

## Digital Assets Recent Updates

November 4, 2024

We are pleased to provide you with the October 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

- ***SEC Files Notice of Appeal in Case Against Ripple; Ripple Files Cross-Appeal***  
On October 2, the SEC filed a notice of appeal in its enforcement action against Ripple. Judge Analisa Torres ruled in July 2023 that Ripple’s secondary sales of XRP did not violate the securities laws. Ripple filed a cross-appeal on October 10 and indicated in a later filing that it intends to challenge several aspects of Judge Torres’s ruling, including whether institutional sales of XRP violated the securities laws and whether Ripple lacked fair notice that the securities laws apply to XRP transactions. Ripple CEO, Brad Garlinghouse, has stated that he is confident Ripple is “going to win the appeal” “because we’re on the right side of the law” and “right side of history.” [CoinDesk](#); [Garlinghouse Statement](#); [CCN](#).
- ***Crypto Gaming Platform Immutable Issued Wells Notice By SEC***  
On November 1, Immutable—a game development platform that simplifies building Web3 games—announced that it has received a Wells Notice from the SEC related to sales of its IMX token in 2021. In a statement released on its website, Immutable said that it received the Well Notice within hours of first meeting with the SEC and that “the SEC is continuing to indiscriminately assert that tokens are securities.” Immutable stated that it

would continue “business as usual” and that it welcomes “regulatory clarity – but it appears that some elements of the SEC do not want to engage in a constructive dialogue.” Immutable’s CEO and a related entity, the Digital Worlds Foundation, reportedly received separate Wells Notices. [Immutable Statement](#); [CoinDesk](#).

- ***SEC Sues Cumberland DRW Alleging It Operated as an Unregistered Dealer***  
On October 10, the SEC filed a lawsuit against Cumberland DRW LLC, a crypto trading firm, in the Northern District of Illinois alleging that Cumberland operated as an unregistered dealer in violation of the Securities Exchange Act when it bought and sold more than \$2 billion in digital assets. In a letter to CoinDesk, Cumberland stated that it is “not making any changes to our business operations or the assets in which we provide liquidity as a result of this action.” The complaint seeks permanent injunctive relief, disgorgement of proceeds, prejudgment interest, and civil penalties. [Press Release](#); [Complaint](#); [CoinDesk](#).
- ***Former FTX Chief Engineer Avoids Prison After Cooperation in Bankman-Fried Case***  
On October 30, U.S. District Judge Lewis A. Kaplan sentenced former FTX chief engineer, Nishad Singh, to three years of supervision and no prison time, citing his immediate cooperation with authorities and testimony against Sam Bankman-Fried. Singh had pleaded guilty to six criminal counts and faced a theoretical statutory maximum sentence of up to 75 years in prison, but prosecutors had requested leniency for his ongoing cooperation. [Law360](#); [NYT](#).
- ***Founder of Cryptocurrency Ponzi Scheme Sentenced to More Than 10 Years in Prison***  
On October 4, David Carmona, the founder of IcomTech, was sentenced to 121 months in prison. IcomTech, founded in 2018, was purportedly a cryptocurrency mining and trading company where customers purchased crypto-related investment products. Instead of making investments on behalf of clients, however, Carmona and other co-defendants used the money to promote the company, repay other clients, and enrich themselves. [Press Release](#); [The Block](#).
- ***DOJ Brings Criminal Wash Trading Charges in Cryptocurrency Matter***  
On October 9, the U.S. Attorney’s Office for the District of Massachusetts charged eighteen individuals and numerous entities with market manipulation and fraud based on a wash trading theory. The government alleges that cryptocurrency companies, market makers, and employees engaged in pump-and-dump schemes through false statements and sham trades. As part of an international investigation of the alleged misconduct, federal investigators used NexFundAI, a government-created token, to try to induce the defendants to engage in wash trading. Also on October 9, the SEC filed parallel civil charges against some of the same entities and individuals. [DOJ Press Release](#); [SEC Press Release](#); [Cointelegraph](#); [TRM Labs](#).
- ***Crypto Ponzi Scheme Promoter Sentenced to 20 Years in Prison***  
On October 15, Juan Tacuri, a senior promoter in the Forcount/Weltsys crypto Ponzi scheme that targeted Spanish speakers, was sentenced to the statutory maximum 240 months in prison by Judge Analisa Torres in the Southern District of New York. Tacuri

was ordered to forfeit \$3.6 million, pay restitution of at least \$3.6 million, and relinquish all right and title to his Florida home. [Press Release](#).

