




# Akin

## CryptoLink



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On February 15, 2024, outgoing House Financial Services Chair Patrick McHenry (R-NC) told reporters that Republicans "have an understanding" with Ranking Member Maxine Waters (D-CA) on stablecoin legislation. This "understanding" has been a long time coming. The two sides were close in the Summer of 2022, when the combination of upcoming elections and the FTX collapse halted any serious legislative progress on crypto policy. Revisiting the subject in the Summer of 2023, Waters and the White House objected to the McHenry stablecoin framework at the Financial Services Committee markup, and even with bipartisan support, the legislation has still not made it across the House floor. Still, both sides continued their talks, and it is fair to say that an "understanding" is a positive movement. While not a completed deal or locked-in legislative text, and though the administration remains a wildcard, it is clear that McHenry and Waters are in the mode of 'let's get something done.' And at least on stablecoin legislation, it seems that the administration understands the importance of providing some regulatory clarity on the subject, as Treasury Secretary Yellen recommended during her congressional testimony as head of the Financial Stability Oversight Council (FSOC).

But how to get it done? McHenry is still pursuing his market structure bill - the FIT for the 21st Century Act - that the Financial Services Committee reported last summer. But this remains a much heavier lift than stablecoin legislation. With Chairman Gensler at the SEC still content to pursue regulation by enforcement, getting comprehensive market structure legislation across the line that takes at least some regulatory authority away from the SEC, a comprehensive deal is an elusive goal. Yet negotiations continue. Members of the House and the Senate - Sens. Sherrod Brown, Tim Scott, Cynthia Lummis, Kirsten Gillibrand, and Chuck Schumer, along with McHenry and Waters in the House - are attempting to cobble together an omnibus financial services bill that would include some combination of crypto policy, cannabis banking, and capital markets legislation. It seems premature that such a bill would come together this spring (to be attached to the Fiscal Year 2024 spending bills), but the work will continue throughout the spring and summer with an eye toward landing this plane during a Lame Duck session of Congress.

In other House news, on February 29, the Financial Services Committee approved House Joint Resolution 109 (H.J.R.109), which would unwind SEC Staff Bulletin No. 121 (SAB 121). The controversial Staff Bulletin requires that a bank holding a client's cryptocurrencies should do so on its own balance sheet, which opponents contend forces banks to hold too

much capital to offset that risk. H.J.R. 109 now heads to the House floor for a full vote. This resolution will likely get a vote in both chambers (it is a 'privileged resolution' in the Senate, meaning that it cannot be filibustered). But ultimately, to become law, it needs to pass both the House and the Senate, *and be signed by the President*. Though there is some value to putting Congress on the record on this issue, it seems unlikely that the President will sign a bill unwinding an action by his own SEC.

Meanwhile, Senate Agriculture Committee Chair Debbie Stabenow (D-MI) announced in an interview on February 28 that she would revive her proposed crypto legislation from the 117th Congress. Stabenow's draft bill, the Digital Commodities Consumer Protection Act, would grant the Commodity Futures Trading Commission (CFTC) new tools and authorities to regulate digital commodities. The bill had senior bipartisan support when it was originally introduced, having been co-authored by Senate Ag Ranking Member John Boozman (R-AR), Minority Whip John Thune (R-SD), and Sen. Cory Booker (D-NJ). When asked in the interview if she would beef up the bill, Stabenow claimed it was already "very tough" on the industry. This legislative effort was shelved in the Fall of 2022 after the collapse of FTX, but it had (and will still have) important bipartisan commitments.

