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Gibson Dunn Digital Assets Recent Updates – August 2023

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We are pleased to provide you with the latest 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

1. ***Ripple Secures Landmark Win Against SEC, SEC Seeks To Appeal***

   On July 13, U.S. District Judge Analisa Torres ruled that the SEC could not establish as a matter of law that a crypto token was a security in and of itself, delivering a landmark legal victory for the cryptocurrency industry. The ruling provided a win for a cryptocurrency company in a case brought by the SEC, while also giving the SEC a partial victory. The judge determined that Ripple's XRP sales on public exchanges were not offers of securities, but sales to sophisticated investors amounted to unregistered sales of securities. The case has significant implications for the broader crypto industry and has triggered calls for Congress to provide clear rules and legislation for digital assets. Following the ruling, both Coinbase and Kraken, large U.S. crypto exchanges, announced they will allow trading of XRP on their platforms again. On August 9, the SEC stated in a letter to the court that it plans to seek an interlocutory appeal, which is a generally disfavored procedural step that would require Judge Torres's approval. On August 17, Judge Torres permitted the SEC to file a motion to file an interlocutory appeal by the following day. Ripple will have until September 1 to file its response to the motion, and the SEC will have until September 8 to file a reply. Only if Judge Torres grants the motion will the SEC then be allowed to seek permission for an interlocutory appeal also from the Second Circuit. **The Block**; **Blockworks**; **Client Alert**; **CoinDesk**; **Reuters**; **Order**

2. ***Landmark Ripple Determination Endorsed, But Split Arises In Rejection Of Do Kwon And Terraform Labs' Motion To Dismiss***

   On July 31, U.S. District Court Judge Jed Rakoff denied Terraform Labs and founder Do Kwon's motion to dismiss the SEC's lawsuit against them alleging fraud involving various cryptocurrencies. Terraform and Do Kwon argued that the above *Ripple* decision invalidated the SEC's case against them. Significantly, Judge Rakoff agreed with Judge Torres' *Ripple* ruling that the SEC could not establish as a matter of law that a crypto token was a security in and of itself. However, Judge Rakoff rejected the *Ripple* opinion's distinction between institutional versus retail purchasers for whether a token was offered as a security.

Related People

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The case is currently headed for trial. **Bloomberg**; **The Block**; **Client Alert**; **Financial Times**; **Reuters**; **Order**

3. ***Bankman-Fried Jailed Pending Trial, Campaign Contribution Charge Still Possible***

FTX founder Sam Bankman-Fried was ordered to jail when Judge Lewis A. Kaplan of the Manhattan Federal District Court revoked his bail, concluding that Bankman-Fried's communications with the media and an attempt to contact a former FTX employee constituted attempts "to tamper with witnesses at least twice" in the lead-up to his trial, which is scheduled to start on October 2. The presiding judge had imposed a temporary gag order in the case while considering prosecutors' request to jail Bankman-Fried. Bankman-Fried had been under house arrest at his parents' home since December, released on a $250 million bond. The U.S. government sought modifications to Bankman-Fried's bail agreement after he showed a reporter private writings of Caroline Ellison, the former head of the crypto hedge fund he founded and his former girlfriend, who is a key witness for the prosecution. Bankman-Fried also had phone calls with journalists and was in contact with an author who is writing a book about his rise and fall that is set for publication the week before the trial begins.Meanwhile, U.S. prosecutors announced they intend to file a superseding indictment that will incorporate Bankman-Fried's alleged campaign finance charge into existing charges, reversing a reported late-July decision to drop the campaign contribution charge from their fraud case against Bankman-Fried, after he argued it was not part of his extradition agreement. Bankman-Fried also faces fraud and conspiracy charges that could lead to decades in prison if convicted. **ABC News**; **Bloomberg**; **CoinDesk**; **CoinTelegraph**; **DOJ**; **NPR**; **NYTimes**

4. ***Judge Appears To Side With Coinbase Against SEC In Pre-Motion Conference; Coinbase Files Motion For Judgment On Pleadings; Scholars File Amicus Brief In Support of Coinbase***

On July 13, 2023, Judge Katherine Polk Faila of the U.S. District Court for the Southern District of New York held a pre-motion conference in the SEC's suit filed in June against Coinbase. The SEC alleges that Coinbase violated securities laws by listing on its platform digital assets that the SEC considers securities. At the conference, Judge Faila expressed "skepticism" with the SEC's position, that the Court "would have thought the [SEC] was doing diligence" when it approved Coinbase's Form S-1 to commence trading, and that the SEC failed to warn Coinbase that "maybe some day there could be a problem" and sued two years later. The Court also voiced concerns over the breadth of the SEC's definition of securities, its ability to communicate this definition to the public, and the vagueness of the *Howey* test, the SEC's criteria for whether a digital asset qualifies as a security. On August 4, Coinbase filed its motion for judgment on the pleadings, maintaining that the SEC's claims fall outside the agency's Congressionally delegated authority because the platform does not trade securities. The motion contends that the SEC's claims must be dismissed because (i) the SEC fails to allege a contractual undertaking beyond the point of sale, (ii) the alleged transactions lack expectation in income, profits, or assets of a business, (iii) the major questions doctrine prohibits the SEC's interpretation of "investment contract," (iv) the SEC fails to allege Coinbase acts as a "broker" by making Wallet software available, and (v) Coinbase's alleged staking services do not involve relinquishment of property creating risk of loss or profits generated by managerial efforts. The case is closely watched for its potential impact on cryptocurrency trading and exchange listings. On August 11, a group of six securities law scholars filed an amicus brief in support of Coinbase. The law professors argue that the tokens traded on Coinbase are not "investment contracts" under the settled meaning of the term in that they lack a contractual undertaking and an expectation in income, profits, or assets of a business, and,

