

Article Information

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Blockchain Bites: FSB Finalises Global Crypto-Asset Regulatory Framework, SEC sought to squash US crypto with Coinbase delisting “request”, IRS says staking rewards are taxable income when tokens are received, Crypto holders top 516M globally: Crypto.com, US Congress to debate crypto bill

Michael Bacina, Steven Pettigrove, Tim Masters, Jake Huang, Luke Higgins and Kelly Kim of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

FSB Finalises Global Crypto-Asset Regulatory Framework

The Financial Stability Board (FSB) recently [published](#) its global regulatory framework (**Framework**) for crypto-asset activities to promote the comprehensiveness and international consistency of regulatory and supervisory approaches.

This Framework consists of two sets of recommendations for:

1. the regulation, supervision and oversight of crypto-asset activities and markets; and
2. the regulation, supervision, and oversight of “global stablecoin” arrangements.

The Framework is based on the principle of “same activity, same risk, same regulation”. This initially draws concerns, as it doesn’t inherently recognise that “same regulation” may fail when decentralised technology is considered. At a recent conference in Sydney, the suggestion was made that “tailored regulation, same outcome” may be a better approach, however the FSB has still included an express element of flexibility which still permits customisation of regulation and could leave a “same outcome” end goal intact.

While this may seem pedantic, the approach is critically important when there are calls by some for all of the crypto-asset industry to be dealt with under existing laws strictly, which would amount to a ban, should crypto-assets be declared financial products / securities without a workable licensing framework in place. Recently a project in the US which testified before Congress that they were compliant [was shown up to have no trading and no assets available for sale, despite claiming they were an example of a compliant path under existing US securities laws.](#)

The FSB approach shows clear TradFi influence, drawing on experiences in different jurisdictions to seek to establish a high-level, flexible and technology neutral framework.

The FSB says the Framework will:

ensur[e] that crypto-asset activities and stablecoins are subject to consistent and comprehensive regulation, commensurate to the risks they pose, while supporting responsible innovations potentially brought by the technological change.

In formulating this Framework, the FSB highlighted that events in the crypto-asset industry last year (e.g. the [collapse of FTX](#) and [meltdown of Terra/Luna](#)) illustrate the failure of a key service provider in the crypto-asset ecosystem can quickly

spread to other parts of the ecosystem.

In light of these events, the FSB's recommendations focus on three main areas:

- adequate safeguarding of client assets;
- addressing risks associated with conflicts of interest; and
- cross-border cooperation.

The safeguarding of client assets is a theme which will be familiar to many in the Australian blockchain scene as exchanges have been asking for regulation around crypto-custody for several years, well before the collapses of last year.

The FSB's mandate is to coordinate at the international level the work of national financial authorities and international standard-setting bodies in order to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies. Last February, the G20 [asked](#) the FSB to coordinate the delivery of an effective regulatory, supervisory and oversight framework for crypto-assets, including publishing the recommendations in this Framework by July 2023.

The Framework will provide input to a joint paper with the International Monetary Fund (**IMF**) to be delivered to the G20 in September 2023, which aims to support a coordinated and comprehensive policy approach to crypto-assets by synthesizing IMF's work on macroeconomic and monetary issues and FSB's work on supervisory and regulatory issues. The IMF's approach will be closely watched to see if it takes a "same regulation" theme, risking an inflexible path, or emphasizes the tailoring required to deliver a technology-enabling regulatory framework.

SEC sought to squash US crypto with Coinbase delisting "request"

Coinbase CEO Brian Armstrong has [said](#) the US Securities and Exchange Commission (**SEC**) asked Coinbase to stop trading all cryptocurrencies except Bitcoin, just before the SEC [commenced legal proceedings against the cryptocurrency exchange](#) in June.

Mr Armstrong reportedly told the Financial Times that the SEC made the "recommendation" before launching sweeping legal action against the Nasdaq-listed Coinbase in June for breaching US securities law, including failure to register as a broker and as a national securities exchange. Coinbase responded to the SEC's complaints by pointing out that it has long sought regulatory clarity from the SEC and that it had formally lodged a request for rule-making.

The SEC's [case](#) specifically identified a dozen, mostly lightly traded, crypto-assets traded on Coinbase's platform, calling them securities under US law and asserting that by offering them to customers the exchange fell under the regulator's jurisdiction.

But the prior "request" for Coinbase to delist every one of the more than 200 tokens on the exchange - with the exception of Bitcoin - indicates that the SEC's chair [Gary Gensler](#), has pushed for even wider authority over the industry, and the position aligns with Mr Gensler's prior comments that he believes all crypto-assets are securities under US law.

Armstrong told the Financial Times:

They came back to us, and they said . . . we believe every asset other than bitcoin is a security...And, we said, well how are you coming to that conclusion, because that's not our interpretation of the law. And they said, we're not going to explain it to you, you need to delist every asset other than bitcoin.

