

20 DECEMBER 2024 • 67 MINUTE READ

Blockchain and Digital Assets News and Trends – October–December 2024

Written by: Margo Tank, James Williams, Elizabeth (Liz) Caires, Eric Hall

Contributors: Michael Fluhr, David Stier

This periodic bulletin is designed to help companies identify important legal developments governing the use and acceptance of blockchain technology, smart contracts, and digital assets.

While the use cases for blockchain technology are vast, this bulletin focuses on uses of blockchain and smart contracts in the financial services sector. With respect to digital assets, we have organized our approach to this topic by discussing them in terms of traditional asset type or function (although the types and functions may overlap) – that is, digital assets as:

- Securities
- Virtual currencies
- Commodities
- Deposits, accounts, intangibles
- Negotiable instruments
- Electronic chattel paper
- Digitized assets

In addition to reporting on the law and regulation governing blockchain, smart contracts, and digital assets, this bulletin will discuss the legal developments supporting the infrastructure and ecosystems that enable the use and acceptance of these new technologies.

INSIGHTS

Argentina begins establishing a comprehensive framework for crypto assets

By [Nicolás Fernández Madero](#)

The *Comisión Nacional de Valores* (CNV), Argentina's legislative body, has issued General Resolution N°1025 (General Resolution), inviting public consultation on a draft for new regulations governing virtual asset service providers (VASPs).

The main features of the October 2024 General Resolution include the mandatory establishment of VASP entities in Argentina, minimum net worth requirements based on the type of services provided, the appointment of specific company officers, the implementation of technical infrastructure, mandatory audits, and the development of certain internal policies and manuals.

Although the General Resolution is still in draft form, it is expected that the final version will closely align with the current proposal. [\[Read more\]](#)

STATUTORY AND AGENCY DEVELOPMENTS

FEDERAL DEVELOPMENTS

White House

- **President-elect announces appointment of White House Artificial Intelligence (AI) and Crypto Czar.** According to [public reporting](#), President-elect Donald Trump has announced that he will appoint PayPal's Chief Operating Officer (COO), David Sacks, as "White House AI and Crypto Czar." In a social media post, the President-elect stated that Sacks "will work on a legal framework so the crypto industry has the clarity it has been asking for, and can thrive in the US."

SEC

- **SEC touts record-breaking enforcement numbers for 2024 driven by crypto industry actions.** On November 22, the Securities and Exchange Commission (SEC) [announced](#) its [enforcement results](#) for fiscal year 2024. Despite a reported 26-percent decline in the number of enforcement actions, the SEC reported \$8.2 billion in financial remedies, "the highest amount in SEC history." That number was largely attributable to the SEC's enforcement action against blockchain company Terraform Labs and its founder Do Kwon. The SEC also cited settlements with BarnBridge DAO and Silvergate Capital as significant wins against crypto industry defendants.

- **SEC publishes 2025 examination priorities.** On October 23, the SEC's Division of Examinations (Division) **announced** the release of its **2025 examination priorities**. The Division publishes its examination priorities annually to make investors and registrants aware of the examination topics that it plans to focus on in the new fiscal year. This year's examinations will prioritize perennial and emerging risk areas, such as crypto assets and the use of emerging technologies.
- **SEC Chair and Enforcement Director announce departures.** On November 21, the SEC **announced** that Chair Gary Gensler would be leaving the position on January 20, 2025, ending a nearly four-year tenure as its lead administrator. The SEC's press release acknowledged a legacy of enforcement actions, including for fraud, wash trading, registration violations, and other misconduct. Data from the Blockchain Association **quantifies** that legacy at 104 enforcement actions through 2023. In **remarks** to the Practising Law Institute's 56th Annual Institute on Securities Regulation, shortly before the announcement of his departure, Chair Gensler defended his enforcement record, stating, "Court after court has agreed with our actions to protect investors" while simultaneously recognizing that "[n]ot every [digital] asset is a security," citing bitcoin, Ether, and stablecoins as examples. Gensler's announcement came less than a month after SEC Enforcement Director Gurbir Grewal **announced** his own departure on October 2. Like Gensler, Grewal oversaw more than 100 enforcement actions addressing what the SEC called "widespread noncompliance in the quickly growing crypto space."
- **SEC Commissioner Peirce calls for clearer crypto regulation at Wharton FinTech Series.** In her **remarks** at the Wharton FinTech Lecture Series, SEC Commissioner Hester M. Peirce spoke of the delicate balance between regulation and innovation, particularly in the context of financial technology and crypto assets. She illustrated the complexities of excessive regulation using the analogy of a potholder she had recently purchased that came with a 20-page disclosure document, making the point that excessive regulation could stifle the innovation of even relatively innocuous products. Peirce then addressed the SEC's inconsistent approach to crypto regulation, which has often been characterized by legal uncertainty and a focus on enforcement rather than collaboration, which, in her view, has pushed much of the innovation overseas. Peirce advocated for a more open and predictable regulatory framework that would allow for experimentation and innovation, including the creation of a "micro-innovation sandbox" to facilitate cross-border experimentation. Peirce also pointed out the potential benefits of asset tokenization and the need for clear guidance to foster its development.
- **SEC Commissioner Uyeda praises regulatory leadership of Indo-Pacific countries on crypto regulation.** On October 24, SEC Commissioner Mark T. Uyeda delivered **remarks** at the 2024 AIMA APAC Annual Forum in Hong Kong, highlighting the significance of the Indo-Pacific region in global financial markets, the regulation of private funds in the US, and the importance of international regulatory engagement. Uyeda expressed concerns about government criticisms of alternative investments and the role of "shadow banking" in financial stability. He emphasized the importance of alternative investments in providing

nontraditional funding to companies, which is crucial for innovation and economic growth. Uyeda also discussed the recent court ruling that vacated the SEC's prescriptive rule on private fund advisers, which he opposed, and the ongoing regulatory proposals that could impact private fund managers, such as the re-proposed custody rule and pending cybersecurity regulations. Uyeda claimed that the SEC's current regulatory approach to crypto is less advanced compared to that of the Indo-Pacific region. He highlighted the leadership of jurisdictions in Hong Kong, Singapore, Japan, and Australia in facilitating crypto and fintech innovation while promoting investor protection. Uyeda pointed out the lack of sufficient guidance from the SEC on key issues, such as when a crypto offering needs to be regulated as a security. He emphasized the need for the SEC to engage more transparently with market participants. Uyeda also mentioned the challenges faced by private fund managers in the US regarding the custody and auditing of crypto assets and called for the US to learn from the regulatory approaches of other countries to better facilitate innovation, capital formation, and investor protection in the crypto space.

Congress

- **House Committee on Financial Services holds hearing on technological innovations in financial services.** On December 4, the House Committee on Financial Services held a hearing entitled, "Innovation Revolution: How Technology is Shaping the Future of Finance." In a memorandum **published** before the hearing, committee staff previewed that a significant portion of the hearing focused on blockchain technology and digital assets, which the committee sees as potential building blocks for the next generation of internet technology. During the **hearing**, committee members recognized that blockchain enables the creation of decentralized networks that offer new ways to provide services, such as financial products and social networks, with greater user autonomy and privacy. The hearing further acknowledged that the market capitalization of digital assets is approximately \$3 trillion, with stablecoins like Tether (USDT) and USD Coin (USDC) providing price stability. Speakers also discussed the potential of tokenization, which involves creating digital representations of real-world assets on the blockchain in order to increase liquidity, transparency, and access. The memorandum did, however, note that innovators will need to address challenges such as interoperability and systemic risks.
- **Acting Comptroller of the Currency comments on crypto volatility in remarks before Committee on Financial Services.** On November 20, Michael J. Hsu, Acting Comptroller of the Currency, provided an update on the Office of the Comptroller of the Currency (OCC)'s efforts to ensure the safety and soundness of national banks and federal savings associations. He discussed the state of the federal banking system, highlighting that the overall condition remains sound with strong levels of regulatory capital and sufficient liquidity buffers. Hsu emphasized the importance of safeguarding trust in the banking system and outlined four priorities: guarding against complacency, elevating fairness, adapting to digitalization, and managing climate-related financial risks. He noted that the OCC's focus on strong risk management has helped banks navigate challenges such as the crypto market downturn, rising interest rates, and commercial real estate concerns. The OCC has also been working on enhancing fairness in banking, modernizing the Community

Reinvestment Act, reforming overdraft practices, and expanding financial inclusion through initiatives like Project REACH. Regarding cryptocurrency and digital assets specifically, Hsu highlighted the significant impact of the crypto market's volatility, noting that crypto lost over \$2 trillion in value, leading to the failure of many players in the industry. He stressed the importance of strong risk management in preventing complacency and ensuring stability in the banking system amid such volatility. Hsu also discussed the challenges posed by the digitalization of banking, in which nonbank financial technology companies (fintechs) offer banking services, creating confusion and diffused accountability. He mentioned the bankruptcy of Synapse, a banking-as-a-service (BaaS) middleware firm that affected many consumers when they were not able to access their money. Hsu voiced support for the Department of the Treasury's push for federal payments regulation and a chartering regime for nonbanks to close regulatory gaps and promote responsible innovation and competition.

