

Digital Assets Recent Updates

August 6, 2024

We are pleased to provide you with the July 2024 edition of Gibson Dunn's digital assets regular update. This update covers recent legal news regarding all types of digital assets, including cryptocurrencies, stablecoins, CBDCs, and NFTs, as well as other blockchain and Web3 technologies. Thank you for your interest.

ENFORCEMENT ACTIONS

UNITED STATES

- ***SEC Sues Consensys over MetaMask***
On June 28, the SEC sued Consensys Software Inc. (an Ethereum software provider) over its MetaMask cryptocurrency wallet, which is the most used wallet on Ethereum. The SEC alleged that MetaMask is an unregistered broker because it permits users to buy and sell digital assets directly in-app. Additionally, the SEC alleged that Consensys has offered and sold unregistered securities through its staking service, which provides consumers with “liquid staking tokens” via third-party providers Lido and Rocket Pool, in exchange for depositing assets to secure the Ethereum blockchain. Soon after filing this enforcement action, the SEC moved to dismiss or transfer the declaratory judgment action that Consensys previously filed against the SEC in Texas. [SEC Press Release](#); [CoinDesk](#); [The Block](#); [Law360](#).
- ***SEC Drops Hiro And Stacks Investigation***
On July 12, the SEC dropped its investigation of Hiro, formerly known as Blockstack, which launched Stacks—a Bitcoin layer-2 blockchain. Early on, Blockstack treated its tokens as securities and attempted to register them through various exemptions. In 2021, Hiro launched a new consensus mechanism and concluded that the network had become

so decentralized that its coin no longer constituted a security. The SEC then began a three-year investigation of Hiro. The SEC has now closed that investigation, with SEC staff stating in a letter that they do “not intend to recommend an enforcement action by the SEC.” [SEC 1](#); [SEC 2](#); [CoinDesk](#); [CoinTelegraph](#); [The Block](#).

- ***FTX and CFTC Reach \$12.7 Billion Settlement***

On July 12, following months of negotiations, FTX and the U.S. Commodity Futures Trading Commission (CFTC) agreed to a \$12.7 billion settlement, pending approval from the U.S. Bankruptcy Court for the District of Delaware. The CFTC filed suit against FTX, its former CEO Sam Bankman-Fried, and its sister company Alameda Research in December 2022, alleging that they made misrepresentations by marketing FTX.com as a digital commodity asset platform. According to the July 12 filing, the proposed settlement “resolves ongoing litigation and disputes with one of the largest creditors of the Debtors, avoids the cost and delay of further litigation, and mitigates a significant risk of diminution of the assets available for distribution to creditors.” The settlement agreement is divided into \$8.7 billion in restitution and \$4 billion in disgorgement. As part of the settlement agreement, the CFTC has also agreed to forgo pursuing a civil monetary penalty against FTX, prioritizing the payment of FTX’s creditors. [TheBlock](#); [Cointelegraph](#).

- ***Two Former FTX Executives and Cooperators in Bankman-Fried Case Will Be Sentenced in the Fall***

On July 9, U.S. District Judge Lewis A. Kaplan scheduled an October 30, 2024 sentencing hearing for Nishad Singh, a former engineering director at the now-defunct crypto exchange FTX, and set a November 20, 2024 hearing for Zixiao "Gary" Wang, who co-founded FTX with Sam Bankman-Fried. Singh and Wang were among the first to plead guilty to charges related to their roles in the collapse of FTX, and both testified for the government at the 2023 trial of Bankman-Fried. A sentencing date has not been set for Caroline Ellison, the former CEO of Alameda Research who also pleaded guilty and testified against Bankman-Fried. [The Block](#); [Law360](#); [Cointelegraph](#).

- ***BitMEX Pleads Guilty to Violating the Bank Secrecy Act***

On July 10, cryptocurrency exchange and derivative trading platform BitMEX pleaded guilty in the Southern District of New York to a charge alleging the exchange violated the Bank Secrecy Act by willfully failing to maintain adequate anti-money laundering and customer identification programs between September 2015 and September 2020. BitMEX’s co-founders previously pleaded guilty to similar charges. The exchange will be sentenced on October 7, 2024 before U.S. District Judge John Koeltl. [DOJ Press Release](#); [Law360](#); [CoinDesk](#).