This request by the SEC would have set a chilling precedent and essentially shuttered Coinbase's business, as well as sending a message to the vast majority of US cryptocurrency exchanges that the SEC considered they were operating illegally unless they have registered with the SEC. This could be a "catch-22", because even if the exchanges want to register with the SEC, there is no clear guidance as to how, and no exchange (other than Prometheus, which has no trading or assets live) has been able to register to date.

Mr. Armstrong said delisting all cryptocurrency except Bitcoin would have sounded the death knell for the industry in the US:

We really didn't have a choice at that point, delisting every asset other than bitcoin, which by the way is not what the law says, would have essentially meant the end of the crypto industry in the US

And that the SEC left Coinbase with no options but to go to court:

It kind of made it an easy choice . . . let's go to court and find out what the court says.

So far, the SEC and the US Commodity Futures Trading Commission (**CFTC**) are jostling for jurisdiction over the crypto industry. The CFTC sued [Binance](#) – the world's largest crypto exchange – and its founder CZ early this year. Three months later, the SEC launched its own [legal action against Binance](#). Gensler has previously said he believes most cryptocurrencies, with the exception of Bitcoin, are securities under US law.

This arises from the so-called “embodiment theory” under which, if an “investment contract” is offered in connection with the sale of tokens, most often seen by the issue of a Simple Agreement for Future Tokens, the SEC considers those “Future Tokens” to be securities, whereas the entire crypto industry considers the “Future Tokens” to be a property delivered to the investor who entered into the SAFT, and the SAFT itself is the only securities offering which has been made. Put another way, in the famous *Howey* decision, investing in orange groves via contract was found to be a kind of securities transaction under US law, but of course the oranges grown in the orange groves were not securities, because they were just oranges. Similarly Courts around the world have been recognising crypto-assets as a kind of property and not in and of themselves (but of course depending on individual facts and circumstances) to be securities, most recently in the [Ripple decision](#).

Coinbase and the SEC have been entangled in a series of legal disputes including:

- In July 2022, Coinbase applied for clarity and rulemaking to the SEC;
- The same month the SEC [issued](#) Coinbase a Wells Notice indicating that it is considering enforcement action against the exchange;
- In May 2023, the SEC was [ordered by the court](#) to explain its failure to respond to a 2022 petition for rulemaking by Coinbase;
- In June 2023, the SEC [filed](#) sweeping legal actions against Coinbase for alleged breaches of securities law;
- Following the SEC's complaint, the court made a rare decision urgently ordering the SEC to respond to Coinbase's previous petition; and
- On 13 June 2023, the SEC [responded](#) to the order saying that it was considering the petition and needed 120 days to reply.

The SEC's request to Coinbase signals that the SEC has long positioned itself as giving a very broad interpretation of the definition of “securities” under US law as it pursues a regulation by enforcement campaign.

However, the SEC said its enforcement division did not make formal requests for:

companies to delist crypto assets

and added:

In the course of an investigation, the staff may share its own view as to what conduct may raise questions for the commission under the securities laws

This latest instalment of the SEC vs Coinbase (and the whole crypto industry) again highlights the importance of swift and clear regulatory clarity with meaningful and achievable pathways to compliance which can only be provided by the legislature. While Australia has largely avoided a broad regulation-by-enforcement, there has been ongoing delays in legislation for even basic custody and licensing rules to apply to digital currency exchanges.

Without clarity, users are exposed to the risks of exchanges which don't properly segregate assets or meet a minimum required standard, increasing the likelihood of further losses in avoidable collapses in future.

IRS says staking rewards are taxable income when tokens are received

This week the United States' Internal Revenue Service (**IRS**) [issued Revenue Ruling 2023-14](#), which confirms that US crypto investors must report rewards earned from staking digital assets as gross income, in the same year it was received.

Staking usually involves crypto holders putting their digital assets ‘to work’ and earning a return (usually in the form of

additional rewards denominated in the same cryptocurrency that the crypto holder placing at stake). Crypto holders 'lock up' their tokens in various ways, in order to participate in the running of the particular blockchain and assist in maintaining its security. Some staking will involve the provision of validator nodes and crypto not leaving the customer's wallet (known as 'non-custodial' staking) and some will require a transfer in to a smart-contract or other wallet ('custodial staking').

The ruling states that gross income which must be declared includes income realised in any form, whether that be money, property, or in this case, staking rewards. The value of the tokens received as staking rewards must be calculated as of the moment the taxpayer gains control (or could gain control) of the tokens (i.e. has the ability to sell the tokens):

The fair market value of the validation rewards receiving is included in the taxpayer's gross income in the taxable year in which the taxpayer gains dominion and control over the validation rewards

This principle holds true for investors staking tokens through a cryptocurrency exchange or on their own, and will create pricing headaches for do it yourself stakers unless they use specialised taxation software to calculate the price and tax payable.

