

Digital Assets Recent Updates

October 2, 2024

We are pleased to provide you with the September 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

- ***Court Denies Motion to Dismiss in Tornado Cash Criminal Case***
On September 26, Judge Failla of the U.S. District Court for the Southern District of New York denied Tornado Cash developer Roman Storm's motion to dismiss the criminal charges against him. The Department of Justice has charged Storm and Roman Semenov, another Tornado Cash developer, for conspiracy to commit money laundering, conspiracy to operate an unlicensed money transmitting business, and conspiracy to violate the International Emergency Economic Powers Act. In an hour-long oral opinion, Judge Failla rejected Storm's arguments for dismissing each of the counts. She explained that: "[A]t this stage in the case the court cannot simply accept Mr. Storm's narrative that he is being prosecuted merely for writing code. If the jury ultimately accepts this narrative, then it will acquit. But there's no basis for me to decide as a matter of law that the government hasn't alleged criminal conduct sufficient to satisfy each of the elements of the offenses charged." The case will now proceed to trial, which is slated to begin on December 2. [CoinDesk](#); [Law360](#).
- ***Former Alameda Research CEO Caroline Ellison Sentenced to Two Years in Prison***
On September 24, Judge Kaplan of the U.S. District Court for the Southern District of

New York sentenced Caroline Ellison, the former CEO of Alameda Research, to two years in prison. Ellison was one of three FTX/Alameda insiders cooperating with the government in its prosecution of former FTX CEO Sam Bankman-Fried. She pleaded guilty to seven felony counts of fraud and conspiracy. Although Ellison cooperated and provided critical testimony, Judge Kaplan cited the scale of FTX's losses—which amounted to \$8 billion—as a reason for the two-year sentence. Ellison also has an \$11 billion judgment in restitution. [New York Times](#); [Bloomberg](#); [Forbes](#).

- ***Mango Markets, Blockworks Reach Settlement with SEC***

On September 27, the SEC filed settled charges against Mango DAO, Mango Labs LLC, and Blockworks Foundation, resolving claims about that the MNGO token was offered as an unregistered security, among other claims. As part of the settlement, the entities have agreed to voluntarily destroy their MNGO tokens, request the token's removal from trading platforms, and pay \$700,000. The entities did not admit any wrongdoing as part of the settlement. [SEC Press Release](#); [CoinDesk](#).

- ***eToro Settles Charges with SEC***

On September 12, eToro agreed to pay \$1.5 million to settle charges by the SEC that its crypto trading platform operated an unregistered securities broker and clearing agency. As part of the settlement, eToro will make only Bitcoin, Bitcoin Cash, and Ether available for its U.S. customers for trading. [Press Release](#).

- ***DeFi Platform Rari Capital Settles SEC Charges***

On September 18, the SEC announced that Rari Capital, a decentralized finance platform, and its co-founders settled charges that they had misled investors and engaged in unregistered securities-broker activities. According to the SEC's complaint, Rari Capital offered two products—Earn pools and Fuse pools—which allowed users to deposit digital assets into lending pools managed either by Rari (Earn) or user-created (Fuse) and earn returns. Without admitting the SEC's allegations, the defendants consented to the entry of final judgments ordering various forms of relief, including permanent injunctions, civil penalties, and disgorgement. [SEC Press Release](#); [The Block](#).

- ***New York Restaurant Flyfish Club Settles with SEC Over NFTs***

On September 16, the Flyfish Club, a New York restaurant, settled with the SEC over issues related to its sale of NFTs. The SEC alleged that Flyfish “conducted an unregistered offering of crypto asset securities,” when it sold 1,600 NFTs to U.S. investors, generating \$14.8 million, to fund the construction of an exclusive restaurant and bar called the “Flyfish Club.” Flyfish Club agreed to pay \$750,000 as part of the settlement. [SEC Press Release](#); [The Block](#).

