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Gibson Dunn Digital Assets Recent Updates – March 2024

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We are pleased to provide you with the next 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

- **FTX Founder Sam Bankman-Fried Sentenced to 25 Years in Prison** On March 28, Sam Bankman-Fried was sentenced to 25 years in prison after being found guilty of fraud and money laundering in connection with the collapse of his FTX cryptocurrency exchange. Bankman-Fried's presentencing report recommended he be sentenced to 100 years in prison. Bankman-Fried's legal team urged the court to impose a lenient sentence, relied on 29 character references in his sentencing memo, and argued that he did not intend to cause the harms alleged. Bankman-Fried has been held at the Metropolitan Detention Center in New York since his bail was revoked on August 23, 2023, and will be transferred to a low or medium-security prison near his parents in San Francisco to serve his sentence. At sentencing Bankman-Fried said, "I'm sorry about what happened at every stage . . . It haunts me every day." He has stated that he plans to appeal his conviction. NYT; Financial Times; CNBC; Reuters; Law360.
- **DOJ Makes First Public Indictment of Individual for Underreporting Cryptocurrency Capital Gains** On February 6, Frank Ahlgren III was indicted for unreported capital gains from a $4 million sale of bitcoin. According to the DOJ, Ahlgren willfully failed to report capital gains from bitcoin sales between 2017-2019, and knowingly evaded reporting requirements by making cash deposits "in individual amounts of $10,000 or less to avoid the filing of a [Currency Transaction Report]." This marks the first public indictment of an individual for unreported capital gains from legal transactions involving cryptocurrency. This development showcases the federal government's continued scrutiny of digital asset transactions. DOJ; Law360.
- **SEC Sanctioned in Debt Box Case** On March 18, the SEC was sanctioned for misstatements made by its counsel in proceedings against the crypto project Debt Box. The court found that the SEC acted in bad faith by making misleading statements about evidence it used to obtain a temporary restraining order and other emergency measures. The SEC initiated the suit against Debt Box in July 2023, and obtained a temporary asset freeze, restraining order, and receivership. Utah Federal District Judge Robert Shelby said in his sanctions order that the SEC acted in "bad faith" and "deliberately perpetuat[ed] falsehoods." The SEC was ordered to pay attorneys' fees and all expenses arising from the emergency measures. Judge Shelby rejected the SEC's argument that it was protected from monetary sanctions by sovereign immunity, instead finding that the common law permits assessment of attorneys' fees when a party has acted in bad faith. The court also denied the SEC's motion to dismiss the case without prejudice. Law360; Yahoo Finance; The Block.
- **SEC Accepts Settlement with ShapeShift AG** On March 5, the SEC entered into a settlement with ShapeShift AG, which, according to the SEC, facilitated the

Related People

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buying and selling of digital assets from 2014 until early 2021 through its ShapeShift.io platform. The SEC's order alleges ShapeShift violated Section 15(a) of the Securities Exchange Act of 1934. Without admitting liability, ShapeShift agreed to pay a $275,000 penalty and consented to a cease-and-desist order. Commissioners Uyeda and Peirce criticized the enforcement action, calling it "the latest installment in the serial drama of the Commission's poorly conceived crypto policy." SEC Press Release; Peirce and Uyeda Statement; The Block.