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therefore, are not securities. U.S. Senator Cynthia Lummis (R-WY) and the Blockchain Association, a pro-crypto lobbying group, also filed amicus briefs in support of Coinbase's motion, arguing in part that Congress has not granted the SEC authority to regulate crypto assets. **Axios**; **Bitcoinist**; **Decrypt**; **Hearing Transcript**; **Motion**; **The Verge**; **Professors' Amicus Brief**; **CoinTelegraph**; **Sen. Lummis Amicus Brief**; **Blockchain Association Amicus Brief**

5. ***SEC Sues Crypto Founder Richard Heart Alleging Fraud***

On July 31, the SEC sued Richard Heart, also known as Richard Schueler, and three entities under his control (Hex, PulseChain, and PulseX) for conducting unregistered offerings of crypto asset securities that raised over $1 billion from investors. The SEC also accused Heart and PulseChain of fraud by misappropriating at least $12 million of proceeds from the offerings to buy luxury items, including sports cars and a 555-carat black diamond. Heart allegedly promoted Hex as a high-yield "blockchain certificate of deposit," and claimed returns as high as 38% for a "staking" feature for Hex tokens, misleading investors with promises of wealth. The SEC's complaint seeks injunctive relief, disgorgement of ill-gotten gains, penalties, and other equitable relief. **SEC Press Release**; **CoinDesk**; **Bloomberg**; **The Block**

6. ***DOJ Consolidates Crypto Enforcement Team***

The U.S. Department of Justice (DOJ) announced the merging of the Computer Crime and Intellectual Property Section (CCIPS) with the National Cryptocurrency Enforcement Team (NCET) to strengthen efforts to combat cybercrime. The merger will double the Criminal Division attorneys available for digital currency-related cases, elevate the status of cryptocurrency work within the DOJ, enhance tracing and seizure of cryptocurrency assets, and multiply the entire DOJ's capacity to charge digital assets cases. The announcement emphasizes that "every modern prosecutor needs to be able to trace and seize cryptocurrency." The DOJ aims to tackle cyber threats, such as ransomware, by leveraging the expertise of the newly combined CCIPS and NCET teams and promoting collaboration with the DOJ's National Security Division. **DOJ Announcement**; **Coin Geek**

7. ***Bitfinex Hacker "Crypto Couple" Pleads Guilty To Money Laundering***

A New York couple, Ilya Lichtenstein and Heather Morgan, pleaded guilty to money laundering conspiracy after hacking into cryptocurrency exchange Bitfinex and stealing assets now worth over $4.5 billion. According to the DOJ, Lichtenstein used advanced hacking techniques to fraudulently authorize over 2,000 transactions transferring bitcoin to his crypto wallet. At the time of their arrest, the DOJ had seized around 120,000 bitcoin (then worth approximately $3.6 billion) that the couple allegedly had conspired to steal, and subsequently recovered an additional $475 million related to the hack. **Reuters**; **Law360**

8. ***Celsius Founder Alex Mashinsky Arrested, Faces Suits By Four Agencies***

On July 13, Alex Mashinsky, founder and former CEO of bankrupt crypto-lender Celsius Network, LLC, was arrested and charged with seven counts of fraud by the DOJ under an indictment that also names Celsius's Chief Revenue Officer, Roni Cohen-Pavon. The CFTC, FTC, and SEC simultaneously filed civil suits alleging similar claims against Mashinsky. The FTC's complaint also names Celsius officers Shlomi Daniel Leon and Hanoch "Nuke" Goldstein. Mashinsky is accused of having schemed to defraud customers about the security of the Celsius platform, and made false or misleading statements about profits and Mashinsky's purchases and sales of Celsius's token to inflate the token's value and to attract

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customer deposits of digital assets to the platform. Mashinsky is further accused of misappropriating deposits, unregistered offers and sales of securities, using false statements to obtain customer information of a financial institution, consumer harm, acting as an unregistered commodity pool operator (CPO) and associated person (AP) of a CPO, and failing to make commodity pool disclosures. Mashinsky faces up to 115 years in prison if found guilty on all criminal counts. Mashinsky pleaded not guilty and was released from custody on a $40 million bond. **CoinDesk**; **CFTC**; **CFTC Complaint**; **Decrypt**; **DOJ Indictment**; **FTC Complaint**; **SEC Complaint**; **Wired**

9. ***New York U.S. Attorney Announces Indictment For Decentralized Exchange Smart Contract Exploit***

   On July 11, the U.S. Attorney for the Southern District of New York announced the unsealing of an indictment and arrest of New Yorker Shakeeb Ahmed, a senior security engineer for an international tech company, for using his expertise to reverse engineer smart contracts and blockchain audits to exploit a vulnerability in a crypto exchange's smart contract and inject fake pricing data, causing it to generate fraudulent fees worth approximately $9 million. After withdrawing the fees as cryptocurrency, Ahmed communicated with the crypto exchange, offering to return most of the stolen funds on the condition that he avoid referral to law enforcement. Ahmed then laundered the proceeds of the exploit through various transactions, including swapping tokens, bridging blockchains, exchanging into Monero for anonymity, and using overseas cryptocurrency exchanges. Ahmed subsequently conducted online searches related to the exploit, his criminal liability, fleeing the U.S., and avoiding extradition. Ahmed, aged 34, pleaded not guilty to charges of wire fraud and money laundering, each carrying a maximum sentence of 20 years in prison. Ahmed was released on bond and reportedly will be permitted to live at his Manhattan apartment pending trial. **DOJ**; **CoinTelegraph**; **Decrypt**; **Forbes**; **Blocking.net**; **Yahoo Finance**; **International Business Times**; **TechNext**; **CyberNews**; **Blockworks**; **Gizmodo**

