

#### THE LANDSCAPE OF GOVERNMENT

**ENFORCEMENT**, private litigation, and federal and state regulation of **DIGITAL ASSETS, BLOCKCHAIN AND RELATED TECHNOLOGIES** is constantly evolving. Each quarter, Ropes & Gray attorneys analyze government enforcement and private litigation actions, rulings, settlements and other key developments in this space. We distill the flood of industry headlines so that you can identify and manage risk more effectively. Below are the takeaways from this quarter’s review.

#### ENFORCEMENT LANDSCAPE

**Heavy enforcement activity continues.** In the second quarter of 2023, the U.S. Securities and Exchange Commission (“SEC”) followed through on its Q1 warning that enforcement actions against Binance and Coinbase were forthcoming. Meanwhile, the Commodities Futures Trading Commission (“CFTC”) has continued to bring enforcement actions against other players in the digital asset space. Further, after months of anticipation—and unfortunately just after quarter end—Judge Analisa Torres issued a long-awaited summary judgment decision in *Ripple*. Look for our [full analysis](#) on the implications of that decision, which the SEC is seeking to appeal (no doubt buoyed by Judge Rakoff’s explicit rejection of the reasoning as departing from *Howey* in his subsequent summary judgment ruling in *SEC v. Terraform Labs Pte. Ltd. and Do Hyeong Kwon*, No. 1:23-cv-01346 (S.D.N.Y. Feb. 16, 2023).)

#### 1. SEC AND CFTC TAKE ACTION AGAINST BINANCE AND COINBASE

On June 5 and 6, the SEC rocked the crypto industry by filing separate charges against Binance and Coinbase.

#### TABLE OF CONTENTS

■ ENFORCEMENT LANDSCAPE .....	1
■ REGULATORY UPDATES .....	5
■ PRIVATE LITIGATION.....	6
■ LEGISLATION.....	7
■ LOOKING AHEAD .....	9

The SEC accused the crypto titans of failing to register as securities exchanges, failing to register as clearing agencies, failing to register as broker-dealers, and offering and selling unregistered digital assets. The SEC also alleged that Binance engaged in wrongdoing relating to, among other things, the use of customer funds. In both actions, the SEC revived the open question left unanswered by the *Kraken* settlement in early February—namely, whether staking-as-a-service constitutes a security. Although the SEC’s position remains a resounding “yes.”

■ **SEC Charges Coinbase.** On June 6, 2023, the SEC [commenced](#) an enforcement action against Coinbase and Coinbase Global (“CGI”) (collectively “Coinbase”) in the District Court for the Southern District of New York (“S.D.N.Y.”), alleging that Coinbase “intertwines the traditional services of an exchange, broker, and clearing agency without having registered any of those functions with the Commission as required by” §§ 5(a) and 5(c) of the Securities Act of 1933 and §§ 5, 15(a), and 17A(b) of the Exchange Act of 1934. Among other things, the SEC took aim at Coinbase’s staking-as-a-service program, wherein Coinbase allegedly pools customers’ crypto assets, performs blockchain transaction validation services with the pools, and provides those customers with some of the rewards generated. The same day, state securities agencies in 10 states—California, Alabama, Illinois, Kentucky, Maryland, New Jersey, South Carolina, Vermont, Washington and Wisconsin—brought parallel

actions alleging that Coinbase's staking services also violated state securities laws.

- Note that these enforcement actions come on the heels of the CFTC's enforcement action against Coinbase, which we reported on in Q1 2023. Be sure to check out our [previous edition](#) for more insight on Coinbase's ongoing actions with regulators.
- **SEC Charges Binance.** Last quarter, we noted the SEC had its sights set on Binance for the platform's involvement in Voyager Digital's bankruptcy plan. The SEC objected to Binance's acquisition of Voyager on the grounds that Binance.US may be operating an unregistered securities exchange and hinted that it could be the target of future regulatory scrutiny by the SEC. Since the bankruptcy judge rejected the SEC's objections, the regulator has ramped up its efforts against Binance and its affiliates.
  - On June 5, 2023, the SEC filed a [complaint](#) in the District Court for the District of Columbia charging Binance Holdings ("Binance"), its CEO, Changpeng Zhao ("CZ"), and business affiliates BAM Trading and BAM Management US Holdings (collectively "BAM") with violating the antifraud and registration provisions of the Securities Act of 1933 and Exchange Act of 1934. The complaint alleges that Binance should have registered Binance.com as an exchange, broker-dealer and clearing agency, and that Binance's stablecoin (BUSD) is a security that CZ and Binance offered and sold without filing a corresponding registration statement with the SEC.
  - Binance and Coinbase are situated very differently in these two actions. In contrast to the complaint against Coinbase, the SEC has alleged that Binance engaged in misconduct beyond the failure to register securities transactions or obtain appropriate licenses.
  - For example, according to the Binance complaint, Zhao and Binance made false public statements to evade regulatory oversight. In screenshots appended to the complaint, Binance's Chief Compliance Officer ("CCO") sent a text message to a Binance employee, stating that Binance blocked U.S. customers