- ***United Texas Bank Agrees to Cease-and-Desist Order***

On September 4, United Texas Bank, a crypto-friendly bank, agreed to a cease-and-desist order with the Federal Reserve and the Texas Department of Banking. Following a May 2023 examination, the regulators found “significant deficiencies” with the bank's risk-management practices. The order requires the bank to bolster its Bank Secrecy Act and anti-money laundering program and requires the bank's board of directors to file a written plan on how it will strengthen its oversight of the bank's program. [Order](#); [The Block](#).

- ***CFTC Obtains \$209 Million Judgment Against Operator of Crypto Ponzi Scheme***

On September 3, in an enforcement action brought by the Commodity Futures Trading

Commission (CFTC), Judge Rowland of the U.S. District Court for the Northern District of Illinois entered a final judgment against Sam Ikkurty, the operator of an alleged commodity-pool Ponzi scheme, and several related entities. The judgment includes a civil penalty, restitution, disgorgement, and a contempt fine. The CFTC also announced that it had recovered \$18 million in digital assets that had been stolen from a court-appointed receiver. [CFTC Press Release](#); [The Block](#).

- ***Robinhood Crypto, LLC and the California Department of Justice Settle for \$3.9 Million***

On September 4, the California Attorney General announced a \$3.9 million settlement with Robinhood Crypto, LLC to resolve an investigation into the company's consumer disclosures concerning its crypto trading and order-handling arrangements. Robinhood did not admit any wrongdoing as part of the settlement. [California DOJ](#); [The Block](#).

- ***TrueUSD Stablecoin Backers Settle Fraud and Registration Charges with SEC***

On September 24, TrustToken and TrueCoin settled the SEC's accusations that the two companies knowingly misrepresented the backing of the TrueUSD stablecoin and offered securities tied to TrueUSD without properly registering with the SEC. TrueCoin was the original issuer of TrueUSD. The companies did not admit or deny wrongdoing in the settlement. The companies agreed to pay \$163,766 each in fines, and TrueCoin agreed to return \$400,000 in profits and interest if the settlement is approved by the court. [SEC Press Release](#); [CoinDesk](#).

REGULATION AND LEGISLATION

UNITED STATES

- ***SEC Approves Listing and Trading Options for BlackRock's Spot Bitcoin ETF***

On September 20, the SEC approved the listing and trading of options for BlackRock's spot Bitcoin ETF on an "accelerated basis," eight months after BlackRock applied for approval. The approval has been viewed as a positive signal for the broader acceptance of Bitcoin ETFs, reflecting the growing interest in digital assets among institutional investors. [Reuters](#); [The Block](#).

- ***SEC Delays Decision on 7RCC Spot Bitcoin and Carbon Credit Future ETF***

On September 3, the SEC announced that it was delaying until November 21 its decision whether to approve crypto asset manager 7RCC's application for an ETF aimed to expose investors to Bitcoin and carbon credits. 7RCC filed the initial application in December 2023. [SEC](#); [The Block](#); [CoinTelegraph](#).

INTERNATIONAL

- ***New UK Bill Proposes Classifying Cryptocurrency as Personal Property***

On September 11, a bill was introduced in Parliament that would classify cryptocurrencies, NFTs such as digital art, and carbon credits as personal property. The Justice Minister supported the bill. The law would give legal protection to owners and companies against fraud and scams, while helping judges deal with complex cases where digital holdings are disputed or form part of settlements. The bill aims to address a legal

gap, where digital assets were previously excluded from English and Welsh property law, leaving owners of such assets with little recourse if their holdings were interfered with. [UK Government Press Release](#); [NASDAQ](#).

- ***Nigerian Securities Regulator Grants Approval To Crypto Firms***
On August 29, the Nigerian Securities and Exchange Commission (Nigerian SEC) announced that it granted Approval in Principle to two crypto exchanges under its Accelerated Regulatory Incubation Program and admitted five other digital asset firms into its Regulatory Incubation program. The approvals are a precursor to a full registration with the Nigerian SEC. [Forbes](#).
- ***Australia's Securities Regulator To Require Licensing for Crypto Firms***
On September 23, a commissioner of the Australian Securities and Investments Commission announced that the agency will require crypto firms – including but not limited to crypto exchanges – to be licensed under Australia's corporations law. The Commission plans to release updated regulatory guidance in two months and will seek industry feedback. [Westlaw](#); [The Block](#).