## INTERNATIONAL

- ***Dubai's VARA Fines Seven Crypto Entities for Operating Without Licenses***  
On October 8, Dubai's Virtual Assets Regulatory Authority (VARA) announced that it fined and issued cease-and-desist orders to seven entities for operating without the required licenses and for breaching marketing regulations. VARA stated that these actions serve as a "public warning . . . to all engaged in any unlicensed firms." [Press Release](#); [CoinDesk](#).
- ***Japanese Authorities Analyze Monero Transactions, Arrest 18 in Laundering Case***  
On October 21, Japan's National Police Agency's Cyber Special Investigation Unit arrested 18 individuals after analyzing nearly 900 transactions involving Monero—a digital asset with enhanced privacy properties—to identify instances of money laundering. According to Japanese authorities, this case marks the first time the country's law enforcement agencies had used Monero transactions to identify suspected criminals. [Cointelegraph](#).

## REGULATION AND LEGISLATION

### UNITED STATES

- ***New California Law Targeting Sellers of Digital Goods Might Apply to NFTs***  
On September 24, California enacted AB 2426, which imposes new requirements on the sale of "digital goods." Unless a company selling a digital good gives the buyer unrestricted ownership of the good, the seller may not use words like "buy" or "purchase" in advertising the sale, without one of two conditions being satisfied: (1) the seller obtains an affirmative acknowledgment from the buyer that the buyer is receiving only a revocable license to access the digital good, or (2) the seller provides the buyer with a "clear and conspicuous statement" that the buyers is purchasing only a revocable license. Although the law is silent on whether it applies to NFTs, the definition of "digital good" is arguably broad enough to encompass at least certain NFTs. The legislation will take effect on January 1, 2025. [The National Law Review](#).
- ***Pennsylvania House Passes Bipartisan Crypto Bill***  
On October 23, the Pennsylvania House of Representatives overwhelmingly passed House Bill 2481, known as the Bitcoin Rights bill, which addresses the use of bitcoin as a payment method, guidelines for taxing cryptocurrency transactions, and residents' rights to self-custody digital assets. Similar bills are being considered by legislatures in other states. The bill will move to the Pennsylvania State Senate after the election. [Bill](#); [CoinDesk](#); [Fox Business](#).
- ***Senators Release Discussion Draft of Regulatory Framework for Stablecoins***  
On October 10, Sen. Bill Hagerty (R-TN) unveiled draft legislation that would establish a new framework to regulate stablecoins. The bill is modeled on the Clarify for Payment Stablecoins Act currently being debated in the House. It would split federal supervision of

stablecoins between the Federal Reserve and the Office of the Comptroller for the Currency. Among other provisions, the bill would establish currency-reserve thresholds for issuers. [Discussion Draft](#); [The Block](#).

- ***SEC Approves Listing of Bitcoin ETF Options; Delays Decision on ETH ETF Options***

On October 18, the SEC approved two Bitcoin options ETFs. A week earlier, the SEC announced it would postpone until December 3 its decision whether to approve Ethereum options tied to ETFs. [CoinDesk](#); [Cointelegraph](#); [CoinChapter](#); [Cointelegraph](#).

## INTERNATIONAL

- ***Denmark's Tax Law Council Recommends Taxing Unrealized Crypto Gains***

On October 23, Denmark's tax authority announced that the Minister of Taxation will introduce a bill in the first quarter of 2025 proposing "mark-to-market" taxation for digital assets. Under this proposal, appreciation of digital assets would be treated as capital income regardless of whether the asset is sold. Taxes are levied on the annual changes in the value of the digital asset. Denmark's Tax Law Council recommended that the rules not take effect until Jan. 1, 2026 at the earliest, if enacted. [Press Release \(Danish\)](#); [The Block](#).