The industry continues to closely watch the SEC's litigation against several cryptocurrency companies, including Coinbase, Binance and Kraken. These cases commonly involve allegations that the companies operated as unregistered securities exchanges, brokers, dealers or clearing agencies in connection with the sale of digital assets. The SEC's lawsuit against Kraken is still at an earlier stage than the cases against Coinbase and Binance. On February 22, 2024, Kraken moved to dismiss the SEC's lawsuit, challenging the SEC's position on what constitutes an "investment contract," as overly broad and as regulatory overreach. Kraken's motion to dismiss also focused on how the SEC did not allege direct consumer harm to Kraken's consumers. While the SEC's case against Binance is still ongoing, the remainder of the U.S. regulatory actions against Binance were settled through a \$4.3 billion plea deal, which was officially approved by a federal judge on February 23, 2024. However, Binance is still facing regulatory challenges abroad, including a demand from the Nigerian government for \$10 million in fines due to Binance's alleged foreign exchange rates manipulation.

Looking ahead, the SEC's trial against Terraform Labs and its founder, Mr. Kwon is set to start in March 2024. The SEC had alleged that Terraform orchestrated a "multi-billion-dollar crypto asset securities fraud." Last December, the presiding judge, issued a ruling on summary judgment, siding with the SEC and finding that there was "no genuine dispute" that the digital assets Terraform sold, including UST, LUNA, wLUNA and MIR, were securities. However, there remain many live issues in the SEC's case against Terraform, as the court has not yet addressed remedies nor entered any money judgment, which will be determined through the trial.

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## Lawmakers Introduce Legislation to Overturn SEC Crypto Accounting Bulletin

On February 1, 2024, U.S. Sen. Cynthia Lummis alongside Reps. Wiley Nickel and Mike Flood introduced a bipartisan, bicameral Congressional Review Act resolution to overturn the U.S. Securities and Exchange Commission's (SEC) Staff Accounting Bulletin (SAB) 121. According to Sen. Lummis, "SAB 121 has massive implications, and the SEC should have received feedback on it from the federal banking regulators and the public before implementing this legally binding directive". Rep. Nickel also stated that "Gary Gensler and the Security and Exchange Commission continue to overstep their authority, and it's time for Congress to weigh in on Staff Accounting Bulletin No. 121". SAB 121 directed all consumer cryptocurrency firms to track crypto funds as liabilities on their balance sheets. Lawmakers have criticized the rule for creating risks for consumers and creating uncertainty in bankruptcy proceedings. The joint resolution provides for "congressional disapproval" of the rule and expressly states that the rule "shall have no force or effect".

The joint resolution can be found [here](#) and Sen. Lummis' press release can be found [here](#).

## Nominee to OECD Responds to Senator Warren's Letter

On February 9, 2024, Patrick Maloney, President Biden's nominee to the Organization for Economic Cooperation and Development (OECD), released a letter stating that he will recuse himself "from participating in the OECD's decision-making processes regarding cryptocurrency and digital assets policy" and refuse any "employment, board service, or compensation from any company or organization primarily engaged within the cryptocurrency or digital assets industry" for four years after the conclusion of his service. Maloney's letter came in response to Sen. Warren's public concern over a revolving door between crypto firms and crypto policymakers in Washington.

Maloney's letter can be found [here](#).

## Hong Kong Monetary Authority Issues Tokenization and Custodial Standards for Crypto Firms

On February 20, 2024, the Hong Kong Monetary Authority (HKMA) issued two letters regarding tokenization and custody of digital assets. These letters require authorized institutions to "apply these standards in safeguarding client digital assets, whether the assets are received in the course of conducting virtual asset (VA) related activities as an intermediary, distributing tokenized products, or providing standalone custodial services." With reference to international standards and practices, the HKMA set out the expected standards, which have incorporated flexibility for authorized institutions to put in place "operational arrangements that are commensurate with the nature, features and risks of the digital assets under custody."

The letter on custodial services can be found [here](#), and the letter on tokenization can be found [here](#).

## SEC Seeks Comments on Proposed Rule Change to Permit Listing and Trading of Options on Bitwise and Grayscale Bitcoin ETFs

On February 23, 2024, the SEC issued a notice of filing of proposed changes to permit the listing and trading of options on the Bitwise Bitcoin ETF, the Grayscale Bitcoin Trust (BTC), and any trust that holds bitcoin. The SEC published the notice to solicit comments on the proposed rule change from interested persons. If approved, the options will trade "in the same manner as options on other ETFs (including commodities ETFs) on the Exchange".