- **SEC Demands Information Related to Ethereum Foundation** As of March 20, as part of an investigation into Ethereum, the SEC demanded information from companies regarding dealings with the Ethereum Foundation. Gary Gensler, chair of the SEC, has not commented on Ethereum's status, but according to companies that have received subpoenas, the SEC seeks to classify Ethereum as a security. Gensler has said that some digital assets are unregistered securities and therefore subject to SEC rules. If Ether is designated as a security, it could create pressure to delist the token. In addition, it could decrease the likelihood of SEC approval of ETFs investing directly in Ether, which is currently being sought by multiple issuers. In the past, the threat of action by the SEC has negatively impacted token prices. Ether, however, gained rather than lost value as news of the investigation spread. Fortune; Bloomberg; Bloomberg.
- **DOJ Charges Digitex CEO for Failing to Implement Anti-Money Laundering Safeguards** On February 12, Adam Todd, the CEO of Digitex Futures Exchange (Digitex), was charged with allegedly violating the Bank Secrecy Act by failing to implement proper anti-money laundering and know-your-customer protocols. Todd faces up to five years in prison, if convicted. DOJ; Law360; Cointelegraph.
- **Trial Commences for Accused Operator of Cryptocurrency Mixer Bitcoin Fog** On February 13, the trial for Roman Sterlingov, accused operator of cryptocurrency mixer Bitcoin Fog, commenced in D.C. federal court. Sterlingov was charged with money laundering and operating an unlicensed money transmitting business, among other things. Prosecutors allege that Sterlingov knew Bitcoin Fog facilitated illegal transactions and made a concerted effort to conceal his involvement, including the use of the pseudonym "Akemashite Omedotou." Law360; Bloomberg.
- **Crypto Exchange Kraken Seeks Dismissal of Claims in Dispute with SEC** On February 22, Kraken filed a motion to dismiss the SEC lawsuit filed against it in November 2023. The SEC alleges that Kraken failed to register as a securities exchange, broker, and clearinghouse. Kraken's motion to dismiss argues that the SEC has failed to establish that the tokens on its platform are investment-contract securities. Kraken's motion also cites the major questions doctrine, arguing that the SEC has expanded its authority beyond what has been delegated to it by Congress. Kraken's argument echoes those made by other exchanges in their respective SEC enforcement actions. Law360; Bloomberg; CoinDesk; Kraken.
- **Digital Currency Group Files Motion to Dismiss NY AG's Suit** On March 6, Digital Currency Group (DCG) filed a motion to dismiss a lawsuit brought by New York Attorney General Letitia James, denying allegations of concealing losses and defrauding investors. DCG founder Barry Silbert also filed a motion to dismiss the claims. In an accompanying press release, the firm described the New York Attorney General's allegations as based upon "blatant mischaracterizations and unsupported conclusory statements," and asserted that DCG proceeded based on the advice of its accountants, investment bankers, and advisors. The motion further alleges that rather than creating a "liquidity crunch" as alleged by the AG, DCG invested hundreds of millions of dollars into its subsidiary leading up to its bankruptcy, despite no obligation to do so. CoinDesk; The Block; DCG Motion; Silbert Motion; Press Release.
- **U.S. District Court Dismisses SEC Claim Against Coinbase Wallet, Allows Lawsuit to Continue** On March 27, a U.S. District Court judge partially ruled in

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favor of Coinbase's motion to dismiss by dismissing the SEC's claim that Coinbase's Wallet application acts as an unregistered broker under U.S. law. The judge concluded however that the lawsuit could proceed for now with the claim that Coinbase had failed to register its staking program with the SEC, finding that the SEC had plausibly alleged that staking customers had a reasonable expectation of profit due to "Coinbase's managerial efforts." CoinDesk; Cointelegraph; Bloomberg.

INTERNATIONAL

- **Do Kwon Wins Extradition Appeal - Will be Extradited to South Korea Instead of United States** The Appellate Court of Montenegro has overturned a previous decision by the High Court of Podgorica to extradite Terraform Labs co-founder, Do Kwon, to the United States. Now, Kwon likely will be extradited to South Korea after March 23. Kwon, arrested in Montenegro in March 2023, faced extradition requests from both the U.S. and South Korea, with ongoing speculation as to his whereabouts amidst allegations of fraud related to Terraform Labs and its Terra blockchain. AP News; Reuters.
- **Worldcoin Must Stop Data Collection in Spain for Three Months** On March 6, the Spanish Agency for the Protection of Data (AEPD) directed Worldcoin to cease collecting and processing data in Spain for three months as it investigates complaints related to data collection. Worldcoin, a project that seeks to create a private and secure technology that allows individuals to prove their humanness online, filed suit against AEPD's order. On March 11, the Spanish High Court upheld the three month pause. Worldcoin has over 4 million users, states that it operates lawfully in all locations in which it is available, and is "grateful to now have the opportunity to help the AEPD better understand the important facts regarding" the technology. Worldcoin Statement; Reuters; Cointelegraph.