Treasury

- **2024 FSOC report identifies digital currencies as source of financial instability risk.** In December, the Financial Stability Oversight Council (FSOC) published its **annual report** providing a comprehensive assessment of risks to US financial stability. The FSOC comprises heads of the Department of the Treasury, Board of Governors of the Federal Reserve System, SEC, Commodity Futures Trading Commission (CFTC), Consumer Financial Protection Bureau (CFPB), and OCC, among others. The report highlights vulnerabilities in various sectors including commercial real estate, residential real estate, corporate credit, and digital assets. The report outlines the Council's activities, recommendations for enhancing market integrity, and responses to emerging threats. The report places significant emphasis on the growing market of digital assets, including cryptocurrencies and stablecoins. As of July 2024, the global market value of crypto assets was just under \$2 trillion. The FSOC highlights the risks associated with stablecoins, particularly their vulnerability to runs and the lack of a comprehensive federal prudential framework. The FSOC recommends that Congress pass legislation to address these risks, including regulatory requirements for reserves, capital, and reporting. The report also discusses the launch of new crypto asset exchange traded products (ETPs) and their potential to increase interconnections between the traditional financial system and the crypto asset ecosystem. Additionally, the FSOC notes the importance of monitoring the use of tokenized products and the potential financial stability risks they pose. Overall, it continues to advocate for enhanced regulatory oversight and data collection to better understand and mitigate the risks associated with digital assets.
- **IRS memorandum advises reporting assets frozen in bankrupt digital asset platforms as income.** On November 1, in response to a taxpayer's request for advice, the Internal Revenue Service (IRS) published a **memorandum** providing advice "regarding the proper year of inclusion of frozen digital asset rewards in gross income." According to the memorandum, a taxpayer who receives rewards, such as staking rewards, from a digital asset trading platform that files for bankruptcy in the same year, must still report those awards in the taxpayer's gross income even though the taxpayer has no access to those

rewards while they remain locked in bankruptcy proceedings. The IRS justified this position on the basis that the rewards are credited to the customer's account as soon as they are distributed. Thus, the IRS acknowledged that rewards that are not distributed to a taxpayer before the company files for bankruptcy, or credit to the taxpayer subject to a lockup period, do not need to be reported until the taxpayer takes "dominion and control" over the rewards.

- **Department of the Treasury and IRS announce 2024-2025 Priority Guidance Plan.** On October 3, the Department of the Treasury and IRS published their [2024-2025 Priority Guidance Plan](#) (Guidance Plan). The Guidance Plan outlines 231 guidance projects that are priorities for the allocation of resources from July 1, 2024 to June 30, 2025. It suggests the development of specific guidance related to digital assets – including regulations under Sections 6045A and 6050I – regarding information reporting of transactions involving digital assets between "brokers." Additionally, the Guidance Plan further suggests developing guidance under Sections 1001 and 1012 involving token wrapping.

FDIC

- **FDIC reports 4.8 percent of US households use or hold digital currency.** On November 12, the Federal Deposit Insurance Corporation (FDIC) published the results of its [2023 FDIC National Survey of Unbanked and Underbanked Households](#). According to the FDIC's [press release](#), the nation's overall rate of households without a bank or credit union account hit a record low of 4.2 percent, representing 5.6 million households. The survey also included questions about the use of crypto or digital assets to store and transfer money. The survey found that in 2023, 4.8 percent of US households owned or used crypto or digital assets in the previous 12 months. 92.6 percent of these households held crypto or digital assets as an investment, while only 4.4 percent used digital assets as a form of payment.
- **OCC meets with SIFMA to discuss FDIC proposal to restrict brokered deposits.** On November 18, representatives from the Securities Industry and Financial Markets Association (SIFMA) met with the FDIC and the OCC to discuss the FDIC's proposed rule on brokered deposits. According to the OCC's [memorandum](#) documenting the meeting, SIFMA representatives expressed concerns about the lack of supporting data for the proposed changes and recommended either withdrawing or significantly revising the proposal. They highlighted that the 2021 Final Rule had modernized restrictions on brokered deposits and created exceptions for broker-dealers providing sweep deposit services, which had resulted in a substantial reduction in reported brokered deposits. The new proposal, however, seeks to eliminate or narrow these exceptions without providing new data or studies to justify the changes, potentially reclassifying a significant portion of deposits and impacting institutions' capital and liquidity requirements. In response, the FDIC pointed to the failure of crypto company Voyager Digital to justify its plan to restrict insured depository institutions (IDIs) from accepting brokered deposits. Voyager was not considered a deposit broker due to its exclusive relationship with a single IDI, and the funds placed at Voyager were unsafely kept resulting in customer confusion about FDIC insurance coverage. Despite Voyager's failure, SIFMA representatives noted that Voyager's former IDI partner

continues to operate without adverse impacts, indicating that the proposed changes may not address the actual risks associated with digital assets and related entities. The representatives argued that the proposal lacks a comprehensive cost and benefit analysis and does not sufficiently consider the implications for consumers and institutions involved with digital assets.

- **Committee on Capital Markets Regulation weighs in on FDIC's proposed brokered deposits rule.** On November 13, the Committee on Capital Markets Regulation, an independent research organization formed from leaders in several disciplines related to capital markets, submitted **comments** regarding the FDIC's proposed rule on brokered deposits. The Committee argued that the proposal's expanded definition of brokered deposits would increase banks' capital and liquidity requirements and deposit insurance premiums for many types of deposit arrangements. The Committee expressed that the proposal is fundamentally flawed, stating that it fails to consider relevant evidence; reverses a prior agency action without a rational basis; and does not acknowledge the costs it would impose on the banking system, financial intermediaries, and their customers. As a result, the Committee recommended that the FDIC withdraw the proposal and maintain the existing regulations established in 2020. In particular, the Committee's comments mention the failure of Metropolitan Commercial Bank, which held the deposits of customers of the crypto company Voyager Digital, which failed in 2022. The FDIC's proposal acknowledges that Metropolitan Commercial Bank was put at risk because it held deposits of Voyager customers, indicating that such arrangements create legal, operational, and liquidity risks for the bank if the broker fails. However, the Committee argues that the bankruptcy of Voyager does not support the conclusion that these depository arrangements create these risks, as Metropolitan Commercial Bank did not experience distress as a result of Voyager's failure. Instead, the bank has apparently enjoyed increased profitability and improved capital ratios since Voyager's failure in 2021. The Committee's comments join similar arguments from industry representatives such as the **Independent Community Bankers of America (ICBA)**, **Better Markets**, and **Charles Schwab**.

CFTC

- **CFTC's Global Markets Advisory Committee advances recommendation on tokenized non-cash collateral.** On November 21, the Global Markets Advisory Committee (GMAC) of the CFTC **advanced** a **recommendation** to expand the use of non-cash collateral through the use of distributed ledger technology (DLT). The recommendation provides a legal and regulatory framework for how market participants can apply their existing policies, procedures, practices, and processes to support the use of DLT for non-cash collateral in a manner consistent with margin requirements for both cleared and non-cleared derivatives, subject to specified conditions and limitations designed to mitigate credit, market, and liquidity risks. The recommendation was approved without objection.
- **CFTC releases enforcement results for fiscal year 2024 including significant results against cryptocurrency industry participants.** On December 4, the CFTC **published** its report of enforcement actions for fiscal year 2024. According to the CFTC's **announcement**

of the results, “digital asset cases” were a significant driver of its record-breaking monetary recoveries, including \$2.6 billion in civil penalties and \$14.5 billion in disgorgement and restitution. These actions included the settlement of fraud claims against FTX, Alameda Research, Voyager, and a romance scammer.

