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Blockchain Bites: SEC targets Gemini Earn, US Congress creates crypto subcommittee for regulation, BlackRock eyes tokenised future, NAB to launch AUDN stablecoin

Michael Bacina, Steven Pettigrove, Tim Masters, Luke Misthos and Lola Hickey of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

SEC targets Gemini Earn

On 12 January 2023, the United States Securities and Exchange Commission (**SEC**) charged leading cryptocurrency firm Genesis Global Capital along with the crypto exchange Gemini Trust Company for allegedly engaging in the unregistered offer and sale of securities to retail investors through the Gemini Earn crypto-asset lending program. Gary Gensler, the SEC Chair, said:

> *We allege that Genesis and Gemini offered unregistered securities to the public, bypassing disclosure requirements designed to protect investors*

The SEC alleges that this unregistered offering facilitated the raising of billions' worth of crypto-assets from hundreds of investors. In December 2020, Genesis entered into an agreement with Gemini to offer US customers an opportunity to loan their crypto-assets to Genesis in exchange for interest paid by Genesis. Gary Gensler noted that:

> *Today's charges build on previous actions to make clear to the marketplace and the investing public that crypto lending platforms and other intermediaries need to comply with our time-tested securities laws. Doing so best protects investors. It promotes trust in markets. It's not optional. It's the law.*

In February 2021, Genesis and Gemini began offering the Gemini Earn program to retail investors, who had the opportunity to tender their crypto-assets to Genesis with Gemini acting as an agent to facilitate the transaction. The SEC alleges that Gemini would acquire an agent fee, from the returns Genesis paid to Gemini Earn investors, which was at times as high as 4.29 percent. Genesis would then use its discretion in how to use investor's crypto-assts to generate revenue and interest to investors in the Gemini Earn program. Gurbir S. Grewal, Director of the SEC's Division of Enforcement, said:

> *The recent collapse of crypto asset lending programs and the suspension of Genesis' program underscore the critical need for platforms offering securities to retail investors to comply with the federal securities law*

In November 2022, Genesis informed Gemini Earn investors that it would not allow them to withdrawn their crypto-assets due to Genesis lacking sufficient liquidity to meet withdraw requests due to volatility in the crypto-asset market. At this time, it is alleged that Genesis held approximately $900 million in investor assets from 340,000 Gemini Earn investors. In early January 2023, Gemini terminated the Gemini Earn program.

The SEC alleges that there are further investigations into other securities law violations and alleged misconduct which is ongoing. To date, the Gemini Earn investors still have not been able to withdraw their crypto-assets.

US Congress creates crypto subcommittee for regulation

The United States Congress has announced the launch of its newest subcommittee, one which will oversee and focus on the crypto and fintech industries. The Subcommittee on Digital Assets, Financial Technology, and Inclusion will be a part of the powerful House Financial Services Committee.

The US representative for Arkansas, French Hill, will chair the committee following his work on the Task Forces on Financial Technology and Artificial Intelligence and the Financial Services Committee. In a statement Mr. Hill acknowledged the change happening in the financial technology sector, and hinted at future regulation:

> *At a time of major technological advancement and change in the financial sector, it is our job to work across the aisle and promote responsible innovation while encouraging FinTech innovation to flourish safely and effectively in the United States.*

2022 was a tumultuous year for the crypto industry littered with cratering prices, ASIC stop orders, liquidation and capped off with the arrest of FTX CEO and founder Sam Bankman-Fried.

While the bad seemingly outweighs the good, 2022 also saw increased calls to action for regulation and legislation to be implemented to protect the industry and encourage participation.

Now, as we navigate the start of 2023, this subcommittee may help give the US the kind of crypto-knowledge and sensible regulation which has to date been lacking. Representative Hill has a reputation of being crypto-friendly, and at a minimum he is clearly knowledgeable about the challenges and opportunities posted by blockchain and crypto, which can only be a plus for the industry.