REGULATION AND LEGISLATION

UNITED STATES

- **Republican Senators Introduce "The CBDC Anti-Surveillance State Act"** On February 26, Republican senators introduced legislation aimed at blocking a central bank digital currency (CBDC) in the United States. U.S. Senator Ted Cruz (R-Texas), joined by Senators Bill Hagerty (R-Tenn.), Rick Scott (R-Fla.), Tedd Budd (R-N.C.), and Mike Braun (R-Ind.), filed legislation titled "The CBDC Anti-Surveillance State Act" due to concerns that a digital dollar would impinge on personal privacy. In a post on Cruz's website, Cruz expressed his view that the "Biden administration salivates at the thought of infringing on our freedom and intruding on the privacy of citizens to surveil their personal spending habits, which is why Congress must clarify that the Federal Reserve has no authority to implement a CBDC." Former President Donald Trump, the presumptive Republican presidential nominee, has promised to ban the creation of a CBDC. CoinDesk; Press Release.
- **House Finance Committee Votes to Move Forward with Measure to Overturn SEC's Staff Accounting Bulletin 121** On February 29, the U.S. House Financial Services Committee voted to advance a resolution aimed at overturning the SEC's Staff Accounting Bulletin 121 (SAB 121), which mandates regulated financial institutions to record their customers' crypto holdings as liabilities on their own balance sheets. The resolution garnered bipartisan support, with 31 lawmakers voting in favor of the resolution and 20 lawmakers voting against. SAB 121 has drawn controversy over the past few years due to concerns that it would disincentivize banks from providing custodial services for digital assets and create unnecessary risks in the crypto ecosystem. Rep. Mike Flood (R-Neb.), who introduced the resolution, argues that the result of SAB 121 "is that banks must choose to either custody digital assets[,] thus inflating their balance sheet and

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severely affecting every other line of business[,] or stay entirely out of the market." SAB 121 qualifies as a rule under the Congressional Review Act and therefore can be reviewed and disapproved by Congress. Disapproval requires each chamber to pass a resolution of disapproval, which must then be signed by the President. The Block; CoinDesk; Blockworks; Law360; Cointelegraph.

