Article Information

Authors: Steven Pettigrove, Jake Huang, Luke Higgins, Luke Misthos
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Blockchain Bites: Block Earner triumphs in ASIC appeal, Defi "Broker Rule" ripped up by US Congress and Trump, SEC published Crypto Disclosure Guidance, Danger on the crypto Oregon Trail

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.

Block Earner triumphs in ASIC appeal

In a landmark decision, the Full Federal Court has allowed a cross-appeal brought by Web3 Ventures Pty Ltd, trading as Block Earner, holding that its fixed-yield 'Earner' product did not constitute a "financial product" under the *Corporations Act 2001 (Cth)* (Corporations Act). As a result, Block Earner was not required to hold an Australian Financial Services Licence (AFSL) to offer the product to consumers and did not contravene the Corporations Act.

The decision marks a significant shift from the Federal Court's earlier ruling, which had found that the Earner product required licensing. The Full Court's decision effectively resolves ASIC's case against Block Earner, subject to any High Court appeal by ASIC. The decision provides important clarity on a number of key legal principles relevant to the financial services licensing regime in Australia and could have influence in other common law countries.

Background to the Block Earner Case

Between March and November 2022, Block Earner offered two key products:

1. Earner – a fixed-yield product involving crypto-assets, and
2. Access – a variable-yield product, which the Federal Court earlier held was not a financial product.

ASIC alleged that by offering the Earner product, Block Earner was providing financial services without a licence in breach of Chapter 7 of the *Corporations Act*. It pursued both injunctive relief and pecuniary penalties.

In February 2024, the Federal Court agreed with ASIC that the Earner product was a financial product, finding that it likely constituted a managed investment scheme (MIS), financial investment, or possibly a derivative. A second product, called Access, was found not to be a financial product by the court. Some weight was placed in the decision on a representation by Block Earner on their website, when his Honour said at [42]:

it is clear from the statement which appeared on the Block Earner website from March to May 2022 that the contributions made by users were to be "pooled", "pooling customer funds" being the very term used on the website.

However, in June 2024, the Court relieved Block Earner of any penalty, principally on the basis that the company had obtained legal advice, the company's cooperation, and the novelty of the legal issues raised. ASIC appealed the penalty decision in June 2024. Block Earner cross-appealed the core finding that the Earner product was a financial product.

The Earner Product

The analysis of the Full Federal Court considered whether the Earner product constituted an interest in an MIS, a financial

investment product, or a derivative.

The Earner product allowed customers to lend crypto-assets to Block Earner and receive a fixed rate of interest over the term of the loan. Block Earner used the loaned cryptocurrency to generate income by lending the cryptocurrencies to third parties. Under the terms of use of the Earner product, Block Earner was required to pay a fixed rate to its customers regardless of the income it earned in relation to the cryptocurrency which was the subject of the loan, and the terms and conditions made this point clear. This factor was critical to the Full Federal Court's decision which also focused on applicable disclosure in Block Earner's user terms.

Earner was not an interest in an MIS

The Full Federal Court concluded that the Earner product was *not* an interest in an MIS as it did not satisfy key elements of the definition contained in section 9 of the Corporations Act. The judgment emphasized that there must be a nexus between the user's contribution to the scheme and the user's acquisition of rights to specific benefits produced by the scheme.

The Court held that Block Earner users' rights were defined by the applicable user terms and limited to the repayment of principal and interest on loans and that users did not acquire any right to benefits produced by Block Earner for itself from loan proceeds [56]. In so holding, the Court distinguished the returns generated by Block Earner from loan proceeds from the statutory concept of a customer acquiring rights to benefit from a scheme [56].

Further, the Court held that despite the fact Block Earner pooled user's loan proceeds, such proceeds were not pooled for the purpose of generating returns for users [74]. Block Earner did not pass on returns generated from the pooling of loan proceeds. Its only obligation to users was to return the loan principal and interest and users did not have economic exposure to Block Earner's use of those loan proceeds. In so holding, the Court again pointed to specific disclosure in user terms indicating that any interest paid to users was not referable to activities undertaken by Block Earner [72].

In summary, the Full Federal Court found that:

1. the terms of the Earner product did not represent or promise that contributions of money or money's worth made by Block Earner's customers were in consideration for the acquisitions of rights to benefits produced by the scheme (see paragraphs [50]-[64]);
2. the funds of Block Earner's customers were not pooled *for the purposes* of producing financial benefits for the members of the 'scheme' in circumstances where they have acquired rights to those benefits (see paragraphs [65]-[77]).

