

Article Information

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Blockchain Bites: ASIC appeals Finder decision, Australia scores early success in the war on scams, D'Oh Kwon lose SEC battle, ERC-3643: Compliance by design, Wall St titans back Bitcoin ETFs

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

ASIC appeals Finder decision

The Australian Securities and Investments Commission (ASIC) has [announced](#) that they will appeal the Federal Court's decision [dismissing ASIC's allegations that Finder Wallet's Earn product](#) was a debenture.

This crypto-asset Earn product allowed users to transfer cash, purchase True AUD stablecoins and be paid a fixed return for giving Finder the use of the stablecoins. Customers were paid in AUD on a compounding return of either 4.01% or in some cases 6.01% with a nifty little second by second counter showing the interest clocking up.

ASIC had alleged that by providing the Earn product, Finder Wallet provided unlicensed financial services, breached product disclosure requirements and failed to comply with design and distribution obligations.

ASIC's allegation centred around the Earn product being a debenture under Section 9 of the *Corporations Act 2001* (Cth) (the **Corporations Act**) - with which the Federal Court disagreed. A debenture is defined as follows under the Corporations Act:

debenture of a body means a chose in action that includes an undertaking by the body to repay as a debt money deposited with or lent to the body. The chose in action may (but need not) include a security interest over property of the body to secure repayment of the money.

The Federal Court dismissed ASIC's claims on 14 March 2024 and ordered ASIC to pay costs.

Now ASIC has appealed this decision. It said it is doing so because

it is concerned that the Finder Earn product was offered without the appropriate licence or authorisation and therefore without the benefit of important consumer protections.

ASIC has pursued its case on the basis that the Finder Earn product on the narrow basis that the product was a form of debenture. In a [similar recent case involving Block Earner, ASIC alleged that two yield bearing products also involving cryptocurrency related offerings](#) were in the form of a managed investment scheme, financial investment or derivative. The primary judge in this case was not required to address these matters based on ASIC's pleaded case.

It appears from ASIC's [Notice of Appeal](#) that it is basically re-running the same arguments, claiming that the primary judge "erred in" in applying the law, and his categorization of the Earn product terms.

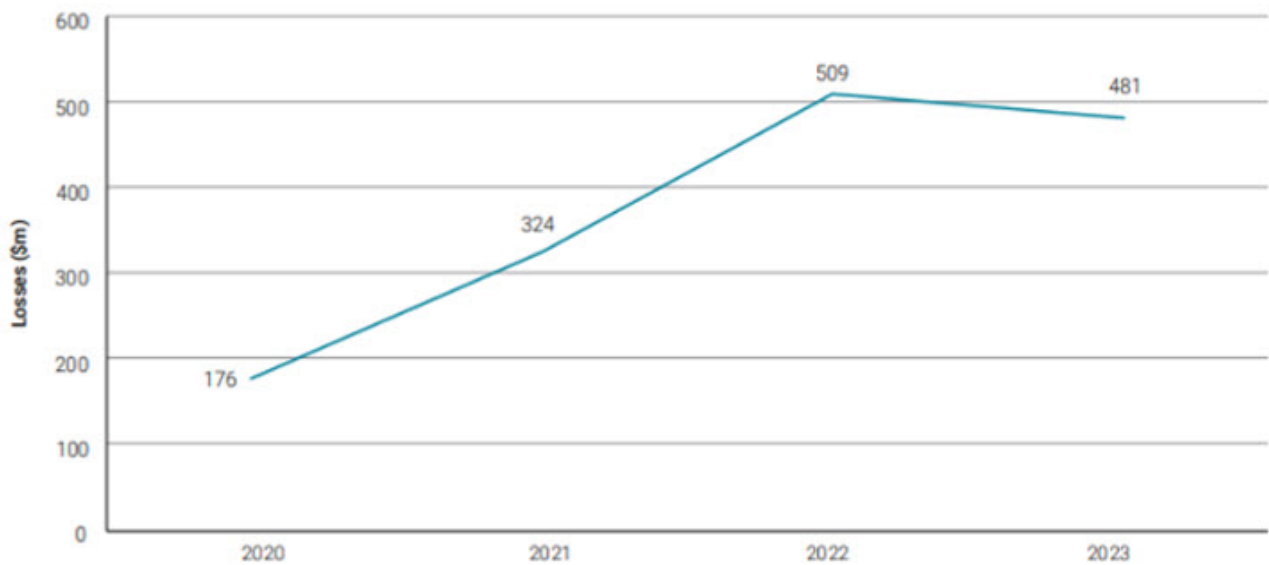
ASIC's appeal is not a huge surprise, as the decision and adverse costs order was a significant set back for ASIC, which has recently [indicated its intention to test its regulatory perimeter](#) in relation to cryptocurrency related offerings. It also follows a partial win in the Block Earner case, in which [ASIC failed to establish that Block Earner's access product was a financial product](#).

The appeal will be heard by the Full Federal Court on a date to be determined. It has been [reported](#) that Finder is "disappointed" with ASIC's decision not to accept the Federal Court ruling, but is prepared to diligently defend its product in the Full Federal Court.