- **House Financial Services Committee Votes on Bill to Clarify Secret Service's Authority Over Crypto Cybercrimes** On February 29, every member of the House Financial Services Committee voted in favor of the Combating Money Laundering in Cyber Crime Act, which would clarify the U.S. Secret Service's power to investigate crypto cybercrimes. Rep. Zach Nunn (R-Iowa), one of the cosponsors of the bill, states that cybercrimes have led to hundreds of billions of dollars lost. According to Nunn, this "is a bipartisan bill and it closes the gap to empower our Secret Service professionals to continue to investigate cybercriminals[,] including cases involving digital assets[,]" around the globe. Rep. Gregory Meeks (D-NY) says this bill will "allow us to better address threats from nations like and including Russia and North Korea," and by expanding the scope of U.S. Secret Service investigations, this bill "brings another element of protection and defense in line with the 21st century." The Block; CoinDesk.
- **SEC Postpones Decision on Ether ETFs, Decision Expected in May** On March 4, the SEC postponed its decision regarding the approval or rejection of BlackRock's and Fidelity's spot Ether exchange-traded funds (ETFs). This delay marks the second postponement since January, when the SEC initially delayed its decision after approving several spot Bitcoin ETFs. The SEC is expected to approve or deny the ETFs in May once the first final deadline for a decision is due. Reuters; Cointelegraph.
- **Virginia Creates Working Group to Foster Blockchain and Digital Asset Expansion Within State** The Virginia Senate passed Senate Bill No. 339, creating a dedicated workgroup within the state to study and recommend measures for fostering the expansion of blockchain technology, digital asset mining, and cryptocurrency. Proposed by Senator Saddam Azlan Salim (D-Virginia), the bill aims to exempt miners from money transmitter licenses and prohibit targeted ordinances. The workgroup, comprising 13 members from legislative and non-legislative backgrounds, is tasked with concluding studies and presenting recommendations on the cryptocurrency ecosystem by November 1, 2024, for consideration in the 2025 Regular Session of the General Assembly. Cointelegraph.
- **Wyoming Gives DAOs a Nonprofit Legal Framework** On March 7, Governor Mark Gordon signed a bill into state law that would allow in-state decentralized autonomous organizations (DAOs) to establish themselves as decentralized unincorporated nonprofit associations (DUNA). This new legal framework gives DAOs more options, as DAOs have already been cleared to establish themselves as limited-liability corporations within the state of Wyoming. Establishing a DAO as a DUNA gives the DAO legal existence, enables the DAO to pay taxes, and provides the DAO with limited liability from the actions of other members. Miles Jennings, general counsel at a16z Crypto, called this development a "major breakthrough," as this will give DAOs "much-needed protections and empower them to keep blockchain networks open." CoinDesk; Blockworks.
- **President Biden Proposes Crypto Mining Tax and Wash-Sale Rules for Digital Assets** On March 11, United States President Joe Biden announced his fiscal year 2025 budget proposal, which included a crypto mining tax and changes in wash-sale rules. Last year, similar taxes were proposed, but they were not taken up by Congress in drafting budget bills. The new wash trading rules aim to inhibit people from selling an investment for a loss, and then quickly rebuying the investment. CoinDesk; CCN.

INTERNATIONAL

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- **UK Financial Regulator Issued 450 Alerts on Illegal Cryptoasset Advertisements in Q4 2023** On February 14, the Financial Conduct Authority (FCA), an independent financial regulatory body in the UK, reported that it issued 450 consumer alerts against firms for the illegal promotion of cryptocurrency during the last three months of 2023. The FCA previously introduced financial promotion rules for cryptoassets in October 2023, heightening regulatory scrutiny. The regulator has worked with tech companies to address illegal promotions, including the removal of 35 mobile applications from app stores at the end of December 2023, and pledged it will be "continuing [its] robust action against firms issuing illegal financial promotions in 2024." Financial Conduct Authority; CoinDesk; The Block.
- **English Draft Legislation Labels Crypto as Property** On February 22, England's Law Commission published draft legislation confirming the existence of an additional category of common law personal property that includes digital assets. This legislation builds on a report on digital assets produced by the Commission in June 2023, which showed that crypto tokens and NFTs are property rights. The report also concluded that the common law was flexible enough to accommodate digital assets. The legislation seeks to confirm that digital assets are covered by the common law and to remove any legal uncertainty. The Commission accepted responses to the draft legislation until March 22. CoinDesk; Yahoo.
- **Taiwan Considering Implementation of Further Digital Asset Law** In response to an October 2023 bill introduced in Taiwan's parliament and a speech by the Chairman of the Financial Supervisory Commission (FSC), Taiwan is considering the implementation of a special act to regulate the cryptocurrency industry, with results expected to be released in September 2024. The bill will aim to protect investors and to create more effective regulations for digital asset markets. The Block; Cointelegraph.
- **UK Considering How to Implement OECD Crypto Reporting Framework** The UK government launched a consultation to implement the Organization for Economic Co-operation and Development's (OECD) crypto reporting framework, aiming to address tax non-compliance and enhance tax transparency in the crypto market. The framework, expected to generate £35 million ($45 million) between 2026 and 2027, and £95 million between 2027 and 2028, aims to exchange information on relevant crypto transactions across jurisdictions. The consultation, initiated after the spring budget speech, will close on May 29. The government plans to publish a response and seek further feedback on draft regulations thereafter. CoinDesk.
- **UAE Grants Initial Approval to Crypto Exchange Nexo** Nexo, a digital asset services provider, has received initial approval as a licensed entity in Dubai from the Virtual Assets Regulatory Authority (VARA). This marks the first step in obtaining full licensing for various activities including lending and borrowing, management and investment, and broker-dealer services. CoinDesk.
- **UK Law Enforcement Authority to Seize Crypto Assets Expanded** UK law enforcement agencies' increased ability to seize cryptocurrency assets in criminal cases, including terrorism, will take effect on April 26, following approval of the legislation in March. The provisions include a civil recovery regime for crypto and crypto asset confiscation orders, which enables authorities to seize items associated with crypto assets. CoinDesk.
- **United Kingdom to Allow Institutional Investors to Build Crypto-Backed ETN Market** On March 11, the United Kingdom's Financial Conduct Authority (FCA) announced it will not object to requests from Recognized Investment Exchanges (REIs) to build a listed market segment for crypto asset-backed exchange-traded notes (ETNs). ETNs are a form of exchange-traded product, which are often issued by a bank or an investment manager, that tracks an underlying asset or

