms' technological capabilities and engage in 'AI washing'."

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

Indian National Sentenced to Prison For \$20 Million Dollar Cryptocurrency Fraud Scheme

On October 17, 2024, the U.S. Attorney's Office for the Western District of North Carolina announced that Chirag Tomar, a citizen of the Republic of India, was sentenced to prison for stealing more than \$20 million from hundreds of victims through the use of fake or "spoofed" websites mimicking the cryptocurrency exchange website Coinbase. U.S. District Judge Kenneth D. Bell ordered Tomar to serve 60 months in prison followed by two years of supervised release. According to case filings, from as early as June 2021, Tomar and his co-conspirators engaged in a spoofing scheme (where a malicious cyber actor disguises an email address, sender name, or website URL to convince victims they are interacting with a trusted source) to steal millions in cryptocurrency from hundreds of victims located worldwide and in the United States. Court documents show that Tomar and his co-conspirators executed the fraud by spoofing Coinbase.

The Western District of North Carolina's press release can be found [here](#).

Australian Securities and Investments Commission Charges Ex-CEO of Mine Digital with Fraud

On October 21, 2024, the Australian Securities and Investments Commission (ASIC) announced that the ex-CEO of ACCE Australia Pty Ltd (ACCE) Grant Colthup appeared in the Magistrates Court at Ipswich charged with one count of fraud contrary to the Criminal Code 1899 following an ASIC investigation in connection with a \$2.2 million cryptocurrency transaction in July 2022. According to ASIC's press release, between May 2019 and September 2022, ACCE operated a digital asset exchange platform and offered cryptocurrency trading services to customers under the name 'Mine Digital'. ASIC alleged that a customer of Mine Digital paid \$2.2 million to ACCE for Bitcoin and never received any cryptocurrency in exchange, and that Colthup used the funds to pay liabilities of ACCE and/or purchase cryptocurrency for others. The matter is being prosecuted by the Office of the Director of Public Prosecutions following a referral from ASIC.

ASIC's media release can be found [here](#).

U.S. Attorney Requests Adjournment of Trial Date for Founder of Crypto Investment Platform

On October 24, 2024, the U.S. Attorney for the Eastern District of New York filed a letter with Judge Orelia E. Merchant in the ongoing criminal case against Horst Jicha, the founder of a cryptocurrency scheme called USI Tech. In the letter, the U.S. Attorney noted that Jicha had absconded in violation of his pretrial conditions and had not self-surrendered; as such, the government requested that the trial date (currently set for March 24, 2025) be adjourned. The government had previously filed a letter on October 10, 2024, in advance of the status conference in the matter, in which it informed the court that Jicha had apparently tampered with his ankle bracelet and had absconded in violation of his pre-trial conditions. Jicha was previously arrested by the FBI in Florida, on December 23, 2023, pursuant to a federal arrest warrant for securities fraud and conspiracies to commit securities fraud, wire fraud and money laundering for his role in USI Tech (a network marketing company that claimed to have allegedly built the world's first automated Bitcoin trading platform and could allegedly generate investors guaranteed returns on investment through its Bitcoin mining and auto-trading operations).

The letters can be found [here](#), and [here](#), and further information can be found [here](#).

Akin Thought Leadership

[Akin Win for Celsius Litigation Administrator, NY Bankruptcy Court Allows Legal Notices Sent via NFTs](#) (October 30, 2024)

[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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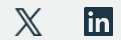


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