10. ***Bittrex Inc. And Founder Settle Unregistered Exchange Charges With SEC***

    Crypto trading platform Bittrex Inc. and its co-founder William Shihara have agreed to settle SEC charges of operating an unregistered national securities exchange, brokerage, and clearing agency. Bittrex Inc.'s foreign affiliate, Bittrex Global GmbH, also agreed to settle charges that it failed to register as a national securities exchange. The SEC's complaint, filed in April 2023, also alleged that Bittrex provided services to U.S. investors with crypto assets that were considered securities and that Shihara, the company's former CEO, directed issuers to remove from public channels certain statements that would alert regulators to investigate whether the crypto asset was offered and sold as a security. As part of the settlement, Bittrex and Shihara neither admit nor deny the allegations and will pay $24 million in disgorgement, prejudgment interest, and civil penalties, pending court approval. **SEC Press Release**; **CoinTelegraph**

11. ***U.S. Treasury Defeats Tornado Cash Suit, District Court Upholds OFAC Sanctions***

    On August 17, a federal judge in Texas sided with the U.S. Department of the Treasury against a group of plaintiff developers and investors who sued in September last year, seeking to invalidate the Office of Foreign Assets Control's (OFAC's) addition of Tornado Cash to the Specially Designated National and Blocked Persons (SDN) List. The U.S. District Court for the Western District of Texas, Judge Robert Pitman, found that Tornado Cash qualified as an association, composed of its founders, its developers, and its DAO, with the common purpose of developing, promoting, and governing Tornado Cash, and thus could be designated under OFAC regulations, despite arguments that Tornado Cash was

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autonomous software. The court then held that it would defer to OFAC's determination that smart contracts constitute property. Specifically, the court found whereas contracts are property under the regulations, smart contracts are a "code-enabled species of unilateral contracts," "like a vending machine." Judge Pitman further found that Tornado Cash had a beneficial interest in the smart contracts, stemming from an expectation that they would generate revenue in the form of tokens. The court additionally rejected plaintiffs' First Amendment arguments, holding (among other things) that the Amendment does not protect a right to make political donations through any bank or service of their choosing. Lastly, the court held the plaintiffs' Fifth Amendment Takings Claim was waived as the plaintiffs failed to pursue it against the government's motion. The plaintiffs may appeal. **CoinDesk**; **Order**; **CoinTelegraph**

International

12. ***Worldcoin Token And Protocol Launch; French Investigators Reinforce Worldcoin Investigation; Kenya Temporarily Bans Worldcoin Operations, Police Raid Warehouse***

    Following a July 24 launch of Worldcoin's token (WLD) and blockchain protocol, French and Argentine data protection regulators CNIL and AAIP, respectively, announced investigations of Worldcoin due to concerns over data collection and retention practices. Worldcoin requires that users provide an iris scan in exchange for a digital World ID and in certain countries pays a user 25 tokens for a scan. Operators of Worldcoin's iris-scanning Orbs receive tokens as incentives as well. WLD tokens currently trade for around $2. Worldcoin reportedly has collected over 2.2 million individuals' iris scans to date. CNIL's investigations support the ongoing and previously reported work on the project of Bavarian privacy regulators, who bear primary responsibility under EU law. The project has reiterated its compliance with EU's law on biometric data under the General Data Protection Regulation (GDPR). Worldcoin also faces concerns from the UK's Information Commissioner's Office regarding the sufficiency and ability to withdraw consent consistent with data processing rights. On August 2, the Kenyan minister of internal security announced a temporary ban on Worldcoin from operating in the country until authorities had the opportunity to assess any risk to residents. On August 7, Kenyan police reportedly raided a Worldcoin warehouse in Nairobi and seized machines believed to store Worldcoin data. The Kenyan Data Commissioner alleged that Worldcoin's parent company, Tools for Humanity, had misrepresented its intentions when registering and the Kenyan Interior Cabinet Secretary stated that Worldcoin was not a registered legal entity. Worldcoin stated it plans to cooperate with the government before resuming operations. **Bloomberg** ; **CoinDesk**; **CoinTelegraph**; **KahawaTungu**; **Reuters**; **Semafor**

13. ***Crypto Bridge MultiChain CEO And Sister Arrested In China, Operations Shuttered Following $130M Hack***

    MultiChain, a cryptocurrency project facilitating cross-blockchain connectivity, announced its closure following news that its founder and CEO, known as Zhaojun, was apprehended by Chinese authorities on May 21. In a Twitter statement, MultiChain explained that Zhaojun's unexplained absence since late May prompted the decision. As a crypto bridge, MultiChain enabled users to exchange digital tokens across different blockchains they operated on. **CoinDesk**; **Decrypt**; **Economic Times**; **DLNews**

