

## Article Information

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Service: Banking & Finance, Blockchain, Corporate & Commercial

Sector: Financial Services, FinTech

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# Blockchain Bites: Smoother waters ahead as SEC officially ends Ripple rift?; Doh! Kwon admits Terra/Luna was not self healing; and On the chopping block: 100 DCE registrations slated for cancellation

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

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### Smoother waters ahead as SEC officially ends Ripple rift?

Ripple's long running saga at the hands of the US Securities and Exchange Commission (SEC) has finally come to a close. The case first began [in 2020](#) with the SEC alleging that Ripple's original sale violated US securities laws. Both Ripple and its CEO and Chair were sued. In October 2023 the claim against the CEO and Chair personally [was dismissed](#).

The case has been closely watched, with a judgment in 2023 finding that the XRP tokens were not securities under US laws, but that certain sales of XRP to investors were investment contracts (and that some programmatic sales were not) that *secondary* sales of XRP were not covered by US securities laws. Specifically, the Court said those "Programmatic Sales" were:

*blind bid/ask transactions, and Programmatic Buyers could not have known if their payments of money went to Ripple, or any other seller of XRP.*

A key treatise by Lewis Cohen and others called '[The Ineluctable Modality of Securities Law: Why Fungible Crypto Assets Are not Securities](#)' set out the position regarding tokens themselves not being securities and aligns with the case and the direction of crypto regulation globally.

An attempt by the SEC to [appeal the parts of their decision](#) that went against them was dismissed, but Ripple was [ordered to pay a US \\$125M penalty](#) for their violation of US securities laws. Ripple appealed that decision and since the Trump Administration has brought a pro-crypto position to the USA and the SEC has changed focus the parties have been trying to settle, but an agreement reached in June [was rejected by the Court](#). Subsequently [a joint stipulation was filed](#) leaving the original judgment intact and ending the various appeals.

Pro-innovation SEC Commissioner Hester Pearce said the end to this litigation [was](#):

*A welcome development for many reasons, including that minds once occupied with litigation now can concentrate on creating a clear regulatory framework for crypto*

The closing of this crypto chapter, and a focus on fit-for-purpose rules, such as the [GENIUS Act](#) and [market structure legislation currently in the US Senate](#) are extremely positive signs for the crypto industry in the USA, and around the world. Debate continues as to which form of law is superior, and discourse over the correct way to define tokens at law continue.

What remains clear is that token issuers need competent legal advice and an international structure to access the global marketplace, and be nimble while global crypto regulations continue to be developed.

*Written by Steven Pettigrove*

#### **Doh! Kwon admits Terra/Luna was not self healing**

The founder of the algorithmic stablecoin project Terra (UST), [Do Kwon, has pled guilty to fraud charges in New York after a lengthy battle](#) which saw the United States and South Korea seeking his extradition from Montenegro after being arrested on charges of carrying a false passport.

Kwon rose to fame during the 2020/2021 crypto bull run as the Terra project launched the UST stablecoin, which was paired to the Luna cryptocurrency which it promised would always be redeemable for \$1 worth of Luna. The plan worked so long as Luna was considered to have value, but in May 2022, the Luna token price crashed causing a de-peg of UST from which is never recovered.

The signs of Luna's passing were already rising following an earlier de-peg in 2021 and the launch of the Luna Foundation Guard, a bitcoin stockpile, intended to collateralize and defend the UST peg if necessary. During the 2022 collapse, Kwon famously tweeted:

*Deploying more capital - steady lads*

However, limited efforts to defend the peg could not halt Luna's fall wiping out billions in value and leaving a trail of financial and personal destruction.

The 2021 de-peg event was ultimately Kwon's comeuppance with Terraform Labs and [the founder claiming at the time that the token's re-peg proved its resilience](#), claiming the mechanism was "automatically self heal[ing]". In fact, Kwon had procured a crypto brokerage to aggressively defend the peg. The brokerage itself has [faced SEC charges over the incident and ultimately settled paying a \\$123 million fine](#).