- ***Taiwan Releases New Draft AML Rules Requiring Crypto Firms to Register***

On October 1, Taiwan's Financial Supervisory Commission (FSC) published proposed amendments to the AML guidelines for virtual asset service providers (VASPs) and opened a 30-day comment period. The new regulations will go into effect on January 1, 2025, and VASPs are expected to register with the FSC by the end of September 2025. Failure to comply may result in imprisonment for up to two years and fines up to \$155,900. [The Block](#); [CCN](#).

- ***Italy Proposes Raising Capital Gains Tax on Cryptocurrencies***

On October 16, Italy's Deputy Finance Minister announced that the Italian government will increase its capital gains tax from 26% to 42% on cryptocurrency transactions in its 2025 budget bill. The bill also will remove the minimum revenue requirements for Italy's Digital Services Tax (DST), which currently applies to companies with global annual income exceeding €750 million and in country income exceeding €5.5 million per calendar year. [Press Conference \(Italian\)](#); [CoinDesk](#); [VAT Calc](#).

- ***Netherlands Opens Consultation on Crypto Tax Reporting Bill***

On October 24, in response to EU directive DAC8, the Netherlands launched a public consultation on a proposed bill that would require crypto service providers to share user data with tax authorities. Folkert Idsinga, State Secretary for Taxation and Tax Authorities, emphasized that the measure aims to enhance transparency and prevent tax evasion through improved data exchange between EU member states. The consultation runs until November 21 and the bill is expected to reach the House of Representatives in the first half of 2025. [CoinDesk](#); [Cointelegraph](#).

## CIVIL LITIGATION

## UNITED STATES

- ***Crypto.com Sues the SEC Alleging Regulatory Overreach***

On October 8, after receiving a Wells Notice from the SEC, exchange Crypto.com filed a lawsuit against the agency and its Commissioners in the Eastern District of Texas, Tyler Division. Crypto.com alleges that SEC overstepped its jurisdiction by asserting authority over vast swathes of digital assets. Crypto.com claims that the SEC has adopted a de facto rule that nearly all digital assets are securities, without engaging in notice-and-comment rulemaking, and is seeking to impose that view on the crypto industry through a campaign of regulation by enforcement. Among other things, Crypto.com seeks a declaration that secondary-market transactions in digital assets are not securities and an injunction preventing the SEC from pursuing enforcement against Crypto.com based on the agency's mistaken understanding of the securities laws. [Reuters](#); [CoinDesk](#).
- ***Alameda Research Sues Crypto Exchange KuCoin Seeking Return of \$50 Million***

On October 28, Alameda Research, the crypto trading affiliate of bankrupt FTX, filed suit in Delaware bankruptcy court against crypto exchange KuCoin's operators, seeking return of \$50 million in assets currently held on the platform. The complaint alleges that KuCoin locked Alameda's account with assets valued at nearly \$30 million immediately after FTX's November 2022 bankruptcy. KuCoin allegedly has since refused requests to return the assets, which are now valued at \$50 million. This action is part of the FTX bankruptcy estate's broader efforts to recover funds transferred from FTX prior to its bankruptcy. [Law360](#); [Cointelegraph](#).
- ***Bitnomial Exchanges Sues SEC, Seeks Permission to List XRP Futures***

On October 10, crypto exchange Bitnomial filed a lawsuit against the SEC in the U.S. District Court for the Northern District of Illinois seeking a declaration that the XRP token is not a security and thus is subject to the sole jurisdiction of the CFTC. After Bitnomial filed a self-certification with the CFTC for trading of the XRP U.S. Dollar futures contract on its exchange in August 2024, the SEC informed Bitnomial that, in the agency's view, Bitnomial would violate the federal securities laws if it proceeded with its contemplated listing of XRP futures. [Complaint](#); [CoinDesk](#).
- ***Federal Court Clears Kalshi to List Election Betting Contracts Pending CFTC Appeal***