Regulation and Legislation

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United States

14. ***Coinbase Wins Approval To Sell Crypto Futures In U.S.***

    On August 16, Coinbase announced that it had gained approval to sell cryptocurrency derivatives directly to retail consumers in the U.S. The approval comes from the National Futures Association (NFA), a CFTC-designated self-regulatory organization, and permits Coinbase to operate as a Futures Commission Merchant (FCM) as well as eligible U.S. customers to access derivatives products alongside Coinbase's spot market. According to the announcement, the global crypto derivatives market comprises approximately 75% of worldwide crypto trading volume. Coinbase previously acquired FairX in 2022, now known as the Coinbase Derivatives Exchange, which is open to third-party brokers, FCMs, and market makers, and which offers retail-investor-sized nano BTC and ETH futures as well as BTC and ETH futures trading for institutional investors. Coinbase also launched a derivatives exchange in Bermuda in May. **Bloomberg**; **Coinbase**; **CoinTelegraph**; **Forbes**

15. ***Federal Reserve Establishes Program To Enhance Supervision Of Banks' Crypto Activity***

    On August 8, the Federal Reserve introduced the Novel Activities Supervision Program (Program). The Program will primarily focus on four types of activities: (1) complex, technology-driven partnerships with non-bank entities to offer banking services to end customers, including through application programming interfaces (APIs) with automated bank infrastructure access; (2) crypto-asset-related activities, including custodial services, crypto-collateralized lending, facilitation of crypto trading, and issuance or distribution stablecoins/dollar tokens; (3) projects utilizing distributed ledger technology (DLT) with "potential for significant impact on the financial system," which the supervision and regulation letter to Federal Reserve officers recognizes as including dollar token issuance, as well as tokenization of securities and other assets; and (4) banking organizations concentrating in offering traditional banking services like deposits, payments, and lending to crypto-asset-related entities and fintechs. The Program is designed to work in partnership with existing Federal Reserve supervisory teams to monitor and examine novel activities, and banks engaged in such novel activities will not be moved to a separate supervisory portfolio. The Federal Reserve will notify institutions in writing whose novel activities will be subject to examination through the Program. **CoinDesk**; **CoinTelegraph**; **CryptoSlate**; **Federal Reserve SR 23-7**

16. ***Federal Reserve Issues Guidance On Bank Preapprovals For Stablecoin/Dollar Token Activity***

    Also on August 8, the Federal Reserve outlined the supervisory nonobjection process for state member banks seeking to use DLT or similar technologies to conduct payments activities as principal, including by issuing, holding, or transacting in stablecoins, which the Federal Reserve refers to as "dollar tokens." The guidance provides that a state member bank will be required to show, to the satisfaction of its Federal Reserve supervisors, that it has established appropriate safe and sound controls and to obtain a written notification of supervisory nonobjection from the Federal Reserve prior to engaging in the proposed activities. Assessment by Federal Reserve staff will focus on various factors, including operational, cybersecurity, liquidity, illicit finance, and consumer compliance risks tied to dollar tokens, as well as compliance with applicable laws. The two Federal Reserve supervisory letters were released in conjunction with the previously announced interagency crypto-asset policy sprint. **CoinDesk**; **CoinTelegraph**; **CryptoSlate**; **Federal Reserve SR 23-8**; **Interagency Joint Statement on**

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Crypto-Asset Policy Sprint

17. ***GAO Releases Crypto Oversight Report Commissioned By Former House Financial Services Committee***

    On July 24, the GAO released a report concluding that there is a significant regulatory gap as to digital assets among federal agencies and recommending that the CFPB, CFTC, FDIC, NCUA, OCC, and SEC adopt an enhanced coordination mechanism going forward. Commissioned by the last House Financial Services Committee, the report found that no single regulator had authority over digital assets that are not "securities" and further noted that no uniform rules existed for requiring stablecoins to disclose reserve assets and risk profiles. **CoinDesk**; **Report**

18. ***House Republicans Introduce Updated Digital Asset Oversight Bill***

    On July 20, House Republicans introduced an updated version of proposed legislation first released in June that would clarify the regulatory responsibilities of the SEC and CFTC over digital assets. The new draft defines "digital assets" more broadly to include an additional range of decentralized finance tokens, leading some critics to argue that the SEC and other regulatory agencies could stretch the language to continue enforcement actions the legislation is intended to forestall. **CoinDesk**; **Bill**

19. ***SEC Chair Requests Additional Funding To Combat Digital Asset "Noncompliance"***

    On July 19, SEC Chair Gary Gensler asked the Senate Appropriations Committee for an additional $72 million in funding to combat "noncompliance" in the digital assets industry, which he described as the "Wild West." The request, which would represent an approximately 3% increase in the agency's current draft budget, would go toward hiring dozens of additional full-time staff members to conduct additional enforcement activities. **CoinDesk**

20. ***Senate Considers Bill To Regulate Digital Asset Providers Like Banks***

    On July 18, a group of U.S. senators introduced the Crypto-Asset National Security Enhancement Act of 2023, a bipartisan bill that would require decentralized finance (DeFi) providers to impose know-your-customer and identity verification requirements akin to those currently required of regulated banks. Subject entities would be required to vet and collect information on customers, run anti-money laundering programs, report suspicious activity to the government, and block sanctioned individuals from protocols. The bill would apply to anyone who controls, makes available, or invests more than $25 million in developing a DeFi protocol. **CoinDesk**; **Bill**

21. ***U.S. Stablecoin Bill Meets House Opposition, Bipartisan Negotiations Lose Steam***

    Negotiations toward a potential bipartisan compromise over stablecoin legislation in the House of Representatives appear to have hit an impasse. According to House Financial Services Committee Chair Patrick McHenry (R-NC), the White House encouraged minority committee members to stall over concerns that the legislation did not go far enough to regulate anonymous payments and embraced an overly decentralized licensing regime. Meanwhile, Rep. Maxine Waters (D-CA), the Committee's ranking Democrat, noted that neither the Federal Reserve nor the U.S. Treasury support the current version of the bill, identifying limited licensing oversight and potential state and federal regulatory conflicts as problematic. Nevertheless, the House bill was successfully voted out of committee by a 34-16