Earner was not a financial investment product

The Full Federal Court concluded that the Earner product was *not* a financial investment under section 763B of the Corporations Act. The Full Federal Court found that the terms governing the offer of the Earner product did *not* lead to a conclusion that:

1. a contribution would be *used* by Earner to generate a financial return or other benefit for the investor, as profits produced by the scheme were not paid to users (see paragraphs [88]-[91], in particular the extract of affidavit evidence at paragraph [89]); and
2. there was an intention by the investor that the contribution would be used to generate a financial return or other benefit, or that Block Earner intended to use that contribution to generate a financial return or other benefit for the investor (see paragraphs [94-[98]).

The Court again pointed to the fact that Block Earner used loan proceeds to generate returns for itself rather than for investors [90]-[91]. In analysing investors' understanding of these arrangements, the Court focused on disclosure in Block Earner's user terms and noted the fact that ASIC had failed to adduce primary evidence from investors of their understanding of these arrangements.

Earner was not a derivative

The Full Federal Court concluded that the Earner product was not a derivative for the purposes of section 761D of the Corporations Act. The Court distinguished between Block Earner's exchange, Earner and Access products and found that they did not constitute a single arrangement. On this basis, it was not open to the Court to find that the Earner product constituted a derivative in circumstances where money repaid to users was not necessarily converted into Australian Dollars such that the consideration or value of the arrangement varied by reference to the price of cryptocurrency [132]-[133].

In that context, it was not necessary for the Full Federal Court to go on to consider whether the Earner product was otherwise exempt from being a derivative on the basis that it was a credit facility or a contract for the provision of future services [138].

Relief on penalty

While the Full Federal Court allowed Block Earner's cross-appeal and dismissed ASIC's appeal, it took the opportunity to make an important observation on penalty relief at the end of its judgment – one that litigants would be wise not to overlook.

At paragraphs [139]-[141] the Full Federal Court noted that Block Earner had been relieved from liability to pay a pecuniary penalty in part because the primary judge accepted that it had obtained legal advice in relation to the Earner product. However, Block Earner neither produced the legal advice nor provided evidence as to its contents. The circumstances of the case – both procedural and evidentiary – led the primary judge to accept the advice was obtained, without further elaboration. But in clarifying the principles that would ordinarily apply, the Full Federal Court sounded a cautionary note suggesting that the primary judge may have erred in providing relief.

If a defendant seeks to rely on the fact of having obtained legal advice as a mitigating factor in penalty proceedings, or as a basis for being relieved from liability altogether, they must generally do more than simply assert that advice was received. As the Court put it:

A defendant who seeks to contend either that they should be relieved from liability to pay a pecuniary penalty… or that a penalty should be fixed in an amount lower than it otherwise would be, because they had received relevant legal advice would ordinarily need to give evidence about what advice they had in fact received.

This is a clear statement that invoking legal advice as a shield against regulatory penalties requires a willingness to substantiate the nature and substance of that advice.

Conclusion

The Block Earner judgment represents a major legal victory for Block Earner and the crypto industry's resistance to the regulatory perimeter being explored by litigation and provides important clarification of the legal principles which apply in relation to investment products. Unfortunately, considerable ink and expense has been spilled in order to reach this conclusion rather than a collaborative approach being taken to find meaningful pathways to compliance.

The Full Court's decision underscores the difficulties faced by industry participants trying to determine how rules designed for traditional finance will apply, and for regulators struggling to apply the existing financial services framework to innovative and decentralised products and services. The decision reinforces the urgent need for fit for purpose regulation and a more flexible and engagement-driven approach to regulatory relief as well as clear guidance on how new products and services can practically comply with the law.

Written by Steven Pettigrove and Luke Higgins with Michael Bacina

Defi "Broker Rule" ripped up by US Congress and Trump

In a significant development for the cryptocurrency industry, President Donald Trump signed legislation yesterday, overturning an Internal Revenue Service (**IRS**) rule that had expanded the definition of "broker" dramatically to include decentralized cryptocurrency exchanges and self-custodial wallet providers.

Background of the Rule

The controversial rule originated from the US $1 trillion bipartisan Infrastructure Investment and Jobs Act of 2021, which expanded broker reporting requirements under Sections 6045 and 6045A to include digital assets. In the final weeks of the Biden administration, the IRS issued a revised rule (T.D. 10021) that specifically targeted decentralized finance (**DeFi**) platforms by classifying them as "digital asset middlemen."

The rule would have required these entities to collect and report revenue and customer information, including names, addresses, and transaction details, similar to traditional securities brokers. This reporting framework was designed as a revenue offset, with the Joint Committee on Taxation estimating it would raise nearly US $28 billion over ten years.

