

Article Information

Authors: Michael Bacina, Steven Pettigrove, Tim Masters, Jake Huang, Luke Higgins, Luke Misthos, Kelly Kim,

Service: Blockchain, FinTech

Sector: Financial Services, IT & Telecommunications

Blockchain Bites: ASIC doubles down on crypto strategy, US Congress to review bipartisan stablecoin bill, Consensys in discord with SEC as battle for Web3 heats up, US puts Samurai Wallet to the sword, Binance faces class action in Canada

Michael Bacina, Steven Pettigrove, Tim Masters, Jake Huang, Luke Higgins, Luke Misthos & Kelly Kim of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

ASIC doubles down on crypto strategy

ASIC Chair Joe Longo outlined ASIC's stance in relation to cryptocurrency in a [recent interview with Sky News](#):

...people think crypto is not regulated. It is regulated. It may not be completely regulated, which is why we have law reform coming. So part of ASIC's [regulatory] strategy is to test the regulatory perimeter.

Mr Longo's comments follow a number of ASIC actions in recent months targeting crypto-related offerings, including its decision to [appeal the Federal Court's judgment finding that Finder Wallet's Finder Earn product was not a debenture](#). In his interview with Sky News, Mr Longo reiterated ASIC's view that the product is a debenture and ASIC's desire to send a strong message that it will take enforcement action where it believes that cryptocurrency related offerings are regulated.

When asked to elaborate on ASIC's enforcement strategy, Mr Longo commented:

My job is to administer the law. A lot of crypto-related investment activity is subject to current regulation. If people aren't complying with the law at the moment, we will take action.

There are a number of matters we are currently investigating.

Turning to global regulatory developments, Mr Longo stated:

...what is interesting about what is happening internationally is that each jurisdiction is taking a slightly different approach. So the Americans, for example...it is all about whether [cryptocurrency] is a security or not.

The [US regulatory environment] is very different to Australia, [as] we have a regime around financial products and services.

If we think [a business offers] a financial product or service, we will take action.

Every jurisdiction has a different approach, but we're all focused on consumer protection.

Mr Longo accepted that there are limits to the regulatory perimeter and that greater clarity is required. In response to the interviewer addressing the lack of specific legislation and regulatory guidance regarding crypto-asset activities, Mr Longo stated:

We are closely working with government and treasury to come up with a regulatory framework which is more fit for purpose...the key point is [crypto] is not entirely unregulated at the moment. If it is a financial product or service, [ASIC] will be there.

Pressed on the timeline for much anticipated legislative reforms, Mr Longo emphasised that there was still a long road ahead, indicating that legislation could slip into next year or even beyond the next election:

At the moment we are still in the consultation phase. The draft legislation hasn't been exposed yet. It is certainly a government priority and we are doing everything we can to work with government and treasury to get progress there. The government has a lot on its plate.

Mr Longo concluded by [reiterating his previous comments cautioning investors](#) from investing in assets which they don't understand.

As crypto-asset markets ramp up again, it looks like the Australian crypto industry is set for more regulatory stick than carrot in the near term. The legislative momentum which seemed to be gathering pace in 2022 following a number of high profile collapses has given way to a range of other priorities. This will disappoint many industry advocates who have called for clear rules to weed out "bad actors" and establish common rules for the industry.

While ASIC has long argued for greater consumer protections in relation to crypto-assets, the very absence of regulatory reform risks leaving consumers exposed in the event of future collapses. There is an urgent need to press on with establishing legislation to protect consumers and harness the benefits of blockchain technology, or risk driving innovators and consumers offshore [as legislative efforts overseas continue to gather pace](#).

Written by Michael Bacina, Steven Pettigrove and Luke Higgins

US Congress to review bipartisan stablecoin bill

In a bipartisan effort to fortify the regulatory landscape surrounding stablecoins, US [Senators Kirsten Gillibrand and Cynthia Lummis have introduced the "Lummis-Gillibrand Payment Stablecoin Act" bill](#). The proposed legislation aims to establish a clear regulatory framework for stablecoins, striking a balance between fostering innovation, consumer protection, and maintaining the integrity of the US dollar.

The core objective of the bill is to ensure that stablecoins operate within a well-defined regulatory framework. This move comes as various stakeholders, including [Federal Reserve Chair Jerome Powell](#) and [Treasury Secretary Janet Yellen](#), advocate for robust oversight of stablecoin operations.

The legislation proposes to mandate one-to-one reserves for stablecoin issuers, which aims to ensure that issuers maintain sufficient backing for their digital assets, mitigating the risk of insolvency and loss for users. Moreover, the act prohibits the issuance of unbacked algorithmic stablecoins, likely in response several failures (see the [Luna collapse of May 2022](#)). Recognising the global nature of digital finance, the bill also addresses illicit finance and aims to prevent stablecoins from being used for money laundering and terrorist financing.