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vote last week and introduced by McHenry (R-NC) as the Clarity for Payment Stablecoins Act. **CoinDesk**; **CoinDesk**; **CoinTelegraph**; **Decrypt**

22. ***Federal Reserve's Instant-Payment System Raises Concerns About National Digital Currency***

    On July 20, the Federal Reserve officially launched FedNow, a new instant-payment service that replaces the existing hour- or day-long bank-to-bank payment system with just-in-time payments. The service will operate around the clock and brings the U.S. banking system in line with many other countries including the EU, UK, India, and Brazil where similar services have existed for years. Although the Fed emphasized that FedNow does not signal a shift toward a central bank digital currency, critics have pointed out that FedNow adopts many of the same speed and efficiency goals as the digital asset industry and paves the way for issuance of a national, and centrally monitored, digital currency. **CoinDesk**; **CoinDesk**; **Federal Reserve**; **Forbes**; **Reuters**

23. ***Nasdaq Halts Plan For Crypto Custody Solution Due To Changing Regulatory Ecosystem***

    On July 18, Nasdaq announced that it is halting plans for the launch of a crypto custody solution in light of "the shifting business and regulatory environment in the U.S." with respect to cryptocurrencies. The exchange had first revealed its intention to develop the custody service in September alongside the establishment of its crypto business, Nasdaq Digital Assets. Nasdaq will continue to list cryptocurrency exchanges and services, to provide technology for crypto custody, and to partner with crypto ETF-issuers to enable tradable exchange-listed products. **Bloomberg**; **CNBC**; **CoinDesk**; **CryptoNews**; **Financial Times**

24. ***Crypto Miners Establish Lobbying Group***

    On August 15, the Digital Energy Council (DEC) officially launched as the first member association focused solely on digital asset mining and energy security, aiming to drive policies that enhance grid resilience, sustainable energy practices, U.S. competitiveness, and national security. Founder Tom Mapes has emphasized the need to foster collaboration between the digital asset mining and energy sectors to fortify energy infrastructure during a pivotal moment of energy modernization. The DEC will facilitate productive discussions among members, regulators, and policymakers to dispel misconceptions and promote economic development, notably engaging with figures like U.S. Senators Lisa Murkowski and Cynthia Lummis to pioneer collaboration and responsible practices in these domains. **Bitcoin Magazine**; **CoinDesk**

International

25. ***EU Regulators Prepare Draft MiCA Regulations For Crypto Asset Providers***

    European securities and banking regulators have released draft regulations implementing the EU's Markets in Crypto Assets (MiCA) law, which was approved last year and establishes a uniform licensing regime for crypto asset service providers across the bloc's 27 member nations. Member states and interested parties are invited to comment on the proposals. Further proposals are expected to issue later this year and submission to the European Commission is slated for June 2024. On July 12, the European Securities and Markets Authority (ESMA) issued its first of three consultation packages, in this first tranche seeking input on proposed rules that would impose additional disclosure and conflict-of-interest requirements, boost know-your-customer and money laundering protections,

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require the segregation of customer assets, and introduce standards for handling customer complaints. The ESMA has invited comments from stakeholders on this first package by September 20, 2023 and intends to publish a second in October 2023. On July 24, media outlets reported that the European Banking Authority (EBA) will release proposed regulations that would subject "significant" cryptocurrencies to centralized EU, rather than member state, control, including by imposing uniform stress test and reserve requirements. Those proposals would be in line with earlier statements from the EBA on implementation of the MiCA. **CoinDesk**; **CoinDesk**; **ESMA**

26. *Abu Dhabi Licenses Rain As First Retail Cryptocurrency Exchange In UAE*

On July 25, Abu Dhabi's Financial Services Regulatory Authority approved the UAE's first retail virtual-asset exchange after a five-year inquiry process. The license went to Rain, a Bahrain-based digital assets company backed by crypto exchange Coinbase. Rain's Abu Dhabi unit is now authorized to open a bank account in the UAE, enable clients to fund their own accounts, and provide services to institutional and certain retail customers in the Abu Dhabi Global Market financial free zone, an economic hub located off the coast of the emirate. **The Block**; **CoinDesk**; **Reuters**

27. *Dubai Grants Binance License To Operate As Virtual Asset Exchange*

On July 31, Binance announced that its Dubai-based subsidiary, Binance FZE, obtained a license to operate as a virtual asset exchange in Dubai. The crypto exchange won an Operational Minimum Viable Product license after meeting the pre-conditions since receiving a preparatory license in September 2022 from Dubai's Virtual Assets Regulatory Authority (VARA). The license allows Binance FZE to offer crypto services to institutional and qualified retail investors in the emirate subject to Dubai's know-your-customer and due-diligence requirements. Specifically, the license allows the exchange to open a domestic bank account to hold clients' funds locally, operate a crypto exchange and offer payments and custody services. "We are honored to be the first exchange to be granted an operational Minimum Viable Product License by VARA," said Richard Teng, head of regional markets of Binance. Teng went on to say the company's priority is to "operate this first fully regulated exchange [in Dubai] . . . setting the stage for global scalability." The Operational Minimum Viable Product license is step three of four to becoming fully regulated in the jurisdiction. The fourth step, a Full Market Product license, is expected after demonstration of compliance with all rules of Dubai's licensing process. **Binance Blog**; **CoinDesk**; **CoinTelegraph**; **The Block**