Written by Jake Huang, Steven Pettigrove and Michael Bacina

Australia scores early success in the war on scams

The upward trend in losses to scams is beginning to turn



Screenshot from the National Anti-Scam Centre quarterly update March 2024

[The recent quarterly update from the National Anti-Scam Centre published 12 March 2024](#), revealed an optimistic decline of 43% in the overall scam losses in the year 2023 December quarter. In particular, losses by cryptocurrency saw the sharpest decline by 74%. This is likely to be further reduced in the coming years, with the report detailing plans for

cryptocurrency scam data to be collected commencing in early 2024, to begin the necessary work to begin making scam data available to the Digital Currency Exchange sector.

In the report, Catriona Lowe, the Deputy Chair of the Australian Competition and Consumer Commission (**ACCC**) reflected the National Anti-Scam Centre's commitment to:

Advocating for mandatory and enforceable industry codes for banks, telecommunications providers, digital platforms, and cryptocurrency exchanges.

[The Australian Banking Association \(ABA\) welcomed the new report](#), with the CEO Anna Bligh stating:

It is encouraging that efforts to protect people are making a difference

However, Bligh warned that the fight against scams requires collective effort:

we must all continue to remain vigilant...banks, government, telcos, social media platforms as well as consumers continue to work together to stay one step ahead of scammers.

In particular, she noted:

Scammers often use crypto exchanges as the getaway vehicle of choice to siphon funds. Banks are now regularly blocking or limiting suspect transfers to high-risk crypto exchanges.

The [new Scam-Safe Accord](#) imposes a high standard of consumer protection on banks and will see a \$100M investment in a new payee system. This is designed to reduce scams by allowing consumers to verify the payee prior to transferring money. Other initiatives under this Accord include:

introducing more warnings and payment delays for consumer protection;

adopting technology and controls to prevent identity fraud, such as the use of at least one biometric check for new customers;

Expanding intelligence sharing across the banking sector; and

Requiring all banks to implement an anti-scams strategy to enhance oversight of the bank's scams detection and response mechanisms

While the battle against scams continues, the early signs of success in the latest report highlight that Australia's anti-scam strategies are headed in the right direction. With combined efforts from institutions, regulators and consumers, it is optimistic that more Australians will be safeguarded from scams. As Lowe commented:

There is much more to be done, however we are making a difference.

Written by Kelly Kim and Steven Pettigrove

D'Oh Kwon: Terraform Labs and Founder lose SEC battle

Following a nine day trial in the Manhattan federal court, a verdict has been handed down by the [jury, finding Terraform Labs and its co-founder, Do Kwon, liable for security fraud by misleading investors](#). The director of the SEC's enforcement division, Gurbir S. Grewal, had the following to say:

Terraform Labs and [Do Kwon] deceived investors about the stability of the crypto asset security and so-called algorithmic stablecoin TerraUSD, and they further misled investors about whether a popular payment application used Terraform's blockchain to process and settle payments

The SEC's position is consistent with their rhetoric when it comes to cryptocurrency and blockchain, signalling that there is likely to be no change in course from the SEC's "regulation by enforcement" approach, alleging that crypto projects should register with the SEC and comply with existing laws, while ignoring the many lawyers, and Commissioner Hester Peirce, who have pointed out there is no actual way for crypto projects to register or comply:

For all of crypto's promises, the lack of registration and compliance have very real consequences for real people. As the hard work of our team shows, we will continue to use the tools at our disposal to protect the investing public, but it is high time for the crypto markets to come into compliance

The jury deliberated for a mere two hours after the closing arguments were heard from the lawyers for the SEC and defendants. The SEC's primary argument was that Kwon and Terraform Labs, under his direction, had deceived investors and consumers about the nature of the algorithm that pegged its stablecoin, TerraUSD (**TUSD**), to the US dollar.

The SEC believes that Do Kwon implied to the public that the algorithm underpinning the peg operated independently of human interference. This was a topic hotly debated by crypto enthusiasts and industry experts alike, with many believing the collapse of Terra/Luna and TUSD was [attributable to a “complex phenomenon that happened across multiple chains and assets”](#), rather than concentrated market manipulation by a third party. As evidenced by the jury’s decision, the claim that the algorithm was immune from market manipulation (i.e. human interference) was accepted as fraudulent behaviour by Do Kwon and Terraform Labs.

As [reported by CoinDesk](#), a representative for Terraform Labs stated that they were continuing to consider their options (such as an appeal) and otherwise remained steadfast that the SEC does not have authority to bring the case against them.

Shrouded in controversy since Terra/Luna’s collapse in May 2022, debate still looms online amongst enthusiasts as to whether the actions of Do Kwon were wrong, or whether these actions by the US and South Korea are simply first hand examples of two jurisdictions wanting to send a message.



Despite a verdict being reached in New York, the battle between the US and South Korea for Do Kwon’s extradition remains, with the [Montenegro Supreme Court assessing the conflicting requests](#).

