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Blockchain Bites: SEC probing BNB sale, 75% of US retailers looking to accept crypto, Staked Ether causes Three Arrows quiver

Michael Bacina, Luke Misthos and Jordan Markezic of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

SEC considering action as it probes BNB sale

The US Securities and Exchange Commission (**SEC**) have commenced an investigation into whether Binance Holdings Limited (**Binance**) breached US securities rules by selling BNB tokens at the time the crypto exchange was in its establishment phase.

Specifically, the SEC's investigation is looking into whether the 2017 initial coin offering (**ICO**) of BNB amounted to a sale of a security that ought to have been registered with the agency. In a statement, Binance said:

> *it would not be appropriate for us to comment on our ongoing conversations with regulators, which include education, assistance, and voluntary responses to information requests… we will continue to meet all requirements set by regulators.*

Binance's original white paper outlined an offering of 200 million BNB tokens. Half of those were sold through the ICO, and the other half were provided to the Binance founders team. As a pitch to investors, Binance offered lower fees for traders paying with the BNB token as well as paying several of its contractors in BNB. One such contractor was a US resident who claims they purchased BNB during the ICO period – which potentially provides the SEC with the jurisdictional gateway they require to institute proceedings.

Binance's situation is similar to the Ripple Labs Inc. investigation in 2020. The SEC sued Ripple Labs as well as two of its executives in December 2020 for alleged contraventions of securities regulation in the sale of XRP token. Ripple Labs is arguing that the XRP token functions as a medium of exchange for virtual currency and is not a security, and that the SEC's claim was jurisdictionally flawed.

The SEC chair, Gary Gensler, has made clear that he believes all ICOs ought to be treated as securities and should therefore fall under the regulatory scheme and oversight of the SEC. The investigation into Binance is yet another reminder of uncertainty in securities regulation and highlights further the need for government consultation with the private sector and crypto industry participants.

The SEC's investigation and Mr Gensler's view of ICOs stands in contrast to the recent US regulatory reform Responsible Financial Innovation Act which would recognise that digital tokens are first and foremost an intangible property / commodity, absent some additional feature rendering them a security under US law.

75% of US Retail merchants planning to accept crypto

Deloitte recently published a report that looked into the overall attitudes and investments in the adoption of digital currency payment systems. Titled 'Merchants getting ready for crypto', the report collected data from 2,000 of senior executives from retail organisations across the United States, primarily within the goods and services industry.

Overall, the report found that:

> *The majority of merchants believe customer interest will increase over the next year, and nearly 75% reported plans to accept stablecoin payments and almost the same reported plans to accept cryptocurrency payments, both within the next 24 months.*
>
> *Nearly all the respondents agreed that the use of digital currencies for regular, everyday purchases will increase over the next few years.*

The data shows that nearly 75% of all US retailers intend to accept crypto payments within the next two-years. The data also demonstrates that respondents were 'optimistic' about digital currencies in the consumer market, with 85% of respondents agreeing that the use of digital currencies would 'increase exponentially' over the next few years.

87% of those polled believed that accepting crypto as payment would provide them with a competitive edge in the market, with another 83% of respondents believing that digital currencies would become legal tender within the next decade. This likely follows market acknowledgment of foreign jurisdictions, such as Lugano in Switzerland, recognising cryptocurrencies like Bitcoin as legal tender.

The data also showed that respondents see benefits accruing to the consumer themselves, with nearly half of those surveyed believing that accepting digital currencies as payment would improve the customer experience as well as increase their consumer base.

Deloitte identified that the top advantage from respondents was that accepting digital currency payment would enable immediate access to funds. The report confirms the forward trajectory towards broad adoption of digital currency payment across the US retail market. In a time of regulatory uncertainty and crypto-asset market volatility, it is reassuring to note that market participants remain confident about the future adoption and integration of crypto in their operations.

Staked Ether causes Three Arrows quiver

Multi-billion-dollar crypto hedge fund, Three Arrows Capital (**3AC**) is the latest victim of the crypto bear-market and the Staked Ether (**stETH**) spiral. On-chain data has triggered speculation that the Singapore-based company is facing at least a USD$400 million liquidation from its lenders.

A closer look into the company came after its CEO, Zhu Su, posted a cryptic tweet earlier this week:

> *We are in the process of communicating with relevant parties and fully committed to working this out*

Due to the transparent nature of the blockchain network, 3AC's market operations have been easily accessible, including a report which indicates 3AC converted 30,000 stETH to ETH, raising concerns about the status of the company.

stETH is supposed to represent one ETH token that is locked up on Ethereum's new 'proof-of-stake' version of the Ethereum blockchain. In the wake of the Terra collapse, a 2-3% disparity between stETH and ETH opened up during market volatility and the gap has further widened amid market degradation and the financial troubles of companies like Celsius Networks.

As such, major holders of stETH used the Curve platform to dump their stETH holding for locked up ETH as the disparity between stETH and ETH climbed to a high of 8%. As a result, the Curve pool, on which 98.5% of these transactions occurred, does not have enough ETH to swap into stETH.

While the wider market fall has implicated 3AC's ability to source enough capital to pay out investors, the stETH collapse has clearly contributed to the looming risk of insolvency for 3AC.