- **CFTC warns messaging app users about the dangers of crypto scams.** On October 31, the CFTC **published** an alert warning users of popular messaging apps like WhatsApp and Telegram to beware of scams to defraud users of crypto assets. According to the alert, fraudsters use these apps to lure users into cryptocurrency “pump-and-dump schemes” by advertising enormous returns with “zero risk” by supposedly getting into a cryptocurrency investment early. The alert advises users to ignore the messages and change their settings to avoid being added to large group messages.
- **CFTC issues advisory related to clearing of options on spot bitcoin and Ethereum ETFs.** On November 15, the CFTC **announced** issuance of a **staff advisory** addressing the clearing of options on spot commodity-based exchange traded fund (ETF) products. The advisory notes that spot commodity ETF shares based on bitcoin have been listed and traded on national securities exchanges, and the SEC approved spot commodity ETF shares of Ethereum. CFTC staff states that “[b]ecause ... it is substantially likely that spot commodity ETF shares would be held to be securities, we believe that these shares listed on SEC registered national securities exchanges do not implicate the [CFTC’s] jurisdiction, and therefore, the clearing of these options...would be...subject to SEC oversight.” The advisory asserts that the CFTC “does not have any more role regarding the clearing of these options.”

FINRA

- **FINRA report addresses implications of the metaverse on the securities industry.** In October, the Financial Industry Regulatory Authority (FINRA) released a **report** entitled, “The Metaverse and the Implications for the Securities Industry,” which explores the potential applications, challenges, and regulatory considerations of the metaverse for the securities industry. The report describes the metaverse as an immersive and interactive virtual world that blends digital and physical experiences and observes that financial institutions are increasingly interested in leveraging metaverse technologies for various purposes, including customer engagement, training, and data visualization. The report highlights the significant revenue opportunities in the metaverse, with projections of it contributing over \$3 trillion to global GDP by 2031. The document also discusses the potential for the metaverse to transform business models and processes within the securities industry, emphasizing the importance of addressing privacy, cybersecurity, and compliance challenges. The report explores the role of digital assets within the metaverse, noting that the metaverse offers a lucrative environment for commerce, with users holding a total of \$163 billion in digital payments, with assets like bitcoin, Ether, and Robux enjoying a strong preference among metaverse users. The document also highlights the regulatory scrutiny surrounding native tokens of decentralized platforms like The Sandbox and Decentraland. Additionally, the report mentions the potential for metaverse payments to accelerate the

shift towards digital commerce, influencing how investors interact with financial market professionals. The integration of wearable devices in the metaverse, for example, could lead to the collection of extensive user data, which financial services firms might use for customer acquisition and market research.

Federal Reserve

- **Federal Reserve issues annual Financial Stability Report.** In November, the Federal Reserve published its annual **Financial Stability Report**, which provides a comprehensive assessment of the stability of the US financial system. The report focuses on vulnerabilities related to asset valuations, borrowing by businesses and households, leverage in the financial sector, and funding risks. It highlights that valuation pressures remain elevated in various markets, including equity, corporate debt, and residential real estate. The report specifically addresses the growth and risks associated with digital assets, particularly stablecoins. Stablecoins have grown substantially since last year's report. By the beginning of November 2024, the total market capitalization of stablecoins exceeded \$170 billion, nearing the record high observed in April 2022. Despite their growth, the report emphasizes that stablecoins are structurally vulnerable to runs and lack a comprehensive federal prudential regulatory framework. The report suggests that while stablecoins currently have a relatively small footprint in the US economy, their rapid growth and potential to scale quickly pose significant risks to financial stability. The report calls for the Federal Reserve and other US government agencies to take steps to address these risks and enhance the resilience of the financial system against potential shocks from digital assets.
- **Federal Reserve Bank of New York issues report on risks of digital assets to financial stability.** In November, the Federal Reserve Bank of New York published an **Economic Policy Review** entitled, "Financial Stability Implications of Digital Assets." The review provides a comprehensive analysis of the financial stability risks associated with the digital asset ecosystem. It adapts the Federal Reserve's framework for assessing systemic risk in the traditional financial system to the digital asset ecosystem, focusing on vulnerabilities such as valuation pressures, leverage, funding risk, and interconnectedness. The review hypothesizes that fragility in the digital asset space could destabilize the broader financial system. The analysis covers various sectors within the digital ecosystem, including crypto assets, stablecoins, centralized crypto lenders, centralized crypto exchanges, and decentralized finance (DeFi). In addition, it discusses how stress in these areas could potentially spill over into the traditional financial system. The review notes that crypto assets, such as bitcoin and Ether, are prone to significant price declines, which can be amplified by the use of leverage and interconnectedness within the digital ecosystem. The document also discusses the risks associated with stablecoins, pointing to the collapse of TerraUSD (an algorithmic stablecoin) as an example. Centralized crypto lenders and exchanges are highlighted as additional sources of leverage and funding risk, with their failures potentially leading to broader financial instability. Additionally, the document explores the role of DeFi protocols in creating interconnectedness and leverage within the digital asset ecosystem. Despite these risks, the document concludes that the overall

contribution of digital assets to systemic risk remains limited, though this could change as the digital ecosystem grows and becomes more integrated with traditional financial markets.

- **Governor Waller questions role of central bank digital currencies in public remarks.** On November 12, Christopher J. Waller, a member of the Board of Governors of the Federal Reserve System, delivered a **speech** at The Clearing House Annual Conference in which he discussed the roles of the private sector and the Federal Reserve in the payments ecosystem. Waller emphasized the importance of private sector innovation in providing goods and services efficiently, including in the payments system. He argued that government intervention should only occur to address market inefficiencies that cannot be resolved by the private sector alone. Waller provided a historical overview of the US payments system, highlighting the evolution from state-chartered banks to the establishment of the Federal Reserve, which was created to address coordination problems and enhance the resilience of the payments system. He noted that the Federal Reserve's role includes providing core clearing and settlement infrastructure, which supports private sector innovation. Waller then addressed ongoing public discussion about central bank digital currencies (CBDCs). He questioned the necessity of a CBDC, asking what specific market inefficiency it would address. Despite his interest in new payment technologies, Waller expressed skepticism about the need for a CBDC, stating he had not yet heard a satisfactory answer to justify its implementation. He highlighted the private sector's role in developing and deploying new technologies, including digital assets, due to their ability to take on innovation risks and efficiently allocate resources. Waller also referenced the Federal Reserve's engagement with the private sector and other central banks through initiatives like the Bank for International Settlements' Project Agorá, which explores the use of tokenization technology to facilitate faster and cheaper cross-border payments.
- **Governor Waller suggests blockchain technology could improve efficiency and reduce costs.** On October 18, Federal Reserve System Governor Christopher J. Waller delivered **remarks** at The Vienna Macroeconomics Workshop. Waller discussed the roles of centralized finance and DeFi, including his views on whether they are substitutes or complements. He highlighted the historical context of centralized finance, emphasizing the role of intermediaries or middlemen in facilitating financial trades and the associated costs and benefits. Waller explained that centralized finance has provided significant value through efficient matching of buyers and sellers, risk assessment, and legal enforcement, but it also comes with transaction costs and the need for trust in intermediaries. He noted that technological innovations, such as the telegraph, telephone, and internet, have historically advanced financial trading, and that the next wave of innovations could address some drawbacks of centralized finance. Waller then focused on the emergence of crypto assets and their impact on DeFi. He described the crypto ecosystem as consisting of three parts: crypto assets, the technology facilitating their trade (including smart contracts and tokenization), and the blockchain for recording trades and ownership. He explained that the earliest digital asset, bitcoin, was designed to function without intermediaries, relying on cryptographic technology for privacy and control. Waller discussed how technologies

like DLT, tokenization, and smart contracts could complement centralized finance by improving efficiency and reducing costs. He also mentioned stablecoins, which aim to provide a stable value for trading and reduce the need for payment intermediaries. He cautioned, however, that stablecoins face risks similar to other substitutes for genuine US dollars. Ultimately, Waller concluded that while some services emerging through DeFi cannot be provided by centralized finance, the technological innovations from DeFi are largely complementary and have the potential to enhance centralized finance.

- **Federal Reserve Governor Bowman encourages community banks to experiment with crypto assets ecosystem.** On October 2, Michelle W. Bowman, a member of the Board of Governors of the Federal Reserve System, delivered a [speech](#) at the 2024 Community Banking Research Conference, emphasizing the importance of community banks and proposing a tailored regulatory and supervisory framework for their future. Bowman discussed the challenges of current regulatory thresholds, which often fail to account for economic growth and inflation, leading to unintended regulatory burdens on smaller banks. She also stressed the importance of innovation within the banking sector, including partnerships with fintech companies and the use of digital ledger technology, while cautioning against regulatory frameworks that might stifle such innovation by pushing smaller banks into higher compliance tiers. Bowman acknowledged the evolving financial landscape and the role of innovation, including the provision of traditional banking services to entities involved in the crypto asset ecosystem. She noted that innovation, such as engaging in bank-fintech partnerships and considering the use of digital ledger technology, presents challenges for both regulators and banks, but emphasized that regulatory thresholds should not discourage investment in innovation among community banks. She also highlighted the need for clear and actionable guidance to help community banks navigate the complexities of third-party risk management, including those related to digital assets.