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index. While these products would be available to professional investors, retail consumers remain banned. The FCA explained that crypto-backed products are ill-suited for retail investors. The FCA stated that exchanges will be responsible for making sure sufficient controls are in place so that ETN trading is safe and orderly. The London Stock Exchange stated that it will accept applications for bitcoin and ether ETNs in the second quarter of 2024. CoinDesk.

- **OKX Secures the Monetary Authority of Singapore's In-Principle Approval for Major Payment Institution License** On March 12, the President of OKX announced that OKX secured in-principle approval for a Major Payment Institution (MPI) license from the Monetary Authority of Singapore (MAS). The license will allow OKX to facilitate multiple payment services. OKX's President states that "the in-principle approval from MAS is a validation of [OKX's] business strategy, and also an exciting opportunity for [OKX] to continue as a responsible stakeholder in [Singapore]." After receiving the full license from MAS, OKX will be able to facilitate cross-border transactions in the country, as well as provide digital payment token services to consumers. OKX; Cointelegraph.
- **EU Approves Anti-Money Laundering Legislation Targeting Anonymous Crypto Transactions Using Hosted Wallets** On March 19, the European Parliament approved a ban on anonymous crypto payments involving hosted wallets, which are wallets operated by third-party providers. The ban has no threshold and applies to any such transaction. Opponents argue that anonymity is a crucial feature of crypto that promotes financial privacy, while the new legislation would have a minimal effect on crime. The new legislation will take effect within three years from its promulgation. Cointelegraph.

CIVIL LITIGATION

UNITED STATES

- **Coinbase Challenges SEC's Refusal to Engage in Rulemaking Regarding Digital Assets** On March 11, U.S. crypto exchange Coinbase filed an action against the SEC in the Third Circuit arguing that the SEC violated the Administrative Procedure Act by denying a rulemaking petition that Coinbase filed in July 2022. Coinbase's rulemaking petition asked the SEC to propose new rules explaining the basis for the broad authority the agency has asserted over the digital-asset industry. Coinbase's petition also identified the many ways in which existing SEC rules are unworkable for digital asset firms. The SEC denied the rulemaking petition in December 2023, only after Coinbase filed a mandamus action seeking to compel a response from the agency. Coinbase is asking the Third Circuit to require the SEC to engage in rulemaking or, at a minimum, to provide a rational explanation for its refusal to engage in rulemaking. CoinDesk; CCN.
- **Texas Crypto Firm Sues the SEC** On February 21, LEJILEX, a Texas based crypto firm, sued the SEC in Texas federal court challenging the SEC's jurisdiction over digital assets. Working with the Crypto Freedom Alliance of Texas (CFAT), LEJILEX hopes to preemptively avoid an SEC enforcement action against them for failing to register securities or securities exchanges on their platforms. The suit asks the court to enjoin the SEC from bringing actions against LEJILEX or other CFAT members, pointing to cases brought against other crypto exchanges. Law360; Yahoo; Bloomberg.
- **Survey of Crypto Miners' Energy Use is Suspended** On February 23, the U.S. Department of Energy (DOE) agreed to suspend its mandatory survey soliciting information about electricity consumption from cryptocurrency miners. The suspension occurred in response to a suit filed by the Texas Blockchain Council and a crypto-mining company, Riot Platforms, Inc., seeking to block the survey. Later the same day, a federal district judge in Texas granted a temporary