28. *Russia Adopts Legal Framework For Central Banking Token*

On July 24, Russian President Vladimir Putin signed legislation authorizing the Russian central bank to issue a digital ruble. The Bank of Russia has been working toward the central bank digital currency since 2020, when the Bank published its first analysis on the project, and may begin testing the electronic currency in August. The cryptocurrency has been the subject of a pilot program with several Russian banks since February 2022, and has been viewed by the Bank of Russia as a method to circumvent financial sanctions imposed by the U.S. and Europe and to allow Russian authorities better control over money allocated for domestic projects. **Bloomberg**; **CoinDesk**

29. *UK Economic Secretary Rejects Proposal To Regulate Crypto As Gambling*

On July 20, the UK's Economic Secretary rejected a proposal issued by the House of Commons Treasury Committee to regulate cryptocurrencies more harshly by relying on the country's gambling laws. According to the Secretary's response,

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the UK Government remains committed to establishing a new regulatory regime for digital assets that protects customers without departing from international norms, which would risk driving digital asset providers out of the country and redirecting interested customers to foreign markets. **CoinDesk**; **Report**

30. ***Indonesia Launches National Cryptocurrency Exchange***

    On July 20, officials with the Indonesian commodities regulator confirmed that the nation's cryptocurrency exchange and clearinghouse had been operational since July 17 after a number of significant delays. The exchange is managed by the nation's central bank and financial regulators and operates much like a traditional securities market with built-in fairness and consumer-protection requirements. **CoinDesk**

31. ***Hong Kong Approves First Retail Cryptocurrency Exchanges, Positions Itself As Crypto Hub***

    HashKey Exchange and OSL have become the first cryptocurrency exchanges in Hong Kong to secure licenses enabling retail investors to trade on their platforms. The milestone comes two months after the local regulatory authority announced permitting for companies to offer such services. The licenses mark the establishment of Hong Kong as a crypto hub, an especially notable development against the backdrop of some relatively cautious markets following the collapse of FTX. With this opening of HashKey Exchange's and OSL's services to everyday retail investors, the platforms aim to boost crypto adoption and engagement within the region. **Nikkei**; **CoinDesk**; **Bloomberg**; **Yahoo Finance**; **CoinTelegraph**

32. ***Singapore Grants Crypto Exchange Blockchain.com Major Payment Institution License***

    On August 1, Blockchain.com was granted a major payment institution (MPI) license from the Monetary Authority of Singapore (MAS) that will allow it to expand its services to institutional and accredited investors. The MPI license enables it to offer payment services, including digital payment token services and cross-border transfers. Blockchain.com's approval follows an in-principle approval that MAS first issued to Blockchain.com in September 2022. The Singapore headquarters of the global crypto exchange Crypto.com and stablecoin issuer Circle recently received licenses to provide digital payment token services in June 2023. **Blockworks**; **CoinDesk**; **CoinTelegraph**; **Press Release**; **The Straits Times**

Civil Litigation

United States

33. ***FTX And Genesis Reach Agreement Regarding Bankruptcy Dispute***

    Bankrupt crypto firms FTX and Genesis have reached an agreement in principle to settle their ongoing dispute. Genesis emerged as the largest unsecured creditor of FTX, owed $226.3 million, while FTX claimed that Genesis owed FTX nearly $4 billion, later reduced to $2 billion, which Genesis denied. The agreement, detailed in a letter filed with the U.S. Bankruptcy Court for the Southern District of New York in the *Genesis* Chapter 11 proceedings, stated that the settlement would resolve the claims made by both parties, but did not include specific details about the agreement. Genesis Global Capital had temporarily halted redemptions and new loans following the collapse and Chapter 11 filing of FTX in November due to

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market dislocation and loss of industry confidence. Genesis in turn filed for bankruptcy protection in January, already weakened by losses from the collapse of Three Arrows Capital. **Bloomberg**; **CoinDesk**

34. ***FTX Estate Sues Bankman-Fried And Former Executives In Bid To Recoup $1 Billion***

    On July 20, the bankruptcy estate for crypto firm FTX filed a complaint against its founder Bankman-Fried and three of its former executives, Caroline Ellison, Gary Wang, and Nishad Singh, in an attempt to claw back over $1 billion in allegedly misappropriated value to the company. The estate claims that the former executives breached their fiduciary duties by misusing customer funds on luxury condominiums, political and charitable donations, and speculative investments, as well as abused their control over the exchange and its related companies. Further, the executives allegedly issued hundreds of millions of dollars of equity to themselves without value to the estate, and cash to make investments unrelated to the estate. **CoinTelegraph**; **Reuters**; **The Guardian**

35. ***Winklevoss' Gemini Sues Digital Currency Group And Founder Barry Silbert For Alleged Fraud***

    Crypto trust firm Gemini has filed a lawsuit against Digital Currency Group (DCG), claiming fraud by DCG subsidiary Genesis, and its founder Barry Silbert. The suit aims to recover funds from DCG that assertedly were tied to Gemini's Earn program and managed by Genesis. Gemini alleges that Genesis falsely presented robust risk management practices and thorough vetting processes. The suit accuses Silbert of urging Gemini to continue the Earn program despite knowing of Genesis's insolvency and attempting to conceal its financial issues. DCG countered the claims as defamatory and called the lawsuit a "publicity stunt." **Bloomberg**; **CoinDesk**