- ***Hydrogen Technology Executives Sentenced to Prison for Price Manipulation***

On June 25, the CEO of Hydrogen Technology was sentenced to two years and 11 months in prison and the Head of Financial Engineering was sentenced to three years and nine months in prison for their involvement in manipulating the price of the company’s cryptocurrency, HYDRO, through wash trades and spoofing. According to the DOJ, the case marked the first time a federal jury found that a cryptocurrency was a security and that manipulating cryptocurrency prices was securities fraud. [DOJ Press Release](#); [CoinDesk](#).

- Silvergate Bank Settles Charges with Federal and California Regulators***
 On July 1, Silvergate Capital Corporation, the parent of the crypto-friendly Silvergate Bank, agreed to pay \$63 million to settle charges from the SEC, Federal Reserve, and the California Department of Financial Protection and Innovation. Silvergate Bank liquidated in 2023 following a run on deposits. Regulators sued Silvergate, alleging the bank misled the public and failed to implement adequate anti-money laundering programs. [CoinDesk](#); [The Block](#); [Cointelegraph](#).
- Paxful Co-Founder Pleads Guilty to Anti-Money Laundering Charge***
 On July 8, Artur Schaback, co-founder of peer-to-peer crypto trading platform Paxful pleaded guilty to one count of conspiracy to willfully fail to establish, develop, implement, and maintain an effective anti-money laundering program under the Bank Secrecy Act. The government alleged that between 2015 and 2019 Schaback operated a virtual currency platform without collecting sufficient know-your-customer data, failed to implement appropriate anti-money laundering policies, and did not file any suspicious activity reports despite knowing that the platform's users were participating in criminal activities. Schaback is scheduled to be sentenced on November 4 and faces a potential maximum penalty of five years in prison. Additionally, as part of the plea agreement, Schaback will pay a \$5 million fine and step down from Paxful's board of directors. [Plea Agreement](#); [GIR](#); [Coinspeaker](#).
- Guo Wengui Convicted in U.S. in \$1 Billion Fraud Scheme***
 On July 16, Guo Wengui (AKA Miles Guo), self-exiled Chinese billionaire and businessman, was convicted by a New York jury on several counts, including racketeering conspiracy, wire fraud, and money laundering, for soliciting investments in various entities through false statements and representations to hundreds of thousands of his online followers. Guo was previously arrested in March 2023 on suspicion of orchestrating a more than \$1 billion fraud conspiracy that involved cryptocurrency. According to the DOJ following his arrest, Guo obtained more than \$262 million in victim funds through the Himalaya Exchange, a purported cryptocurrency ecosystem. Guo's sentencing has been scheduled for November 19. [TheBlock](#); [USAO Statement](#); [BBC](#).
- Abra Settles with 25 States for Unlicensed Money Transmission***
 On June 26, Abra, a cryptocurrency investing platform, and its CEO settled a collective action with 25 state financial regulators for operating the Abra App without the required state money transmitting licenses. Under the settlement agreement, Abra will return up to \$82.1 million in cryptocurrency to U.S. customers in the settling states. Abra also agreed to stop "accepting virtual asset Allocations from U.S. Abra Trade Account customers" and to stop "making buying, selling, or trading cryptocurrencies available to U.S. Abra Trade customers." [Conference of State Bank Supervisors](#); [Reuters](#); [CoinDesk](#).

INTERNATIONAL

- Crypto Payment Company Payeer Faces \$10M Fine in Lithuania***
 On July 7, the Lithuanian Financial Crime Investigation Service (FNTT) imposed fines of 9.29 million euros (approximately \$10 million USD) on crypto exchange and e-commerce payment service company Payeer, alleging the company violated anti-money laundering regulations and allowed customers to transfer money through sanctioned Russian banks.

According to the FNTT's announcement, the fines were the largest ever imposed on a virtual asset service provider in Lithuania. [FNTT Press Release](#); [Cointelegraph](#).