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restraining order against federal agencies and the survey. The U.S. Energy Information Administration (EIA), the DOE's statistical arm, sought the information to evaluate concerns that increased electricity use by cryptocurrency miners could threaten energy grid reliability. The Office of Management and Budget granted an emergency request from the EIA allowing them to move forward with the survey without following regular statutory processes such as notice and comment. The plaintiffs argue that the EIA failed to make the necessary showing that such emergency approval would prevent public harm, therefore unlawfully circumventing statutory procedure. Law360; Reuters.

- **SEC Seeks to Leverage Default Judgment in Enforcement Actions Against Crypto Exchanges** Judge Tana Lin of the Western District of Washington granted partial satisfaction of the SEC's motion for default judgment against Sameer Ramani, a defendant in the case involving former Coinbase product manager Ishan Wahi and co-defendants. Ramani, who reportedly fled the United States and failed to respond to court summonses, faces permanent injunctions, civil penalties, and disgorgement of funds. In its default judgment order, the court assumed that the allegations in the SEC's complaint were true and concluded that the digital assets at issue in that case were securities. The SEC subsequently filed the default judgment order as supplemental authority in its pending enforcement actions against various crypto exchanges. The exchanges responded that the default judgment order should be disregarded because it was "procured against an empty chair." Cointelegraph; Response Letter.
- **Voyager Users Sue Public Relations Firm Ketchum Inc. Over Involvement in Crypto Promotion** On February 9, a class of users of Voyager, a bankrupt digital assets lender, sued public relations firm Ketchum Inc. in federal court for aiding and abetting Voyager's sale of unregistered securities. Ketchum provided Voyager marketing and communications support for a high-profile press conference with the Dallas Mavericks, which promoted the Voyager platform and products. The complaint argues that Ketchum "knew or should have known that the objective of their partnership, and the promotional activity they undertook together, constituted promoting unregistered securities." Law360.
- **Genesis Approved to Sell $1.6 Billion in Shares of Investment Trust to Fund Chapter 11 Bankruptcy Payouts** On February 14, the New York bankruptcy court granted crypto lender Genesis Global's (Genesis) request to sell $1.6 billion in Grayscale Investments shares to fund payouts to creditors. Digital Currency Group, the parent company of Genesis, objected to the request due to the timing and a demand for Digital Currency Group to be consulted before such sales. Genesis continues its liquidation plan after filing for bankruptcy in January 2023. Bloomberg; Law360; Reuters; WSJ.
- **Celsius Distributes $2 Billion of Cryptocurrency Pursuant to Bankruptcy Plan** On February 15, Celsius Network filed an update with the court that "[n]early 75% of the BTC/ETH set to be distributed by PayPal/Venmo and through Coinbase has already been collected," equating to $2 billion for nearly 172,000 creditors. This comes on the heels of the company exiting bankruptcy in late January 2024. The Block; Cointelegraph.
- **FTX Investors File Class Action Against the Company's Bankruptcy Counsel** On February 16, FTX investors filed a class action racketeering lawsuit in Florida federal court against FTX's bankruptcy counsel, alleging that the law firm aided in FTX's fraudulent behavior. Ryne Miller, a former partner at the law firm, left to become FTX's general counsel in 2021. The plaintiffs argue that the firm knew of FTX's impending financial turmoil, but "realized it stood to gain hundreds of millions more from their work in bankruptcy." According to the complaint, the firm served as counsel for FTX for 16 months prior to the company's collapse, receiving over $8.5 million in legal fees, and has continued to serve as FTX's bankruptcy counsel, generating $180 million in fees. Bloomberg; The Block; Reuters; Law360.