36. ***Crypto Custodian Prime Trust Files For Chapter 11 Bankruptcy***

    Crypto custodian Prime Trust filed for Chapter 11 bankruptcy protection in Delaware on August 14. The filing comes after confronting a shortfall in customer funds—the company has between 25,000 and 50,000 creditors and estimated liabilities between $100 million and $500 million versus $50 million to $100 million worth of estimated assets. The firm's top five unsecured creditors assert claims of roughly $105 million, with the largest claim for $55 million. The bankruptcy also follows a June 21 cease and desist order against Prime Trust issued by Nevada's business regulator, saying the firm's financial condition was "critically deficient" and unable to honor customer withdrawals. On June 26, the Nevada regulator petitioned a court to place the firm into receivership, which the court approved on July 18. At the time of the regulator's petition, Prime Trust owed over $85 million in fiat to its clients but only had around $2.9 million. Its digital asset liabilities were smaller, with Prime Trust owing about $69.5 million in crypto while holding approximately $68.6 million. **Bankruptcy Filing**; **The Block**; **Cease & Desist Order**; **CoinTelegraph**; **Receivership Petition**

Speaker's Corner

United States

37. ***SEC Chief Accountant Warns Accounting Firms About Legal Liability For Crypto 'Audits'***

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In a public statement on July 27, SEC Chief Accountant Paul Munter warned accounting firms of the potential pitfalls of purported crypto "assurance" work. In particular, Munter highlighted accounting firms' potential legal liability for statements made by their clients and responsibilities with respect to auditor independence. Reflecting on a renewed focus on accounting firms following recent developments and insolvency in the industry, as well as a recent trend involving crypto platforms and others engaging accounting firms to perform reviews and marketing these as "audits" to investors, Munter cautioned that accounting firms could face legal liability under antifraud laws for statements made by their clients, if the clients mislead about the extent of a financial review or the "scope of work" done by the accounting firm. As part of their public responsibilities, the SEC Chief Accountant insisted, accounting firms must ensure that accountants' names or services are not used to convey a false sense of legitimacy or to mislead investors. Thus, where an accounting firm learns that a client has made misleading statements to the public about the nature of its non-audit work, the Office of the Chief Accountant staff view that best practice is for the firm to consider making a noisy withdrawal to disassociate from the client. **SEC Statement**

38. ***Gensler Raises Concerns About Fraud And Manipulation For Bitcoin ETFs***

SEC Chair Gary Gensler expressed skepticism about the crypto marketplace when asked about pending applications for spot bitcoin ETF applications in a televised interview on July 27. Though Gensler did not make a direct statement regarding the recent wave of filings spurred by BlackRock in the interview, he did raise concerns about general fraud and potential manipulation in the crypto industry. "The platforms themselves, where trading is occurring of various crypto tokens, though some of it comes under the securities laws, currently they're not necessarily compliant with those time-tested protections against fraud and manipulation," Gensler said. **The Block**; **Bloomberg**

International

39. ***South Korea Urges Crypto Platforms To "Strengthen Compliance Capacity"***

On July 27, the Korean Financial Intelligence Unit (KoFIU)—a government agency dedicated to tackling money laundering and terrorist financing—held a consultative body meeting to "strengthen the compliance capacity of virtual asset service providers." At the meeting, KoFIU Commissioner Rhee Yunsu said that the agency "will operate a strategic analysis team on virtual assets to more systematically analyze criminal activities involving virtual assets" to provide data to investigative authorities. The purpose of the initiative is to support virtual asset service providers' compliance efforts and to combat relevant crime as the country awaits proper legislation to address illegal activities in the market. Five domestic crypto services providers attended the meeting and reported their measures for dealing with potential crime. **The Block**

40. ***Japan's Prime Minister Says Web3 Can Transform Internet***

During the WebX web3 conference in Tokyo on July 25, Japan's Prime Minister Fumio Kishida said that web3 has the capacity to transform the traditional internet and contribute to social change in Japan. Kishida said the government was dedicated to creating an ecosystem amenable to the promotion of web3 as part of his administration's "new capitalism" economic platform designed to address social issues through growth and innovation. "Web3 is part of the new form of capitalism," the Prime Minister declared. **The Block**

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Other Notable News

41. ***Cboe Amends Five Spot Bitcoin ETFs To Enter "Surveillance Sharing Agreements" With Coinbase Following Refiling Of Blackrock Spot Bitcoin ETF***

    On July 11, exchange operator Cboe Global Markets submitted amendments to the SEC for five proposed spot bitcoin ETF applications to include a surveillance-sharing agreement (SSA) with Coinbase. The amended filings include ETFs from Invesco, VanEck, WisdomTree, Fidelity, and the joint fund ARK Invest and 21Shares. Cboe stated that it "reached an agreement on terms" with Coinbase for the SSAs. Coinbase's shares surged as much as 11% on June 11 following the announcement. Cboe's filings follow on the heels of Nasdaq's refiling for BlackRock's ETF in July, which also listed Coinbase as a surveillance sharing partner. The SSAs are intended to meet the SEC's standards for preventing fraud and protecting investors, as outlined by the regulator earlier this year. If approved, the filings would mark the first spot bitcoin ETFs. **The Block**; **CoinTelegraph**

42. ***Two Major Crypto VC Funds Announce New Fundraisings, Buck "Crypto Winter"***

    Polychain Capital, one of the most prominent venture capital firms in the crypto space, has raised around $200 million in the "first close" of its fourth crypto venture capital fund. The firm further plans to raise around $400 million total for this fund. Polychain has around $2.6 billion in assets under management. Coinfund, a New York-based crypto venture capital firm, also announced that it raised $158 million in its latest funding round and is focusing on crypto infrastructure projects that enable greater decentralization, a trend that has emerged after the implosion of FTX last year. Both successful raises come in the midst of an extended crypto winter that has seen a broad retreat from crypto-related investments following a series of failures throughout 2022, further complicated by higher interest rates that have increased the cost of borrowing. But Alex Felix, Coinfund's co-founder and chief investment officer, has pointed out that this slower-paced environment raises the quality of entrepreneurs competing for more limited funds. **CoinDesk**; **Fortune**; **Decrypt**