STATE DEVELOPMENTS

Digital assets

- **California passes law imposing new requirements for sellers of “digital goods.”** On September 24, California Governor Gavin Newsom approved [Assembly Bill 2426](#) (AB 2426), which addresses situations in which digital media sellers, such as game publishers, revoke consumer access to purchased digital goods without recourse. The law mandates that sellers of digital goods (including movies, apps, games, books, and music) must clearly communicate what consumers are actually receiving when they “purchase” these items. Under the new law, sellers must either obtain an affirmative acknowledgment from buyers that they are only receiving a license, including all applicable restrictions, or provide a clear and conspicuous statement that the purchase is only a license, with access to full details of the license. The law excludes subscription-based services, free digital content, and digital goods that cannot be revoked after the transaction. Though AB 2426 does not explicitly address non-fungible tokens (NFTs) or other blockchain-based digital assets, NFTs could fall under the law’s scope if the digital asset is considered a “digital good” ownership, which

could be revoked by the seller. Sellers must ensure compliance with the new requirements by January 1, 2025 to avoid regulatory penalties or false advertising claims.

- **California amends and delays implementation of the Digital Financial Assets Law.** On September 29, California Governor Gavin Newsom signed [Assembly Bill 1934](#) which amends the previously-passed Digital Financial Assets Law (DFAL). The amendment extends the deadline for digital asset companies operating in California to obtain a license to operate in the state for an additional year until July 2026. The amendment also imposes new requirements for digital asset companies to maintain monthly compliance records and clarifies provisions related to stablecoins.
- **Pennsylvania House advances bill to endorse framework for use and custody of digital assets.** On October 28, the Pennsylvania House of Representatives passed a bipartisan [bill](#) entitled, “The Digital Assets Authorization Act,” which establishes a legal framework for the use and custody of digital assets within the state. The act defines key terms such as “blockchain,” “blockchain protocol,” “digital asset,” and “hardware wallet.” A digital asset is characterized as a decentralized virtual currency, cryptocurrency, or native electronic asset (including decentralized stablecoins or NFTs), but explicitly excludes central bank digital currencies or any other government-controlled digital-only assets. The act prohibits the state or any municipality from restricting or impairing the ability of individuals or businesses to accept digital assets as payment for legal goods and services, or to maintain self-custody of digital assets using self-hosted or hardware wallets. Additionally, it prevents the imposition of additional taxes or charges on digital assets solely based on their use as a payment method. The act also authorizes the operation of nodes for connecting to blockchain protocols and transferring digital assets on these protocols. It ensures that the provisions of the act do not override existing laws related to commercial code, fiduciary access to digital assets, licensing and regulation of virtual currency businesses, and the reporting and disclosure of financial exploitation or fraud. The act aims to create a supportive environment for the use and development of digital assets and blockchain technology in Pennsylvania, promoting innovation while ensuring compliance with existing legal and regulatory frameworks.

ENFORCEMENT ACTIONS AND LITIGATION

FEDERAL

Securities

- **SEC charges entities operating Mango Markets crypto trading platform.** On September 27, the SEC [announced](#) the filing of settled charges against Mango DAO and Blockworks Foundation for engaging in the unregistered offer and sale of crypto assets called “MNGO” tokens that raised more than \$70 million. The SEC also settled charges against Blockworks Foundation and Mango Labs LLC for engaging in unregistered broker activity in connection with various crypto assets being offered and sold as securities on the Mango Markets platform. The SEC’s [complaint](#) was filed in the US District Court for the Southern District of

New York. Mango DAO, Blockworks Foundation, and Mango Labs have agreed to settle the SEC charges without admitting or denying the allegations. The settlement includes injunctions and civil penalties of nearly \$700,000 and orders the destruction of the MNGO tokens or removal of the tokens from trading platforms. The settlements are subject to court approval. For more information on Mango, see our [August 2024](#) issue.

- **SEC sues Cumberland exchange platform for registration failures.** On October 10, the SEC [announced](#) a civil enforcement action against Cumberland DRW LLC, a digital asset trading platform and popular market making firm. According to the SEC's [complaint](#), since 2018, Cumberland operated as a securities dealer but failed to register with the Commission as required by Section 15(a) of the Securities Exchange Act of 1934. The complaint identified several digital assets as securities, including POL, SOL, ATOM, and ALGO.
- **Bitnomial sues SEC for regulatory overreach.** On October 10, Bitnomial Exchange LLC filed a [complaint](#) against the SEC in the US District Court for the Northern District of Illinois seeking declaratory and injunctive relief. Bitnomial challenges the SEC's assertion of jurisdiction over its planned listing of XRP Futures, a futures contract based on the digital asset XRP. Bitnomial argues that the SEC is incorrect to take the position that XRP is a security that would require it to comply with additional SEC regulations, including registering as a national securities exchange. Instead, the complaint alleges that XRP Futures should be regulated solely by the CFTC, under whose jurisdiction Bitnomial has already self-certified the product. Bitnomial argues that precedent from the Southern District of New York establishes that XRP is not inherently a security when traded on secondary markets, which is the context for XRP Futures. The company alleges that the SEC's position imposes unnecessary regulatory burdens and hinders its ability to list XRP Futures, despite compliance with CFTC requirements. Therefore, it seeks a court declaration that XRP Futures are not security futures and an injunction to prevent the SEC from bringing an enforcement action.
- **Crypto.com sues SEC following Wells notice.** Cryptocurrency exchange Crypto.com [announced](#) that it filed suit against the SEC on October 8 after receipt of a Wells notice alleging that it is acting as an unregistered broker-dealer and clearing agency. The [complaint](#) seeks declaratory and injunctive relief to prevent the SEC from "unlawfully expanding its jurisdiction to cover secondary-market sales of certain network tokens sold on the company's platform." According to the announcement, "Our lawsuit contends that the SEC has unilaterally expanded its jurisdiction beyond statutory limits and separately that the SEC has established an unlawful rule that trades in nearly all crypto assets are securities transactions no matter how they are sold, whereas identical transactions in bitcoin and Ether are somehow not."
- **Gaming company announces receipt of SEC Wells notice for in-game token.** On November 1, Web3 gaming company Immutable [announced](#) that it was issued a Wells notice by the SEC alleging violations of securities law and alleged misrepresentations by the

company. Immutable believes the SEC claims relate to its listing and private sales of its IMX tokens in 2021. According to the announcement, the company's "very first interaction with the SEC, we were told a Wells notice would be issued to the company within the week. We then received it within hours. What's more, the notice simply cited statutory provisions and contained limited meaningful detail about the nature of the investigation." Immutable asserts it is "confident in the legality of [its] assets and services, in the value digital ownership can bring to 3.1 billion gamers across the world, and in the power of blockchain to create a better internet."

- **SEC charges crypto market makers with wash trading FBI-created assets.** On October 15, the SEC **announced** securities fraud charges against three crypto market makers accused of wash trading digital assets that were created at the direction of the Federal Bureau of Investigation (FBI) as part of an investigation of crypto industry market manipulation. According to the SEC's **complaint** against British Virgin Islands entity ZM Quant Investment Ltd., the crypto market maker allegedly provided "market-manipulation-as-a-service" by generating fake trading volume for multiple digital assets, including the FBI's NexFundAI, to attract retail investors. The complaint accuses ZM Quant and two employees, Baijun Ou and Ruiqi Lau, of using bots to wash trade the assets. Similarly, the SEC's **complaint** against United Arab Emirates (UAE) entity CLS Global FZC LLC alleges that the company and its employee, Andrey Zhorzhes, created an artificially active trading market for the asset using bots at the direction of NexFundAI's promoters. The FBI's operation also produced securities fraud **charges** against Gotbit Consulting LLC and a California resident, Vy Pham, who are accused of manipulating the markets for two other digital assets: "Saitama Inu" and "Robo Inu."