specifically to avoid U.S. regulators like OFAC and the SEC. The complaint adds that Binance publicly represented that U.S. customers were restricted from trading, but it permitted high-value U.S. customers to trade without restrictions. The complaint also references a document titled "VIP Handling," which is described as a set of talking points, instructions and draft emails intended to assist high-value U.S. customers in skirting know-your-customer laws and U.S. documentation requirements.

- Additionally, the Binance complaint alleges that the defendants commingled and diverted customer assets to Zhao-controlled entities, touted non-existent security controls, and "engaged in wash trading and artificially inflated the trading volume of crypto asset securities on the Binance.US Platform."
- **The Aftermath.** On June 6, the SEC sought an order from a federal judge in Washington to freeze Binance's assets in an effort to protect those assets belonging to U.S.-based customers. According to sources, the lawsuit caused a withdrawal of \$790 million from investors in the first 24 hours. [Binance subsequently agreed to halt USD withdrawals and deposits](#) after the platform's banking partners "signaled their intent" to stop supporting Binance trading. On June 17, 2023, Binance entered a [consent order](#) with the SEC, which imposes several limitations on all defendants, including requirements to repatriate BAM's U.S. customers' assets to the United States; maintain these assets in the United States for the duration of the litigation; facilitate customer withdrawals; and refrain from transferring assets and funds or control over assets or funds to Binance Holdings, CZ and affiliates. Kaiko, a crypto data firm, published [research](#) showing that Binance.US's market share dropped from 8% to 1.5% following the SEC's suit.
- **The Aftermath—States Pile On.** On June 6, a number of state securities regulators lodged similar nonregistration charges against Coinbase. For instance, California's Department of Financial Protection and Innovation ("DFPI") "[determined](#)" that Coinbase violates the securities law by offering its staking rewards program

accounts to California residents without first obtaining a qualification from DFPI to offer or sell these securities.” Likewise, the Alabama Securities Commission [issued](#) a show cause order, claiming “that Coinbase violates the securities law by offering its staking rewards program to Alabama residents without a registration to offer or sell those securities.” Similarly, the Illinois Secretary of State’s Securities Department [alleged](#) that Coinbase “failed to register its staking offerings with the Securities Department.”

## 2. ADDITIONAL ENFORCEMENT ACTIONS

- **The SEC pursues Bittrex.** On April 17, 2023 the SEC [charged](#) Bittrex, a crypto trading platform, and its former CEO, William Shihara, in the Western District of Washington (W.D. Wash.) for operating an unregistered national securities exchange, brokerage and clearing agency. The SEC also charged Bittrex’s foreign affiliate, Bittrex Global GmbH, (collectively “Bittrex”) for failing to register as a national securities exchange in connection with its operation of a “single shared order book.”