43. ***Ethereum DeFi Spooked By Hacks And Curve Finance Liquidation Threat; Risks Mitigated***

    On July 30, around $70 million was stolen in a string of attacks on several key DeFi platforms, including Curve Finance, one of the most popular decentralized exchanges. The attacks also targeted lending protocol Alchemix, yield platform Pendle, synthetic asset tool Metronome, and decentralized NFT protocol JPEG. Spooked traders withdrew roughly $1.5 billion worth of digital assets after hackers stole around $62 million from Curve. The price of the Curve DAO (CRV) declined 20.91% on the day of the hack, and continued to decline the next day to a seven-month low. By the morning of August 1, the market valuation of CRV had plummeted 46%. This drop in turn triggered wider market fear as Curve Finance founder, Michael Egorov, had loans worth roughly $100 million secured against CRV, collateral that was at risk of liquidation if the price of CRV dipped below a certain threshold. Several actions were taken to mitigate any risk of a liquidation crisis for Curve—and to avoid any systemic risk for DeFi more broadly. On August 1, Egorov sold 39.25 million CRV tokens for stablecoins to a number of notable decentralized finance investors, including Justin Sun, the founder of Tron blockchain, for a total of $15.8 million. Egorov also made partial repayment on certain of his loans, reducing liquidation risk. Further, the DAO that governs one of

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the lending platforms that Egorov had borrowed from, Abracadabra, approved an emergency measure to change how it tracks those tokens' prices to prevent inadvertent selling of CRV tokens. As of August 11, Curve Finance had recovered 70% of funds worth about $50 million lost in the hacking incident. **The Block**; **CoinDesk**; **CoinTelegraph**; **Forbes**; **NewsBTC**; **TechCrunch**; **Yahoo Finance**

44. ***PayPal Launches U.S. Dollar Stablecoin***

On August 7, PayPal launched a U.S. dollar-denominated stablecoin called PayPal USD (PYUSD), aimed at leveraging the potential of stablecoins for web3 payments and digital environments. The stablecoin will be an Ethereum-based token fully backed by U.S. dollar deposits, short-term U.S. Treasuries, and similar cash equivalents, and will be redeemable 1:1 for U.S. dollars. It will enable eligible U.S. PayPal customers to transfer funds, send person-to-person payments, fund purchases, and convert cryptocurrencies within the PayPal ecosystem. The stablecoin's issuance is managed by Paxos Trust Company and is designed to bridge the gap between fiat and digital currencies, while promoting transparency through public monthly reserve reports and third-party attestations of value. **CoinDesk**; **PayPal Press Release**

45. ***Binance Japan To Begin Onboarding Users***

Binance Japan, a subsidiary of Binance, announced that it is set to begin onboarding users to its new platform, with existing Binance customers able to migrate to the Japanese subsidiary as soon as mid-August. The Japanese subsidiary will enable users to spot trade, earn products, and participate in an NFT marketplace. It will also feature 34 tokens available for trading, including Binance Smart Chain's BNB, which will be available in Japan for the first time. **CoinDesk**

46. ***Pro-Bitcoin Argentine Presidential Candidate, Javier Milei, Wins Presidential Primary***

Javier Milei, a libertarian candidate, unexpectedly won Argentina's open presidential primary election with over 30% of the vote, positioning him as a front-runner for the fall general election. Milei has called for abolition of Argentina's central bank as a "scam" and spoken favorably of Bitcoin, remarking that it "represents the return of money to its original creator, the private sector." Milei's party, La Libertad Avanza, also has tweeted positively of El Salvador's use of Bitcoin as legal tender. Milei, however, advocates for dollarization of the Argentine economy as triple-digit inflation afflicts the nation. The general election is set for October, with a potential runoff in November. **CoinDesk**; **Finbold**; **NYTimes**

The following Gibson Dunn lawyers prepared this client alert: Ashlie Beringer, Stephanie Brooker, Jason Cabral, M. Kendall Day, Jeffrey Steiner, Sara Weed, Ella Capone, Grace Chong, Chris Jones, Jay Minga, Nick Harper, Jessica Howard, Nathaniel Tisa, and Simon Moskovitz. Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding the issues discussed in this update. Please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's FinTech and Digital Assets practice group, or the following: **FinTech and Digital Assets Group: Ashlie Beringer,** Palo Alto (650.849.5327, aberinger@gibsondunn.com) **Michael D. Bopp,** Washington, D.C. (202.955.8256, mbopp@gibsondunn.com **Stephanie L. Brooker,** Washington, D.C. (202.887.3502, sbrooker@gibsondunn.com) **Jason J. Cabral,** New York (212.351.6267, jcabral@gibsondunn.com) **Ella Alves Capone,** Washington, D.C. (202.887.3511, ecapone@gibsondunn.com) **M. Kendall Day,** Washington, D.C. (202.955.8220, kday@gibsondunn.com) **Michael J. Desmond,** Los Angeles/Washington, D.C. (213.229.7531, mdesmond@gibsondunn.com) **Sébastien Evrard,** Hong Kong (+852 2214 3798, sevrard@gibsondunn.com) **William R. Hallatt,** Hong Kong (+852 2214 3836, whallatt@gibsondunn.com) **Martin A.**

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