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- **FTX Files Proposed Settlement in FTX Europe Clawback Case** On February 22, FTX filed for approval of a settlement resolving a lawsuit seeking to claw back $323 million from the co-founders of an entity they acquired. If approved by the court, the settlement would have FTX sell the subsidiary back to the co-founders for $32.7M. The proposed settlement comes after FTX tried and failed to sell the entity. In 2021, FTX bought Digital Assets DA AG and rebranded it as FTX Europe. The current lawsuit claims that the purchase price was a "massive overpayment" for a company that had just a little more than a business plan. This is one of numerous lawsuits FTX has filed to recover funds for creditors and customers since filing for bankruptcy in November 2022. FTX stated in its court filing that litigation would be costly and complicated, and that the proposed settlement is the best option for creditors. Reuters; WSJ; Law 360.

SPEAKER'S CORNER

UNITED STATES

- **CFTC Chair Emphasizes Need for Congress to Pass Legislation** Commodity Futures Trading Commission (CFTC) Chair Rostin Behnam reiterated the need for Congress to pass legislation addressing regulatory gaps in the crypto industry during his annual appearance before the House Agriculture Committee. Behnam emphasized the importance of regulating cryptocurrencies like Bitcoin (BTC) and Ether (ETH), which make up a significant portion of the market. He highlighted the Financial Innovation and Technology Act for the 21st Century (FIT Act), which aims to address regulatory uncertainties but has yet to pass a floor vote. Behnam expressed confidence in the CFTC's ability to establish a regulatory framework within 12 months if the FIT Act is enacted. CoinDesk.
- **House Financial Services Committee Discusses Cryptocurrency and Illicit Finance** On February 15, the House Financial Services Committee hosted a congressional panel on how to address the use of cryptocurrency for illicit finance. In his opening statement, Chairman French Hill (R-Ark.) highlighted that the "borderless nature of blockchain technology necessitates international cooperation" and that "members of both sides of the aisle are interested in working on solutions." House Financial Services Committee; Law360; The Block; Politico.
- **Leading U.S. Investment Bank Argues U.S. Authorities Can Exert Some Control Over Tether via OFAC** On February 15, a leading U.S. investment bank released a research report stating that "U.S. regulators can exert some control on Tether's offshore usage via [the Office of Foreign Assets Control]," which is a unit of the U.S. Treasury Department. The report cited Tether's association with Tornado Cash as an example of such regulation. In 2022, OFAC sanctioned Tornado Cash for allegedly assisting in money laundering. Although Tether initially did not take action against Tornado Cash addresses, in December 2023, Tether decided to freeze stablecoin held in OFAC-sanctioned wallets as a proactive measure. The Block; CoinDesk.
- **OCC Acting Chief Advocates for Trip Wires Around Payments and Private Equity Activity** On February 21, the acting chief of the Office of the Comptroller of the Currency (OCC), Michael Hsu, advocated for regulators to set numerical "trip wires" around activity in the digital payments and private equity industries. In a speech given at Vanderbilt University, Hsu said that payments and private equity pose the largest risk for the next "great blurring" of banking and commerce, with activity in these areas resembling a phase of surging nonbank growth that preceded 2008 and other historic market failures. Hsu called on the Financial Stability Oversight Council (FSOC) to develop quantitative thresholds to identify when a payments or private equity firm becomes a systemic risk. When the threshold is crossed, the FSOC would then formally assess the individual firm. This assessment would inform any additional regulatory activity, which could include

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use of the FSOC's designation power to apply heightened bank-like regulations. This proposal follows the FSOC's policies enacted last year, which lay out an analytical framework for its work as a watchdog and remove procedural hurdles to the use of its designation power, which were put in place during the Trump administration. Law360; Politico; Bloomberg.