Industry Opposition

The cryptocurrency industry strongly opposed these regulations, arguing they were fundamentally unworkable for DeFi platforms, which by design don't act as intermediaries and often lack visibility into user identities and simply could not report transactions when operating in a decentralised way.

Industry associations including the Blockchain Association, Texas Blockchain Council, and DeFi Education Fund filed a lawsuit in December 2024, seeking an injunction against the rule. Critics maintained that the Treasury Department had effectively changed the definition of "broker" far beyond what Congress had intended in the original legislation.

Congressional and Executive Action

Both the House of Representatives and Senate voted in March 2025 to nullify the

revision through the Congressional Review Act, which allows Congress to reverse new federal rules with a simple majority.

President Trump, who had campaigned as a "crypto president" and promised to promote digital asset adoption and fire the former SEC Chair, signed the bill into law on 10 April, finalizing the nullification of the expanded broker definition. This action aligns with earlier executive orders from the Trump administration that created a cryptocurrency working group and established a federal stockpile of bitcoin.

After attending the signing of the new law, the sponsor of the bill, Mike Carey (R) said:

The DeFi Broker Rule needlessly hindered … innovation, infringed on … privacy… and was set to overwhelm the IRS with an overflow of new filings that it doesn't have the infrastructure to handle during tax season. By repealing this misguided rule, … the IRS [has] an opportunity to return its focus to the duties and obligations it already owes … instead of creating a new series of bureaucratic hurdles

The President of the Blockchain Association, Kristin Smith, said:

This rule promised an end to the United States crypto industry – it was a sledgehammer to the engine of American innovation. On behalf of our members, and the entire industry, we're grateful to have this harmful rule off the books for good.

Impact and Future Outlook

The nullification represents a significant victory for the cryptocurrency industry, particularly for DeFi developers, self-custodial wallet providers, and other non-custodial entities that would have faced substantial compliance challenges under the expanded definition.

The reversal of this rule signals a more favorable regulatory environment for cryptocurrency innovation under the current administration, though broader questions about appropriate taxation and reporting frameworks for digital assets remain to be addressed.

Industry participants can now operate without the immediate threat of these expanded reporting requirements, which had been scheduled to take effect for transactions occurring on or after 1 January 2027.

Written by Steven Pettigrove and Michael Bacina

SEC Crypto Disclosure Guidance: A Blueprint for Web3 Projects as well?

The SEC's Division of Corporation Finance recently released guidance on disclosure requirements for crypto asset securities. While targeting securities offerings, the guidance serves reads as a valuable blueprint for the kinds of disclosures which all web3 projects should strive to achieve – whether their tokens are securities or not.

Why should non-security token projects care? Because given the amount of rug pulls and scams and hacks in crypto and the outsized narrative those have created, transparency builds trust, attracts quality participants, and creates sustainable communities in a longer term model. The framework offers a ready-made template for responsible disclosure that can benefit any project.

The Web3 Transparency Imperative

Token-based projects operate in an environment where information asymmetry can be extreme. Developers typically possess vastly more knowledge about the project, technology, tokenomics, and details of the governance than token

holders. By adopting rigorous disclosure practices, projects can build better trust, attract more sophisticated participants, help rating sites understand the projects, reduce the risk of misledaing or deceptive conduct claims, and establish best practices.

The Essential Disclosure Checklist for Web3 Projects

Based on the SEC guidance, with a few tweaks, here's a practical checklist web3 teams should consider implementing:

Business Description

Clear explanation of the network/application's purpose and functionality:

- Current development stage and a realistic timeline to full deployment, too many projects are overly optimistic on their roadmaps;
- Technical architecture, consensus mechanism, and transaction validation processes;
- Governance system and update/upgrade processes, which is only becoming more important as 'control' is a rising theme in determining decentralisation;
- Revenue generation model and value creation mechanisms, but being mindful of the risk of offering returns which could trigger securities laws;
- Network roles (validators, users, developers) and their relationships with each other; and
- Security measures and third-party audit status and frequency.

Token Characteristics

- Technical specifications (divisibility, transferability, network fees);
- Token utility within the ecosystem;
- Total supply mechanics (fixed, inflationary, deflationary);
- Initial distribution and allocation (team, treasury, community, investors);
- Vesting schedules and lock-up periods;
- Smart contract audit status and results; and
- Token custody mechanisms and security considerations

Risk Factors

- Technical risks (code vulnerabilities, scalability issues, limits on the underlying chains being used);
- Operational risks (team dependencies, funding constraints, geographical risks);
- Market risks (liquidity, volatility, competition);
- Regulatory uncertainties and compliance approach;
- Network-specific risks (51% attacks, MEV exploitation); and
- External dependencies (oracles, bridges, third-party protocols).