Commodities

- **Federal court orders \$5 million in restitution for digital asset fraud scheme.** On December 11, the CFTC **announced** that the US District Court for the Central District of California had ordered Marco Ruiz Ochoa, David Carmona, Juan Arellana Parra, Moses Valdez, and David Brend to pay \$5 million in total for their roles with Icomtech. According to the **consent order**, Icomtech fraudulently induced 190 victims to invest more than \$1 million in bitcoin and "other digital asset commodities" with promises of "daily returns" from Icomtech's trading activities. Instead, the defendants misappropriated the assets and many victims lost all of their money. For more information on the IcomTech cases, see our **October 2023** issue.
- **CFTC charges pastor with fraud involving digital asset multi-level marketing scheme.** On December 10, the CFTC **announced** a civil enforcement action against the pastor of a Spanish-language church, Francier Obando Pinillo. According to the CFTC's **complaint**, Pinillo targeted at least 1,515 customers, including members of his own church, with promises that he had an automated digital asset trading system called Solanofi. Pinillo allegedly told victims that investments in Solanofi were risk free and guaranteed 34.9-percent profits compounding monthly. The complaint alleges that Pinillo promised victims a 15-percent referral fee. In reality, the CFTC alleges, Pinillo never traded the victims' assets

and fabricated their account statements while using later investments to pay out earlier investors.

- **CFTC charges fake commodity trading platform allegedly targeting Asian Americans.** On September 27, the CFTC **announced** a civil enforcement action against three individuals and the entities Aipu Limited and Fidefx Investments Limited. According to the CFTC’s complaint, the defendants solicited \$3.6 million from 32 customers in both fiat and cryptocurrencies. The scheme allegedly offered leveraged commodities contracts to victims through messaging platforms WeChat, WhatsApp, and Line. Defendants would promise 10- to 30-percent profits based on their inside information and then provide fake websites showing equivalent gains. In reality, the complaint alleges, defendants made no such investments and immediately misappropriated the assets to offshore accounts.

Virtual currency

- **FBI seizes more than \$6 million from “confidence investment schemes.”** On September 26, the Department of Justice (DOJ) **announced** that it had traced more than \$6 million taken in a “cryptocurrency confidence investment scheme,” otherwise known as a “pig-butcher” scam. Such scams typically involve gaining a victim’s trust through dating apps or purported investment groups before inducing a victim to make a cryptocurrency investment. The scheme often involves a fake investment site that presents fake returns to encourage the victim to invest even more. Invariably, victims realize too late that they cannot withdraw their assets. According to the FBI, schemes like this have targeted tens of thousands of US victims with losses exceeding \$5.6 billion in 2023 alone.
- **Indiana man pleads guilty in connection with theft of \$37 million in cryptocurrency from nearly 600 victims.** On October 1, the US Attorney’s Office for the District of South Dakota **announced** that Evan Light had pleaded guilty to conspiracy to commit wire fraud and conspiracy to launder money for his involvement in a hacking scheme through which he gained access to an investment holding company and stole more than \$37 million in cryptocurrency from nearly 600 victims. Light then tried to launder the money through mixing services and gambling websites. The FBI was able to trace the proceeds back to Light and continues to investigate his co-conspirators.
- **Indian citizen sentenced to 60 months in prison for stealing \$20 million in cryptocurrency using fake websites.** On October 17, the US Attorney’s Office for the Western District of North Carolina **announced** that Chirag Tomar had been sentenced to 60 months in prison for his scheme to use “spoofed” websites that mimicked a legitimate cryptocurrency exchange to steal more than \$20 million worth of cryptocurrencies. According to the announcement, Tomar secured a web domain very similar to that of the legitimate exchange’s and then used the spoofed login page to collect victims’ login credentials, which allowed Tomar and his co-conspirators to access the victims’ real accounts and transfer their cryptocurrency. Some versions of the website informed victims that their accounts had been locked and directed them to call a fake customer support

number that Tomar would then use to gain remote access to his victims' computers. Tomar was arrested in the Atlanta airport in December 2023 and pleaded guilty in May 2024.

- **Fourth Circuit confirms that homeowner's insurance policy did not cover \$170,000 loss of cryptocurrency.** On October 24, a three-judge panel of the United States Court of Appeals for the Fourth Circuit **ruled** that Lemonade Insurance Co. (Lemonade) was not obligated to indemnify its policyholder against the loss of \$170,000 of cryptocurrency lost in a fraud scheme. The court rejected the policyholder's argument that the cryptocurrency constituted property that was covered by his policy. Lemonade successfully argued that, while cryptocurrencies can be stored on physical media, the assets themselves are intangible and therefore could not constitute a "physical loss."
- **DOJ announces its first guilty plea in NexFundAI sting operation.** On October 30, the US Attorney's Office for the District of Massachusetts **announced** that Liu Zhou, the founder of cryptocurrency market making company MyTrade, had pleaded guilty to a widespread market manipulation conspiracy. Zhou was caught in an undercover law enforcement **operation** that involved the FBI's creation of an Ethereum-based digital asset called NexFundAI. Undercover agents engaged Zhou who offered "daily wash trades" and a "volume bot" that could execute "pump and dumps." The NexFundAI operation also led to several civil enforcement actions brought by the SEC.
- **DOJ indicts HashFlare founders in connection with mining fraud scam.** On November 14, the DOJ **announced** an indictment against Sergei Potapenko and Ivan Turogin, the promoters of a cryptocurrency mining operation called HashFlare. According to the indictment, the two men misrepresented the computing power of their mining operations and could not pay out the mining proceeds they promised to their investors. The defendants also allegedly raised \$25 million selling investments in a company called Polybius, which never materialized. Instead, the defendants laundered the proceeds through real property, luxury vehicles, and cryptocurrency mining machines.
- **DOJ disrupts nationwide crypto phishing scam.** On November 20, the US Attorney's Office for the Central District of California **announced** it had unsealed criminal charges against five men who allegedly conspired to target employees of companies to acquire employee credentials and steal millions of dollars in cryptocurrency. According to the **indictment**, the scheme involved four US citizens and one UK citizen who allegedly used mass texts from September 2021 to April 2023 that told victims their accounts had been compromised and encouraged them to log in to fake versions of familiar websites. The defendants then used the provided login credentials to steal confidential information, which, in many cases, provided access to their victims' virtual currency wallets.
- **Federal Reserve bars CEO following cryptocurrency embezzlement scheme.** On November 21, the Board of Governors of the Federal Reserve System **announced** it had issued an **Order of Prohibition** against Shan Hanes, the former CEO of Heartland Tri-State Bank, following his unauthorized transfer of \$47.1 million of the bank's funds to his

personal cryptocurrency accounts. Between May 30, 2023 and July 7, 2023, Hanes conducted a series of ten wire transfers, claiming to invest in lucrative digital currency products. In reality, these funds were transferred to fraudulent actors, leading to the bank's insolvency and failure on July 28, 2023. The Board of Governors alleges that Hanes's actions violated the bank's policies and constituted unsafe banking practices, breaches of fiduciary duties, and violations of law or regulation. Hanes has separately pleaded guilty to embezzlement by a bank officer and agreed to make restitution of approximately \$60.5 million.

- **FBI seizes more than \$1 million in USDT from fraud scams.** On November 26, the US Attorney's Office for the North District of Ohio **announced** a civil complaint in forfeiture directed at 947,883 USDT, nearly half of which were the life savings of an Ohio man caught in a fraud scam. According to the announcement, the man was tricked into believing that his retirement account had been compromised and gave remote computer access to scammers who then transferred his money to various crypto accounts. The announcement followed an October 4 **press release** in which the US Attorney's Office for the same district announced that it was seeking forfeiture of an additional \$200,000 in USDT taken fraudulently from a different Ohio man. In both cases, federal investigators managed to trace the funds and executed a seizure warrant in July 2024, freezing the USDT in a law enforcement-controlled wallet.
- **Northern District of California finds DAO members can be held liable for securities violations.** On November 18, the United States District Court for the Northern District of California issued a ruling that certain token holders of decentralized autonomous organizations (DAOs) are considered general partners under California law. This ruling means that these token holders can be held liable for securities law violations, such as the failure to register DAO governance tokens as securities with the SEC. The court denied a motion to dismiss in *Samuels v. Lido DAO*, affirming that DAOs can be held accountable for unregistered securities sales. The plaintiff, Andrew Samuels, had alleged that Lido DAO and its key investors violated Section 12(a)(1) of the Securities Act of 1933 by selling unregistered securities. The court found that entities like Paradigm Operations, Andreessen Horowitz, and Dragonfly Digital Management acted as general partners by holding large voting blocks of Lido DAO tokens LDO and participating in the DAO's governance. This participation included influencing the development and operational decisions of Lido DAO. The court also highlighted that DAOs might be liable for soliciting token purchases on secondary markets, as seen in the *Houghton v. Leshner* case, decided in September 2023, where the same court ruled that members of Compound DAO could be held liable for failing to register COMP tokens as securities and for soliciting public investment. These rulings collectively emphasize that DAOs, despite their decentralized nature, are not immune from legal liability, and key investors who influence DAO governance can be held responsible for its actions.