CIVIL LITIGATION

UNITED STATES

- ***Bitcoin Miner Swan Bitcoin Sues Former Employees for Conspiring to Steal its Mining Business***
On September 26, Swan Bitcoin filed a complaint in the U.S. District for the Central District of California alleging that its former consultants, employees, and others conspired to execute a “rain and hellfire” plan to usurp Swan's Bitcoin mining business. Swan alleges that defendants (former consultants) and former Swan employees stole “highly proprietary code” from Swan's Bitcoin mining software, stole other confidential information related to its mining business, and conspired to resign together to create a competing company named Proton Management. Among other allegations, the complaint notes that these former Swan executives and consultants downloaded thousands of confidential and trade secret documents and, with Proton, solicited Swan's mining personnel. With this conduct, the complaint alleges, all defendants violated the Defend Trade Secrets Act and the California Business & Professions Code; the former consultants breached their contracts with Swan (including by failing to return Swan's computers and devices); Proton interfered with Swan's contractual relations with its former employees and aided and abetted their breaches of the duty of loyalty; and all defendants were engaged in an ongoing conspiracy. (Gibson Dunn represents Swan Bitcoin in this lawsuit.) [Law.com](#); [Axios](#); [CoinTelegraph](#).
- ***Court Grants SEC's Motion to Dismiss Consensys's Declaratory Judgment Suit***
On September 19, Judge O'Connor of the U.S. District Court for the Northern District of Texas granted the SEC's motion to dismiss a lawsuit filed by Consensys, the developer of the MetaMask wallet. The lawsuit sought a declaratory judgment that transactions in Ether are not securities transactions and that two features of MetaMask (MetaMask Swaps and MetaMask Staking) do not violate the securities laws. The district court dismissed the Ethereum claims as moot because the SEC has concluded its Ethereum

investigation and informed Consensys that it did not intend to recommend an enforcement action on that basis. The district court dismissed the MetaMask claims as unripe because, according to the court, neither the Wells Notice Consensys received related to those claims nor the later enforcement action the SEC initiated against Consensys constituted final agency action that would render Consensys's claims fit for judicial review. [Decision](#); [CoinTelegraph](#).

- ***Judge Dismisses Dogecoin Class Action Lawsuit Against Elon Musk and Tesla***
On August 30, Judge Alvin Hellerstein of the U.S. District Court for the Southern District of New York dismissed with prejudice a class action lawsuit against Elon Musk and Tesla, which had alleged that both manipulated the Dogecoin market. *Gorog v. Musk*, No. 22-05037 (S.D.N.Y. Aug. 30, 2024). The district court ruled that Musk's tweets about Dogecoin becoming the Earth's currency or catapulting to the moon were "aspirational and puffery" and "not factual and susceptible to being falsified." [Reuters](#); [CoinDesk](#).

INTERNATIONAL

- ***England High Court Rules That Crypto Asset Recovery Requires Tracing Specific Units of Stablecoin Across Different Exchanges***
On September 17, a Deputy Judge of the English High Court made the first-ever ruling under English law on the treatment and status of cryptocurrency after a full trial. The Plaintiff was targeted by fraudsters who talked him into transferring away cryptocurrency assets worth \$3.3 million. His lawyers alleged that the money ended up in an exchange in Thailand, called Bitkub, and tried to hold that exchange liable. But the Judge ruled that the evidence given by a blockchain tracing expert was inadequate, because the Plaintiff needed to show how parts of his stolen stablecoin was offloaded through a range of cryptocurrency exchanges *after* being mixed with money from other sources, through a range of fourteen transactions on the blockchain. The Judge ruled that the Plaintiff would have to track a specific unit of a stablecoin as it moves from wallet to wallet, to hold the receiving exchange liable. [Law360](#).