  - The Complaint alleges that Shihara deliberately misled and evaded regulators, coordinating with crypto asset issuers to delete “problematic statements” before allowing their crypto assets to become available for trade on Bittrex. The complaint alleges that Bittrex should have registered as an exchange because it brought together securities orders from multiple buyers and sellers using established non-discretionary methods under which the orders interacted, and which was achieved using a shared book order. The complaint alleges that Bittrex operated as an unregistered clearing agency because it matched sell and buy orders and maintained custody of customer assets (and therefore allegedly acted as an intermediary).
  - On May 8, 2023, just three weeks after being charged by the SEC, Bittrex [filed for bankruptcy](#) in the U.S. Bankruptcy Court of Delaware. However, unlike some other large crypto trading platforms, Bittrex did not freefall into its Chapter 11 filings and gently wound down the company. Bittrex also lacks secured debt and was able to satisfy its customers’ withdrawals.
- **Default judgements against Chicago Crypto Capital.** On May 10, 2023, the [SEC obtained default judgements](#) in the U.S. District Court for the Northern District of Illinois (N.D. Ill.) against Chicago Crypto Capital (“CCC”), its owner Brian Amoah and former salesperson Elbert “Al” Elliott for violating Securities Act of 1933 Sections 5 and 17(a), and Exchange Act of 1934 Sections 15(a), 10(b), and Rule 10b-5 thereunder. Specifically, the complaint alleged that CCC, Amoah and Elliot acted as unregistered brokers when conducting an unregistered offering of BXY token, which raised “at least \$15 million . . . from approximately 100 individuals.” The complaint further alleges that the defendants made materially false and misleading statements about the “offer, purchase, and/or sale of BXY tokens, including about the custody and delivery of BXY, the markup charged by CCC, the delivery of account statements, CCC’s liquidation of an investor’s BXY, their personal investments in BXY, and the financial and management problems occurring at BXY’s issuer, Beaxy Digital Ltd.” The default judgments enjoin CCC, Amoah and Elliott from committing further violations of securities laws and permanently enjoin them from direct or indirect participation in any future crypto asset securities offerings. Amoah and CCC were additionally ordered to pay disgorgement and prejudgment interest in an amount exceeding \$1 million, while Elliott was ordered to pay approximately \$25,000 in disgorgement and prejudgment interest. The default judgment also imposes civil penalties of \$1,339,368 on CCC, \$245,553 on Amoah, and \$133,938 on Elliott.
- **Forex dealing in Futures?** On June 22, 2023, the CFTC [filed](#) an enforcement action in the U.S. District Court for the Central District of California (“C.D. Cal.”) against Cunwen Zhu and Justby International Auctions (“Justby”), alleging that Zhu and Justby fraudulently misappropriated over \$1.3 million in customer funds intended for digital asset commodity and forex trading.

  - The complaint alleges that Zhu, Justby and others operated a type of “romance fraud,” also referred to as a “Sha Zhu Pan” or “Pig Butchering” scheme. In this scheme, the fraudsters cultivate a friendly or romantic relationship with a customer, “fatten” them up with falsehoods, and encourage them to participate in a

fraudulent financial opportunity. The complaint alleges that from approximately April 2021 through March 2022, Zhu and Justby accepted and misappropriated over \$1.3 million from at least 29 customers as part of this scheme.

- The CFTC seeks restitution to defrauded customers, disgorgement of ill-gotten gains, civil monetary penalties, trading bans, and a permanent injunction against further violations of the Commodity Exchange Act and CFTC regulations.
- **Icomtech accused of “Ponzi scheme.”** On May 24, 2023, the CFTC filed an [enforcement action](#) against numerous individuals doing business as “Icomtech,” alleging that they operated a Ponzi scheme whereby they fraudulently solicited “hundreds of thousands of dollars from more than 170 individuals in the U.S. and other countries for Icomtech to supposedly trade bitcoin and other digital asset commodities for them, and for misappropriating customer funds.” The CFTC alleges that the individual defendants violated Sections 6(c)(1) of the Commodity Exchange Act, 7 U.S.C. §§ 9(1) and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2022).
- **Kraken takes on IRS, defending crypto privacy rights.** Crypto exchange Kraken has responded to the IRS’s attempt to obtain customer information. The IRS filed a petition in February, seeking customer records from Kraken after the exchange delayed submitting the information. Kraken argues against the IRS’s “unjustified treasure hunt” and references a previous ruling in a similar case involving Coinbase, where the court approved a narrowed summons that only allowed basic information for identifying reportable gains. Kraken maintains that the scope of the IRS request is overbroad, citing the court’s previous denial of the IRS’s ex parte motion for leave to serve “John Doe” summons on Kraken. Discussions between Kraken and the government reached an impasse, with Kraken opposing the requested anti-money laundering reports and further user information beyond basic details. The government also sought limited funding records accessible on the blockchain.

