Article Information

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Service: Blockchain
Sector: Financial Services

Blockchain Bites: ASIC sues Blockchain Global director, crypto faces rising class actions, Full Court flips Qoin (again) narrowing AFSL Authorised Rep exemption, ASIC encourages exchanges to kick the tyres on token listing practices

Steven Pettigrove, Luke Higgins, Luke Misthos and Emma Assaf of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

Call of duty: ASIC sues Blockchain Global director

The Australian Securities and Investments Commission (**ASIC**) has launched civil penalty proceedings in the Federal Court against Liang "Allan" Guo, a former director of Blockchain Global Ltd (in liquidation), in connection with the collapse of the ACX cryptocurrency exchange, which we wrote about in Feb 2020 when the exchange mysteriously changed the name of the operating company shortly before customers were unable to make withdrawals.

According to ASIC's press release, the regulator alleges Mr Guo breached his duties as a director by misusing customer funds, failing to maintain proper records, and making misleading statements regarding the company's operations. The charges come in the wake of Blockchain Global's spectacular collapse in late 2019, when users of the ACX Exchange were abruptly unable to withdraw funds or crypto assets.

Blockchain Global was placed into external administration in 2022 following significant governance concerns and other missteps, including the refusal of a financial services licence and a halted IPO bid in 2017. Liquidator reports filed in October 2023 revealed that over AUD$58 million was owed to unsecured creditors, more than AUD$22 million of which was attributed to ACX customers. Investigations also uncovered that customer funds were co-mingled with company money and funneled into related entities, drawing parallels with other high-profile exchange failures.

ASIC's investigation formally commenced in January 2024, culminating in interim travel restrictions on Guo. However, Guo departed Australia in September 2024, just weeks after the orders expired, and has not returned since.

Compounding concerns are Guo's claims to liquidators that private wallet credentials to millions in crypto were lost due to a laptop theft in China, an incident for which no police report was ever lodged.

The collapse has also spawned new case law confirming the court's powers to order freezing orders in respect of cryptocurrency and that bitcoin may be treated as property and is capable of being held on trust.

These proceedings mark a significant step in ASIC's pursuit of accountability in one of Australia's first and most notable crypto exchange collapses. The broader Blockchain Global saga continues to unfold, with co-director Sam Lee also facing legal scrutiny overseas for his alleged role in unrelated global investment schemes.

ASIC's decision to pursue director's duty breaches shows the broad tools which the regulator already has in hand to target alleged misconduct in the cryptocurrency sector notwithstanding that Blockchain Global was not an AFSL holder.

While the legal action demonstrates ASIC's willingness to enforce corporate compliance in the sector, the fact that Guo has already left the jurisdiction suggests that any judgment in the case will likely be of symbolic value rather than resulting in

returns for creditors of the defunct exchange, highlighting that swift action is needed by regulators if justice is to be done.

By Steven Pettigrove and Luke Misthos with Michael Bacina

Staying ahead of the class: Crypto faces rising class actions

As the cryptocurrency sector matures and regulatory expectations rise, private claims involving crypto exchanges and product issuers are increasing as a result of increased scrutiny and a lack of clear regulatory frameworks and expectations.

Class actions are fast emerging as a key litigation risk for crypto exchanges, miners and businesses, particularly as client and investor expectations shift in line with traditional financial markets. While many in the industry have long called for fit for purpose and clear regulatory frameworks, the lack of harmonised global standards leaves exchanges vulnerable to allegations of disclosure failures—especially around product disclosure, AML/CTF compliance and cybersecurity. This underscores the need for exchanges to not only uplift internal controls but proactively meet disclosure expectations to limit the risk of shareholder and consumer litigation.

The rise of class actions poses a significant threat to crypto exchanges and companies, even as the risk of regulatory action has abated in some jurisdictions like the United States. While exchanges are frequently targeted due to their visibility and backing, and perceived profitability, the broader reputational damage to the industry is often associated with product issuers. Memecoins, for example, are high-risk offerings that are sometimes linked with alleged insider trading and pump-and-dump situations. While individual investors losses may be modest, a class action can provide a vehicle for advancing broader allegations of misleading or unconscionable conduct across a group of investors or clients or alleging breaches of securities laws which regulators have backed away from pursuing. Investors may also look to exchanges which list these assets as litigation targets with deeper pockets.