SPEAKER'S CORNER

UNITED STATES

- ***New Paper Argues that Bitcoin Is Protected by the First Amendment***
On September 25, Ross Stevens, the founder and CEO of Stone Ridge Holdings Group and founder and executive chairman of NYDIG, released a paper arguing that bitcoin is speech and expressive association protected by the First Amendment of the U.S. Constitution. Based on a thorough analysis of bitcoin's functionality and First Amendment precedents, the paper argues that bitcoin "constitutes a highly communicative and at times boisterous community dedicated to winning greater freedom from government fiat," and that regulators therefore should "conside[r] the First Amendment implications of targeting bitcoin." Gibson Dunn attorneys Theodore J. Boutros, Jr., Eugene Scalia, and Nick Harper worked closely with Stevens in preparing the paper. [Paper](#).
- ***Maxine Waters Calls for Comprehensive Agreement on Stablecoin Regulations This Year***

On September 24, Rep. Maxine Waters (D-CA) called for a comprehensive agreement on stablecoin regulations before the end of 2024. Waters has been working with Rep. Patrick McHenry (R-NC), who chairs the House Financial Services Committee, to create a regulatory framework for stablecoins since 2022. Waters said she believes lawmakers could reach a deal on the bill that “prioritizes strong protections” for consumers and has “strong federal oversight.” [Waters Press Statement](#); [The Block](#).

- ***SEC Commissioner Uyeda Recommends “Customized” S-1 Forms for Digital Assets***

On September 3, during a discussion at Korea Blockchain Week 2024, SEC commissioner Mark T. Uyeda said that the agency needs to create a S-1 registration form that is tailored to digital asset securities. Uyeda noted such a form could help provide regulatory certainty for the digital-asset industry. [Axios](#), [The Block](#).

- ***House Legislators Urge SEC to Clarify How It Treats Crypto Airdrops***

In a September 17 letter to SEC Chair Gary Gensler, House Financial Services Committee Chair Patrick McHenry (R-NC) and House Majority Whip Tom Emmer (R-MN) accused the SEC of “putting its thumb on the scale” by making hostile assertions about airdrops and creating an unforgiving regulatory environment regarding crypto and blockchain technology. The letter requests that the SEC answer whether “giving away non-security digital assets for free” implicates the *Howey* test. The letter also asks how crypto airdrops are any different from airline miles or credit card points that are “distributed freely to encourage engagement,” much like “airdrops aim to engage users and developers” in growing blockchain networks. [Letter](#); [The Block](#).

OTHER NOTABLE NEWS

- ***Court Invalidates CFTC Restriction on Prediction Markets; CFTC Appeals***

On September 12, Judge Cobb of the U.S. District Court for the District of Columbia vacated an order issued by the CFTC that prohibited Kalshi, a prediction market, from offering “event contracts”—a type of derivative contract whose payoff is based on the outcome of a contingent event. Kalshi has offered event contracts for a broad range of events, including the outcomes of U.S. political races. Judge Cobb rejected the CFTC’s arguments that Kalshi’s events contracts violate the Commodity Exchange Act or the CFTC’s regulations. The CFTC has appealed to the D.C. Circuit, which granted a temporary emergency stay of the district court’s order pending appeal. Oral argument took place on September 19. [District Court Opinion](#); [CoinDesk](#).

- ***Japanese Banks Launch Stablecoin for Cross-Border Transactions***

On September 6, three Japanese banks launched the trial phase for “Project PAX,” a stablecoin-based platform that aims to speed up cross-border settlements for enterprises. The initiative aims to develop regulated stablecoins that can be integrated with existing financial frameworks. The project plans to use SWIFT’s API framework, already used by banks, to settle payments on the blockchain while complying with anti-money laundering regulations. [Yahoo Finance](#); [The Block](#); [Datachain](#).

- ***University of Chicago Professors Release Desk Reference for Legal Matters in Web***

3

On September 19, Professors Anup Malani and Todd Henderson, professors at the University of Chicago Law School, published *Legal Matters in Web 3: A Desk Reference*, which is a comprehensive, open-access legal desk reference about crypto-related legal topics. The publication provides a deep dive on those businesses and technologies, sketches a range of legal risks associated with them, and provides a deeper dive on specific legal topics and use a range of projects to illustrate how they interest the Web3 ecosystem. [Publication](#).

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