NFTs

- **Federal judge approves \$4 million settlement in Dapper Labs' NFT case.** On October 18, Judge Victor Marrero of the US District Court for the Southern District of New York **approved** the final settlement between Dapper Labs, Inc. and a class of plaintiffs, which included NBA Top Shot Moments, between June 15, 2020 and December 27, 2021. Judge Marrero, who previously sustained plaintiffs' allegations that the NFTs were sold as unregistered securities, approved a settlement amount of \$4 million.
- **Second Circuit Court of Appeals hears arguments in MetaBirkins appeal.** On October 23, a panel of the US Court of Appeals for the Second Circuit **heard arguments** on whether Mason Rothschild, who goes by the name Sonny Estival, infringed Hermès International's trademarks with his "MetaBirkins" NFTs. The case, which has been ongoing for years, centers around the artistic intent and trademark use of Rothschild's digital assets. A jury previously found Rothschild liable for trademark infringement, influenced by his statements that the NFTs were "digital commodities" and a "gold mine." Questioning from Judges Denny Chin and Raymond J. Lohier Jr. appeared sympathetic to Hermès, probing whether Rothschild was leveraging Hermès' goodwill for his own benefit. Rothschild's attorneys compared his work to Andy Warhol's *Campbell's Soup Cans*, arguing that his NFTs blur the line between art and business. The judges appeared to grapple with application of *Rogers v. Grimaldi*, which protects artists' First Amendment rights, and its relevance in light of the Supreme Court's 2023 ruling in *Jack Daniel's Properties v. VIP Products LLC*, which suggests that *Rogers* does not apply if a trademark is used as a "designation of source" for goods. Judge Chin questioned whether Rothschild's use of the Birkin mark served as a source identifier, while Judge Lohier expressed skepticism about accommodating First Amendment interests under the *Jack Daniel's* framework. Judge Pierre N. Leval, however, appeared persuaded that Rothschild was acting as an artist rather than a merchant, suggesting that his statements were more about homage than deception.

Illicit finance

- **DOJ disrupts billion-dollar money laundering network.** On September 26, the DOJ **announced** an indictment against two Russian nationals charged with laundering money from a global network of cyber criminals. In coordination with the US Secret Service and the Departments of State and the Treasury, the operation shut down web domains for three cryptocurrency exchanges implicated in the scheme. Blockchain analysis revealed that the defendants had facilitated approximately \$1.15 billion in transactions from 2013 to 2024, with roughly 32 percent involving bitcoin generated from criminal activity including ransomware attacks and darknet drug markets.
- **AurumXchange founder indicted for laundering Silk Road proceeds.** On October 28, the **US Attorney's Office for the Southern District of Indiana** and the **IRS** announced an indictment against Maximiliano Pilipis for his operation of AurumXchange, an allegedly unlicensed virtual currency exchange used for money laundering. According to the press release, from 2009 to 2013, Pilipis collected millions of dollars in fees for facilitating more than 100,000 transactions in bitcoin and other virtual currencies, a "portion" of which came from accounts held on Silk Road, an anonymous dark web marketplace that federal law

enforcement shut down in 2013. Prosecutors allege that Pilipis then attempted to launder his proceeds through 2018 and avoided reporting the proceeds on his federal tax returns in 2019 and 2020.

- **Bitcoin Fog founder sentenced to more than 12 years in prison for role in laundering nearly \$400 million.** On November 7, the [DOJ](#) and [IRS](#) announced that Roman Sterlingov had been sentenced to 12.5 years in prison for his role in operating cryptocurrency mixing service Bitcoin Fog from 2011 through 2021. Over its decade in operation, Bitcoin Fog processed more than 1.2 million bitcoin, most of which came from dark net marketplaces as the proceeds from illicit activities. A jury convicted Sterlingov in March 2024 following a month-long jury trial. The Criminal Investigation division of the IRS and the FBI's Virtual Asset Unit claimed credit for identifying Sterlingov despite his efforts to remain anonymous.
- **“No questions asked” money transmitter convicted on money laundering charges.** On November 8, the [IRS](#) and the [US Attorney's Office for the District of Massachusetts](#) announced that Trung Nguyen had been convicted for running an unlicensed money transmitting business and for money laundering. The jury found that Nguyen ran a cash-to-bitcoin conversion service called National Vending LLC, which he used to launder money for romance scammers and a drug dealer between 2017 and 2020. Nguyen reportedly enrolled in a course that counseled creating a business with “fictitious” suppliers and avoiding the term “bitcoin.” He then structured transactions to avoid reporting requirements for transactions larger than \$10,000.
- **International money launderer pleads guilty to transmitting more than \$73 million in fraudulently obtained crypto.** On November 12, the [DOJ](#) [announced](#) that Daren Li had pleaded guilty to conspiracy to commit money laundering for his role in a scheme to launder at least \$73.6 million in proceeds from cryptocurrency investment scams. The scheme employed a web of shell companies in the US and abroad that funneled money to international bank accounts. Li used encrypted messages to coordinate with his co-conspirators, who opened several US bank accounts on behalf of the shell companies to receive the victims' funds before converting them to USDT.
- **Bitfinex hacker sentenced to five years in prison for stealing nearly 120,000 bitcoin.** On November 14, the [DOJ](#) [announced](#) that Ilya Lichtenstein had been sentenced to five years in prison for the 2016 hack of cryptocurrency exchange Bitfinex. According to the announcement, Lichtenstein hacked into Bitfinex's network to execute more than 2,000 transactions, which transferred 119,754 bitcoin to wallets that Lichtenstein controlled. To launder the proceeds, Lichtenstein and his wife set up fake online accounts across multiple exchanges, converted the bitcoin to other cryptocurrencies, and used mixing services to launder the proceeds. Both Lichtenstein and his wife pleaded guilty in August 2023.
- **Helix mixing service operator sentenced to three years in prison.** On November 15, the [US Attorney's Office for the District of Columbia](#) [announced](#) that Larry Harmon, operator of

the cryptocurrency mixing service Helix, had been sentenced to three years in prison for conspiracy to commit money laundering. According to the announcement, Harmon founded Helix and a darknet search engine called Grams to permit online drug dealers to launder their illicit proceeds. In total, Helix processed more than 354,000 bitcoin and provided special application programming interfaces (APIs) to permit Helix to interface with popular darknet marketplaces.

- **Unlicensed money transmission business operator convicted in jury trial.** On November 25, the [US Attorney's Office for the District of Massachusetts](#) and the [IRS](#) announced that a jury had convicted Alan Joseph on one count of operating an unlicensed money transmitting business and three counts of money laundering. The jury found that, from August 2020 to February 2021, Joseph converted cash to bitcoin in at least four transactions. About \$25,000 of that cash came from an undercover agent, who told Joseph the money was coming from sales of counterfeit luxury goods.
- **Fifth Circuit overturns OFAC sanctions on Tornado Cash.** On November 26, the US Court of Appeals for the Fifth Circuit [ruled](#) that the Office of Foreign Assets Control (OFAC) overstepped its authority by sanctioning Tornado Cash, a popular cryptocurrency mixer. The court concluded that immutable smart contracts, which Tornado Cash uses to anonymize cryptocurrency transactions, do not qualify as “property” under the International Emergency Economic Powers Act (IEEPA). The Fifth Circuit relied on the Supreme Court’s recent decision in *Loper Bright Enterprises v. Raimondo*, which eliminated broad *Chevron* deference to agency interpretations of statutory text. The Fifth Circuit emphasized that immutable smart contracts cannot be owned or controlled, and thus, do not meet the statutory definition of property. The case arose after OFAC sanctioned Tornado Cash in August 2022, alleging it was used to launder over \$7 billion in cryptocurrency, including funds stolen by North Korea’s Lazarus Group. The sanctions included adding Tornado Cash and its immutable smart contracts to the Specially Designated Nationals and Blocked Persons (SDN) List, effectively banning US persons from engaging with the service. The Fifth Circuit, however, found that these immutable smart contracts, being unchangeable and unremovable, do not constitute property as they cannot be owned or controlled by any party. The court also observed that these smart contracts do not qualify as “contracts” or “services” under OFAC’s regulatory definitions. This decision narrows OFAC’s reach over decentralized technologies and has significant implications for the Department of the Treasury’s ability to regulate DeFi platforms and other anonymity-enhancing services in the cryptocurrency space.
- **OFAC deals further blow to North Korean money laundering network.** On December 17, the Department of the Treasury [announced](#) that it had sanctioned two individuals and their front company Green Alpine Trading, LLC for their involvement in a global money laundering network responsible for financing North Korea’s weapons program. According to the [press release](#), Lu Huaying and Zhang Jian facilitated money laundering and cryptocurrency conversation services for North Korea through Green Alpine Trading, which is based in the UAE. The investigation was a cooperative effort between the US and the

UAE. As a result of the sanctions, any property belonging to Jian, Huaying, or Green Alpine Trading is blocked, meaning individuals or institutions that interact with the property risk sanctions or criminal prosecution.