Senator Lummis has been outspoken on the topic of cryptocurrency and blockchain, often appearing to champion the cause:

NEWS: US Senator Cynthia Lummis suggests that high-ranking government officials perceive [#Bitcoin](#) as a threat because it's decentralized and they cannot control it. pic.twitter.com/5eFrzNqlgs

— Simply Bitcoin (@SimplyBitcoinTV) [April 9, 2024](#)

<<https://twitter.com/i/status/1777733999475007593>>

While the legislation represents a significant step towards regulating stablecoins, [industry participants have voiced concerns regarding its scope and potential implications](#). One immediate concern revolves around the bill's treatment of crypto-backed tokens like DAI and the outright ban on algorithmic stablecoins. Critics argue that the legislation lacks provisions addressing these specific types of stablecoins, potentially leaving gaps in regulatory coverage.

Moreover, the bill primarily focuses on regulating stablecoins issued by US companies, raising questions about its efficacy in addressing stablecoins issued by foreign entities such as Tether (**USDT**). Although the legislation aims to curtail the use of unregulated foreign stablecoins by imposing stringent regulations on US-based issuers, there remains uncertainty about its ability to prevent foreign entities from accessing US customers.

Looking ahead, the fate of stablecoin legislation hinges on several factors, including congressional priorities, legislative timelines, and ongoing negotiations. With legislators increasingly focused on campaign activities for the [upcoming US presidential election](#), the window for passing comprehensive stablecoin legislation may narrow. However, there remains optimism that bipartisan support and growing awareness of the need for regulatory clarity will propel the bill forward.

While uncertainties persist, there is a palpable sense of urgency to enact meaningful regulatory reforms that balance innovation with consumer protection. As the debate surrounding stablecoin regulation continues to evolve, stakeholders across the financial ecosystem remain hopeful that concerted efforts will yield a robust regulatory framework that fosters innovation, safeguards consumers, and strengthens the integrity of the financial system.

As the legislative journey unfolds, stakeholders must remain vigilant, actively engaging with policymakers to shape the future of stablecoin regulation and ensure a vibrant and resilient digital economy for the future.

Written by Luke Higgins and Steven Pettigrove

Consensys in discord with SEC as battle for Web3 heats up

The developer of the MetaMask cryptocurrency wallet, [Consensys, has filed a lawsuit against the United States Securities and Exchange Commission \(SEC\)](#) pre-empting possible regulatory enforcement action against the company. Consensys is seeking declaratory relief that the Ether cryptocurrency, the native token of the Ethereum blockchain, is not a security and that its MetaMask Swap and Staking products do not violate securities laws. Consensys is also seeking injunctive relief against investigations and enforcement action against Consensys, including on the basis that it violates Fifth Amendment protections on due process.

Consensys offers software solutions as well as blockchain technology and services to Web3 participants, working closely with the Ethereum Foundation. The complaint, filed in the United States District Court for the Northern Division of Texas, referred to a Wells Notice received by Consensys, foreshadowing possible SEC enforcement action against Consensys and alleging Consensys violated securities laws by offering the Metamask Swap and Staking products.

Consensys [took to their website](#) to explain its action against the SEC.

We took this step for two very basic reasons: (1) the SEC should not be allowed to arbitrarily expand its jurisdiction to include regulating the future of the internet; and (2) the SEC's reckless approach is bringing chaos to developers, market participants, institutions, and nations who are building or already managing critical systems running on Ethereum, the world's largest platform for decentralized applications.

Consensys' action reflects a growing frustration in the industry that the SEC's approach to Web3 and cryptocurrency involves a fundamental mischaracterization of the foundational technology that Web3 is built on and represents a blatant refusal to work with the industry to create clear rules and a pathway to compliance.

Consensys' Founder and CEO, Joe Lubin (who is also a Co-Founder of the Ethereum blockchain), [stated in the company's blog post](#):

We have time and time again witnessed the current SEC contradict itself with ever-changing views on the blockchain, consistently mischaracterizing this technology and what is built on it as a shallow and doomed investment scheme, rather than as the breakthrough technology it is.

In Australia, the [Australian Securities and Investments Commission \(ASIC\) has adopted aspects of the United States' regulation by enforcement approach](#) promising to test the regulatory perimeter insofar as existing financial services laws apply to crypto-asset related products and service ([with similarly mixed results](#)). However, ASIC is also working closely with Treasury on regulatory reforms to establish a licensing regime for digital asset custodians and intermediaries.

