

## Article Information

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# Blockchain Bites: Stablecoins as securities? Gensler continues to “crack down” on crypto without clear reason; Gary Gensler Doubles Down on Dangers of Crypto; Freezing order made against Blockchain Global in \$10.3M ACX exchange case; Sporting Clubs Become Players in Cryptocurrency World

Michael Bacina, Jade McGlynn and Luke Misthos of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

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### Stablecoins as securities? Gensler continues to “crack down” on crypto without clear reason

During a recent hearing before the Senate Banking Committee, Securities and Exchange Commission Chairman Gary Gensler has continued to ruffle feathers in the crypto realm as he refuses to rule out regulating stablecoins as securities – without a reason.

Less than a month ago, Gensler [called on Congress](#) to grant the SEC more authority over cryptocurrencies, touting that mostly all crypto-assets are securities and therefore must be subject to SEC oversight. Back then [we questioned](#) his lack of clear legal justification as to why this variety rich asset class should be painted with the same broad brush. If all digital currencies fall so easily under the definition of securities – as Mr Gensler seems to suggest, what further authority does the SEC need that it does not already have?

Nevertheless, the Commissioner [continues to publicly ‘crack down’](#) on the “wild west” of crypto without clarity, providing little more justification than the tired myth that cryptocurrency “*is rife with fraud, scams, and abuse in certain applications*”. It seems Mr Gensler thinks this a sufficient reason alone to [testify to the Banking Committee](#) that the US “*can do better*” in consumer protection if the SEC could just have jurisdiction over:-

- The offer and sale of crypto tokens
- Crypto trading and lending platforms
- Stable value coins
- Investment vehicles providing exposure to crypto assets or crypto derivatives
- Custody of crypto assets

It’s unfortunate that this complete myth – that cryptocurrency is only used for crime, continues to be repeated despite it being well debunked (for those who disagree we highly encourage a read of the [2021 Chainalysis Report](#)). It also makes little sense that the Commissioner continues to argue that the SEC should have more authority over cryptocurrency, without

providing clear guidelines as to when a digital asset will be considered a security and therefore under the SEC's umbrella in the first place.

This further need for clarity was made clear when, during Gensler's testimony to the Banking Committee, Senator Pat Toomey, a Pennsylvania Republican, [pressed the Commissioner](#) about whether he believes stablecoins are securities under the Howey Test (the Supreme Court's test for determining a security), saying:-

*To me a stablecoin doesn't meet the second prong of the Howey Test, that there has to be an expectation of profits from the investment ... [i]f it doesn't meet the Howey Test, it looks to me like it's not a security.*

Unfavourably, Gensler didn't properly address Toomey's question, vaguely replying that stablecoins "may as well be securities" without providing any real explanation or justification for his position.

Gensler argued that the definition of securities is broad enough to include many different types of instruments including those that don't need not meet the *Howey* test, but without providing the very vital information on how that renders digital assets, like stablecoins, as securities.

In our view, despite *trying* to defend his demands, Gensler has not provided 'a full picture' or an understandable basis for his claims that most digital assets are securities, and until the SEC provides proper clarity as to their regulatory perimeter, the US should and *will* continue to be viewed as a jurisdiction which is warning away, rather than welcoming, digital assets.

### **Gary Gensler Doubles Down on Dangers of Crypto**

The Securities and Exchange Commission (**SEC**) Chairman Gary Gensler has anted up in his stance against cryptocurrencies, this time going all in against stablecoins. In an interview with [the Washington Post](#), Gensler maintained his aggressive stance against crypto by saying stablecoins posed a danger to investors and had questionable long-term viability.

Gensler has dealt out [another 'wild west' analogy](#), this time likening stablecoins to poker chips in a casino:

*The poker chip is like the stable coin at the casino gaming table ... I think there's just a lot of warning signs and flashing lights*

It is unsurprising that Gensler has dealt out further criticism of the crypto markets having been very public about his opinions on cryptocurrency networks saying [most consumers are not educated enough to judge the risks themselves](#).

Despite continued affirmations by Gensler that he is speaking on his own accord, and not in the interests of the SEC, it is becoming increasingly difficult to disassociate an organisation and its lead chairman.