Antitrust

- **Coinbase fends off TRO in antitrust case against wBTC issuer.** On December 18, the US District Court for the Northern District of California declined to issue a temporary restraining order (TRO) that would have stopped Coinbase from delisting wBTC from its exchange. The issuer of wBTC, BiT Global Digital Ltd., sought a temporary restraining order to prevent Coinbase Global Inc. from delisting its wrapped bitcoin product, wBTC, from the Coinbase platform. BiT Global's wBTC allows bitcoin to be traded on decentralized exchanges and has been traded on Coinbase since at least October 2020. The request for a TRO was part of a \$1 billion antitrust lawsuit that BiT Global filed against Coinbase alleging that Coinbase delisted wBTC after creating a competing product, Coinbase Wrapped BTC. The complaint alleges monopolization and attempted monopolization under the Sherman Act, as well as violations of the Lanham Act and California's Unfair Competition Law. In denying the TRO, Judge Araceli Martinez-Olguin, found that BiT Global failed to show irreparable harm, concluding that BiT Global's claims were largely speculative and lacked evidence of BiT Global's potential market share loss, such as the percentage of wBTC currently traded on Coinbase. Coinbase defended its decision by citing concerns over the control of wBTC potentially falling into the hands of Justin Sun, a controversial figure in the cryptocurrency industry.

Bankruptcy

- **Judge in Celsius bankruptcy permits notice to digital wallets via NFT.** On October 24, Judge Martin Glenn of the US Bankruptcy Court for the Southern District of New York granted a motion for alternative service of process via NFTs in adversary proceedings related to the Celsius Network LLC bankruptcy case. The plaintiff, Mohsin Y. Meghji, Litigation Administrator for a class of debtors, sought to serve defendants associated with cryptocurrency wallets through NFTs due to the challenges in identifying and locating them. The court authorized this innovative method, recognizing the anonymity maintained by digital blockchain technology and the difficulties it presents in civil litigation aimed at recovering misappropriated assets. The court's decision was influenced by precedents from other courts that had approved service via NFTs on digital wallets. The NFTs will contain links to a service website with the necessary legal documents, ensuring that the defendants are notified of the actions against them. The court viewed this method of service as akin to email service, with the added advantage of being able to monitor the receipt and interaction with the NFTs, thereby ensuring due process.

STATE

Virtual currency

- **Texas settles money transmission charges against Kraken.** On October 28, the Texas Department of Banking announced that it had entered a consent order with Payward, Inc.; Payward Ventures, Inc.; Payward Guardian, LLC; and Payward Interactive, Inc. (formerly TradeStation Crypto, Inc.) (jointly, Kraken). The order found that Kraken conducted money transmission services by receiving sovereign currency and stablecoins in exchange for a promise to return or transfer that value at a later time or different location. According to the order, this activity falls under the definition of money transmission as per the Texas Finance Code. The order also faults Payward Ventures for its failure to provide all necessary items to qualify for and retain a permanent license, and requires Payward Interactive to maintain a minimum tangible net worth, submit quarterly financial statements, and comply with all applicable requirements of the Texas Finance Code. Additionally, the order imposes a civil penalty of \$250,000 and requires Kraken to refrain from changing its business models or engaging in new activities in Texas without prior written permission.

SPOTLIGHT ON INTERNATIONAL DEVELOPMENTS

- **Argentine Congress approves a tax amnesty law, which includes crypto assets within the tax regularization framework.** On June 27, the Argentine National Congress approved law N°27,743, which aims to offer tax amnesty to Argentine citizens holding undeclared assets both domestically and internationally. These assets covered by the regularization program encompass cash, real estate, stocks, bonds, movable property, credits, rights, and also crypto assets, provided, however, that the law excludes crypto assets held outside Argentina from the amnesty regime, permitting only those held within Argentina. The implementation of this law is pending regulation, with expectations that, in order to be considered “local,” the custodian must be registered with the VASP registry under the supervision of the CNV. The VASP registry is mandatory for VASPs having a connection with Argentina through specified criteria, such as conducting operations using any “.ar” domain; having commercial agreements with third parties or affiliates that allow for the local receipt of funds or assets from Argentine residents; directing advertising towards, or otherwise targeting Argentine residents; or generating more than 20 percent of total turnover in Argentina from activities that require VASP registration. In addition, while most assets will be assessed at the time of regularization, the amnesty law proposes to value crypto assets based on either their acquisition date or the regularization date, whichever is greater – a method criticized for potentially disadvantaging declarants. This tax amnesty bill is part of an economic reform package of laws that aims to attract large investment through beneficial tax advantages.
- **Australia announces three-year plan to launch a wholesale CBDC.** On September 18, Assistant Governor Brad Jones of the Reserve Bank of Australia (RBA) **announced** his commitment to launching a wholesale CBDC to be used by banks. According to Jones, the wholesale CBDC would represent an evolution in monetary arrangements, providing a stable settlement asset for systemically important markets. The RBA is launching a three-year research program to explore the potential of wholesale CBDC and tokenized commercial bank deposits, focusing on new ledger arrangements and concepts like “programmability” and “atomic settlement” in tokenized markets. Jones’ announcement also

addressed tokenization, which involves creating digital tokens that can represent real-world assets or exist as standalone instruments on new ledger technologies. These tokens can be traded and transferred on programmable platforms, which Jones suggested could offer greater functionality and efficiency in asset settlement and wholesale payments. The RBA is exploring how tokenization could reduce counterparty and operational risks, increase transparency, and lower intermediary and compliance costs. Jones' remarks also mention the potential for tokenized markets to enhance liquidity and transaction capabilities while acknowledging the challenges associated with tokenization, such as increased liquidity requirements and the need for interoperability with traditional infrastructure. The RBA's research aims to determine whether the benefits of tokenization justify its implementation in Australia's financial system.

- **Danish Tax Law Council recommends taxing unrealized gains on crypto.** On October 22, the Tax Law Council of Denmark issued a 93-page [report](#) entitled, "Taxation of Financial Crypto Assets," that provides a comprehensive analysis of the current legal framework and challenges associated with the taxation of gains and losses from trading crypto assets. It discusses various taxation models, such as the realization model, net result model, and mark-to-market model, in addition to their implications for taxpayers. It also examines international regulations, including those from Sweden, Norway, Germany, the US, and the UK, to provide a comparative perspective on how different jurisdictions handle the taxation of crypto assets. The document emphasizes the importance of defining financial crypto assets clearly, noting that they are digital representations of value or rights that can be transferred and stored electronically using DLT, such as blockchain. The document ultimately recommends that financial crypto assets be taxed similarly to financial contracts under the mark-to-market model, which would involve annual taxation based on the market value of the assets. It also addresses specific issues such as the taxation of airdrops, gifts, transaction costs, and lost access to crypto wallets.
- **European Central Bank calls bitcoin "unfair."** On November 2, the European Central Bank (ECB) published a [paper](#) titled, "The Distributional Consequences of Bitcoin," by Ulrich Bindseil and Jürgen Schaaf. The paper critically examines the authors' belief that bitcoin has shifted from a means of payment to an investment asset. The authors argue that bitcoin's original promise as a global digital currency has not materialized due to its cumbersome, slow, and expensive transaction process, and its high volatility which prevents it from fulfilling the classic functions of money. Instead, the authors argue bitcoin has become an attractive investment asset, with its value driven by speculative demand rather than any intrinsic economic function. The paper discusses the macroeconomic implications of a "Bitcoin-positive" scenario where its price continues to rise, arguing that such a scenario would lead to significant wealth redistribution. Early bitcoin holders would benefit at the expense of latecomers and non-holders, potentially leading to social instability and the impoverishment of broader society. The authors also address the political and regulatory landscape surrounding bitcoin, noting the influence of the cryptocurrency industry on political campaigns and legislation. They highlight the significant lobbying efforts of the crypto industry to shape favorable regulations and the varying stances of political

candidates on cryptocurrency policies. The paper also explores the potential macroeconomic effects of speculative asset price increases, drawing parallels with historical asset bubbles. The authors conclude that even in a scenario where bitcoin prices continue to rise, the wealth effects would be a zero-sum game, and therefore they argue for its strict regulation or even an outright ban.