The SEC's notice can be found [here](#).

## Key Enforcement Actions

### **Kraken Files to Dismiss SEC Suit**

On February 22, 2024, Payward, Inc. and Payward Ventures, Inc. (together, Kraken) filed a motion to dismiss in the U.S. District Court for the Northern District of California on the grounds that the SEC's complaint "fails to state a claim against Kraken upon which relief can be granted." The SEC alleges that Kraken operated as an unregistered securities exchange, broker, dealer, and clearing agency by operating a platform on which crypto assets were offered and sold as investment contracts and therefore were within the purview of U.S. securities laws. According to the motion, the SEC's claims should be dismissed because the SEC "fails to plausibly allege that digital assets were investment contracts when traded on Kraken, a longstanding U.S.-based platform for trading such assets."

Kraken's motion can be found [here](#).

### **Federal Judge Approves \$4.3 Billion Binance Plea Deal**

On February 23, 2024, U.S. District Judge Richard A. Jones signed off on Binance's \$4.3 billion plea deal in respect of its money laundering and fraud charges. According to Judge Jones, "This really is a case where the ethics of the company was compromised by greed ... This isn't a question of ignorance and lack of knowledge. It is a question of volition and choice." In a sentencing memorandum filed on February 16, 2024, U.S. prosecutors noted that this was the largest penalty imposed against a money services business in the DOJ's history and "one commensurate with the severity of Binance's criminal conduct."

Further information can be found [here](#) and the government's sentencing memorandum can be found [here](#).

### **Montenegro Court Approves Terraform Co-Founder's Extradition to the U.S.**

On February 21, 2024, a Montenegro court found that Terraform co-founder Do Kwon should be extradited to the U.S. rather than his home country of South Korea to face trial on fraud charges.

Earlier, in January 2024, Judge Jed Rakoff of the Southern District of New York pushed the SEC's fraud trial against Terraform Labs and Do Kwon to give Kwon a better chance of attending the trial as he awaited extradition from Montenegro, where he had been held on criminal fraud charges.

On February 26, 2024, in a status letter, Kwon's defense counsel wrote, "Mr. Kwon will likely not be extradited before the end of March and he will likely not be present or able to attend at least the start of the trial scheduled to begin on March 25, 2024. We provide this information purely as a status update for the Court. Consistent with our letter to the Court

of January 11, 2024, we will not seek any adjournment of the trial date regardless of the timing of Mr. Kwon's ultimate extradition."

At present, Kwon's trial is set to begin on March 25, 2024.

Kwon's status letter can be found [here](#) and the Wall Street Journal's report on the Montenegro ruling can be found [here](#).

## **SEC Charges Founder of \$1.7 Billion HyperFund Crypto Pyramid Scheme and Top Promoter with Fraud**

On January 29, 2024, the SEC charged Xue Lee (also known as Sam Lee) and Brenda Chunga (also known as Bitcoin Beatee) for their involvement in a fraudulent crypto-asset pyramid scheme known as HyperFund that raised more than \$1.7 billion from investors worldwide. According to the SEC's complaint (filed in federal district court in the District of Maryland), from June 2020 through early 2022, Lee and Chunga promoted HyperFund membership packages, which they claimed guaranteed investors high returns, including from HyperFund's supposed crypto asset mining operations and associations with a Fortune 500 company. In reality, however, the complaint alleges that Lee and Chunga knew or were reckless in not knowing that HyperFund was a pyramid scheme and had no real source of revenue other than funds received from investors. In 2022, the HyperFund scheme collapsed, and investors were no longer able to make withdrawals. Chunga agreed to settle the charges, to be permanently enjoined from future violations of the charged provisions and certain other activity, and to pay disgorgement and civil penalties in amounts to be determined by the court at a future date. The settlement is subject to court approval. The charges against Lee will be litigated.