On October 2, the U.S. Court of Appeals for the D.C. Circuit denied the CFTC's request for a stay of the U.S. District Court for the District of Columbia order that allowed KalshiEX LLC—a financial exchange and predictions market that allows trading of event contracts—to offer election-outcome betting contracts. The appellate court found that the CFTC failed to demonstrate a “concrete basis to conclude that event contracts” would result in irreparable harm or distort the electoral process. The CFTC filed its opening brief on October 16. Oral argument will follow the completion of briefing, which is currently scheduled to conclude on December 6. [Reuters](#); [The Block](#).
- ***Delaware Judge Approves FTX Estate's Bankruptcy Plan***

On October 8, Delaware Bankruptcy Judge John Dorsey approved FTX's bankruptcy plan filed in September 2024. Under the plan, customers are expected to receive cash repayments averaging 118% of the value of their assets as of FTX's bankruptcy filing in November 2022. Those payouts, however, will not wholly account for the gains that

Bitcoin and other cryptocurrencies experienced during the pendency of the bankruptcy proceeding. [CoinDesk](#).

## SPEAKER'S CORNER

### UNITED STATES

- ***Rep. Hill “Still Optimistic” on Year-End Crypto Bills***  
At the 8th Annual Washington D.C. Fintech Week on October 22, Rep. French Hill (R-AR) expressed optimism about year-end cryptocurrency legislation during a conversation with Georgetown University Law Center professor Dr. Christopher Brummer. Hill stated: “I’m still optimistic that FIT21, which is the regulatory framework bill, and the stablecoin bill have possible consideration in the lame duck,” noting that “in all lame duck sessions, they take the direction from who wins the top of the ticket, so that will govern a bit of what we’re dealing with.” [The Block](#).
- ***CFTC Chair Calls for Congressional Action on Crypto and Election Betting at SIFMA Meeting***  
Speaking at the Securities Industry and Financial Association’s annual meeting on October 21, CFTC Chair Rostin Benham called on Congress to address crypto regulation and election betting markets, including FIT21. Benham stated “there’s a lot going on in terms of technology and disruption. Digital assets obviously comes top of mind in terms of just regulating spot markets, but what is blockchain and tokenization going to do for financial markets? And those are areas where I personally would love for Congress to weigh in a little bit more than they have.” When discussing the CFTC’s ongoing case against Kalshi, Benham noted the CFTC is in a tough position as an “election cop” and thinks the subject matter of the case is “a classic area where Congress should actually weigh in.” [The Block](#).
- ***Federal Reserve Governor Waller Sees DeFi as “Complementary” to Traditional Finance***  
At the 19th Annual Vienna Macroeconomic Workshop in Austria, Federal Reserve Governor Christopher Waller addressed the future relationship between DeFi and traditional finance. “While there are certain services emerging through DeFi that cannot be provided by centralized finance, the technological innovations stemming from DeFi are largely complementary to centralized finance,” he stated. He also addressed stablecoins, noting that “if appropriate guardrails can be erected to minimize run risk and mitigate other risks, such as their potential use in illicit finance, then stablecoins may have benefits in payments and by serving as a safe asset on a variety of new trading platforms.” [The Block](#).

## OTHER NOTABLE NEWS

- ***Stripe Acquires Stablecoin Platform Bridge for \$1.1 Billion***  
On October 21, Bridge CEO and co-founder, Zach Abrams, announced in a post on X that Bridge will be “joining forces with Stripe.” Bridge provides services that allow businesses to accept payments in stablecoins. The \$1.1 billion deal has been finalized

but not yet completed. This acquisition would be the largest for Stripe and the largest ever in the crypto industry. [The Block](#); [Cointelegraph](#).

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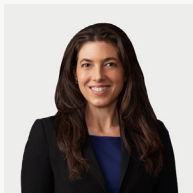
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