The IRS' approach may be disappointing to some given the longstanding historic principles in which tax should apply in similar scenarios. When taxpayers extract precious materials, harvest crops, produce goods, or otherwise exercise 'dominion and control' over property which had no previous owner, tax law in the US (also Australia) has historically operated to impose tax at the point of sale of that property.

The IRS' approach in the ruling instead operates to impose tax at the point of receipt of tokens. This ruling could be said to be contrary to these longstanding principles of taxation law, and being akin to a miner being taxed on the market price of gold the moment they unearth a shiny nugget of gold ore, but on the other hand it may be a recognition of staking sharing some similarities with investment contracts or deposit accounts, reflecting some staking advertising.

IRS rulings are not explicitly binding on taxpayers, however they are generally viewed as highly persuasive. Although the ruling may be a disappointing outcome for some wishing for more technology-neutral (and tax deferring) approach to digital asset taxation, there remains hope for US investors as the [Lummis-Gillibrand digital assets bill](#) would confirm that staking or mining rewards are not taxable until the point of sale. A section-by-section summary of the bill can be viewed [here](#).

The Australian Board of Taxation has a crypto taxation consultation underway, with a report due [in the next 6 weeks](#).

Crypto holders top 516M globally: Crypto.com

[Crypto.com](#) has released their annual market sizing report showing a significant month-on-month growth in crypto users, specifically a 21% jump in the first half of 2023, suggesting that nearly 1 in 10 people on earth are holding crypto, with almost half of that figure holding some Bitcoin.

The report opines that drivers of the increase included the introduction of the Bitcoin Ordinals protocol which brought NFTs to the Bitcoin network for the first time as well as ongoing Ethereum upgrades. Interest in BTC ETFs has been growing as well as institutions consider Bitcoin to be an asset which deserves a (very small) allocation.

The report uses a methodology of on-chain analysis of deposit addresses to estimate the number of global users since any one user can have as many wallet addresses as they please, and users on exchanges don't necessarily need to have a separate wallet address.

On a pure wallet analysis view, Glass Node reports that daily active Bitcoin addresses continue to rise, with around [20M addresses active](#).

Bitcoin: Number of Active Addresses


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Glassnode [see](#) around 6M daily active wallets for Ethereum:

Ethereum: Number of Active Addresses


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The amount of data available on-chain for analysis only increases, with greater transparency around how crypto-assets move, and providing unprecedented opportunities for businesses like Chainalysis and Elliptic to also report on the [growth of crypto-adoption](#) as well as the prevalence (or lack thereof) of crime in crypto systems.

The sharing of this kind of information is useful for regulators and policymakers to consider when determining how this industry will impact our digital economy in the future.

Congress to debate crypto bill to (possibly) bring regulatory clarity

On 20 July 2023, the [Financial Innovation and Technology for the 21st Century Bill](#) was introduced in the US, with the aim

of clarifying rules for digital assets and protecting investors in the crypto sector. [The bill is a joint effort by the Chairs of a number of Congressional Committees](#) including the House Committee on Agriculture, Subcommittee on Digital Assets, Financial Technology and Inclusion, Subcommittee on Commodity Markets, Digital Assets, and Rural Development. Some of its notable provisions include:

- Setting definitions of digital assets
- Exempting transactions in digital assets from certain taxes
- Registration requirements for digital asset intermediaries with the Securities and Exchange Commission (**SEC**)
- Registration requirements for digital asset intermediaries with the Commodity Futures Trading Commission (**CFTC**)
- Proposed codification of the SEC Hub for Innovation and Financial Technology and LabCFTC
- Proposed CFTC-SEC Joint Advisory Committee on Digital Assets
- Modernisation of the SEC's mission

The Bill would establish a regulatory structure for digital assets within the existing authorities of the SEC and the CFTC and create a registration process at both the SEC and CFTC for digital asset market participants. The bill also provides the CFTC with spot market authority over decentralized tokens that do not meet the definition of a security. If passed, this would directly address a key criticism raised by Coinbase, namely that there is no clear path to registering in the US.

The bill is said to have taken into account feedback from stakeholders and industry participants and reflect the draft legislation's intention to:

Provide for a system of regulation of digital assets by the CFTC and the SEC, and for other purposes.

Sponsor [Rep. Dusty Johnson commented:](#)

The digital asset space is muddled with regulatory uncertainty, lack of authority, and a lacking framework for core operating principles.

The bill is said to recognize the power of digital assets and blockchain technology to 'revolutionize [the] financial system'. It has been introduced at a critical time where other jurisdictions are advancing with developing regulatory frameworks for digital assets. The US, by contrast, has mostly lagged behind, with regulators often resorting to regulation by enforcement in the absence of clear guidance.

In relation to how the bill will address this issue, Johnson explained:

Our collaborative bill gives both the CFTC and SEC a seat at the table. Our bill establishes clear principles to ensure financial security and certainty as digital asset developers continue to innovate.

Following debate in both the House Financial Services Committee and Agriculture Committee this week, the Committees [voted to advance the bill to the House Floor for further debate.](#)