

Digital Assets Recent Updates

August 28, 2024

We are pleased to provide you with the August 2024 edition of Gibson Dunn's digital assets regular update. This update covers recent legal news regarding all types of digital assets, including cryptocurrencies, stablecoins, CBDCs, and NFTs, as well as other blockchain and Web3 technologies. Thank you for your interest.

ENFORCEMENT ACTIONS

UNITED STATES

- ***OpenSea Receives Wells Notice from SEC***
On August 28, Devin Finzer, the CEO of NFT marketplace OpenSea posted on social media that the company had received a Wells notice from the SEC, which indicates that the agency is considering whether to pursue an enforcement action against the company. According to Finzer, the SEC's contemplated enforcement action is premised on the agency's belief that NFTs on the OpenSea platform are securities. Finzer called the Wells notice a "sweeping move against creators and artists" and pledged to "stand up and fight" while offering \$5 million to cover legal fees for NFT creators who may receive similar notices. [Coindesk](#); [X](#).
- ***Kraken's Motion to Dismiss SEC Lawsuit Denied***
On August 23, Judge William H. Orrick of the Northern District of California denied crypto exchange Kraken's motion to dismiss a lawsuit brought by the SEC, which alleged that Kraken acts as a broker, dealer, exchange, and clearing agency in violation of Sections 5, 15(a) and 17(A)(b) of the Securities Act. Applying the *Howey* test, the court held that although digital assets themselves are not investment-contract securities, the SEC

plausibly alleged that Kraken facilitates transactions involving investment contracts. [August 23 Order](#); [Bloomberg](#); [CoinTelegraph](#).

- ***Abra Settles Charges with SEC over Abra Earn***

On August 26, the SEC filed settled charges against Plutus Lending LLC, known as Abra, alleging that the company improperly offered its Abra Earn product as an unregistered security and operated an unregistered investment company. The company agreed to cease violations of the registration provisions of the Securities Act and the Investment Company Act and pay civil penalties in an amount to be determined by a court. In 2020, Abra settled with the SEC and Commodities Future Trading Commission (CFTC) to end an investigation into its swaps product. [SEC Press Release](#); [CoinDesk](#).

- ***Federal Prosecutors Indict Michelle Bond for Campaign Finance Violations***

On August 22, prosecutors in the Southern District of New York unsealed an indictment against former Republican congressional candidate Michelle Bond. She was charged with conspiring with FTX executives to engage in an unlawful campaign-finance scheme. Prosecutors alleged that Bond and Ryan Salame, an executive at FTX, orchestrated a sham consulting agreement through which Bond received \$400,000 to finance her congressional campaign. Bond is charged with one count of conspiracy to cause unlawful campaign contributions; one count of causing and accepting excessive campaign contributions; one count of causing and receiving an unlawful corporate contribution; and one count of causing and receiving a conduit contribution. Each count carries a maximum sentence of five years in prison. [The Block](#); [DOJ Press Release](#).

- ***Telegram Founder Arrested in France***

On August 24, Pavel Durov, the founder and CEO of Telegram was detained by French authorities in Paris, reportedly in connection with an investigation into the app's role in failing to moderate criminal activity on the platform, including drug trafficking, child pornography, and money laundering. This detention has sparked tensions between France and Russia, as Telegram is a crucial communication platform in post-Soviet nations, used by both government authorities and opposition groups. The arrest has drawn criticism from Russian officials, who are demanding consular access to Durov, who holds citizenship in the UAE and France. [BBC](#).

- ***FTX and Alameda Pay \$12.7 Billion to End CFTC Lawsuit***

On August 7, U.S. District Judge P. Kevin Castel approved a settlement between FTX and its sister company Alameda Research to pay \$12.7 billion to their customers, investors, and creditors. Under the consent order, FTX and Alameda will pay \$8.7 billion in restitution to investors who sustained losses proximately caused by violations of the Commodity Exchange Act and \$4 billion in disgorgement for gains received from misconduct. The repayment order implements a settlement between the CFTC and the bankrupt crypto exchange, which has committed to a bankruptcy liquidation that will repay customers whose deposits were locked during its 2022 collapse. Judge Castel also found that FTX violated the Commodity Exchange Act, concluding that the exchange misled investors by representing itself as a safe place to buy and sell cryptocurrency while commingling assets between the exchange and the hedge fund, Alameda. [Bloomberg Law](#); [PYMNTS](#); [Reuters](#); [Washington Post](#).

