Digital Assets Recent Updates

February 4, 2025

We are pleased to provide you with the January 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

- ***Federal Judge Grants Coinbase Leave to Seek Interlocutory Appeal in SEC Enforcement Action***
  On January 7, in the SEC's enforcement action against Coinbase, U.S. District Judge Katherine Polk Failla of the Southern District of New York granted Coinbase permission to seek an interlocutory appeal of the court's ruling denying in part Coinbase's motion for judgment on the pleadings. The district court authorized Coinbase to seek leave from the Second Circuit to resolve the issue "whether transactions involving crypto-assets of the kind Coinbase intermediates are 'investment contracts,' and thus securities, for purposes of the Securities Act." The district court also stayed the enforcement action pending appeal. On January 21, Coinbase filed its brief in the Second Circuit seeking that court's permission to proceed with the interlocutory appeal. Banking Dive; Denial of Judgment on the Pleadings; Grant of Interlocutory Appeal; Second Circuit Brief.

- ***KuCoin Agrees to Pay Nearly $300 Million in Criminal Penalties***
  On January 27, 2025, Peken Global Limited—the Seychelles-based entity that operates "KuCoin"—pled guilty to one count of operating an unlicensed money transmitting business. According to the DOJ's press release, KuCoin and its affiliates failed to

implement effective AML and KYC programs in violation of the Bank Secrecy Act, failed to report suspicious transactions, and failed to register with the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN). According to the DOJ, KuCoin had approximately 1.5 million registered users in the United States and earned approximately $184.5 million in fees from those users. KuCoin agreed to criminally forfeit $184.5 million and pay a criminal fine of approximately $112.9 million, however, the total monetary penalty is expected to be offset by a potential settlement with the U.S. Commodity Futures Trading Commission and a $5.3 million fine KuCoin already paid as part of a civil settlement with the New York Attorney General's Office. KuCoin will also exit the U.S. market for at least the next two years, and KuCoin founders Chun "Michael" Gan and Ke "Eric" Tang, who were indicted along with Peken in March 2024, reached deferred prosecution agreements whereby they agreed to no longer have any role in KuCoin's management or operations. DOJ; Law360; Reuters; The Block; MLex.

- ***BitMEX Fined $100 Million For Bank Secrecy Act Violations***
  On January 15, crypto exchange HDR Global Trading Ltd., a/k/a BitMEX, was fined $100 million and ordered to serve two years of unsupervised probation for violating the Bank Secrecy Act by failing to establish an adequate anti-money laundering and know-your-customer program. BitMEX said in a statement that it is "glad to move past this matter, and look[s] forward to continuing to focus on innovation and delivering the best products and services to our users without further distraction." DOJ; Global Investigations Review; Law360; BitMEX.

- ***DCG and Ex-Genesis CEO Agree to Pay SEC $38.5 Million to Settle SEC Charges***
  On January 17, Digital Currency Group (DCG) and Sochiro "Michael" Moro, former CEO of DCG's crypto trading subsidiary, Genesis Global Capital LLC, agreed to pay the SEC $38.5 million in civil penalties to settle securities fraud claims. DCG will pay $38 million to the SEC, with Moro paying the remaining $500,000. Both DCG and Moro also agreed to a cease-and-desist order; neither admitted liability. A spokesperson for DCG said that the company is "pleased to have concluded an extensive investigation process that was limited in its findings and focused on the social media posts and communications made by our former operating subsidiary." SEC; Law360; CoinDesk.

- ***NYAG Initiated Suit to Recover $2.2M from Crypto Scammers***
  On January 11, NY Attorney General Letitia James filed a lawsuit to recover $2.2 million of frozen cryptocurrency allegedly fraudulently solicited from New Yorkers. The complaint alleges a scheme whereby scammers sent text messages to New Yorkers promising them fake remote jobs as product reviewers: victims were told to create crypto accounts, deposit funds with their own bank accounts, and then review products on fake websites. They were told they would get their money back plus commission, but allegedly never received payment. None of the alleged scammers' identities are named in the complaint. As the scammers are unidentified, James plans to serve process on them by airdropping an NFT to the wallets used to allegedly steal the victims' cryptocurrency. According to the New York Attorney General, this would be the first time a state or federal regulator has proposed serving a lawsuit in this manner; New York courts have allowed a private plaintiff to serve process via NFT in the past. The Block; Cointelegraph; Complaint.