In a parallel action, the U.S. Attorney's Office for the District of Maryland announced criminal charges against Lee and Chunga.

The SEC's press release can be found [here](#), and the complaint can be found [here](#).

## **SEC to Drop Debt Box Suit Amid Potential Sanctions**

On January 30, 2024, the SEC announced its intention to drop the case against Digital Licensing Inc. (doing business as Debt Box). In its response to U.S. District Judge Robert J. Shelby's order to show cause, the SEC argued that its attorneys' failure to correct misstatements to obtain emergency measures does not warrant sanctions, and that it is taking steps to address the court's concerns. The SEC noted that, given the SEC's ongoing review into the allegations and evidence in the matter, the SEC has determined that the best way to proceed is to dismiss the action without prejudice. The initial case involved allegations against Debt Box for selling licenses tied to cryptocurrencies. The SEC had obtained emergency measures, but the court later reversed them, prompting the current review and potential dismissal. The Debt Box defendants seek sanctions and reimbursement, while the SEC opposes permanent dismissal and suggests the court reject additional sanctions.

The SEC's response can be found [here](#).

## **SEC Charges Founder of American Bitcoin Academy Online Crypto Course with Fraud Targeting Students**

On February 2, 2024, the SEC announced that Brian Sewell and his company, Rockwell Capital Management, had agreed to settle fraud charges in connection with a scheme that targeted students taking Sewell's online crypto trading course known as the American Bitcoin Academy. The SEC alleged that the fraudulent scheme cost 15 students \$1.2 million.



According to the SEC's complaint (filed in U.S. District Court for the District of Delaware), from at least early 2018 to mid-2019, Sewell encouraged hundreds of his online students to invest in the Rockwell Fund, a hedge fund that he claimed he would launch, and which would use cutting-edge technologies like artificial intelligence and trading strategies involving crypto assets to generate returns for investors. The complaint alleges that Sewell received approximately \$1.2 million from 15 students but never launched the fund nor executed the trading strategies he advertised to investors, instead holding on to the invested money in bitcoin. Without admitting or denying the allegations in the complaint, the defendants consented to injunctive relief. Rockwell Capital Management also agreed to pay disgorgement and prejudgment interest totaling \$1,602,089 and Sewell agreed to a civil penalty of \$223,229. The settlement is subject to court approval.

The SEC's press release can be found [here](#), and the complaint can be found [here](#).

### **Man Convicted of \$300 Million Securities Price Manipulation and Wire Fraud Cryptocurrency Conspiracy**

On February 7, 2024, the U.S. Department of Justice (DOJ) announced that a federal jury in the Southern District of Florida convicted Shane Hampton for manipulating the price of a security and scheming to defraud investors in connection with the purchase of Hydrogen Technology's cryptocurrency, HYDRO. According to court documents and evidence presented at trial, Hampton served as the head of financial engineering at Hydrogen Technology and orchestrated a months-long scheme to manipulate the price of HYDRO. Hampton and his co-conspirators hired an outside firm to run an automated trading system to manipulate the price of HYDRO on a cryptocurrency exchange in the United States by flooding the market with fake and fraudulent orders from October 2018 to April 2019. Hampton and his co-conspirators executed approximately \$7 million in "wash trades" and placed over \$300 million in "spoof trades" for HYDRO through the bot. The jury convicted Hampton of conspiracy to commit securities price manipulation and conspiracy to commit wire fraud. He is scheduled to be sentenced on April 29, 2024 and faces a maximum penalty of five years in prison for the conspiracy to commit securities price manipulation conviction and 20 years in prison for the conspiracy to commit wire fraud conviction.

The DOJ's press release can be found [here](#).

