## Article Information

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# Blockchain Bites: Hot pursuit of cold cash: Celsius serving clawback actions in Australia, SEC announces Crypto 2.0 taskforce, ASIC extends custody guidance to crypto assets, Cryptopia returns $400m in crypto to creditors

***Steven Pettigrove, Jake Huang, Luke Higgins 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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**Hot pursuit of cold cash: Celsius serving clawback actions in Australia**

The latest episode in the Celsius bankruptcy saga is just in: the Litigation Administrator of the defunct crypto exchange has begun serving clawback complaints filed in the US bankruptcy court to Australian customers. These customers now face the imminent threat of having default judgments entered against them by a US court unless they respond to the complaints.

The Litigation Administrator filed around 2000 separate clawback complaints in July 2024 in a US bankruptcy court seeking to recover money and assets withdrawn by customers of the exchange in the 90 days prior to bankruptcy. Prior to its fall in 2022, Celsius held approximately USD $25 billion in assets for over 1.5 million users, making it one of the largest crypto-asset custodians in the world.

Celsius, which filed for bankruptcy on 13 July 2022, is relying on broad preference provisions under the US Bankruptcy Code to seek to avoid and recover from customers who made net withdrawals exceeding USD$100,000 in the 90 days prior to bankruptcy. It is also seeking to recover a number of allegedly fraudulent transfers.

The Litigation Administrator is now seeking to serve customers who did not receive or accept settlement offers made by the Litigation Administrator early last year with summons issued by the US court on clawback actions and other claims. Celsius is claiming the value of cryptocurrency withdrawn by customers at US dollar market prices as at 14 June 2024 plus interest and costs. For many, the claim amount will significantly exceed the value of assets withdrawn from the exchange at 2022 prices.

There are a number of potential defenses to preference claims under the US Bankruptcy Code. Depending on their individual circumstances, some creditors may be able to rely on one of these clawback defenses to defeat a preference claim, although this remains a live issue which will likely need to be determined by the US Court. For now, the Litigation Administrator is arguing that no defences will apply.

Customer served by the Litigation Administrators will need to act swiftly to understand their legal options, including potential defences and settlement strategies.

Piper Alderman is liaising with experienced US counsel on developments in the Celsius bankruptcy and offering assistance to Australian-based customers who may be affected by clawback actions.

*Written by Jake Huang and Steven Pettigrove*

**SEC announces Crypto 2.0 taskforce**

The new Trump administration has made a series of dramatic policy announcements and changes across a wide range of areas. For the blockchain industry, after years of regulation-by-enforcement by the SEC under Gary Gensler, some stunning changes have been announced. First, Commissioner Mark T. Uyeda, who has authored dissents against the prior regulation-by-enforcement approach, has been appointed Acting SEC Chair. Chair Uyeda has called the previous SEC approach:

> *a disaster for the whole industry*

As one of his first acts as Acting SEC Chair, Uyeda has announced the formation of a crypto task force, led by so-called "crypto-mom" Commissioner Peirce, who has written blistering dissents concerning previous enforcement actions by the SEC.

The Task Force aims to develop:

> *a comprehensive and clear regulatory framework for crypto assets…the Task Force will collaborate with Commission staff and the public to set the SEC on a sensible regulatory path that respects the bounds of the law*

Key priorities for the task force include:

1. Defining realistic paths to registration for crypto projects.
2. Developing disclosure frameworks that align with the unique nature of blockchain technologies.
3. Smarter deployment of enforcement resources, focusing on bad actors rather than the entire industry.

The announcement of the Task Force decries "enforcement actions to regulate crypto retroactively and reactively, often adopting novel and untested legal interpretations".

Commissioner Peirce, a longstanding advocate for thoughtful crypto regulation, has emphasised the need for collaborative input from investors, industry participants, and academics. The task force will also engage with Congress to provide technical assistance, aiming to align the SEC's regulatory efforts with the statutory framework and broader policy objectives.

Commissioner Peirce is under no illusion as to the challenges ahead, saying:

> *This undertaking will take time, patience, and much hard work. It will succeed only if the Task Force has input from a wide range of investors, industry participants, academics, and other interested parties.*

Given the significant influence the SEC has over international crypto regulation, this move is likely to have global ramifications.

This new direction represents a dramatic shift in US policy by embracing innovation and seeking to establish policy settings that facilitate the unique features of blockchain and digital assets. By working together with industry stakeholders and international counterparts, the SEC's new approach has the potential to rebuild trust with the crypto industry, and establish a regulatory environment that protects investors while recognising the potential of the digital economy.

*Written by Michael Bacina, Steven Pettigrove and Luke Higgins*

**ASIC extends custody guidance to crypto assets**

In December 2024, the Australian Securities and Investment Commission (**ASIC**) issued an updated version of its *Regulatory Guide 133 Funds management and custodial services: Holding assets* (**RG133**). RG133 sets out the regulator's minimum standards for asset holders to ensure that they meet their obligations under their Australian Financial Services Licence (**AFSL**). This is the most significant update to the guidance since 2022, and for the first time formally extends the standards to the custody of crypto-assets.

Generally, the good practice standards in RG133 apply to licensed asset holders and custodians engaged by them to hold crypto-assets. With regards to crypto custody, the new standards in RG133 apply to:

- responsible entities (mostly licensed retail fund managers) where they hold crypto-assets; and
- custodians where crypto-assets are financial products.

While RG133 is not a legal instrument, it expresses ASIC's views and expectations when it interprets and enforces the law in relation to custody arrangements, including in the context of assessing whether the asset holder which holds or relies on an AFSL is complying with its general obligations to ensure that the financial services are provided efficiently, honestly and fairly and to have in place adequate resources to carry out their obligations.