REGULATION AND LEGISLATION

UNITED STATES

- ***New Crypto Bill Seeks to Permit Payment of Federal Income Tax in Bitcoin***
On June 25, Rep. Matt Gaetz (R-FL) introduced a bill to Congress that would allow for federal income tax to be paid with Bitcoin. In a statement promoting the bill, Rep. Gaetz explained, "By enabling taxpayers to use Bitcoin for federal tax payments, we can promote innovation, increase efficiency, and offer more flexibility to American citizens." In 2022, Colorado was the first state to approve cryptocurrency payments for state income taxes. [The Hill](#); [Forbes](#).
- ***SEC Approves Ethereum ETFs***
On July 22, the SEC approved the first Ethereum spot exchange-traded funds (ETFs), marking the second cryptocurrency to gain spot ETF approval after Bitcoin spot ETFs were approved in January 2024. Many in the industry believe that these approvals, combined with the SEC's closure of its Ethereum 2.0 investigation, indicate that the agency does not believe Ether is a security. [CoinDesk](#); [The Block](#); [Financial Times](#).
- ***IRS Releases New Rules for Custodial Cryptocurrency Brokers***
On June 28, the IRS released final regulations governing cryptocurrency brokers who take possession of the digital assets sold by their customers (including exchanges, hosted wallet services, and digital assets kiosks). The new rules require such cryptocurrency brokers to disclose the movements and gains of customers' assets. The rules apply to transactions starting from January 1, 2025. Brokers will be required to track cost basis for assets starting in 2026. Notably, the IRS reserved addressing issues regarding non-custodial services (including self-hosted wallets) for a later rulemaking. [IRS News Release](#); [CoinDesk](#); [Reuters](#).
- ***Congress Does Not Override White House Veto of SEC Bill***
On July 11, the House of Representatives voted on whether to override President Biden's veto of legislation overturning Staff Accounting Bulletin No. 121—an SEC guidance document making it difficult for banks to hold custodial digital assets. Although a majority of the House voted to overturn the veto, the vote fell short of the required two-thirds threshold. The same day, it was reported that the SEC was granting exemptions from SAB121 to certain unidentified financial institutions. [CoinDesk](#); [White House](#); [SEC](#); [The Block](#).

INTERNATIONAL

- ***First Phase of the EU's MiCA Regulation Goes into Effect, Targeting Stablecoins***
On June 30, the first phase of the Markets in Crypto-Assets Regulation (MiCA) took effect, focusing on stablecoins. MiCA was initially approved by the EU in April 2023 to provide a uniform framework for digital assets. The new laws permit only regulated stablecoins to be used within the bloc, causing some exchanges to begin delisting non-

compliant stablecoins. Additionally, MiCA prohibits issuers from issuing more stablecoins within the bloc if the “estimated quarterly average number and average aggregate value of transactions per day associated to its uses as a means of exchange within a single currency area is higher than 1 million transactions and EUR 200 000 000, respectively.” MiCA implementation will be a gradual process, with regulations impacting digital asset service providers coming in December 2024. [MiCA Full Text](#); [The Block](#); [Cointelegraph](#).

- ***ESMA Publishes Second Final Report Under the Markets in Crypto-Assets Regulation***

On July 4, the European Securities and Markets Authority (ESMA) published the second Final Report under MiCA “covering eight draft technical standards that aim to provide more transparency for retail investors, clarity for providers on the technical aspects of disclosure and record-keeping requirements, and data standards to facilitate supervision by National Competent Authorities (NCAs).” This final report includes draft technical standards including sustainability indicators for crypto-asset consensus mechanisms and business continuity measures for crypto-asset service providers. Once finalized, these draft technical standards will be submitted to the European Commission, which will decide whether to adopt them within three months. [ESMA Press Release](#); [Final Report](#).

- ***EBA Extends Travel Guidelines for Crypto Exchanges***

On July 6, in an effort to ramp up its anti-money laundering measures, the European Banking Authority (EBA) announced the extension of Travel Rules guidelines (Regulation (EU) 2023/1113) for crypto-asset service providers (CASPs) and their intermediaries. These guidelines, which requires exchanges to collect and transmit information on the sender, recipient, and transaction nature, will become mandatory for all crypto exchanges operating within the EU by December 30, 2024. These requirements include declaring the CASPs’ policies on multi-intermediation and cross-border transfers, collecting users’ information for the transfer of funds or crypto assets, and identifying whether transactions are related to the purchase of services. Once effective, CASPs and their intermediaries will be given a two-month compliance period. [Cointelegraph](#); [JD Supra](#); [Cointribune](#).

- ***Bolivia Lifts Ban on Crypto Payments***

On June 26, the Banco Central de Bolivia, Bolivia’s Central Bank, lifted the country’s ban on cryptocurrency payments in a move to help boost Bolivia’s economy and align Bolivia with the crypto policies other Latin American countries. Financial institutions may now transact with digital assets, but the government does not recognize any digital assets as legal tender. Bolivia’s ban dates back to 2014. [Banco Central de Bolivia’s X Announcement](#); [Cointelegraph](#).