- ***Operators of Cryptocurrency Privacy Services Charged with Money Laundering***
  Russian operators of the cryptocurrency privacy services Blender.io and Sinbad.io, have

been indicted by a federal grand jury. According to the DOJ, Blender.io and Sinbad.io were used by cybercriminals "launder funds stolen from victims of ransomware, virtual currency thefts, and other crimes." The government alleges that Blender.io and Sinbad.io, the operators, designed the services to hide the source of cryptocurrency, making them "save havens" for laundering criminally derived funds. The indictment of the individual operators come after Blender.io and Sinbad.io were sanctioned by the Department of Treasury's Office of Foreign Assets Control (OFAC) in 2022 and 2023 respectively. According to the Department of Justice, Ostapenko and Oleynik have been arrested; Tarasov remains at large. DOJ; The Block.

- ***Terraform Labs Co-founder Do Kwon Pleads Not Guilty to Criminal Charges in New York Following Extradition***
  On January 2, Do Kwon pleaded not guilty to charges including wire fraud, securities fraud, and money laundering following his extradition to the United States from Montenegro a few days before. The charges stem from Kwon's alleged involvement with the stablecoin Terra USD, which fell dramatically in value in 2022. Montenegro extradited Kwon after months of debate on whether Kwon should face charges in the United States or in South Korea. The Block; DOJ.

REGULATION AND LEGISLATION

UNITED STATES

- ***President Trump Signs Executive Order on Crypto to Promote U.S. Leadership in Blockchain and Digital Assets***
  On January 23, President Trump signed an Executive Order titled "Strengthening American Leadership in Digital Financial Technology" which outlines several key policies regarding crypto, including: ensuring access to open public blockchain networks, ensuring fair access to banking services for the crypto industry, providing regulatory clarity, and protecting against the risk of central bank digital currencies (CBDCs) by prohibiting their establishment in the U.S. This Executive Order revoked former President Biden's Order on crypto and effectively rescinded all policies and directives issued pursuant to it. The Order also establishes a working group within the National Economic Council to craft a new federal regulatory scheme for digital assets. The Block; Cointelegraph.

- ***President Trump Picks Caroline Pham as Acting Chair of the CFTC***
  Caroline Pham, who had been serving as a CFTC commissioner since April 2022 after being nominated by former President Biden, will be acting Chair of the financial regulator and replace Rostin Behnam. As a commissioner, Pham had called on the government to address crypto regulation and had proposed initiatives to protect investors. Pham nominated Harry Jung as Chief of Staff; according to the CFTC's statement, Jung will lead the CFTC's engagement with the crypto industry. CFTC; Cointelegraph; CoinDesk.

- ***Trump Names Mark Uyeda Acting SEC Chair***
  On January 21, the SEC announced that President Trump designated Mark T. Uyeda as Acting Chairman of the agency, assuming the role left open by Gary Gensler's resignation until the Senate confirmation of Paul Atkins as the nominated permanent Chair. Uyeda has been a strong critic of Gensler's approach to regulating digital assets, and is

expected to be much friendlier to the industry. “The environment we have created for the crypto asset markets, especially as it relates to secondary trading, is untenable,” said Acting Chairman Uyeda and Commissioner Hester M. Peirce in a March 5, 2024 statement. SEC; Reuters; AP; March 5, 2024 Statement.

- ***SEC Launching Crypto Task Force***
  On January 21, SEC Acting Chairman Mark T. Uyeda launched a “crypto task force” “dedicated to developing a comprehensive and clear regulatory framework for crypto assets.” According to the press release, SEC Commissioner Hester Peirce will head the task force. “We look forward to working hand-in-hand with the public to foster a regulatory environment that protects investors, facilitates capital formation, fosters market integrity, and supports innovation,” said Peirce. Richard Gabbert, Senior Advisor to the Acting Chairman, and Taylor Asher, Senior Policy Advisor to the Acting Chairman, will serve as the task force’s Chief of Staff and Chief Policy Advisor. Significantly, the Commission’s press release announcing the task force noted that “[t]o date, the SEC has relied primarily on enforcement actions to regulate crypto retroactively and reactively, often adopting novel and untested legal interpretations along the way. Clarity regarding who must register, and practical solutions for those seeking to register, have been elusive. The result has been confusion about what is legal, which creates an environment hostile to innovation and conducive to fraud. The SEC can do better.” SEC; CoinDesk; The Hill.

- ***SEC Rescinds Crypto Accounting Guidance SAB 121***
  The SEC’s Division of Corporate Finance and Office of the Chief Accountant have issued Staff Accounting Bulletin (SAB) 122, which rescinds the prior and controversial SAB 121. SAB 121 required firms that custody cryptocurrencies to record their customers’ holdings as liabilities on their balance sheet. The guidance had sparked much criticism in the industry in the past year. Last year, the House and Senate voted to repeal SAB 121, though the measure was vetoed by former President Biden. The Block; CoinDesk.