Team and Governance

- Core team members' identities, experience, and roles;
- Governance structure (centralized, DAO, hybrid);
- Decision-making processes for protocol changes;
- Treasury management and fund allocation procedures;
- Conflict resolution mechanisms; and
- Incentive alignment between team and token holders.

Development Roadmap

- Key milestones with realistic timelines;
- Technical dependencies and potential bottlenecks;
- Resource allocation for different development phases;
- Success metrics and evaluation criteria; and

Contingency plans for potential setbacks.

Implementation Approaches

Web3 projects can implement these disclosure practices through different ways including:

1. **A documentation Hub**: Comprehensive, regularly updated documentation that covers all disclosure areas;

2. **Transparency Reports**: Quarterly updates on development progress, treasury activities, and governance and other matters;
3. **Community Calls**: Regular AMAs addressing disclosure topics with recorded sessions;
4. **On-Chain Transparency**: Publishing key metrics and treasury activities on-chain; and
5. **Audit Reports**: Going beyond a transparency repot and having third party audits of processes (not just code audits).

Beyond Compliance: Strategic Transparency

The most successful web3 projects recognize that transparency isn't just about avoiding regulatory issues—it's a strategic advantage. By adopting rigorous disclosure voluntarily, projects can:

- Differentiate themselves from less transparent competitors;
- Attract institutional participation that requires robust disclosure;
- Build sustainable communities based on informed participation; and
- Reduce speculation in favor of value-based token economics.

While the SEC guidance specifically targets securities offerings, and is plainly inspired by the kind of disclosure that securities require, building something better in web3 than used to exist (i.e. giant and dense disclosure documents which no one ever read) is both a huge challenge and a great opportunity. Voluntarily adopted disclosure practices will demonstrate that crypto isn't scammers and hucksters, but filled with skilled professionals building real products and projects for a hungry market.

The future of web3 depends not just on technological innovation, but on establishing norms of transparency and accountability that can sustain trust in decentralized systems. The SEC's disclosure guidance offers a roadmap that all projects would be wise to follow—regardless of their regulatory classification.

Written by Michael Bacina

Danger on the crypto Oregon Trail with 'copycat' lawsuit against Coinbase

It has been said that insanity is doing the same thing over and expecting different results, but that maxim isn't stopping the great state of Oregon, most famous amongst computer nerds for the 1980s hit game the Oregon Trail, from launching a lawsuit against Coinbase alleging securities violations.

The 171 page complaint alleges that Coinbase is violating Oregon's securities laws by permitting the sale of crypto which doesn't come with 'proper disclosures'. The Oregon Attorney General's press release alleges that Oregon is filling an 'enforcement vacuum' created by the abandonment of cases under the 'Trump Administration'. Oddly, the AG says:

After building trust with Oregon consumers, Coinbase sold high risk investments without them being properly vetted to protect consumers

It's unclear just what cryptocurrencies were sold to Oregon consumers to 'build trust' which presumably weren't 'high risk investments' given nearly all cryptocurrencies are treated as being volatile and high risk. Coinbase has always asserted that they do not list securities for sale on their platform.

Paul Grewel, Chief Legal Officer at Coinbase has said that the lawsuit is a 'copycat' of the SEC proceedings since abandoned at the federal level against Coinbase.

This is a fair critique as it seems 70-80% of the Oregon proceedings have been directly copied from the SEC proceedings, including technical descriptions, asset-specific narratives, and structural organization descriptions. The statistical data and market capitalization figures are precisely replicated.

Mr Grewel said that the Attorney General of Oregon had made clear to Mr Grewel that he was:

picking up where the Gary Gensler's SEC left off

Mr Grewel added:

no lawsuit is harmless. In fact, Oregon's lawsuit directly undermines constructive policymaking happening in DC.… momentum has never been stronger to pass comprehensive federal legislation for digital assets… Yet instead of waiting for … Congress to enact clear rules of the road, Oregon has taken it upon itself to try to regulate a worldwide industry through

enforcement.

In the United States, most securities enforcement occurs at the federal level, but states also have securities legislation on their books and most states have their own securities regulators. Leading crypto lawyer Margaret Rosenfeld said:

This highlights a growing problem for the U.S. crypto industry: regulation by patchwork. Instead of one clear federal framework, we're now at risk of 50 different playbooks, each with its own standards, penalties, and definitions.

Meanwhile at the federal level, numerous lawsuits against crypto companies have been dismissed or paused, while the SEC engages with industry to seek to establish a regulatory framework for the industry widely viewed as a reset. That process will continue whether or not any states seek to continue down the fraught road of regulation-by-enforcement, but the distraction of state level cases will not be helpful.

Written by Michael Bacina