- ***South Korea Enacts First Comprehensive Cryptocurrency Regulation***

On July 19, South Korea’s new set of cryptocurrency regulations went into effect. The Virtual Asset User Protection Act (VAUPA), including the related enforcement decree approved on June 25, 2024, is the country’s first comprehensive cryptocurrency regulation. VAUPA requires that local crypto exchanges store 80% of user deposits in cold wallets protected from cyberattacks. These cold wallets must be held separately from operation funds and must generate a return of 1% to 1.5% interest. Exchanges must also conduct real-time monitoring for abnormal trading activity and must maintain either insurance or reserve funds to prepare for hacks or liquidity crises. [Coinpedia 1](#); [Coinpedia 2](#); [Korean Financial Services Commission](#); [CoinMarketCap](#); [Cointelegraph](#).

- ***Russia Approves New Crypto Laws***

On July 30, Russia passed two crypto laws. The first law, effective November 1, 2024, legalizes crypto mining for registered entities and individuals, while unregistered persons may mine only if they do not exceed specified energy consumption limits. The second law, effective September 1, 2024, provides for an experimental regime granting the Bank of Russia “powers to allow authorized companies to conduct cross-border settlements and exchange trading in digital currency.” Companies need to apply to participate in the experimental regime. [CoinDesk](#).

- ***Taiwan Amends Anti-Money Laundering Laws to Cover Crypto***

On July 16, the Legislative Yuan, Taiwan’s parliament, passed amendments to its anti-money laundering (AML) laws. Under the new AML laws, entities and individuals providing crypto services could face two years of imprisonment or a fine of up to NT \$ 5 million if they fail to complete AML procedures and registration. The laws apply to any service provider that operates in Taiwan and mandates that overseas providers create local entities for registration compliance. [The Block](#).

CIVIL LITIGATION

UNITED STATES

- ***Coinbase-Backed Lawsuits Seek Documents from the SEC and FDIC***

On June 27, History Associates Incorporated, a research firm retained by Coinbase, initiated suits against the SEC and FDIC for failure to comply with Freedom of Information Act (FOIA) requests. In 2023, History Associates, at Coinbase’s direction, submitted FOIA requests to the SEC for documents concerning three closed digital-asset-related investigations. History Associates separately submitted a FOIA request to the FDIC related to “pause letters” sent by the agency to financial institutions asking them to cease their crypto activities. Both agencies withheld documents claiming that they are covered by FOIA exemptions. Coinbase and History Associates seek a court order to compel the agencies to disclose the requested records. [History Associates v. SEC](#); [History Associates v. FDIC](#); [The Block](#); [CoinDesk](#); [Cointelegraph](#).

- ***Artists Sue SEC Seeking Clarity Over NFTs***

On July 29, law professor Brian Frye and songwriter Jonathan Mann filed suit against the SEC and its five commissioners in the U.S. District Court in the Eastern District of Louisiana to determine whether NFTs fall under the agency’s jurisdiction and what steps artists must take when creating and selling NFTs. Both have NFT projects in progress and are seeking a declaratory judgment from the court. The SEC’s NFT enforcement actions generally have settled, so courts have rarely had an opportunity to consider whether NFTs may be securities. [TheBlock](#); [Cointelegraph](#).

SPEAKER’S CORNER

UNITED STATES

- Senator Lummis's Draft Bitcoin Bill Proposes U.S. Treasury Bitcoin Reserve**

On July 27, at the Bitcoin Nashville conference, Sen. Cynthia Lummis (R-WY) announced her intention to propose a bill titled "Boosting Innovation, Technology, and Competitiveness through Optimized Investment Nationwide Act of 2024" ("BITCOIN Act of 2024") that would establish a Bitcoin Purchase Program for the U.S. Treasury. According to a draft of the bill that was shared with CoinDesk on July 31, the Bitcoin Purchase Program would buy no more than 200,000 bitcoin a year over a five-year period. States could also voluntarily participate in storing bitcoin holdings as part of the reserve. Part of the proposed plan to fund this program relies on adjustments made to gold certificates, with Federal Reserve banks returning their existing gold certificates to the U.S. Treasury. [TheBlock](#); [CoinDesk](#); [Crypto News](#).
- CFTC Chairman Asserts Agency Is Ready to Take on Oversight of the Cryptocurrency Market**

On July 10, U.S. Commodity Futures Trading Commission Chair Rostin Behnam testified before the Senate Agriculture Committee seeking to assure the Senate that his agency is ready to protect retail investors if it is given oversight of the digital-asset market. Although multiple lawmakers pointed out that much of the agency's oversight concerns institutional-focused products, Behnam asserted that the CFTC already has a wealth of experience protecting retail investors in crypto markets through the agency's enforcement efforts. According to Behnam, more than half of the agency's enforcement docket during the past fiscal year consisted of crypto cases, and a significant portion of the agency's suits deal with alleged fraud of retail investors. Behnam estimated that the CFTC would need around \$30 to 35 million in the first year and \$50 to 60 million in the second to properly oversee cryptocurrency markets. [Law360](#).