### 3. UPDATES TO PRIOR ENFORCEMENT ACTIONS

- **Ooki DAO is “person” subject to service.** On June 8, 2023, the CFTC secured a victory over Ooki DAO in the Northern District of California in the form of a [default judgment](#) after no counsel for the DAO appeared in the case. The court found that Ooki DAO operated an illegal trading platform and unlawfully acted as an unregistered futures commission merchant in violation of 7 U.S.C. § 6(a) and engaged in activities that can only lawfully be performed by a registered futures commission merchant, in violation of 7 U.S.C. § 6d, and failed to implement a Customer Information Program, Know Your Customer, and anti-money laundering procedures, in violation of 17 C.F.R. § 42.2.
  - The CFTC touted its victory in a [press release](#), announcing that, “in a precedent-setting decision, the court held that the Ooki DAO is a ‘person’ under the Commodity Exchange Act and thus can be held liable for violations of the law.”
  - The court ordered Ooki DAO to permanently cease its operations, shut down its website and pay \$643,542 in penalties, though it is unclear whether the civil monetary penalties will ever be paid.
  - Although the default judgment is fact specific, it raises broader questions about the potential liability of individual members of a DAO and the extent to which they may be held personally liable for allegedly unlawful conduct by the DAO. In consideration of these risks, an increasing number of DAOs appear to be using legal wrappers, such as registration as a limited liability company in jurisdictions like Wyoming or the Caymans, where such structures are available.
- **Wahi Settles with the SEC.** On May 30, 2023, the SEC announced that former Coinbase manager Ishan Wahi and his brother, Nikhil Wahi, agreed to settle their insider trading charges. Filed in July 2022 in the Western District of Washington, the initial complaint arose out an alleged scheme whereby Ishan gave his brother tips about multiple crypto assets ahead of public announcements. As part of the settlement, the *Wahi* defendants agreed not to deny the SEC’s allegations. While the settlement is still subject

to the court's approval, the *Wahi* defendants consented to being permanently enjoined from violating Section 10(b) of the Exchange Act. Check out previous editions of our publication for more information on the [Wahi case](#).

- **SEC withdraws request for ill-gotten gains.** The SEC [withdrew](#) its request to reclaim ill-gotten gains associated with an enforcement action for an allegedly unregistered securities offering. While LBRY claims its token was not an investment opportunity, the SEC is seeking a civil penalty of \$111,614. The SEC also requested an injunction against LBRY's project—despite LBRY winding down operations—arguing that the organization should be enjoined until it completes the dissolution process. For more on the LBRY enforcement action, check out our [Q4 2022](#) edition of Crypto Quarterly.

## REGULATORY UPDATES

### 1. SEC PROPOSES AMENDMENTS TO EXPAND EXCHANGE REGULATIONS.

- The SEC [reopened](#) the [comment period](#) for proposed amendments to Rules 3b-16 under the Securities Exchange Act. These amendments seek to expand the platforms subject to SEC registration as exchanges or broker-dealers. The proposed changes would include Communication Protocol Systems that bring together buyers and sellers of securities and could impact DeFi systems. Currently, these systems operate without registration and outside the purview of federal securities laws. However, changes to statutory language, like changing the definition of “exchange function,” could bring DeFi systems within scope. The amendments would require CPS to register with the SEC, aiming to enhance investor protections, improve regulatory oversight, guarantee fair market principles and reduce regulatory disparities between similar securities marketplaces.

### 2. BANK POLICY INSTITUTE SUPPORTS TORNADO CASH LAWSUIT, PURPORTEDLY PROTECTING FINANCIAL FREEDOM

- The [Bank Policy Institute](#) (BPI), representing major financial institutions through an amicus brief, has [urged](#) a Texas federal judge to grant an early win to the U.S. Department of the Treasury in a lawsuit involving the crypto mixing protocol Tornado Cash. The suit, brought by users of Tornado Cash, alleges that the Treasury violated the Administrative Procedure Act and the First Amendment by listing the service on the Office of Foreign Asset Control's blocked persons list. For reference, other groups on this list include recognized terrorist groups such as al-Qaeda, ISIS and the Strategic Rocket Force of the Korean People's Army. The plaintiffs argue that this listing restricts law-abiding Americans' ability to engage in private financial transactions. The plaintiffs have filed a motion for summary judgment, supported with amicus briefs filed by the Blockchain Association, Andreessen Horowitz and the Electronic Frontier Foundation.