### **SEC Obtains Final Judgments Against Promoters of Multi-Million Dollar CoinDeal Scheme**

On February 7, 2024, the United States District Court for the Northern District of Illinois entered final judgments on all claims against two CoinDeal promoters, Arline Woodbury and Joyce Holverson. The SEC's complaint alleged that Woodbury and Holverson acted as downstream promoters for the CoinDeal scheme, through which investors would supposedly generate astronomical returns from the imminent sale of an anonymous blockchain technology. According to the complaint, Woodbury and Holverson formed their own investor groups to take advantage of bonuses and payouts offered through CoinDeal. The complaint alleged that Woodbury and Holverson raised more than \$3 million from hundreds of investors based on dissemination of materially false and misleading statements about the deal and collectively misappropriated hundreds of thousands of dollars of investor funds for personal use.

The SEC's press release can be found [here](#), the final judgment against Woodbury can be found [here](#), and the final judgment against Holverson can be found [here](#).

### **SEC Charges TradeStation Crypto for Unregistered Offer and Sale of Crypto Asset Lending Product**

On February 7, 2024, the SEC announced charges against TradeStation Crypto, Inc. for failing to register the offer and sale of a crypto lending product that allowed U.S. investors to deposit or purchase crypto assets in a TradeStation account in exchange for the company's promise to pay interest. According to the SEC's order, TradeStation began to offer and sell the crypto lending product with the interest feature around August 2020, marketed the feature as a way for investors to earn interest, and had complete discretion over how to deploy the assets to generate revenue to pay interest to investors. The SEC's order found that TradeStation offered and sold the crypto lending product with the interest feature as a security, and, since it did not qualify for a registration exemption, TradeStation was required to register its offer and sale but failed to do so. Without admitting or denying the SEC's findings, TradeStation agreed to a cease-and-desist order prohibiting it from violating the registration provisions of the Securities Act of 1933, and to pay a \$1.5 million penalty to settle the SEC's charges. In parallel actions by state regulatory authorities, TradeStation agreed to pay an additional \$1.5 million in fines to settle similar charges.

The SEC's press release can be found [here](#) and the order can be found [here](#).

### **New York Attorney General James Expands Lawsuit Against Cryptocurrency Company Digital Currency Group For Defrauding Investors**

On February 9, 2024, New York Attorney General Letitia James filed an amended complaint, expanding the Office of the Attorney General's (OAG) lawsuit against Digital Currency Group, Inc. (DCG), DCG's CEO Barry Silbert, and the former CEO of Genesis Global Capital, LLC and its affiliates (Genesis), Soichiro Moro, for defrauding additional individuals and institutions of an additional \$2 billion. According to the press release, the amended complaint is the result of more investors coming forward following Attorney General James' October 2023 suit against Gemini Trust Company (**Gemini**), Genesis, and DCG for misleading representations to investors about an investment program called Gemini Earn and causing over \$1 billion in losses. The OAG's continued investigation revealed that these additional investors were similarly defrauded and provided with false assurances that their funds were safe when in fact they were not, leading to an additional \$2 billion in assets that were lost. In total, OAG found that these companies defrauded more than 230,000 investors out of more than \$3 billion.

The Attorney General's press release can be found [here](#).

### **Colorado Securities Commissioner Amends Complaint Against Eli Regalado and INDXcoin to Include 12 Additional Defendants**

On February 12, 2024, Colorado Securities Commissioner Tung Chan filed an amended complaint in the civil fraud case against Eligio (Eli) and Kaitlyn Regalado of Denver, INDXcoin, LLC and Kingdom Wealth Exchange LLC. The amended complaint, filed in Denver District Court, includes new evidence and expands to 12 more defendants, including Mr. Regalado's father and brother-in-law. The amended complaint alleges that Eli Regalado's father, Eligio P. Regalado Sr., violated the anti-fraud, licensing and registration provisions of the Colorado Securities Act, and allegedly misled investors into believing that an investment in INDXcoin would grow tenfold within three to four months when, in reality, "investors haven't realized any gains and haven't been able to liquidate their investments." Commissioner Chan noted that "[c]ryptocurrency transactions are fast and borderless, which can make crypto scams insidious and far-reaching."

The Colorado Division of Securities press release can be found [here](#).