OTHER NOTABLE NEWS

- U.S. Senate Annual Report Pushes Blockchain for National Security Applications**

On July 9, the United States Senate Committee on Armed Services issued a report for the 2025 fiscal year, in part assessing the viability of utilizing blockchain technology for supply chain security and other national security uses. According to the report, "blockchain technology has the potential to enhance the cryptographic integrity of the defense supply chain, improve data integrity, and reduce the risk of the manipulation or corruption of certain types of data by near-peer competitors." The committee also wants to explore blockchain use cases "to achieve national security goals and to create secure, transparent, accountable, and auditable data related to supply chains." With these goals in mind, the report directed the U.S. Secretary of Defense to provide a briefing on this subject by April 1, 2025. [Committee Report](#); [Cointelegraph](#).
- First Cross-Agency Fraud Disruption Conference Convened to Combat Crypto Scams**

American citizens lose billions of dollars each year to such scams. On July 11, the Commodity Futures Trading Commission and the Department of Justice Computer Crime and Intellectual Property Section announced a first-of-its-kind interagency Fraud Disruption Conference, which will focus on efforts to combat "pig butchering" scams, a common type of scam in which a victim is induced to transfer large sums of money (usually cryptocurrency) to a scammer pretending to be a new friend or romantic partner.

Other participants in the conference include the Federal Bureau of Investigations, the Secret Service, the Securities and Exchange Commission, the Social Security Administration, the Treasury, the Drug Enforcement Administration, the Postal Inspection Service, and several US Attorney's offices. [CFTC 1](#); [CFTC 2](#).

The following Gibson Dunn lawyers contributed to this issue: Jason Cabral, Kendall Day, Jeff Steiner, Sara Weed, Chris Jones, Jay Minga, Nick Harper, Justin Fishman, Tin Le, and Cody Wong.

FinTech and Digital Assets Group Leaders / Members:



Ashlie Beringer
Palo Alto
+1 650.849.5327
aberinger@gibsondunn.com



Michael D. Bopp
Washington, D.C.
+1 202.955.8256
mbopp@gibsondunn.com



Stephanie L. Brooker
Washington, D.C.
+1 202.887.3502
sbrooker@gibsondunn.com



Jason J. Cabral
New York
+1 212.351.6267
jcabral@gibsondunn.com



Ella A. Capone
Washington, D.C.
+1 202.887.3511
ecapone@gibsondunn.com



M. Kendall Day
Washington, D.C.
+1 202.955.8220
kday@gibsondunn.com



Michael J. Desmond
Los Angeles/Washington, D.C.
+1 213.229.7531
mdesmond@gibsondunn.com



Sébastien Evrard
Hong Kong
+852 2214 3798
sevrard@gibsondunn.com



William R. Hallatt
Hong Kong
+852 2214 3836
whallatt@gibsondunn.com



Martin A. Hewett
Washington, D.C.
+1 202.955.8207
mhewett@gibsondunn.com



Michelle M. Kirschner
London
+44 20 7071.4212
mkirschner@gibsondunn.com



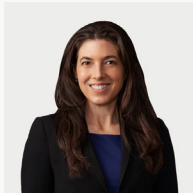
Stewart McDowell
San Francisco
+1 415.393.8322
smcdowell@gibsondunn.com



Mark K. Schonfeld
New York
+1 212.351.2433
mschonfeld@gibsondunn.com



Orin Snyder
New York
+1 212.351.2400
osnyder@gibsondunn.com



Ro Spaziani
New York
+1 212.351.6255
rspaziani@gibsondunn.com



Jeffrey L. Steiner
Washington, D.C.
+1 202.887.3632
jsteiner@gibsondunn.com



Eric D. Vandeveld
Los Angeles
+1 213.229.7186
evandeveld@gibsondunn.com



Benjamin Wagner
Palo Alto
+1 650.849.5395
bwagner@gibsondunn.com



Sara K. Weed
Washington, D.C.
+1 202.955.8507
sweed@gibsondunn.com

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