### 3. U.S. CHAMBER OF COMMERCE BACKS COINBASE, SEEKING REGULATORY CLARITY

- The U.S. Chamber of Commerce [supports](#) Coinbase's petition for the SEC to clarify its position on digital assets, criticizing the SEC's approach as lacking regulatory clarity and due process. The Chamber argues that the SEC's enforcement actions have hindered investment in digital assets while failing to establish clear rules. It claims that the SEC's claim of broad regulatory authority and enforcement-based strategy are unlawful and prevent fair notice and public input. The Chamber's amicus brief joins those filed by the [Crypto Council for Innovation](#) and [Paradigm Operations](#) in support of Coinbase's petition.

## PRIVATE LITIGATION

### 1. BANKRUPTCY LITIGATION

#### **Fahrenheit LLC emerges as top bidder for Celsius Network.**

Bankrupt crypto lending platform Celsius Network has [concluded](#) its Chapter 11 auction, with crypto consortium Fahrenheit LLC (“Fahrenheit”) emerging as the top bidder to acquire Celsius’s assets and take over operations. Fahrenheit, comprised of players in the crypto space including US Bitcoin Corp., Arrington Capital, Proof Group, Steven Kokinos and Ravi Kaza, will provide new management, capital and technology for the Celsius platform. Existing Celsius account holders will hold equity in the new entity. A Chapter 11 plan of reorganization, along with a plan disclosure statement, will be filed by Celsius, reflecting the transaction. Account holders under the Earn program will also receive pro rata shares of liquid cryptocurrency assets. Pending board approval, Steven Kokinos is expected to serve as the CEO. Celsius sought Chapter 11 protection in July due to market challenges, reporting \$5.5 billion in liabilities, and had previously selected NovaWulf Digital Management as the stalking horse bidder.

### 2. CIVIL LITIGATION, CRYPTO TWIST

- **CEO awarded \$3 million in defamation lawsuit.** Emin Gun Sirer, the CEO of blockchain company AVA Labs, has been [awarded](#) \$3 million in damages in a defamation lawsuit against a cryptocurrency rival. A Florida federal judge ruled that the CEO experienced considerable reputational harm and accordingly awarded \$750,000 in general damages. The CEO testified that he had to clear his name, face security concerns and receive questions about the false accusations. The lawsuit claimed that the rival linked the CEO to a terrorist organization, causing financial losses and missed opportunities. In the ruling, the judge also recognized the CEO’s mental anguish, which arose from the CEO’s frequent trips to Turkey, the country where the terrorist organization resides that he was accused of being part of.
- **Core Scientific objects to Celsius Network’s claim in battle over data hosting agreements.** Bankrupt data

center operator Core Scientific has [objected](#) to a \$4.7 million claim made by bankrupt creditor Celsius Network, citing a complex contractual dispute over data hosting agreements. Core argues that it has competing claims against Celsius for unpaid crypto mining energy costs, amounting to at least \$7.7 million. Core suggests that the dispute should be resolved through mediation rather than costly litigation. Celsius owes Core approximately \$11 million and stopped paying after declaring bankruptcy, contributing to Core’s own bankruptcy filing. The objection states that Celsius used its bankruptcy to evade contractual obligations. Celsius, on the other hand, claims that Core was unjustly enriched and should reimburse overpaid fees.

### 3. ALLEGED HEISTS AND SCAMS

- **Texas man files lawsuit over romance scheme.** A Texas man has filed a federal [lawsuit](#) claiming that scammers in Cambodia defrauded him of \$2.7 million through a romance scheme involving a cryptocurrency mining venture. Leonard Terry Licht alleges that he was misled by Tina Ling into investing in Luxkey, a blockchain mining company, but did not receive the promised returns. Licht is seeking a court order to freeze the wallets holding his funds on cryptocurrency exchanges. He accuses Ling and Luxkey of fraud, conversion, and violations of federal and Texas law. The scammers transferred Licht’s funds to multiple accounts and cryptocurrency wallets. Notably, Licht’s complaint claims that his investments were securities under the federal securities laws because they meet the four-pronged definition of an “investment contract” under the *Howey* test. Similar lawsuits involving romance schemes and cryptocurrency scams have been filed by other Texans.
- **Judge freezes assets of crypto promoter, halting a digital heist.** A Manhattan federal judge has [issued](#) a preliminary injunction ordering cryptocurrency promoter Wei “Max” Wu not to move approximately \$35 million worth of digital investor assets. Wu is accused of scamming investors through Spartacus DAO, an investment opportunity he pitched. The judge allowed the plaintiff, Patagon Management, to serve Wu via non-fungible token

(“NFT”) and through various digital channels where Wu is known to be active. The order comes after assets worth an estimated \$15 million were allegedly moved and made unrecoverable in violation of a temporary restraining order. Patagon [alleges](#) that Wu raised funds by offering unregistered securities in the form of blockchain-based digital assets called SPA tokens.