### **SEC Obtains Court Order to Enforce Investigative Subpoenas Against Two Top-Level Promoters of the NovaTech Crypto Asset Investment Program**

On February 13, 2024, the U.S. District Court for the Northern District of Texas granted the SEC's application to enforce a subpoena for production of documents issued to Dapilinu Dunbar and a subpoena for production of documents and testimony issued to Corrie Sampson. According to the SEC's application, Dunbar and Sampson are high-ranking promoters of a crypto-asset investment program marketed under the name "NovaTech." According to the SEC's filing, the SEC is investigating whether certain persons, including Dunbar and Sampson, violated the federal securities laws in connection with the offers and sales of interests in NovaTech, a purported crypto-asset investment program marketed to individual investors in the United States and worldwide.

The SEC's press release can be found [here](#).

### **Texas Crypto Firm Sues SEC to Avoid 'Unlawful' Enforcement**

On February 21, 2024, LEJILEX, a Texas-based crypto company, filed a complaint in the U.S. District Court for the Northern District of Texas against the SEC in order to "prevent the SEC from unlawfully charging them and their members with violating the securities laws based on the SEC's fundamentally mistaken view of its regulatory power, and to end the SEC's efforts to unlawfully extend its regulatory authority to cover nearly all digital assets." In particular, the plaintiffs seek declaratory and injunctive relief to ensure that LEJILEX (whose new platform will enable secondary sales of certain digital assets) does not have to register with the SEC as a securities exchange, broker, or clearing agency, "contrary to the SEC's view, as expressed in the multiple enforcement actions that the SEC has brought against comparable digital asset trading platforms." The complaint argues that the court should grant plaintiffs the relief they request and "free them and the rest of the digital asset industry from the imminent threat of unlawful SEC enforcement actions based on the SEC's unsustainable view of its regulatory authority."

The complaint can be found [here](#).

### **Texas Blockchain Council and Riot Platforms Sue U.S. Department of Energy**

On February 22, 2024, the Texas Blockchain Council (TBC), a non-profit association, and Riot Platforms, Inc., filed a complaint for declaratory and injunctive relief against the U.S. Department of Energy (DOE) and the Energy Information Administration (EIA) to "halt an unlawful so-called emergency collection of information" from TBC's members. The EIA and DOE had proposed to perform the collection of information, which was "unlawfully approved" by the Office of Management and Budget (OMB). According to the complaint, on January 24, 2024, the EIA requested "emergency" review and clearance from the OMB of a planned collection of proprietary energy information from companies that are engaged in cryptocurrency mining. The OMB approved the request two days after receiving it from the EIA, but the plaintiffs alleged that this was a violation of the Paperwork Reduction Act and its implementing regulations. The complaint noted that absent the court's intervention, the plaintiffs, TBC's members, and other mining companies who have received and "are bound to complete the legally defective survey will be immediately and irreparably harmed by being forced to divulge confidential, sensitive, and proprietary information to EIA, which had no lawful authority to request or collect."

The complaint can be found [here](#).

### **FTX Seeks to Settle \$324 Million Clawback Action**

On February 22, 2024, FTX Trading Ltd. and Maclaurin Investments Ltd. (together the **Plaintiffs**) submitted a motion in the U.S. Bankruptcy Court for the District of Delaware for the entry of an order authorizing the Plaintiffs to enter into the stipulation of settlement with Patrick Gruhn, Robin Matzke, Lorem Ipsum UG, and Brandon Williams (collectively, the



Defendants), resolving a \$323.5 million clawback action aimed at the co-founders of its European unit by selling the subsidiary back to the executives for \$32.7 million. According to the motion, approval of the stipulation will resolve Plaintiffs' claims against each of the Defendants and "deliver significant recovery while avoiding the expense, uncertainty and burden of litigation."

The motion can be found [here](#) and further information can be found [here](#).

## Akin Thought Leadership

[Are Crypto Tokens Securities? Terraform Court Says 'Yes' in Extensive Decision](#) (January 12, 2024)



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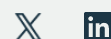


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