BlackRock eyes tokenised future

In recent comments, the Chairman and CEO of BlackRock, Larry Fink, the world's largest asset manager, has repeatedly endorsed the prospects and merits of tokenization in financial markets. In an interview with Aaron Ross Sorkin at the New York Times Dealbook Conference in late November, Fink said:

> *The next generation for markets, the next generation for securities, will be tokenization of securities.*

The notion of tokenisation refers to a digital representation of an asset, which is minted and tradable on a blockchain. Tokenisation allows for a different way of trading assets when compared to traditional shares, bonds or real estate. The transaction is recorded on a ledger that is secure and decentralised.

Fink noted that distributed ledger technology offers the benefit of instantaneous settlement and dramatically reduced fees by eliminating middlemen.

Fink also believes that tokenisation can have benefits for investor participation and governance, commenting to CNBC last week:

> *We want to democratize the vote. This is one of the reasons why I'm focused on the whole idea of blockchain for securities. I look forward to the day when we can tokenize stocks and bonds that every stock and every bond we can identify immediately who is the beneficial owner and this is why we're working on it and every beneficial owner from an individual to an institution have the ability to vote, to democratize every single vote, and that's where we want to take this and we're leading that effort.*

Tokenisation has received increasing attention from financial titans and venture capitalists. In May last year, Flowcarbon, which tokenizes carbon credits, raised $70 million of funds from prominent investors such as General Catalyst and Samsung Venture Investment. In November 2022, JPMorgan worked with Polygon to trade tokenised cash deposits.

While JP Morgan's CEO, Jamie Dimon, has been a longtime critic of cryptocurrencies, the bank has been a prominent backer of blockchain technology and tokenisation through its Onyx platform. The unit's head, Tyrone Lobban, trumpeted

the prospects of institutional DeFi at last year's Consensus conference:

> *Over time, we think tokenizing U.S. Treasurys or money market fund shares, for example, means these could all potentially be used as collateral in DeFi pools…The overall goal is to bring these trillions of dollars of assets into DeFi, so that we can use these new mechanisms for trading, borrowing [and] lending, but with the scale of institutional assets.*

These developments indicate strong institutional interest in the applications of blockchain technology to financial markets. The application of these technologies to Australia's markets is likely to be considered further as part of the Government's proposed reforms to payments and market infrastructure which it has promised to progress this year.

NAB to launch AUDN stablecoin

National Australia Bank (**NAB**) is set to join big-four competitor ANZ in launching its own stablecoin called AUDN by mid-2023.

AUDN will be minted on the Ethereum blockchain and will be backed one-for-one with fiat currency, in this case Australian dollars held by NAB. The AUDN stablecoin will offer NAB customers the ability to settle transactions in real time, including when sending money overseas or trading carbon credits.

NAB's Head of Innovation, Howard Silby said:

> *We certainly believe there are elements of blockchain technology that will form part of the future of finance… That continues to be the source of some debate. But certainly, from our point of view, we see [blockchain] has the potential to deliver instantaneous, transparent, inclusive, financial outcomes.*

Stablecoins are a sensible entry point into blockchain and Web3 for large financial groups as they are well positioned to offer trusted asset-backed tokens. NAB's launch may spur on further investment and research as its customers are exposed to the benefits of blockchain technology.

Although blockchain technology and cryptographic tokens are yet to reach their full potential, it is significant that two of the 'big four' banks in Australia have seen benefits in adopting stablecoins in some capacity. NAB intends to use AUDN as a settlement token, allowing for transfers and transactions to be settled instantly.

Digital asset specialist, DigitalX, has promised to use AUDN to prove reserves in digital asset funds and create real-time settlements.

The Governor of the Reserve Bank of Australia (RBA), Phillip Lowe, has previously endorsed the benefits of stablecoins describing them as:

> *the one piece of the crypto landscape where I think there is real promise*

Meanwhile, late last year, the RBA confirmed that Australia's Council of Financial Regulators (**CFR**) is working on options to incorporate payment stablecoins into the regulatory framework for stored-value facilities. NAB and ANZ are reported to be working closely with financial regulators on the regime.

With two of Australia's major banks now backing stablecoins, the future for stablecoins as one part of Australia's evolving payments landscape looks bright.