While RG 133 formalises ASIC's good practice standards for crypto custody for the first time, it mostly reflects guidance first introduced in 2021 in ASIC's Information Sheet 225 (which is subject to changes in the near future, with a proposed draft released in December 2024).

The key changes to RG133 require:

- **Specialist expertise and infrastructure** relating to crypto-asset custody, including robust systems and practices to receive, validate, review, report and execute instructions from the relevant client.
- **Robust cyber and physical security practices** for operations, including appropriate internal governance and controls, risk management and business continuity practices.
- **Crypto-assets should be segregated on the blockchain**. This means that unique public and private keys are maintained by the asset holder so that other assets are not intermingled with crypto-asset holdings.
- **The private keys** used to access the crypto-assets should be generated and stored in a way that **minimises the risk of loss and unauthorised access**. This requires, for example, solutions that protect private key materials using hardware devices should be physically isolated, and subject to robust physical security practices.
- **The security of private keys is of critical importance**. Asset holders should ensure that the private keys used are protected from unauthorised access—both online and offline.
- Asset holders should adopt a **transaction-signing approach that minimises single point of failure risk**. For example, a multi-signature or sharding-based signing approach is preferred to a single private key to sign transactions.
- The process of **receiving, validating, reviewing and executing instructions should include appropriate permissioning** so that no one party has control of the entire process.
- Cyber security practices and control environments are independently verified to an appropriate standard, as determined by industry practice.

In addition, RG133 also creates new risk management standards for asset holders regarding crypto asset exchanges that they use to obtain crypto-assets. These standards are new and were not included in the previous INFO225. Specifically, ASIC considers it good practice for asset holders to carefully consider where they source their crypto-assets from, including their service providers used to buy or sell crypto-assets. ASIC expects, among other things:

- the asset holder should be satisfied, based on reasonable due diligence, that any service provider it relies on is a **digital currency exchange provider registered with the Australian Transaction Reports and Analysis Centre** (**AUSTRAC**), or is regulated by foreign laws giving effect to the Financial Action Task Force recommendations relating to customer due diligence and record-keeping.
- implements risk-based systems and controls under the *Anti-money Laundering and Counter-Terrorism Financing Act* (**AML/CTF Act**) that are supervised or monitored by a body empowered by law (e.g. AUSTRAC) to supervise and enforce the customer due diligence and record-keeping obligations.
- the asset holder should ensure that authorised participants, market makers and other service providers that trade crypto-assets in connection with the product do so through a service provider that meets the same standard as above.
- the asset holder is responsible for ensuring its **risk management systems appropriately manage all other risks posed by crypto-assets**. This could include implementing or applying relevant standards published by Australian and international organisations as they are developed.

In addition to the new standards in RG133, ASIC's Report 705 *Response to submissions on CP 343 Crypto-assets as underlying assets for ETPs and other investment products* (**REP 705**), which clarifies guidance in previous versions of RG133 and INFO225, should also be considered together with this version of RG133.

Given ASIC's complex custody standards for crypto assets, it is recommended that licence holders and custodians seek advice from legal and industry professionals to ensure they are meeting ASIC's expectations and custody best practice.

*Written by Jake Huang and Steven Pettigrove*

**To Dystopia and back as Cryptopia returns $400m in crypto to creditors**

The long running liquidation of the defunct New Zealand cryptocurrency exchange Cryptopia has reached a pivotal milestone. Liquidators from Grant Thornton have confirmed the return of over NZ$400 million in cryptocurrencies, including Bitcoin and Dogecoin, to 10,000 verified account holders. The distribution follows Justice Gendall's 2020 decision recognising cryptocurrencies as intangible property and held on trust by exchange.

*The Rise and Fall of Cryptopia*

Cryptopia was a popular cryptocurrency exchange that suffered a hack in January 2019, resulting in the loss of NZ$30 million from user accounts. This, coupled with other scandals such as a Cryptopia employee making unauthorised copies of private keys in an attempt to steal NZD$250,000 worth of cryptocurrency, embroiled the exchange in turmoil. The incidents damaged the exchange's reputation and drastically reduced trade volumes, leading to Cryptopia's eventual liquidation.

Faced with uncertainty about the legal status of cryptocurrency assets in New Zealand, the liquidators sought guidance from the High Court. They filed an application to clarify whether cryptocurrencies qualified as 'property' under the *Companies Act 1993* (NZ) and could be held in trust for account holders, or if the assets were beneficially owned by Cryptopia.

Justice Gendall determined that the cryptocurrencies held by Cryptopia were intangible personal property and should be classified as trust property. This ruling meant that the cryptocurrencies would be distributed to account holders rather than being treated as company assets.

*More to Come*

These distributions followed years of diligent efforts to identify users and verify millions of transactions across nearly a million accounts. The Liquidators' Second Report highlights two significant challenges in determining customer holdings:

> *Customers did not have individual wallets and it is impossible to determine individual ownership using just the keys in the wallets.*
>
> *…*
>
> *No detailed reconciliation process between the customer databases and the crypto-assets held in the wallets has ever been completed.*

This marks only the beginning of the distributions, which were approved in March 2024. Grant Thornton celebrated this achievement in a press release and outlined future plans for further distributions:

> *Following this first distribution, liquidators will continue to follow the approved process. This includes giving notice of cut-off dates before distributing the remaining Bitcoin, Dogecoin and all other cryptocurrencies of sufficient value to account holders.*

Grant Thornton has urged remaining account holders to register on the claims portal to ensure their inclusion in future distributions. The liquidators also mentioned 'top-up' payments that will enable account holders to recover up to 100% of their lost funds using 'unclaimed holdings' from users not registered in the claims portal by the specified cut-off dates.

*Written by Steven Pettigrove and Emma Assaf*