- ***IRS Delays Implementing Crypto Cost-Basis Reporting Rules***
  The IRS announced that it is postponing the new tax reporting requirements for crypto until 2026. Under the proposed rule, if a taxpayer has not identified a preferred accounting method, the First-in, First-out (FIFO) will be used, treating the earliest acquired asset as sold first. Under this method, the IRS would maximize capital gains (and therefore tax) for investors. This temporary relief will give brokers a grace period during which they can develop other, more advantageous accounting methods. IRS; The Block.

INTERNATIONAL

- ***Proposal to Mandate Swiss National Bank to Hold Bitcoin Underway***
  On December 31, 2024, the Swiss Federal Chancellery set in motion a proposal that, if adopted, would mandate the Swiss National Bank to hold Bitcoin on its balance sheet. In order to be put to a national referendum, the proposal must garner 100,000 signatures by June 30, 2026. Several other countries are considering adopting Bitcoin, notably the United States (where Senator Cynthia Lummis sponsored a Bitcoin reserve bill), Brazil, and Poland. Reuters; Cointelegraph.

CIVIL LITIGATION

UNITED STATES

- ***Gibson Dunn Secures Win for Coinbase against the SEC in the Third Circuit***
  On January 13, a unanimous Third Circuit panel held that the SEC's denial of Coinbase's petition for rulemaking regarding digital assets was "conclusory and insufficiently reasoned" and therefore arbitrary and capricious under the Administrative Procedure Act. In an opinion penned by Judge Ambro, the Court remanded Coinbase's petition to the SEC for a more complete explanation. A concurring opinion by Judge Bibas further took the SEC to task on due-process grounds. Judge Bibas faulted the agency for failing to provide "meaningful guidance on which crypto assets it views as securities," adding that the SEC's "silence and contradictory unofficial signals breed uncertainty," target "a whole industry," and risk "de facto banning it." Judge Bibas added that the SEC's "caginess" about how the securities laws apply to digital assets "creates a serious constitutional problem" that should be addressed in SEC enforcement actions against crypto firms. Westlaw Today; Opinion.

- ***OKX Facing Nationwide Class Action***
  On January 13, a proposed nationwide class action was filed in the U.S. District Court for the Northern District of California alleging that OKX, one of the world's largest crypto exchanges, violated the Bank Secrecy Act by allegedly failing to comply with anti-money laundering and know-your-customer rules. The class-action complaint also asserts RICO claims, among others. The proposed class is defined as U.S. users whose digital assets were taken from a non-OKX wallet and transferred to an account on the platform. Law360; Law.com.

- ***Celsius to Challenge $445M Claim Denial in FTX Bankruptcy***
  On January 2, Celsius filed a notice in Delaware district court that it is appealing U.S. bankruptcy Judge John T. Dorsey's findings that FTX had not received sufficient notice an avoidance claim was coming and that Celsius' attempt to amend the claim a year after the claim deadline was improper. Celsius had filed a $2 billion proof of claim in June 2023, only one day before the claims deadline in the FTX bankruptcy. Celsius alleged that it might have had claims based on disparaging statements about Celsius made by FTX officers pre-bankruptcy and that it was investigating other potential claims, including some that might allow it to claw back asset transfers from Celsius. One year later, Celsius filed a revised proof of claim, alleging $445M in preferential transfers to FTX that were subject to clawback. Judge Dorsey issued an opinion holding that the June 2023 statement that Celsius was investigating other potential claims did not give FTX sufficient notice of the avoidance claim. Law360.

SPEAKER'S CORNER

UNITED STATES

- ***Wisconsin Rep. Bryan Steil to lead U.S. House Subcommittee on Digital Assets***
  On January 9, Republican Representative FTX was announced as the new leader of the

Subcommittee on Digital Assets, Financial Technology and Artificial Intelligence. Congressman Steil previously served as a member of the Subcommittee on Digital Assets, Financial Technology and Inclusion in the 118th Congress and is serving his fourth term on the Financial Services Committee. As a member of the Committee, Steil voted for both the FIT21 and the stablecoin bill. He has also been particularly critical of the SEC and their approach to crypto, under the Biden Administration. The Block.

- ***Treasury Secretary Nominee Opposes U.S. CBDC***
  On January 16, during his nomination hearing before the Senate Finance Committee, Scott Bessent, who was confirmed as Treasury Secretary in a bipartisan vote, expressed strong opposition to the idea of a U.S. central bank digital currency (CBDC): "I see no reason for the U.S. to have a central bank digital currency. . . . In my mind, a central bank digital currency is for countries who have no other investment alternatives." Separately, when asked about the Treasury's financial-crimes arm, and in the context of terrorist financing, Bessent said: "I believe we have to have a 2025 approach to . . . digital currencies." CoinDesk; Decrypt.