- **Manhattan DA freezes cryptocurrency recovery company's website in scam alert.** The Manhattan district attorney's office [froze](#) the website of cryptocurrency recovery company Coin Dispute Network. The company allegedly claimed to offer services for tracing stolen cryptocurrency but instead took fees and additional cryptocurrency from customers through false promises and inaccurate blockchain tracing reports. The district attorney's office had previously frozen over \$1.3 million in cryptocurrency and held \$200,000 in its accounts during investigations, with the aim of returning stolen money to victims, most of whom were overseas.
- **Hydrogen Technology executives charged with fraud in market manipulation scheme.** Federal prosecutors have [charged](#) five individuals, including executives from fintech company Hydrogen Technology Corp., with a criminal fraud scheme aimed at manipulating the market for the company's digital assets and generating approximately \$2 million in illicit profits. The U.S. Department of Justice accused Hydrogen Technology CEO Michael Kane, chief of financial engineering Shane Hampton, and Moonwalkers Trading Ltd.'s chief technology officer George Wolvaardt of orchestrating the alleged scheme. The indictment states that they coordinated through messaging services to manipulate trading prices for Hydro tokens on undisclosed digital asset exchanges. Each defendant faces charges of conspiracy to commit securities price manipulation, conspiracy to commit wire fraud, and wire fraud. Hydrogen Technology allegedly enlisted Moonwalkers to develop a trading bot that executed orders to deceive others into buying and selling the tokens, including fraudulent spoof orders and wash orders.
- **AI-Blockchain sues Voice.com for unveiling business secrets in NFTs.** In [AI-Blockchain, Inc. and AI Coin](#)

[Inc., v. Voice \(US\) LLC and Block.One LLC](#), No. 1:23-cv-05299 (S.D.N.Y., filed June 22, 2023), Brooklyn cryptocurrency company AI-Blockchain is suing rival NFT company Voice.com for stealing its business secrets, including technological know-how, trade secrets, NFT minting, blockchain platforms and patented software products, which were shared to facilitate an acquisition or commercial arrangement. The complaint alleges that AI-Blockchain disclosed confidential business information to B1 and its CFO, the company which purchased the “Voice.com” domain name, all while under an executed NDA.

## LEGISLATION

### Government interest in (or criticism of) Central Banking

**Digital Currency.** While certain regulators continue to bring enforcement actions against players in the crypto market, other government actors are exploring a blockchain-powered Central Banking Digital Currency or CBDC. Similar to a cryptocurrency, a CBDC uses a blockchain ledger to transfer funds from one digital wallet to another. However, a CBDC is controlled by a central authority.

- **The Federal Reserve.** In January 2022, the Board of Governors of the Federal Reserve issued [Money and Payments: The U.S. Dollar in the Age of Digital Transformation](#), which it cited as the “first step in fostering a broad and transparent dialogue ... about the potential benefits and risks of a U.S. CBDC.” The informational discusses the differences between Central Bank Money—a liability of the central bank which comes in the form of physical currency—and Commercial Bank Money—digital money held in accounts at commercial banks. Currently, physical currency (i.e., cash) is the only form of publicly available Central Bank Money; however, a CBDC would allow the general public to access the digital functionality that commercial banks currently enjoy. The Federal Reserve noted that it will not issue a CBDC without clear support from both Congress and the Executive Branch.

**Executive Order.** On March 9, 2022, President Joe Biden issued an [“Executive Order On Ensuring Responsible Development of Digital Assets.”](#) While the Executive Order

speaks about the risks that digital assets can pose to consumers, investors and national security, the Executive Order also promotes the United States' adoption of a CBDC, citing benefits such as low-cost transactions and the reinforcement of U.S. leadership of the international financial system. The Executive Order set deadlines for government offices and institutions to submit reports to the president on the implications of implementing a CBDC and calls for continued research by the Federal Reserve.