Nevertheless, the debate in Washington continues between proponents who believe stablecoins offer a more reliable store of value than other tokens which could transform payment processing for everyday consumers; and skeptics who believe issuers of stablecoins will fail to upkeep sufficient collateral for the assets.

Gensler's aggressive stance against stablecoins comes as both proponents and skeptics urge the US Government to roll the dice with crypto regulation. The SEC has not been shy about delving into crypto, particularly when trying to [regulate the DeFi space](#) or when targeting [Ripple Labs](#).

### **Freezing order made against Blockchain Global in \$10.3M ACX exchange case**

After a 2 year waiting game, customers of the ACX exchange have secured an order in the Supreme court of Victoria to freeze assets of Blockchain Global, with the plaintiffs in pursuit of more than AUD\$10 million dollars worth of allegedly missing digital assets.

It was in February 2020 that reporters first [wrote about](#) the mysterious shutdown that unfolded after the Melbourne based exchange froze a large chunk of customer funds, blaming an "audit" process which has still not been explained. At the time of the story breaking, ACX user Michael Whitehorn [correctly](#) predicted that the then "\$1m+ dollars of exposed [assets]" was just "the tip of the iceberg". The claims against the exchange have a present value of [over \\$10 million](#) dollars.

Frustrated customers were faced with Blockchain Global distancing itself from the exchange, and ACX's Terms of Use

changing just before the freeze to assert the exchange was being operated by another company by the name of “*Peak Trading Group Pty Ltd*”. Previously the Terms of Use identified the website operator as “Blockchain Global Limited”.

The solicitor for the plaintiffs [gave evidence that](#) ACX’s terms of use said all digital assets and cash was held on trust on behalf of the users, and therefore that the plaintiffs would be entitled to seek damages from Blockchain Global, ACX and its directors for the missing assets.

In the affidavit [Stathopoulos further alleged](#):-

I believe that [Blockchain Global] has misappropriated cryptocurrency (and cash earned or invested with respect to the sale of cryptocurrency) belonging to the plaintiffs with a present value of \$10,344,904.30.

On an interim basis at least, Blockchain Global’s alleged involvement has been recognised as a serious enough matter for Justice Riordan to issue the freezing order to protect the plaintiffs, given there is a “*serious question as to whether or not the plaintiffs have been defrauded*” by Blockchain Global. We should note that no finding of wrongdoing against Blockchain Global has occurred at this time.

At first the freezing order was only issued over a digital wallet containing around 120 bitcoins and presently worth around AUD\$6.8 million dollars. However, the order was then extended to all of Blockchain Global’s assets given “*the freezing order would barely cover the plaintiffs claim*”.

After such a long period of uncertainty, with a winding-up application recorded in the meantime against Blockchain Global (but dismissed), the wheels of justice are slowly moving in relation to this matter.

A freezing order remains a temporary relief which does not make any finding of wrongdoing or finding of any facts against ACX or Blockchain Global Limited, and Blockchain Global Limited may well dispute the whole of the allegations, which will be the subject of evidence and a final hearing at a later date.

### **Sporting Clubs Become Players in Cryptocurrency World**

Professional sporting clubs have become the most recent players in the [continuously growing cryptocurrency market](#). Professional European football teams such as Arsenal FC, Real Madrid FC, Juventus and more are offering tokens for fans with a range of benefits.

Underpinned by blockchain technology, fans of these sporting clubs have been offered tokens for as little as £2.00 GBP or €2.00 EUR and have access to different benefits. In the case of Arsenal FC, members were given life-long tokens which allows them to vote on club decisions, opportunities to earn benefits and VIP experiences.

Interestingly, in the case of Italian club Juventus, a smart contract system has now been implemented. Where fans vote on club decisions via smart contract, the club is contractually bound to act in accordance with the poll results. Club-specific Non-Fungible Tokens (**NFTs**), digital badges or physical rewards like matchday tickets are also available for holders.

The tokens are not underpinned by any other cryptocurrencies and appear to only have value based on how much a fan is willing to pay to participate in the decision-making of the club. Despite allowing for capital raising by clubs, the tokens are seen as a way to provide a unique experience for fans and create a more privileged sense of community among those committed to their club.

Rumours continue to fly around when the Australian Football League and National Rugby League will enter the NFT scrum!