- Federal Reserve Board Issues Enforcement Action with Crypto-Friendly Bank**

On August 5, the U.S. Federal Reserve (Fed) entered into a written agreement with Customers Bancorp and its subsidiary bank, Customers Bank, relating to “significant deficiencies” around the bank’s risk-management and anti-money laundering practices. The enforcement action against the Pennsylvania-based bank, which provides digital-asset services and a tokenized instant payments platform, stemmed from a recent joint examination by the Fed and Commonwealth of Pennsylvania Department of Banking and Securities (Department). The consent order does not include a fine but directs the bank to overhaul its policies and internal controls to address identified shortcomings in its compliance with Bank Secrecy Act, anti-money laundering, and Office of Foreign Asset Control regulations and to periodically report its progress to regulators. On the same date, Customers Bank also entered into a Consent Order with the Department. [FRB Agreement](#); [Blockworks](#); [PA Consent Order](#); [CryptoNewsZ](#); [Reuters](#).
- SEC Files Fraud Charges Against Promoters of NovaTech**

On August 12, following an earlier suit by the New York Attorney General, the SEC filed a complaint against NovaTech alleging that the company and eight of its promoters stole \$650 million from 200,000 investors in a Ponzi scheme that used new investors’ money to make payments to earlier investors. According to the SEC, NovaTech’s marketing materials promised investors 2-3% returns per week and purportedly never posted a weekly trading loss, but only a small fraction of investors’ money was ever actually invested and the money that was invested suffered “significant trading losses.” [SEC Press Release](#); [CoinDesk](#).
- CFTC Announces \$1 Million Award to Whistleblower**

On August 7, the CFTC announced that a whistleblower who assisted the regulator in an enforcement action “connected to digital asset markets” would receive a \$1 million award. The CFTC said that it had brought an enforcement action against a firm connected to the digital-asset space based on “information about improper trading” provided by a whistleblower but did not name the whistleblower or the digital-asset firm. The CFTC filing stated that six claimants initially applied to provide information about the digital asset enforcement case, but only one claimant, whose information the CFTC described as “sufficiently specific, credible, and timely” and critical to opening its investigation, received a percentage of the monetary sanctions from the unnamed company. [CFTC Notice](#); [CoinTelegraph](#); [The Defiant](#).
- CluCoin Founder Pleads Guilty to Wire Fraud Scheme**

On August 21, Austin Michael Taylor, the founder of crypto project CluCoin, pleaded guilty to a wire fraud scheme involving the transfer of \$1,140,000 of CluCoin investor funds to Taylor’s personal account. Although he faces a maximum sentence of 20 years in prison at his sentencing hearing scheduled for October 31, U.S. Sentencing Guidelines likely will guide the sentencing judge to a much less punitive result. [DOJ Press Release](#); [CoinDesk](#).

INTERNATIONAL

- Australian Market Regulator Sues Australian Stock Exchange over Blockchain Upgrade**

On August 13, Australia's Securities and Investment Commission sued the Australian Securities Exchange (ASX), Australia's leading stock exchange, for making allegedly misleading statements related to its efforts to replace its systems with blockchain technology. The Australian regulator alleges that in a February 10, 2022, announcement, ASX stated that the blockchain-based replacement for its settlement of share transactions and record shareholdings was on track to go live in April 2023. The regulator claims that the project was not progressing as stated and that the delay and subsequent pause of the project caused significant cost to ASX and market participants who relied on assurances regarding the project's progress and scheduled go-live date. [Financial Times](#); [Reuters](#); [CoinGeek](#).

REGULATION AND LEGISLATION

UNITED STATES

- ***IRS Releases New Draft Digital-Asset Tax Form***

On August 9, the IRS posted an updated draft of Form 1099-DA, which will allow "brokers" to report certain digital asset sale and exchange transactions for calendar year 2025. Beginning in 2026 and for transactions occurring in 2025, regulations finalized in July will require centralized crypto exchanges to issue Forms 1099-DA reporting certain digital-asset sale and exchange transactions. The form updates a draft published by the IRS in April. It requires less data reporting and addresses some privacy concerns by removing requirements to include investors' wallet addresses and certain transaction details in the reports, among other things. The IRS accompanied the draft with instructions for recipients of the form. The agency expects to release draft filer instructions soon, at which point the agency will publish a notice in the Federal Register and allow for a 30-day public-comment period. [IRS Press Release](#); [CoinDesk](#).

- ***Financial Regulatory Agencies Propose Joint Data Standards***

On August 2, the U.S. Securities Exchange Commission announced that it and eight other agencies were set to propose joint data standards under the Financial Data Transparency Act of 2022. The standards will establish technical standards for data submitted to financial regulatory agencies. The proposed standards are intended to promote interoperability of financial regulatory data across the agencies by establishing common identifiers for entities and geographic locations. The rules establish a Financial Instrument Global Identifier (FIGI) that can be used for all classes of financial instruments, including digital assets. The eight other agencies set to propose standards include the Board of Governors of the Federal Reserve, the Commodity Futures Trading Commission, the Consumer Financial Protection Bureau, the Department of the Treasury, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the National Credit Union Administration, and the Office of the Comptroller of the Currency. [SEC Press Release](#); [PYMNTS](#).

