

Article Information

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Service: Blockchain

Sector: Financial Services, FinTech, IT & Telecommunications

Blockchain Bites: EU's new 'travel rule' for crypto transfers, US and Korea to collaborate on Terra/Luna investigations, Grayscale takes SEC to Court over spot bitcoin ETF, SEC Chair confirms BTC a commodity, infers ETH a security

Michael Bacina, Steven Pettigrove, Jade McGlynn, 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.

EU to implement "travel rule" for crypto transfers

The EU Parliament and Council have [reached a provisional deal](#) to curb money laundering and terrorism financing in Europe by implementing the "travel rule" on transfers of crypto-assets.

Co-rapporteur for the European Parliament Committee on Economic and Monetary Affairs Ernest Urtasun [said](#):

This new regulation strengthens the European framework to fight money-laundering, reduces the risks of fraud and makes crypto-asset transactions more secure... This regulation introduces one of the most ambitious travel rules for transfers of crypto assets in the world.

Once implemented, the agreement will require crypto-asset service providers (**CASPs**) to collect information about the originator and beneficiary of crypto-asset transfers which will be made available to the recipient CASP. CASPs will also be required to verify that the source of the crypto-asset is not subject to restrictive measures or sanctions prior to making crypto-assets available to beneficiaries.

In contrast to bank transfers, the deal imposes no minimum threshold or exemption for low value transfers. This is intended to combat attempts to circumvent restrictions by splitting large transfers into multiple low value payments. Despite concerns raised by industry, the [deal](#) does not guarantee that recipients of transaction information will uphold privacy standards.

The new deal also covers transactions from un-hosted wallets (wallets in the custody of a private user) when they interact with hosted wallets managed by CASPs. In the event a customer sends or receives more than €1000 euros to or from their own un-hosted wallet, the CASP will be required to verify whether the un-hosted wallet is effectively owned or controlled by the customer. It is not clear how these measures will impact transfers from un-hosted third party wallets. The travel rule will not apply to person-to-person transfers not involving a CASP.

Negotiators have also agreed on the establishment of a public register for non-compliant and non-supervised CASPs, with which those based in the EU would not be allowed to trade. The register will be established under the EU's comprehensive Markets in Crypto-Assets (**MiCA**) regulation. The new anti-money laundering measures are expected to be implemented on the same timetable as MiCA, which is [expected](#) to come into force in 2024.

US and Korea to collaborate on Terra/Luna investigations

Representatives of the US and the Republic of Korea (**South Korea**) have [agreed to collaborate and share investigation](#)

[data](#) regarding ongoing crypto-related crime and compliance matters, including most notably investigations relating to the [Terra/Luna meltdown](#).

South Korea's Minister for Justice, Han Dong-hoon, met with Securities and Commodities Task Force co-chiefs, Andrea M. Griswold and Scott Hartman, at the US Attorney's Office for the Southern District of New York earlier this week.

The primary goal of the meeting was to agree upon the most effective course of mutual assistance on crypto-related matters including the exchange of information and strengthening cooperation of regulatory authorities. [Yonhap News Agency](#) reported that the ultimate aim of the increased mutual assistance is:

to ensure timely action on the increasing number of securities frauds associated with the digital asset market.

The recent issues faced by Terra appear to have prompted closer cooperation, with the US and South Korea reportedly agreeing to share latest investigation data and reports into the embattled stablecoin issuer which is currently under investigation in both jurisdictions for, among others, fraud, market manipulation and tax evasion.

Over the past year, South Korea has taken a number of measures to enhance crypto-regulation and enforcement, including implementing the ["travel rule"](#) for crypto-transfers and establishing a new division of the Korean Financial Intelligence Unit to supervise AML/CTF compliance by Virtual Asset Service Providers. Recently, South Korea has also established a dedicated crypto oversight committee to assess all new crypto projects listed on crypto exchanges.

The latest move follows reports that the [US House of Representatives](#) is formulating new stablecoin legislation that could, if passed, come into force prior to 2022 ending. The mutual assistance arrangements are the latest example of coordinated action by regulators around the globe in relation to cryptocurrency markets.

Grayscale takes SEC to Court over spot bitcoin ETF

Grayscale, a bitcoin investment trust, has failed in its attempt to convert its Bitcoin Trust, known as GBTC, into an exchange-traded fund (**ETF**). Grayscale filed its application in October 2021 and, following a slew of delays, was knocked back by the US Securities and Exchange Commission (**SEC**).

In its rejection, the SEC outlined that failure by the investment manager to respond to questions about market manipulation concerns was the reason for the application being rejected.

Grayscale then filed a petition in the US Court of Appeals, District of Columbia Circuit challenging the decision. The litigation is being led by Donald B. Verrilli Jr. who stated that the SEC is:

failing to apply consistent treatment to similar investment vehicles, and is therefore acting arbitrarily and capriciously in violation of the Administrative Procedure Act and Securities Exchange Act of 1934.

The SEC has [reportedly](#) told spot ETP sponsors they must demonstrate that a significant amount of bitcoin trading occurs on a regulated market or that the underlying market:

inherently possesses a unique resistance to manipulation beyond the protections that are utilised by traditional commodity or securities markets.

We anticipate that Grayscale will argue that such a standard imposes a higher burden on sponsors of a spot Bitcoin ETF than ETFs based on securities or other investment products.

The SEC's position on Grayscale's proposed spot bitcoin ETF stands in contrast to its previous decisions to approve a [synthetic bitcoin ETF](#) and a [futures based bitcoin ETF](#). Elsewhere, regulators in [Canada \(3iQ\)](#), [Brazil \(QR Capital\)](#) and [Australia \(21Shares and Cosmos\)](#) have approved spot bitcoin ETFs. A number of further applications are awaiting approval from the Australian Securities and Investments Commission (**ASIC**).

While many had hoped the SEC would open the door to greater institutional investment in cryptocurrency markets, it appears that the battle over the spot bitcoin ETF will now continue in the Courts.

SEC Chair confirms BTC is a commodity but infers ETH is a security

In [a recent interview with CNBC](#), Securities and Exchange Commission (**SEC**) Chairman Gary Gensler confirmed his view that Bitcoin is a commodity, while the majority of remaining cryptocurrencies are securities.

Speaking to television anchor and finance expert Jim Cramer on the future of crypto regulation, the Chairman was strident in his view that it is the characteristics of crypto assets which make them securities and subject to the SEC's jurisdiction.

He said:

Many of these crypto financial assets have the characteristics of securities...the investing public is hoping for a return, just like when they invest in other financial assets we call securities.

This is not the first time that Gensler has characterised most crypto-assets as securities. What was new was not what he said, but rather what he implied from what he left unsaid.

In describing the current state of US crypto regulation, Gensler identified the Commodity Futures Trading Commission (**CFTC**) and the SEC as the two entities who are responsible for the protection of participants in the market.

He reiterated:

Many of these fin assets have key attributes of a security...some of them under the SEC and some, like bitcoin - and that's the only one I will say, are a commodity under the exchange commission...

If Gensler's omission and or failure to acknowledge Eth, the native token of the second largest blockchain, Ethereum, as a commodity was intended to imply his position that that token is not a commodity, then this would put him strictly at odds with the CFTC who [defined the token as a commodity in 2015](#).

We anticipate this will not be Chairman Gensler's last comments on this topic, as regulators around the globe continue to grapple with whether and how to regulate a wide variety of crypto-assets.