- **Senator and Eight Attorneys General File Amicus Briefs Opposing SEC's Authority to Regulate Crypto Assets as Securities** On February 27, Senator Cynthia Lummis (R-Wyo.), crypto industry groups, and a veteran appellate attorney filed an amicus brief asserting that the SEC's suit against crypto exchange Kraken expands the definition of investment contract beyond what Congress intended. Lummis argues that the SEC is overreaching its authority by encroaching on Congress's lawmaking power. In the suit, the SEC claims that Kraken operated as an unregistered broker, dealer, exchange, and clearing agency. The amicus brief argues that the "SEC is not suited to the task of crafting a holistic regulatory framework for crypto assets, particularly through a judicial enforcement action (where neither the SEC nor this court is positioned to grapple with the unintended consequences of the SEC's current enforcement stance and the policy implications of its novel legal opinion)." The amicus brief concludes that "such policymaking is precisely the role the Constitution assigns to Congress." Law360.On February 29, a coalition of attorneys general from eight U.S. states submitted a joint amicus brief, also arguing that the SEC's attempt to regulate crypto assets as securities exceeds the SEC's authority. The brief asserts that Congress has not delegated such authority to the SEC and emphasizes the states' interest in preventing the potential preemption of consumer protection laws. The Block.
- **DOJ Changes Prosecution Strategy from Whack-a-Mole to Systemic** According to veteran crypto-focused prosecutors, the Department of Justice is no longer playing "whack-a-mole" in its crypto cases, but rather focusing on large, important actors to further the goal of bringing the broader industry into compliance. On February 23, Tara La Morte and Noah Solowiejczyk, leaders of the U.S. Attorney's Office for the Southern District of New York's Illicit Finance and Money Laundering Unit, spoke at a New York City Bar Association event about this change in strategy. La Morte stated that law enforcement is focusing on "systemic-type prosecution that's going to make an industry impact" and lead "the industry to take notice." Law360.

OTHER NOTABLE NEWS

- **The Philippines Central Bank, Bangko Sentral ng Pilipinas, Plans to Launch Wholesale Central Bank Digital Currency Within Two Years** On February 12, the Philippines' central bank, the Bangko Sentral ng Pilipinas (BSP), revealed the bank's intention of introducing a wholesale central bank digital currency (CBDC) within the next two years. In discussing its decision to limit the CBDC to wholesale, the BSP acknowledged that retail CBDC could intensify bank runs in times of financial stress. Additionally, the BSP confirmed that it will not use blockchain or distributed ledger technology, stating that "[o]ther central banks have tried blockchain, but it didn't go well." Cointelegraph; CoinDesk; The Inquirer.
- **OKX Opens Crypto Exchange in Turkey as Part of International Expansion** On February 27, crypto exchange OKX entered Turkey as part of its global expansion plan. In an interview with CoinDesk, OKX President Hong Fang said that "Turkey is a very important and special market for us. It ranks high in terms of crypto adoption and crypto transaction volume." Fang detailed that "there is a natural tendency to look for value in bitcoin in Turkey, particularly for wealth preservation." Due to Turkey's double-digit inflation rate, crypto has become a lifeline for many. CoinDesk; The Block.
- **Crypto Campaign Contributions Impacted Super Tuesday** Crypto political

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action committees spent more than $78 million on Super Tuesday races, helping propel Adam Schiff (D-CA), Young Kim (R-CA), Shomari Figures (D-AL), Julie Johnson (R-TX), and Tim Moore (R-NC) to win their races and advance to run offs. Fast Company; CoinDesk.

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