INTERNATIONAL

- ***Hong Kong Plans to Increase Digital Asset Regulation in the Next 18 Months***

On August 11, Hong Kong Legislative Council member David Chiu announced that Hong Kong planned to introduce enhanced digital-asset regulations within the next 18 months.

The regulations would be part of the jurisdiction's efforts to become a global hub for financial technology by attracting technology experts, building new infrastructure, and strengthening laws around digital assets. According to Chiu, Hong Kong aims to enhance supervision and enforcement of legislation related to digital assets, including stablecoins. [CoinGeek](#); [CoinTelegraph](#); [Crypto Times](#).

- ***Bank of Ghana Issues Proposed Crypto Regulatory Framework***

On August 16, the Bank of Ghana introduced draft rules for crypto exchanges. The Central Bank said that its regulations followed an “extensive internal review of the surging popularity of digital assets.” The regulatory approach would require exchanges to perform customer due diligence, comply with new reporting and registration requirements, and conduct comprehensive risk assessments. The proposed regulations would also create a pathway for crypto companies to access traditional banking services. [Draft Rules](#); [CoinTelegraph](#).

CIVIL LITIGATION

UNITED STATES

- ***Bitboy and Jimmy Butler Settle Securities Lawsuit***

On August 21, YouTube Influencer Ben Armstrong (aka Bitboy) and Miami Heat basketball star Jimmy Butler agreed to pay \$340,000 to settle a class action lawsuit brought in March 2023, which alleged that Armstrong and Butler promoted the sale of unregistered securities. [Decrypt](#); [Bloomberg](#); [CoinGape](#).

- ***Celsius Sues Tether for Liquidating Celsius Loan Collateral***

On August 9, administrators of bankrupt crypto lender Celsius sued Tether to recover 57,428 bitcoin (worth approximately \$3.5 billion). Celsius's bankruptcy administrators claim that Celsius struck a “token agreement” with Tether in February 2020, which allowed Celsius to borrow U.S. dollars by posting bitcoin as collateral. The administrators' complaint alleges that in June 2022, when the crypto market was in sharp decline, Tether fraudulently and preferentially applied Celsius's bitcoin against obligations owed to Tether for an average price considerably less than bitcoin's market closing price. Tether has responded that its liquidation of Celsius' bitcoin was done in accordance with the token agreement. [Complaint](#); [CoinDesk](#); [CoinGeek](#).

- ***Sixth Circuit Allows Constitutional Challenge to Proceed Against IRS***

On August 9, a Sixth Circuit panel vacated a decision by a district judge in the Eastern District of Kentucky barring crypto think tank Coin Center's claims alleging that a 2021 amendment to the U.S. tax code was unconstitutional. Coin Center alleges that the amendment to the tax code is unconstitutionally vague in violation of the First Amendment, exceeds the scope of Congress's enumerated powers, and violates taxpayers' privacy rights under the Fourth and Fifth Amendments. The Sixth Circuit reversed the district court's ruling that Coin Center's claims were not ripe and therefore not justiciable and remanded the case for further proceedings. [Opinion](#); [CoinDesk](#).

SPEAKER'S CORNER

UNITED STATES

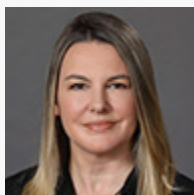
- **Senator Schumer Plans to Pass Crypto Legislation in 2024**
On August 14, during a crypto-related town hall, U.S. Senator Chuck Schumer (D-NY) said that his goal is to pass crypto legislation before the end of this year. He said that he believes it is Congress's responsibility to "provide common sense and sound regulation" and that he would like to see legislation that strikes a "balance for crypto between promoting innovation and providing common sense guardrails." Schumer did not express support for any particular bill currently under consideration in Congress. [The Block](#); [Stablecoin Act Press Release](#); [FIT21](#); [The Block](#).
- **Senator Scott Signals Interest in Forming Crypto-Focused Senate Subcommittee**
On August 21, at a meeting of the Wyoming Blockchain Symposium, U.S. Senator Tim Scott (R-SC) suggested that he would consider creating a panel of the Senate Banking committee focused on digital assets if Republicans win the Senate and he becomes Committee Chair next year. [The Block](#).

OTHER NOTABLE NEWS

- **SEC Crypto Head Leaves for Private Practice**
David Hirsch, the former head of the Securities Exchange Commission's crypto and cyber security division, has left the SEC to join a private law firm. He will be leading the firm's securities enforcement and regulatory counseling practice. [The Block](#).

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