Coinbase, one of the world's largest cryptocurrency exchanges, is the subject of a class action lawsuit filed by shareholders in the US District Court for the Eastern District of Pennsylvania. The lawsuit alleges that Coinbase failed to adequately disclose information relating to its compliance with UK anti-money laundering and counter-terrorism financing (AML/CTF) regulations, as well as details about cybersecurity incidents. According to the complaint, these alleged omissions and misrepresentations led investors to purchase Coinbase shares at inflated prices, resulting in significant losses when the information was later revealed. The lawsuit seeks compensation for those affected over a four-year period, spanning from Coinbase's 2021 public listing through to May 2025.

Binance and its founder Changpeng Zhao faced a class action following Zhao's criminal conviction and the platform's settlement with US regulators. Further, a 'patent troll' has been seeking to enforce patents claiming bitcoin miners are infringing patents. Plaintiff law firms in the United States are also increasingly targeting memecoin projects which have resulted in investor losses.

As regulators continue to demand greater transparency, crypto platforms and product issuers face growing risks around how they manage compliance and disclosure. These risks are expected to grow as the industry enters the regulated sphere and continues to scale. Recent actions are an important reminder to industry to ensure that they provide clear and accurate disclosure to investors and consumers and proactively address compliance issues.

By Steven Pettigrove, Luke Misthos, Emma Assaf with Michael Bacina

Full Court flips Qoin (again) narrowing Australian AFSL Authorised Rep exemption

On 30 May 2025, the Full Federal Court found that BPS Financial Ltd (**BPS**) was not entitled to rely on the 'authorised representative' exemption under the *Corporations Act 2001* (Cth) (**Corporations Act**) when issuing its Qoin Wallet product. The Court allowed ASIC's appeal and declared that BPS had operated without the required Australian Financial Services Licence (**AFSL**).

Background

BPS marketed and issued the Qoin Wallet, a digital wallet which enabled users to store and transact crypto tokens called "Qoin". By late 2022, more than 93,000 wallets had been issued with BPS raising over $40 million through token sales.

While ASIC had previously secured a Federal Court ruling in 2024 that BPS contravened AFSL requirements, the Federal Court accepted that BPS was exempt during a 10-month period in which it was an authorised representative of PNI Financial Services Pty Ltd (**PNI**) which held an AFSL.

ASIC appealed this finding, advancing two grounds of appeal:

1. That the primary judge erred in finding that BPS was exempt from the requirement to hold an AFSL under s 911A(2)(a) of the Corporations Act during the period of the operation of the Authorised Representative Agreement with PNI; and
2. That the primary judge erred in finding that BPS was acting as a representative of PNI (within the meaning of s 911A(2)(a)) during the period of the PNI authorised representative agreement without making the necessary findings of fact as to whether, in providing the relevant financial services, BPS was acting on its own behalf or as a representative of PNI.

The Court addressed two appeal grounds together, as they both turned on whether BPS was acting "as representative of" PNI when it issued the Qoin NCP product.

The Full Court's Ruling

ASIC's primary argument on appeal was that the authorised representative exemption under s 911A(2)(a) of the Corporations Act involves "**an essential representative capacity requirement**", meaning that a person cannot be a representative for the purposes of the exemption if they are, in substance, the issuer of the financial product themselves.

ASIC argued, and the Court accepted, that the primary judge erred by focusing too narrowly on whether BPS had been appointed as an authorised representative under s 916A without asking whether BPS had in fact acted in that capacity when providing the financial service.

The Court emphasised the language of s 911A(2)(a), particularly the words "as representative of". The Court found these words focus not just on whether formal authorisation exists but whether the financial service was actually provided in a representative capacity. This interpretation was consistent with s 911B(1) which the Court held (at [92]):

makes plain that a representative "must only provide a financial service" if they are providing the relevant service on behalf of a principal. The legislation makes it plain that there is an essential requirement that the "representative" act in their capacity as such. (emphasis added)

The Court acknowledged that the primary judge was correct in observing that s 916A(1) allows an AFSL holder to determine the scope of an authorised representative's authority. However, this did not resolve the question of whether BPS provided the Qoin product *in that capacity*. The Full Federal Court explained that (at [96]):

"whilst the AFSL holder might lawfully and validly authorise a person under s 916A to provide specified financial services covered by the AFSL holder's licence, such an authorisation only operates to the extent that the authorised representative, in fact, provides the relevant financial service in that capacity.

