

## Article Information

Authors: Steven Pettigrove, Jake Huang, Lola Hickey, Luke Misthos, Michael Bacina

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# Blockchain Bites: CBDC pilot projects announced, Emojis speak louder than words (and may be financial advice), IMF Executive call for co-ordinated crypto policies, Judge dunks Top Shots in securities ruling, 'Smart Accounts' introduced by Ethereum at WalletCon

*Michael Bacina, Steven Pettigrove, Jake Huang, Luke Misthos and Lola Hickey of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.*

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## CBDC pilot projects announced

On 2 March 2023, the Reserve Bank (**RBA**) confirmed further details of [the pilot projects](#) which it has approved to assess the potential use cases and economic benefits of a central bank digital currency (**CBDC**) in Australia.

Assistant Governor (Financial System) at the RBA, Brad Jones, [said](#):

We are delighted with the enthusiastic engagement by industry in this important research project. It has also been encouraging that the use case providers that have been invited to participate in the pilot span a wide range of entities in the Australian financial system, from smaller fintechs to large financial institutions.

The RBA's CBDC pilot will use a limited-scale pilot CBDC that is a real digital claim on the RBA. The project received a large number of use case submissions from a range of industry participants. Dilip Rao, Program Director – CBDC with the Digital Finance Cooperative Research Centre [said](#):

The variety of use cases proposed covers a range of problems that could potentially be addressed by CBDC, including some that involve the use of CBDC for atomic settlement of transactions in tokenised assets.

A range of criteria were considered by the RBA when selecting the use cases to participate in the pilot, including the potential to provide insights into the possible benefits of a CBDC.

[According](#) to Brad Jones:

The pilot and broader research study that will be conducted in parallel will serve two ends – it will contribute to hands-on learning by industry, and it will add to policy makers' understanding of how a CBDC could potentially benefit the Australian financial system and economy.

The RBA has [announced](#) the following selected use cases and providers:

No.	Use Case Description	Use Case Description
1	Offline Payments	ANZ
2	Nature-based Asset Trading	ANZ / Commonwealth Bank
3	SuperStream Payments	ANZ / Oban

No.	Use Case Description	Use Case Description
4	Corporate Bond Settlement	Australian Bond Exchange
5	Tokenised FX Settlement	Canvas Digital
6	GST Automation	Commonwealth Bank / Intuit
7	CBDC Custodial Models	digi.cash
8	Livestock Auction	Fame Capital
9	High Quality Liquid Assets Securities Trading	Imperium Markets
10	Interoperable CBDC for trusted Web3 commerce	Mastercard / Cuscal
11	Funds Custody	Monoova
12	Construction Payments	NotCentralised
13	Tokenised Bills	Unizon
14	CBDC Distribution	ANZ

Dilip Rao [commented](#) on the project stating that:

The process of validating use cases with industry participants and regulators will inform further research into design considerations for a CBDC that could potentially play a role in a tokenised economy.

A report on the project is anticipated to be published around the middle of 2023.

### Emojis speak louder than words (and may be financial advice)

[A recent ruling](#) in the United States District Court, Southern District of New York found that the use of emojis could amount to financial advice, and therefore carry legal consequences. Common emojis such as the rocket ship, stock chart and money bag could suggest a financial return on investment, according to the ruling.

The case was brought by an investor claiming that Dapper Labs' popular [NBA Top Shot](#) platform involved an unregistered securities offering. The emojis, which included a rocket ship and hands raised in celebration, were allegedly interpreted by the investor as a recommendation to purchase NFTs sold by NBA Top Shots in the hopes the value would rise.

The judge in the case agreed with the investor, stating that emojis posted on Twitter helped to create an expectation of profit:

although the literal word "profit" is not included in any of the Tweets, the "rocket ship" emoji, "stock chart" emoji, and "money bags" emoji objectively mean one thing: a financial return on investment.

Former branch chief of the Securities and Exchange Commission, Lisa Braganca, weighed in to the discussion in a [tweet](#):

Users of these emojis are hereby warned of the legal consequences of their use.

The Court's finding serves as a reminder that seemingly light hearted or informal communications on social media can have serious legal consequences. The finding comprised one aspect of a [broader ruling by the judge permitting a class action to proceed](#) against Dapper Labs and its CEO over the sale of Top Shots NFTs on the basis that they may involve the sale of unregistered securities under US securities laws.

### IMF Executive call for co-ordinated crypto policies

On 23 February 2023, the International Monetary Fund (IMF) [announced](#) the outcome of a conference held by its executive board of directors via a paper titled 'Elements of Effective Policies for Crypto Assets.' This development provides guidance for member countries around the development of effective crypto policies and regulations to:

better mitigate the risks posed by crypto assets while also harnessing the potential benefits of the technological

innovation...[with the IMF aiming to help] members develop a comprehensive, consistent, and coordinated policy response.

