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Blockchain Bites: US SEC doubles down enforcement team for crypto, AUSTRAC issues crypto guides, California issues new executive order on crypto

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

No monkey business: Bored Ape Yacht Club hacked

The United States Security and Exchange Commission has announced that it will be doubling the size of its unit responsible for "safeguarding" investors in cryptocurrency markets and against cyber threats, the Crypto Assets and Cyber Unit.

The increase in personnel is a move by the SEC to play catch-up with a growing number of participants in the crypto-market.

SEC Chair Gary Gensler said:

> *The U.S. has the greatest capital markets because investors have faith in them, and as more investors access the crypto markets, it is increasingly important to dedicate more resources to protecting them*

Historically, the SEC has used its cybersecurity unit to target what it views as bad actors in the industry, and has been ramping up its operations since its formation in 2017. In 2021 the Cyber Unit imposed over $2 billion in sanctions and brought 20 enforcement actions.

The increase will see 20 new positions created, raising the total team to 50. The SEC says they intend to leverage the increase in manpower to ensure investors are protected in the crypto markets, with a focus on investigating securities law violations related to:

- Crypto asset offerings;
- Crypto asset exchanges;
- Crypto asset lending and staking products;
- Decentralized finance ("DeFi") platforms;
- Non-fungible tokens ("NFTs"); and
- Stablecoins

While it's encouraging to see a regulator investing in staff focused on blockchain technology, the emphasis on "investor protection" as a priority over developing pathways for compliant crypto business offerings is concerning concerning to many – particularly given how the SEC sets the tone for regulators globally. Unless regulators provide a path of possible compliance, all the enforcement teams in the world won't support a safer crypto space for participants.

AUSTRAC issues guides to thwarting crypto-crime

The Australian Transaction Reports and Analysis Centre (AUSTRAC) has issued two new regulatory guides for businesses when dealing in, and assessing, perceived risks and expectations around crypto-assets.

AUSTRAC's primary purpose is to monitor and regulate financial crimes, and has historically has placed an emphasis on possible use of crypto for criminal acts.

Nicole Rose, AUSTRAC CEO, recently said in a statement:

> *Financial service providers need to be alert to the signs of criminal use of digital currencies, including their use in ransomware attacks…*

The Preventing the Criminal Abuse of Digital Currencies guide provides financial indicators to help businesses, including digital currency exchange providers, recognise and report criminal activity involving digital currencies.

According to AUSTRAC:

> *Criminals are attempting to take advantage of the rapid take-up of digital currencies to commit crimes and hide from law enforcement. The pseudo-anonymous and borderless nature of digital currencies can make them a risk for criminal activity including money laundering, terrorism financing, ransomware and more.*

The Detecting and Stopping Ransomware guide includes practical information and key indicators to help businesses understand, identify and report suspicious activity where a transaction participant could be the target of a ransomware payment, or trying to profit from a ransomware payment.

The AUSTRAC guides follow the Senate Select Committee on Australia as a Technology and Financial Centre Final Report which considered the issue of de-banking of crypto businesses who were seeing unexplained account closures on a regular basis by major banks, despite robust AML/CTF compliance and little to no criminal activity issues.

In the Digital Currency Guide guide, AUSTRAC states:

> *De-banking legitimate and lawful businesses can negatively impact individuals and businesses. It can also increase the risks of money laundering and terrorism financing and negatively impacts Australia's economy.*

Given anti-tipping off provisions prevent banks from (or some would say permit banks to not) disclose why an account is being closed, AUSTRAC's comments and these guides are a positive step towards educating traditional finance (known as TradFi in crypto circles) in how little criminal activity occurs in crypto business, which Chainalysis measured at 0.14% of transaction volume. Secure and reliable banking will remain an important part of most crypto businesses needs as we continue to see the growth of this exciting technology.

California embraces blockchain with new crypto executive order

California Governor, Gavin Newsom, has issued an executive order – Executive Order N-9-22 – earlier this week relating to cryptocurrencies. The order sets out a road map for regulatory and consumer protections, as well as looking at ways the state would be able to take advantage of blockchain technologies as well as other digital assets.

The Californian executive order follows increased adoption by tech investors and businesses in the state of cryptocurrencies and other digital assets. The executive order also follows, and is consistent with the policy objectives of, the Biden administration's executive order issued in March of this year.

On the Californian executive order, senior aide to Governor Newsom and director of the Governors Office of Business and Economic Development, Dee Dee Myers, has said:

> *Of the 800 blockchain businesses in North America, about a quarter of them are in California, dramatically more than any other state… We've heard from so many that they want to be here, and we want to help them do that responsibly.*

The executive order is constructed in such a way that it will seek to foster cooperation and collaboration between the Governors Office of Business and Economic Development with the Department of Financial Protection and Innovation and Californian Business, Consumer Services and Housing Agency. Following an initial collaboration period, the agencies will combine resources to submit its findings and recommend how the Californian crypto environment can be improved.

The order makes clear that this process will:

> *reflect consultation with relevant state agencies regarding the forthcoming federal reports on the relationship of crypto assets to priorities in energy, climate, and preventing criminal activity.*

This move is yet another example of a strong indication of US State governments warming up to crypto and digital asset adoption and recognising the importance of this growing industry. There are just under 40 US states with bills pending approval addressing crypto-asset related matters. While the industry is yet to comment, the executive order includes reference to and builds on the benefits and risks of crypto prepared by the California Blockchain Working Group.