Turning to the facts, the Court considered that, among other things:

- BPS had developed and launched the Qoin NCP product *before* any involvement with PNI.
- BPS began developing Qoin in 2019 and issued it in January 2020 under an earlier arrangement with another AFSL holder. PNI was therefore not involved in any of the development, document preparation, or launch of the product.
- All key documents associated with Qoin including the White Paper, Product Disclosure Statement and Terms of Use were authored by BPS with no material involvement from PNI.
- The Terms of Use did not mention PNI at all. The contractual relationship was strictly between BPS and its users.
- The appointment of BPS by PNI was essentially a case of 'AFSL provisioning' – seeking out an AFSL holder to allow BPS to issue a financial product without obtaining its own licence (which is not a relationship where PNI meaningfully exercises any control over the financial services BPS was providing).
- Although PNI took some compliance steps such as preparing a compliance plan and attending monthly meetings, these occurred *after* BPS had already produced the Product Disclosure Statement and related documents.

These facts led to the conclusion that "other than appointing BPS as its authorised representative, PNI had little to do with the issue of the Qoin NCP Product" (at [115]) and that "BPS was acting on its own behalf and not as a representative of PNI" (at [116]). Consequently, BPS was not entitled to rely on the s 911A(2)(a) exemption and was required to hold its own AFSL.

Despite this conclusion, the Full Court was quick to affirm that the decision turned on its facts. It did not consider whether the issuer of a financial product can never act in their own capacity as an authorised representative of an AFS licensee.

Interestingly, Qoin itself did not contest the appeal and the Court appointed an amicus curae to argue the point of law. However, the Full Court gave no consideration to the these arguments in its judgment, focusing mostly on the decision

below and ASIC's arguments on appeal which it accepted were refined before the Full Federal Court. These factors place some doubt over the general application of the judgment and perhaps whether the point of law was fully argued.

The Full Court's decision was nevertheless unanimous and highlights ASIC's increased concerns over AFSL provisioning, poor supervision of CAR arrangements and suggests potential limits to the CAR exemption, that is, that a representative as a matter of fact and substantive must be acting as a representative of the licensee (not just providing services of a type covered by its license).

By Steven Pettigrove, Luke Misthos and Emma Assaf

ASIC encourages exchanges to kick the tyres on token listing practices

The Australian Securities and Investments Commission (**ASIC**) has released its May 2025 Market Integrity Update, highlighting the launch of a new portal for Australian Financial Services (**AFS**) licence applicants and encouraging cryptocurrency exchanges to review their token listing practices for tokens which may be at risk of being deemed financial products under Australian financial services laws.

Digital asset platforms encouraged to strengthen token listing practices

ASIC has reiterated its expectation that digital asset platforms maintain robust, well-documented processes when assessing tokens for listing. The regulator observed that while most platforms have frameworks in place, the quality and consistency of their application varies significantly, particularly where reliance is placed on information from affiliated overseas entities or token issuers.

> *"We encourage platforms to do their due diligence. In some cases, platform listings can include hundreds of digital assets. Undertaking a robust legal analysis and risk assessment of each token are important controls to protect consumers."*

ASIC noted some platforms have already taken steps to review and enhance their listing governance, including obtaining external legal advice and establishing regular internal audits. In light of ASIC's continued focus in this area, now is an opportune time for platforms to revisit their listing practices to ensure that have in place robust legal criteria and compliance measures to address the risk of listing tokens which may require a financial services licence or could pose consumer harm owing to poor disclosure or market conduct risk.

ASIC has stated that it will continue to monitor listing practices as part of its broader digital assets work. In the absence of decided cases, exchanges will need to rely mostly on ASIC guidance and general principles in undertaking token assessments. In recent times, ASIC has reiterated its willingness to test the regulatory perimeter in relation to crypto-asset offerings by pursuing cases on appeal even where there is no evidence of consumer losses. Robust compliance policies and legal advice can help mitigate potential penalties in the event of enforcement action. The industry remains frustrated that no pathway to compliance or guidance has been issued despite a Token Mapping exercise being run by Treasury. While ASIC stated historically that decentralised tokens are not financial products, they have indicated their view has 'evolved' but no underlying reasoning for the change in position has been provided. Reading between the lines, the regulator appears to be hinting that exchanges should be ensuring they have a reasonable basis to form a view as to whether tokens are securities / financial products or not. The absence of any guidance, but past suggestions by ASIC that tokens may be financial products remain consistent with the now abandoned approach of Chair Gensler of the SEC in the US. As licensing approaches for crypto exchanges and other businesses, they will be increasingly likely to face a 'reverse onus' and need to prove the tokens they are listing are 'suitable' for users, particularly if ASIC decides to use their product intervention powers once licensing comes into place.

By Steven Pettigrove and Luke Misthos with Michael Bacina