- ***Congress To Investigate "Debanking" Practices***
  The House Oversight Committee and the Senate Banking Committee unveiled plans to investigate "debanking" practices, with a focus on those levied against digital asset businesses and founders. "Debanking," or "de-risking," in this context is the practice of government authorities issuing guidance or exerting pressure on financial institutions to close or refuse to open bank accounts on behalf of a certain class of business. On January 24, Representative James Comer, Chairman of the House Oversight Committee, published a letter he sent to six "leaders of digital asset corporations and associations," writing that the "Committee is interested in engaging individuals who have been debanked and, specifically, how these actions hurt innovation, entrepreneurs, and workers," and that "the Committee seeks to understand the financial institutions and regulators involved." On the same day, Senator Tim Scott, Chair of the Senate Banking Committee, announced plans to hold a hearing on debanking on February 5, 2025, stating that "under Operation Chokepoint 2.0, Biden regulators abused their power and forced financial institutions to cut off services to digital asset firms." Comer; Scott; The Block.

- ***Senate Digital Assets Chair Warns FDIC Not To Destroy Materials Related To "Debanking"***
  On January 16, Senator Cynthia Lummis sent a letter to the Chair of the FDIC urging the agency to "preserve all existing materials . . . relating to the FDIC's digital asset activities since January 1, 2022 . . . ." Senator Lummis asserted that whistleblowers at the FDIC informed her that "destruction of materials is occurring" and that "staff have been threatened with legal action to prevent them from speaking out." Senator Lummis, Chair of the Senate Banking Subcommittee on Digital Assets, appears to be particularly concerned with the destruction of evidence related to an alleged FDIC effort to limit banks' provision of services to digital asset businesses. Letter; Press Release; CoinDesk.

OTHER NOTABLE NEWS

- ***New York Department of Financial Services Launches Transatlantic Regulatory Exchange with Bank of England***
  On January 13, the New York Department of Financial Services (DFS) launched the Transatlantic Regulatory Exchange (TRE), "an international secondment program which allows DFS and other regulators to exchange staff, enabling greater sharing of resources, knowledge, and regulatory approaches." According to the DFS' press release, the first secondment under the program will begin in February with DFS and the Bank of England exchanging staff with expertise in emerging payments and digital assets. The initiative is designed to strengthen regulatory frameworks, protect consumers, and support innovation by connecting New York and London, says DFS Superintendent Adrienne A. Harris. NYDFS; JD Supra.

- ***New York Department of Financial Services Issues a Consumer Alert Warning of Risks Associated with Memecoins***
  On January 16, the NYDFS issued an alert on "rapidly proliferating, sentiment-based" cryptocurrencies, typically referred to as memecoins. The agency noted that the platforms used to create these coins are not regulated by the NYDFS and are thus not subject to the rules and regulations in place for other virtual currencies. The agency warned of significant price volatility and manipulation by the creators of the coins, including "pump-and-dump schemes" (artificially inflating price while selling one's own supply) and "rug pulls" (removing the liquidity from a coin so that selling is no longer possible). The alert warned consumers that these virtual currencies present "exceptional risk of fraud and loss of funds." NYDFS.

- ***President Trump Pardons Silk Road Founder Ross Ulbricht***
  On January 21, President Trump pardoned the founder of what prosecutors had described as a "global, black-market bazaar" where over 100,000 individuals were able to purchase drugs and other illegal services before Ulbricht's arrest in 2013. The network used the Tor network and accepted Bitcoin as payment to allow users to interact anonymously. Ulbricht was serving multiple life sentences without the possibility of parole. The Block; Reuters.

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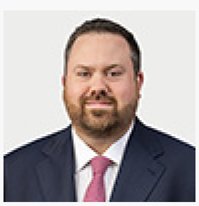

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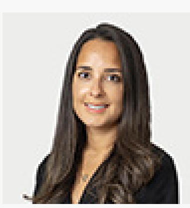

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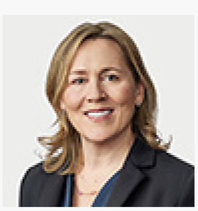

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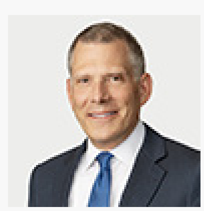

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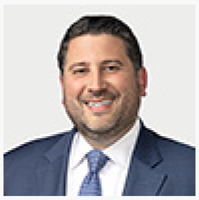

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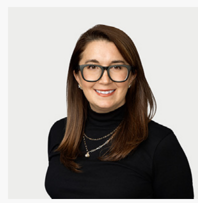

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