Meanwhile, Kwon, who was based in Singapore fled the jurisdiction and was later arrested in Montenegro after being caught attempting to fly to Costa Rica on a false passport. He famously appeared on [Laura Shin's, Unchained Podcast, where he defended his involvement in Terra's collapse](#) demonstrating stark detachment from its consequences.

[South Korea and the United States pursued indictments over the collapse](#). The administrators of the token's issuer, Terraform Labs, and Kwon subsequently entered into a [\\$4 billion settlement with the US Securities and Exchange Commission](#) over the collapse which saw Kwon forfeit \$200 million in proceeds. He now faces further ignominy and a lengthy jail sentence.

More broadly, the Luna collapse was a key driver of the crypto winter cycle of 2022 to 2024 and has prompted regulatory efforts to restrict or ban algorithmic stablecoins. Meanwhile, [fiat and asset backed stablecoins continue to take market share](#) as crypto payments increasingly enter the mainstream. In this context, the Luna collapse stands as stark reminder of entrepreneurial hubris and the time old adage, that if it looks too good to be true, it probably is.

*Written by Steven Pettigrove and Luke Higgins*

#### **On the chopping block: 100 DCE registrations slated for cancellation**

In a press release issued last week, AUSTRAC [announced a campaign to target cancellation of remittance registrations](#) following its "use or lose it" blitz on digital currency exchange (DCE) registrations earlier this year. In that context, the AML/CTF regulator quietly confirmed that 100 DCE registrations are slated for cancellation out of a total believed to exceed 400. 22 DCE registrations were handed in. The crackdown targeted DCEs that appear inactive, with AUSTRAC directly contacting businesses that have not demonstrated trading activity (e.g. by making suspicious matter reports).

In a press release [announcing the campaign, AUSTRAC Chief Executive Officer Brendan Thomas labelled DCEs a high-risk sector](#) and stated that inactivity opens the door for criminals to exploit a company's enrolment status.

*Inactive businesses are vulnerable to being bought and co-opted by criminals...We're aiming to protect consumer confidence in AUSTRAC registration and limit the potential for improper sale and use of DCE businesses.*

As registration with AUSTRAC is a legal prerequisite for offering cryptocurrency-to-fiat services (including crypto ATMs), maintaining an accurate and up-to-date registration is critical. Registrants are required to notify AUSTRAC of a number of matters, including if their business model changes or if they cease to provide DCE services.

The “use or lose it” initiative follows AUSTRAC’s broader push to tighten oversight of digital assets, including new enforcement actions and guidance on anti-money laundering risks related to crypto. DCEs have been in AUSTRAC’s crosshairs for some time, [having previously moved to crack down on unregistered cryptocurrency ATMs](#) and implemented stronger expectations around AML/CTF compliance for DCEs.

The regulator has also confirmed that it will soon launch a publicly searchable DCE register, allowing customers to easily verify whether a crypto exchange is registered and subject to AUSTRAC’s regulatory oversight. This is a positive development for consumers seeking to assess the bona fides of cryptocurrency exchanges and whether they comply with Australian laws (albeit that the current regime’s scope is limited only to AML/CTF compliance).

With amendments to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**) [set to enter into force in March next year, the current DCE regime will transition to a VASP regime](#) with a wider range of designated services, more onerous registration requirements and compliance obligations. The Federal Government is also expected to move forward with a broader licensing regime for digital asset custodians under the Australian financial services licensing regime.

For those digital currency exchanges facing cancellation, the choices are stark. For some cancellation of a registration will mean cessation of business activities and likely insolvency. For others, the cancellation of a registration by the AUSTRAC CEO may be the subject of review under administrative law. For others, some combination of restructuring and sale may be possible although the cancellation of a registration may pose a considerable impediment to available options.

AUSTRAC will now turn its attention to the remittance register with a further cleanup campaign and as we approach year end, preparations for the entry into force of significant amendments to the AML/CTF Act which will apply to all reporting entities as well as the virtual asset sector.

*Written by Steven Pettigrove*