Consensus' action highlight the US crypto industry's [increasingly combative stance in seeking to push back on the SEC's enforcement strategy](#). The SEC approach has seen mixed results, with some [notable defeats including its failure to establish that the XRP token was inherently a security](#). With the SEC now increasingly targeting what many regard as the "good actors" in the industry, the US crypto industry increasingly looks set for a showdown with the SEC over the future of Web3, despite [ongoing US legislative efforts to establish clear ground rules for the industry](#).

Written by Luke Misthos and Steven Pettigrove

US puts Samurai Wallet to the sword

[The US Department of Justice \(DOJ\) has charged the founders of crypto-mixing service, Samurai Wallet, with money laundering and unlicensed money transmitting offences in the US](#). The DOJ alleges that Keonne Rodriguez and William Lonergan Hill, as Samurai's CEO and CTO, were responsible for the 'development, marketing, and operation' of the mixer since about 2015. It is alleged that Samurai Wallet operated as an unlicensed money transmitting business, obfuscating the sources of customer funds through two key services, namely the 'Whirlpool' (mixing) service and 'Ricochet' (adding unnecessary intermediary transactions or 'hops' in the main transaction) service.

In a [press release](#), US Attorney Damian Williams noted:

Samurai...executed over \$2 billion in unlawful transactions and served as a haven for criminals to engage in large-scale money laundering. Rodriguez and Hill allegedly knowingly facilitated the laundering of over \$100 million of criminal proceeds.

The pair were arrested on Wednesday, with Hill's extradition from Portugal pending approval. They will face trial in the US with the District Judge Richard Berman hearing the case. In the meantime, Samurai's website and domain were seized in a joint effort with law enforcement powers in Iceland and a seizure warrant has been served on Google's Play Store, restricting access to the Samurai mobile application in the US.

Williams highlighted the US regulators' heightened vigilance towards the use of cryptocurrency in crimes:

Together with our law enforcement partners, we will continue to relentlessly pursue and dismantle criminal organizations that use cryptocurrency to hide illicit conduct.

The latest indictments follow [the recent conviction of Roman Sterlingov, the founder of the crypto mixer Bitcoin Fog, on four charges involving money laundering](#). Three developers who allegedly created and operated the Tornado Cash protocol [are currently being prosecuted in the Netherlands and the United States on anti-money laundering and sanctions violations](#).

The US authorities' [controversial sanctioning of Tornado Cash](#) now appears to be part of a broader crack-down on privacy tech and crypto mixing services. A key issue in these cases concerns the extent of the alleged accused's involvement in the development and ongoing operation of the software and whether the software itself could be infringing the laws in question, with many crypto lawyers suggesting it cannot as it is merely self executing code.

Written by Michael Bacina, Kelly Kim and Steven Pettigrove

Binance faces class action in Canada

Binance, one of the largest cryptocurrency exchanges in the world, was [sued in Canada last week, over alleged violations of Ontario's securities laws](#). The class action lawsuit was filed by Christopher Lochan and Jeremy Leeder, the representative Plaintiffs demanding damages and rescission of sale contracts entered into between retail customers and Binance. The plaintiffs claimed that the cryptocurrency sales were 'Illegal and void for failure of the Defendants to register

as required under the [Ontario Securities Act] or to file a prospectus.’

The [certification motion dated 19 April](#), accepted the relevant class in the lawsuit as all persons (excepting Binance or its subsidiaries) from September 13, 2019 to the date of the certification of the proceedings who purchased cryptocurrency derivative contracts from Binance.

The plaintiffs additionally highlighted the importance of the class action, submitting that the lead plaintiffs were only ‘two of the tens of thousands of Canadian users of the Binance website who invested in cryptocurrency products and who claim that those products were sold by the Defendants illegally.’

The certification states that Binance were previously notified by the Ontario Securities Commission (**OSC**) that it was contemplating enforcement proceedings:

On April 20, 2021, the Ontario Securities Commission (“OSC”) notified Binance that it was contemplating enforcement proceedings in respect of the Defendants “trading in and distributing securities without registering with the OSC and without filing a prospectus or obtaining an exemption, and that Binance was carrying on business as a marketplace without authorization.”

The class action follows the company’s withdrawal of services from the Canadian Market in May 2023, which placed all Canadian users into ‘liquidation-only mode’ from 1 October 2023 and indicative of the continued scrutiny Canadian authorities have maintained over the exchange following the departure of services from their lands.

The steps taken by the OSC against Binance can be seen as another example of the increasing pressure major exchanges face by global regulators despite the comparatively slow development of clear regulation for exchanges worldwide.

Written by Kelly Kim and Tim Masters