- **State Department announces joint initiative with government of Nigeria to combat illicit finance.** On October 23, the US Department of State **announced** a Bilateral Liaison Group on Illicit Finance and Cryptocurrencies. The group is aimed at supporting Nigeria's capacity to pursue cybercrime investigations and prosecutions.
- **The UK's Financial Conduct Authority targets "finfluencers."** On October 22, the UK's Financial Conduct Authority (FCA) **announced** it had issued 38 alerts against social media influencers promoting financial products, *ie*, "finfluencers." The FCA reports nearly two-thirds of 18- to 29-year-olds follow finfluencers, with the majority stating that they have been encouraged to change their financial behavior as a result.
- **Bank of England pressing forward with plans for digital pound.** According to **public reporting**, the Bank of England is likely to carry out plans to issue a CBDC available to the general public. Despite comments from the Bank's Governor, Andrew Bailey, opposing the widespread adoption of cryptocurrencies to accommodate traditional banking services, the Bank of England and Britain's finance minister have reportedly said they will make a decision before 2025, while Bailey confirmed the Bank is "continuing to prepare for a retail CBDC."
- **Vietnam issues official National Blockchain Strategy.** On October 23, the government of Vietnam issued **Decision No. 1236/QD-TTg**, which promulgates the National Strategy on the application and development of blockchain technology up to 2025, with a vision extending to 2030. This strategy, signed by Prime Minister Ho Duc Phoc, positions blockchain as a pivotal technology in a so-called "Fourth Industrial Revolution," aiming to enhance digital infrastructure, data reliability, and security. The strategy outlines five specific actions: perfecting the legal environment; developing infrastructure; forming a blockchain industrial ecosystem; developing human resources; promoting blockchain development and application; and fostering research, innovation, and international cooperation. The Vietnam Blockchain Association (VBA) plays a significant role in this strategy, tasked with developing blockchain platforms made in Vietnam and promoting the "Make in Vietnam" brand. The National Blockchain Strategy also addresses the legal framework for digital assets. On October 8, the Standing Committee Congress reviewed the draft Law on Digital Technology Industry, which for the first time included digital assets as a legally recognized type of intangible asset that is protected under civil law, intellectual property law, and other relevant laws. This move is part of Vietnam's broader commitment to combating money laundering, terrorist financing, and the proliferation of weapons of mass destruction, with the additional goal of removing Vietnam from the Financial Action Task Force (FATF) gray list by May 2025.

- **Government of Zanzibar announces blockchain sandbox program.** According to regional [public reporting](#), the government of Zanzibar has introduced a national blockchain sandbox designed to support innovative startups in testing their technologies within a secure environment. This initiative, developed by LedgerFi IT Solutions and powered by the XinFin XDC network, aims to foster technological advancement and enhance financial inclusion through digital solutions. The sandbox will prioritize startups that offer digital solutions for financial inclusion, identity verification, and certification issuance. By providing a controlled environment with advanced encryption and multilayered security protocols, the sandbox allows startups to safely test and refine their solutions before scaling up. Those with sufficiently beneficial solutions may also qualify for training and incubator programs. The sandbox aims to reduce regulatory burdens and compliance challenges, creating a soft regulatory environment that helps startups adapt to market realities. The Bank of Tanzania has also introduced a sandbox regulation framework to support financial startups, further easing regulatory challenges and promoting fintech adoption in the region.

DLA PIPER NEWS

- *The Financial Times* recognizes **DLA Piper as one of the Most Innovative Law Firms in North America.**
- *The Legal 500* ranks **DLA Piper Tier 1 in FinTech: Crypto.** DLA Piper was also ranked in Tier 2 for FinTech, and [Margo Tank](#) was ranked as a “Leading Individual.”
- *Chambers FinTech Legal* ranks **DLA Piper** in four categories including Band 2 for Blockchain & Digital Assets, and Band 3 for Payments & Lending, with [Margo Tank](#) individually recognized in Band 3 in Blockchain & Digital Assets and Band 2 in Payments & Lending.
- **DLA Piper’s Commodities, Digital Assets, and Carbon Compliance and Enforcement team** draws on decades of collective experience in the commodities and securities industry to help companies navigate new and complex commodities enforcement matters, including those related to agriculture, metals, energy, digital assets, and carbon/sustainable commodities, among others.

RECENT AND UPCOMING EVENTS

DLA Piper attorneys presented at the following:

- On October 15, DLA Piper presented an engaging discussion on the findings from our new global financial services report, [Financial futures: Disruption in global financial services](#). The report identifies and analyzes disruptors in the industry such as AI use; environmental, social, and governance (ESG) requirements; digitization of financial services; privacy and cyber risks; and key issues that matter to senior leaders of financial institutions and

fintechs. The report findings are based on nearly 800 surveyed decision makers in the global financial services sector. Key insights include the following:

- More than 70 percent of respondents across the global sector believe that digitalization will have a transformative effect on financial services over the next two years, and more than 86 percent believe the same about AI
- More than 80 percent of financial services organizations believe that it is “the new normal” for ESG concerns to be a core driver of the industry, and
- Half of respondents state that the greatest impact on their businesses over the past two years has been managing risks related to cybersecurity and financial crime, and more than half (57 percent) expect this issue to affect them in the immediate future.

The discussion included a keynote from Ambassador Marc Grossman on “Geopolitics, the Global Economy, and Driving Change.” Ambassador Grossman served as US Ambassador to Turkey, Assistant Secretary of State for European Affairs, and Under Secretary of State for Political Affairs. He was most recently the US Special Representative for Afghanistan and Pakistan and is currently a Vice Chairman of The Cohen Group, a business strategic advisory firm headed by former US Secretary of Defense William Cohen, and a Vice Chair of the German Marshall Fund board of trustees.

- On July 24, [Joseph Piesco](#) spoke on a webinar panel entitled, “[Digital Accessibility Lawsuits in 2024.](#)”
- In June, [Michael Fluhr](#) and [Christina Sharma](#) co-chaired a webinar panel entitled, “[Cryptoassets: Emerging legal trends in common law and civil law jurisdictions.](#)” The panel discussed how courts in the UK, Europe, and the US have been determining crypto asset disputes and what that means for creators, developers and owners. Panelists were [Edwald Netten](#), [Dan Jewell](#), [Andrea Pantaleo](#), [Matthew Miller](#), and [Deborah Meshulam](#).

PUBLICATIONS

- In the newly published book, *[Banking \[on\] Blockchain: A Legal and Regulatory Primer](#)*, published by the American Bar Association, [David Stier](#), [Emily Honsa Hicks](#), and [Eric Hall](#) co-authored a chapter on anti-money laundering (AML)/know your customer (KYC) requirements and the Bank Secrecy Act (BSA), as well as provided general editorial assistance on other chapters. The book, a comprehensive guide to the legal and regulatory landscape surrounding the use of blockchain technology, decentralization, and digital assets within the financial services while offering guidance on how financial institutions may navigate the complex regulatory environment.
- *[Cryptocurrency and Digital Asset Regulation](#)*, published by the American Bar Association and co-edited by [Deborah Meshulam](#) and [Michael Fluhr](#), includes chapters by Meshulam,

Fluhr, and Margo Tank.

In case you missed it

- Reporting companies should remain flexible given uncertain future of the Corporate Transparency Act after Texas court grants nationwide injunction
- National security risks headline new AML requirements for investment advisers – and more to come?

Contacts

*Learn more about our **Blockchain and Digital Assets** practice by contacting any of our editors:*

Margo Tank

James Williams

Liz Caires

Eric Hall

Related insights



Publication

AML/CFT reform: ongoing legislative changes

19 DECEMBER 2024 • 2 MINUTE READ



Publication

Fifth Circuit strikes Nasdaq board diversity rules

16 DECEMBER 2024 • 5 MINUTE READ

Publication

Reporting companies should remain flexible given uncertain future of the Corporate...

5 DECEMBER 2024 • 5 MINUTE READ

Related capabilities

Blockchain and Digital Assets

Financial Services

Financial Services Regulatory

Financial Services Litigation

Technology

Fintech

Finance

Investment Management and Funds

Technology Sourcing and Outsourcing

Tax

People

Capabilities

About us

[Insights](#)

[Careers](#)

[Locations](#)

[News](#)

[Events](#)

[Alumni](#)

[Find an office](#)

[Subscribe](#)

[Contact us](#)

[Legal notices](#)

[Privacy policy](#)

[Cookie policy](#)

[Modern slavery](#)

[Fraud Alert](#)

[Sitemap](#)

DLA Piper is a global law firm operating through various separate and distinct legal entities. For further information about these entities and DLA Piper's structure, please refer to the Legal Notices page of this website. All rights reserved. Attorney advertising.

© 2024 DLA Piper