

## Article Information

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# Blockchain Bites: Celsius freezes transactions, Binance sued over Luna/UST meltdown, Ontario fines two exchanges for selling unregistered securities, Crypto not taxes as foreign currency

*Michael Bacina, Steven Pettigrove, 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.*

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## Celsius freezes withdrawals, swaps and transfers

Celsius, a US based cryptocurrency exchange and lender, suspended all withdrawals, swaps and transfers between accounts on Monday, 13 June 2022. In a [blog post](#), the Celsius team cited “extreme market conditions” and stated that it is “taking action today to put Celsius in a better position to honor, over time, its withdrawal obligations”.

Celsius’ Terms of Use state that title to digital assets held in custody wallets shall remain with the user. In suspending withdrawals, swaps and transfers, Celsius relied on the same clause which also specifies that it may suspend access to services, including custody services and custody wallets, in the event of market disruptions or periods of volatility. Celsius is not a licensed bank or depository institution and does not assume fiduciary obligations to its users. Digital assets held in Celsius are not covered by private or government insurance or segregated under client securities laws.

At the time of writing, all withdrawals, swaps and transfers from Celsius remain suspended. It has been reported that Celsius has appointed Citigroup and lawyers to explore restructuring options. On Friday, it was also [reported](#) that US State regulators are investigating the accounts freeze.

It remains to be seen how a US Court would deal with users’ digital assets held by Celsius in the event of insolvency. A user may be an unsecured creditor unless they can establish a proprietary interest in assets held by Celsius. That analysis is potentially complicated where a user has transferred digital assets to Celsius or a third-party custodian which holds the private keys to those assets.

In an Australian context, we are not aware of any Court decision which has addressed the status of users’ digital assets in the event of the insolvency of a firm. However, as many readers will be aware, the Treasury recently completed a consultation on establishing a bespoke licensing regime for crypto asset exchanges, brokers and custodians. The Treasury proposal contemplates a custody regime which would require crypto assets to be held on trust for customers and appropriately segregated.

## Binance US sued over Luna/UST meltdown

Last Monday, a [class action complaint](#) was filed against Binance US and its CEO, Brian Shroder, in the United States District Court in San Francisco. The complaint alleges that the Luna token and Terra USD (UST) stablecoin were unregistered securities and the exchange had advertised those products.

It is alleged that Binance.US unlawfully offered and sold unregistered securities in violation of the US *Securities Act* and operated as an unregistered exchange and/or broker/dealer in violation of the US *Securities Exchange Act*. The plaintiffs are also claiming violations of the California Corporations Code.

The complaint refers to statements allegedly made by Binance.US in relation to UST, including that UST staking was “High

*Yield, Safe & Happy Earn*” and which they allege may have suggested to users that UST was “*fiat-backed*”. However, the complaint does not directly pursue causes of action based on misrepresentation or misleading conduct.

The plaintiffs are seeking orders declaring that Binance.US and Shroder violated federal and state securities laws and for damages and other relief. They are also seeking injunctive relief enjoining Binance US from offering UST for purchase or sale and/or continuing what they assert are the unlawful practices alleged in the complaint.

The Binance US complaint raises a number of legal issues which may have broader ramifications for cryptocurrency exchanges. **If** the Luna token or UST are found to be securities in the US (financial products in Australia) and as a result whether Binance US would have been required to be licensed as an exchange or broker/dealer would have serious impacts on other exchanges.

It is important to note that the claim is just that, and no finding of any wrongdoing has occurred. Binance will have time to put on their defence in due course.

In the meantime, the US Securities and Exchange Commission continues to pursue Ripple Labs, Inc. and two of its executives for alleged violations of the US Securities Act in connection with the offering of the Ripple token (XRP) which the SEC asserts was an unregistered security.

Crypto promotions have also been a hot topic for regulators around the world in recent months with several jurisdictions taking action to address risky advertising. These include the United Kingdom, Spain and Singapore.

Australia has a well-developed consumer law regime, including restrictions on misleading and deceptive conduct which extend to nearly all other goods and services, including the promotion and sale of crypto-assets. The Australian Securities & Investments Commission has said it has delegated powers from the Australian Competition and Consumer Commission (ACCC) to, in coordination with the ACCC, respond to potentially misleading or deceptive conduct relating to crypto-assets which affect Australian consumers, but to date we have not seen any of these delegated powers used.

### **Ontario fines Bybit, bars Kucoin for selling unregistered securities**

The Ontario Securities Commission (**OSC**) has secured fines against [two cryptocurrency exchanges](#), Bybit and KuCoin. The OSC alleges that Bybit and KuCoin had been operating non-compliant exchange platforms that allowed residents of Ontario to trade unregistered securities. The allegations against Bybit involved dealing in crypto-futures contracts. It was alleged that Kucoin dealt in investment contracts involving customers’ crypto-assets and crypto-futures.

The Director of Enforcement at OSC, Jeff Kehoe, recently said via [a press statement](#):

*Foreign crypto asset trading platforms that want to operate in Ontario must play by the rules or face enforcement action... The outcomes announced today should serve as a clear indication that we refuse to tolerate non-compliance with Ontario securities law.*

Bybit cooperated with the OSC’s investigation and reached a settlement with the regulator. According to the OSC’s press release, Bybit agreed to pay CAD\$2.5 million in penalties, as well as providing a legally enforceable undertaking to work with the regulator to bring its business into compliance. In the meantime, Bybit has also undertaken not to accept any new accounts for Ontario-based consumers.

KuCoin did not cooperate with the OSC’s investigation and has been barred from participating in Ontario’s capital markets. KuCoin is also liable for CAD\$2.1 million in penal fines.

The investigations follow a warning from the OSC on 29 March 2021 requiring all crypto asset trading platforms trading in derivatives and securities in Ontario to contact the regulator, or face enforcement action. ByBit and Kucoin allegedly failed to contact the OSC and continued to operate in Ontario. This is a timely reminder that crypto exchanges face enhanced scrutiny from regulators around the globe and to seek appropriate licenses.

### **Crypto not taxed as foreign currency**

The Australian Government has [announced](#) cryptocurrencies will continue to be excluded from being defined as foreign currency for tax reporting purposes. As the end of the financial year approaches, the taxing of cryptocurrency income has fallen into the ‘too hard’ basket.

Despite the most popular cryptocurrency, bitcoin, being recognised as legal tender in El Salvador and the Central African Republic, it (and other cryptocurrencies) will not be considered foreign currency in Australia for tax purposes.

Treasurer Jim Chalmers and Assistant Treasurer Stephen Jones, who announced the move, said that El Salvador's decision had the potential to create uncertainty about the status of bitcoin and other digital assets for tax purposes in Australia.

The announcement stated:

*The government will continue to take a pragmatic and timely approach to its role in the rapidly evolving digital currency landscape.*

Following this announcement, the government is expected to move to legislate the current tax arrangements. Interestingly, the legislated changes are expected to take effect retrospectively from 1 July 2021.

This means any cryptocurrency held from this date will not be taxed as foreign currency. Capital Gains Tax will continue to apply to cryptocurrencies and crypto assets which generate a return.