According to the IMF, the one aspect of the regulatory framework aims to safeguard monetary sovereignty and stability through stronger frameworks which do not allow crypto-assets to have official currency or legal tender status. [According](#) to the IMF:

by adopting the framework, policymakers can better mitigate the risks posed by crypto assets while also harnessing the potential benefits of the technological innovation associated with it.

The IMF [states](#) that the regulatory framework will address excessive capital flow volatility through the use of an unambiguous tax treatment of crypto-assets and through enforcing:

prudential, conduct, and oversight requirements to all crypto market actors.

The IMF broadly agreed that there is a need to develop and apply comprehensive regulations and effective implementation of the Financial Action Task Force standards. The IMF has [detailed](#) that the regulatory framework establishes:

a joint monitoring framework across different domestic agencies and authorities [and] international collaborative arrangements to enhance supervision and enforcement of crypto asset regulations.

The IMF focused on the importance of promoting the principle of ‘same activity, same risk, same regulation.’ The directors put [forth](#) that:

strong coordination between authorities, both at the domestic and international levels, is critical for consistent implementation and avoiding regulatory arbitrage. [The IMF] could serve as a thought leader in further analytical work on rapidly evolving developments in crypto assets.

Co-ordinated regulation will be difficult in the current environment as some jurisdictions seek to attract crypto-asset businesses, and some are following a “regulation by enforcement” approach.

### **Judge dunks Top Shots in securities ruling**

A US judge has ruled that certain digital assets (NFTs) sold by Dapper Labs’ NBA Top Shot platform may qualify as securities. Federal Judge Victor Marreo [rejected a preliminary motion](#) by Roham Gharegozlou, the CEO of Dapper Labs, permitting a class-action lawsuit which alleges that NBA Top Shot NFTs are securities.

As a result, the Court has allowed the case to move forward. Dapper Labs has been given a 21-day window to respond to the Court’s ruling.

[Dapper Labs’ NBA Top Shot](#) allows users to buy, sell, and trade officially licensed NBA NFT collectibles in the form of blockchain-based digital “moments.” These moments are essentially short video clips of significant NBA plays and highlights that are sold as unique, verifiable tokens on the blockchain.

In the case before the U.S. court, a Top Shot user alleged that Dapper Labs had violated U.S. securities law by selling moments as unregistered securities through the platform. The judge applied the *Howey* test and ruled in favor of the plaintiff on a preliminary motion seeking to dismiss the action, stating that the NFTs in question may qualify as investment contracts under US law and therefore meet the legal definition of securities.

In his ruling, the judge attributed significant weight to the fact that TopShots were offered on the private Flow blockchain and marketplace which were created and controlled by Dapper Labs, which meant that purchasers relied on the ongoing managerial efforts of Dapper Labs to support the value of the NFTs. The Court also sighted certain statements made by Dapper Labs and its CEO regarding the prospect of the popular NFTs maintaining or rising in value over time.

It appears likely that Dapper Labs will contest the ruling. A spokesperson for Dapper Labs [reportedly](#) stated:

Importantly, today’s order only denied the defendants’ motion to dismiss the complaint. It did not conclude the plaintiffs were right, and it is not a final ruling on the merits of the case

While this remains a preliminary ruling, it is likely to result in increased regulatory scrutiny of the securities aspects of NFTs. It remains to be seen how other blockchain-based collectible platforms will respond to the ruling, and whether they will make changes to their offerings in light of the ruling in this case. However, the judge in this case was careful to note that his ruling may not apply to NFTs generally and each NFT project would need to be assessed on a case by case basis.

### **‘Smart Accounts’ introduced by Ethereum at WalletCon**

Ethereum is preparing to launch its latest smart contract, 'ERC-4337' at [WalletCon](#). The latest technology is expected to encourage additional users and champion adoption by retail consumers to use digital currencies.

Yoav Weiss, the Ethereum Foundation's security researcher is expected to make the announcement at WalletCon that the ERC-4337 contract will be made available for use by all Ethereum Virtual Machine (**EVM**) compatible networks, including Polygon, BNB Smart Chain, Gnosis Chain and more.

The main benefit of the ERC-4337 smart contract is the account abstraction feature, which allows users to decouple their accounts from the execution of smart contracts. This means that long, complicated seed phrases could become a thing of the past.

By utilising account abstraction, it becomes possible to store unique cryptographic keys, which are main account features for crypto wallets, on standard smartphone security modules. This effectively turns a smartphone into a hardware wallet and mitigates risks around hacking which existing smartphone wallets are uniquely at risk of suffering.

Additionally, users will now be able to utilise two-factor authentication, biometric data such as fingerprints or facial recognition to sign transactions, setting monthly spending limits, and the use of session keys to enjoy blockchain-based games without having to approve transactions constantly.

There remains of course the risk that a user loses, damages or having their smartphone stolen, however, ERC-4337 allows for account recovery by way of a time-locked social recovery process by utilising a group of trusted friends or a third party commercial service.

The user-interface of digital currency wallets has been a drag on adoption and something which interferes with the adoption of NFT based gaming so many are understandably excited about this development.