In the wake of the Manhattan federal court’s verdict, Do Kwon and Terraform Labs face the consequences of deceiving investors about TerraUSD’s stability. As sentencing looms, the debate over jurisdiction and accountability continues, casting a shadow over the future of cryptocurrency regulation.

Written by Luke Higgins and Michael Bacina

ERC-3643: Compliance by design

The [ERC-3643 is a token standard for real-world asset tokenization](#), with an ‘open-source suite of smart contracts’ which facilitate the ‘issuance, management and transfer of permissioned tokens’. The standard is an extension of the ERC-20 standard (a well-established standard for fungible tokens), with a distinct compliance layer through a conditional transfer function. This ensures that token transfers are only executed after approval from a validator which verifies compliance with pre-defined governance criteria.

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Screenshot from <https://tokeny.com/erc3643/>

Tokeny, a leading compliance infrastructure provider for asset tokenisation, first developed the standard in 2018 under the name T-REX (Token for Regulated Exchanges). Upon acceptance by the Ethereum Community last December, the standard was given the current label, ERC-3643. The standard is now backed the [ERC3643 Association tasked with driving its adoption](#) through education and coordinating key stakeholders. To date, the total value of assets tokenized using the standard exceeds USD\$28B.

[Luc Falempin, the co-founder of Tokeny explained in a blog post:](#)

By creating ERC-3643 with the Ethereum technology stacks, we ensure the interoperability...with other applications in the ecosystem.

[Tokeny has identified the key benefits of the standard as:](#)

- Encoded compliance (where rules are embedded within the token at the smart contract level);
- Issuers with greater control over securities;
- Reduced costs;
- Increased transferability and liquidity.

The official [whitepaper](#), dated May 2023, explains the standard was:

Designed to address this need to support compliant issuance and management of permissioned tokens, that are suitable for tokenized securities, either on a peer-to-peer basis or through regulated trading platforms.

ERC-3643 tokens can readily tokenise traditional financial assets today, as their permissioned qualities enable compliance with existing AML and registry requirements. The tokens are also compatible with most existing ERC-20 standard based platforms and can be integrated with minor modifications. The ERC-3643 can be adapted for real-world assets, securities, stablecoins, E-money and loyalty programs, however, new applications continue to be explored.

[On 9 April 2024, Tokeny announced its partnership with the SILC Group to pilot alternative assets through tokenisation using the ERC-3643 standard.](#) The pilot project will assess the potential of blockchain to ultimately replace the various legacy centralized systems that are used to administer funds used by SILC.

Efforts to drive adoption of ERC-3643 are ongoing, with [DevPro and Tokeny jointly releasing an open-source UI component for the standard in January 2024](#). This plug-in bridges ERC-20 compatible DeFi applications with permissioned tokens issued under the ERC-3643 standard, ensuring interoperability.

With the ERC-3643 bringing 'compliance into the realm of permissionless DeFi', the standard offers a pathway for traditional financial assets to trade on public blockchains. This is likely to foster [increasing institutional interest in adopting blockchain technology to unlock the efficiencies of smart contracts in trading and asset administration](#), and with a view to increasing tokenisation of financial markets.

Written by Kelly Kim, Steven Pettigrove and Michael Bacina

Wall St titans back ETFs, as Bitcoin goes mainstream

BlackRock's iShares Bitcoin Trust (IBIT) has seen a surge in interest from major US banks, marking a significant shift in Wall Street's historically sceptical stance on cryptocurrency. In a [recent SEC filing](#), BlackRock disclosed that Citadel, Goldman Sachs, UBS, and Citigroup have been named as "authorized participants" for IBIT. Authorised participants play a crucial role in maintaining the correlation between IBIT's price and that of bitcoin by creating and redeeming shares in the ETF as necessary.

While the addition of these traditional finance or "tradfi" titans underscores the growing institutional acceptance of cryptocurrency, it also raises eyebrows given their historical reservations. Goldman Sachs, for instance, has long been critical of crypto, with its executives dismissing it as an investment asset class. Sharmin Mossavar-Rahmani, CIO of the bank's wealth management unit, [recently reiterated this sentiment](#), stating that neither she nor the bank's clients are believers in crypto.

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However, despite such reservations, Goldman Sachs has established [a dedicated digital assets unit](#), signalling a pragmatic approach to the evolving market dynamics. The bank's move to support BlackRock's bitcoin ETF comes [amidst a broader trend of institutional engagement with digital assets](#) (see recent efforts from [MasterCard](#) and [Citi](#)).

The allure of bitcoin ETFs has proven irresistible to investors, with [reportedly over USD \\$12 billion in net inflows recorded since their launch in January](#). BlackRock's ETF alone boasts assets exceeding USD \$16 billion, underscoring the continuing mainstream appeal of cryptocurrencies.

BlackRock's bitcoin ETF signifies an important moment in the mainstreaming of cryptocurrency and bitcoin's growing legitimacy as an asset class. The newly announced Authorized Participants join a number of leading US money managers who have launched their own Bitcoin ETFs. As the blockchain ecosystem matures, traditional financial institutions are recalibrating their strategies to embrace the emerging digital frontier.

Written by Luke Higgins and Steven Pettigrove