- **CBDC Opposition.** Since President Biden's Executive Order, CBDCs have become a hot topic. Despite the Federal Reserve's statements that they would not issue a CBDC without Congressional and Executive approval, [commentators suggest that legislation may not be necessary](#). Opponents of a U.S. CBDC tend to focus on the surveillance and control that a CBDC would permit the government to have over its citizens. Critics of the CBDC include:
  - **Representative Tom Emmer.** On February 21, 2023, Representative Tom Emmer (R-MN-6) introduced H.R.1122 (the "CBDC Anti-Surveillance State Act") to Congress. The bill limits the ability of the Federal Reserve to provide direct services to individuals and use a central bank digital currency, defined as a digital currency issued by a government-backed central bank.
  - **Senator Ted Cruz.** On March 21, 2023, Sen. Ted Cruz (R-TX) introduced a bill in the Senate (S.887) that would prohibit a Federal Reserve Bank from offering products or services directly to an individual, maintaining an account on behalf of an individual, or

issuing a CBDC directly to an individual. In a press release, Senator Cruz voiced his concerns that a CBDC would make the United States vulnerable to cyber attacks and permit increased surveillance over the private transactions of the American people. Notably, Senator Cruz explained that unlike decentralized digital currencies (e.g., Bitcoin) a government-issued CBDC would allow citizens to transact on a *permissioned* blockchain.

- **Governor Ron DeSantis.** On May 12, 2023, Governor Ron DeSantis signed Senate Bill 7054, which prohibits the use of a federally adopted CBDC by excluding it from the definition of "money" within Florida's UCC. The accompanying press release also cites increased government control over individual finances as reason to not adopt a U.S. CBDC.
- **The Bank Policy Institute.** On April 15, 2021, the Bank Policy Institute released an article discussing the pros and cons of CBDCs for monetary policy. The primary "benefit" is that an interest-bearing CBDC would permit the Federal Reserve to modify interest rates to stimulate the economy. In practice, this could risk zero lower bound and negative interest rates. Indeed, the digital currency in each holder's wallet could be reduced each day by a payment to the Federal Reserve, creating a strong incentive for the CBDC holder to spend their digital currency and stimulate the economy. The Bank Policy Institute notes, however, that to achieve inflation results through the use of negative interest rates, paper currency would need to be eliminated.



Q2 2023

## CRYPTO QUARTERLY

DIGITAL ASSETS, BLOCKCHAIN AND RELATED TECHNOLOGIES UPDATE

### LOOKING AHEAD

To stay ahead of the curve, we look for insights from Ropes & Gray litigation & enforcement lawyers working in the field. This quarter's featured insight:

More digital asset M&A is on the horizon, with Ripple at the forefront. Ripple expanded its crypto custody capabilities by acquiring Switzerland-based digital asset custody provider Metaco for \$250 million. Metaco's platform, Harmonize, is utilized by global custodians and financial institutions for digital asset custody and tokenization. The acquisition enables Ripple to meet the increasing demand for crypto custody services from institutional financial firms. Perhaps this signals an uptick in digital asset M&A, and—as a result—future post-closing or antitrust litigation.

### CONTACTS

For more information on any of these issues, or if you would like to speak with someone with particular experience in any of these areas, please reach out to any of the attorneys below or your usual Ropes & Gray contact.<sup>1</sup>

**Melissa Bender**

melissa.bender@ropesgray.com  
+1 415 315 6340

**Christopher Conniff**

christopher.conniff@ropesgray.com  
+1 212 596 9036

**Daniel O'Connor**

daniel.oconnor@ropesgray.com  
+1 617 951 7260

**Eva Carman**

eva.carman@ropesgray.com  
+1 212 596 9039

**Helen Gugel**

helen.gugel@ropesgray.com  
+1 212 596 9398

**Amy Jane Longo**

amy.longo@ropesgray.com  
+1 310 975 3269

**Mark Cianci**

mark.cianci@ropesgray.com  
+1 617 951 7122

**Stefan Schropp**

stefan.schropp@ropesgray.com  
+1 212 596 9938

**ROPES & GRAY**

ropesgray.com

BOSTON | CHICAGO | DUBLIN | HONG KONG | LONDON  
LOS ANGELES | NEW YORK | SAN FRANCISCO | SEOUL  
SHANGHAI | SILICON VALLEY | TOKYO | WASHINGTON, D.C.