

ADVANCED ANALYTICAL CONSULTING GROUP

SESSION 3: SO MANY CRYPTO CRIMES, SO LITTLE TIME: PREVIOUS AND LIKELY FUTURE CRYPTO LITIGATION

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Topics

1. Past Cryptocurrency Regulatory Actions and Litigation
2. On-Going Cryptocurrency Litigation
3. Likely Forthcoming Cryptocurrency Legal Challenges
4. Big Picture
5. Wrap-Up

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Money

- Crypto confusion: currency (money), security, investment, commodity, ...
- Money (National Currency) has always been recognized as “special”.
- The U.S. Constitution (Article I Section 8 Clause 5) states that Congress shall have the (exclusive) right to coin money, regulate value
- Counterfeiting has always been considered a very serious crime (and the penalties for counterfeiting – and even possession of the special linen “paper” on which U.S. currency is printed) is subject to large fines and jail terms “at hard labor”. The “counterfeiting clause” was once printed on U.S. Dollar notes (spelling out these penalties).
- The idea of a country (like Ecuador, Zimbabwe, and Panama) using another country’s currency as their own official currency is not new.
- Organizationally, crypto situated under Senate Agriculture Committee.

Cryptocurrency Past Regulatory History and Status

- Since the U.S. Federal Government decided that the financial markets could not be left on their own [the Stock Market Crash of October 1929 which led to the Securities Act (1933), Securities Exchange Act (1934), the Securities and Exchange Commission [SEC] (1934), as well as the Commodity Exchange Act (1936) and eventually the Commodity Futures Trading Commission [CFTC] (1974), . . . not to mention Sarbanes-Oxley, more recently Dodd-Frank Act (2010), Volker Rule, ...], there has been a proliferation of regulatory oversight and market laws.
- SEC (securities – stocks/equities and bonds/fixed income, investments):
Mission: “To protect investors; to maintain fair, orderly, and efficient markets; and to facilitate capital formation.”
- CFTC (commodities. futures, derivatives, swaps, options, spot crypto):
Mission: “To promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation.”

Securities and Exchange Commission [SEC] & Crypto

- Cryptocurrencies have really only been around since 2009 (Bitcoin).
- The SEC has historically focused on fraud and market manipulation (insider trading, cornering, front running, wash trading, churning, spoofing, pump and dump schemes, runs, bear raids, layering, ...).
- SEC has also pursued reporting violations, inappropriate research, social media scams, conflicts of interest, and other false information.
- The SEC typically brings CIVIL law suits to Court, though may bring in The Department of Justice (DoJ) for criminal charges.
- The SEC typically does not send people to jail; just fines them (and in particularly bad instances, may ban a person from the industry for life).
- What the SEC will do in the crypto space is still being determined.

Commodity Futures Trading Commission[CFTC]

- The CFTC also is concerned with market integrity and confidence . . . especially for commodities, futures, and derivatives markets.
- The CFTC regulates crypto when they are considered a commodity.
- The SEC regulates crypto assets when they are considered securities.
- Earlier this month (September 2025), the CFTC and SEC coordinated their efforts (and, through initiatives like “Project Crypto” and the “Crypto Sprint”) – which is rather new (as they had been adversarial).
- Jointly issued a statement to clarify regulatory uncertainty, to foster innovation and transparency, and to show their common commitment.
- Thought spot crypto will trade on regulated (CFTC) exchanges, but their September 2nd joint statement opens spot crypto to SEC venues.

The Regulation of Money

- Prior to the institution of the Federal Reserve System (December 1913) U.S. money was the province of The Department of the U.S. Treasury.
- The Constitution and subsequent laws provide for the protection and preservation of the value of the currency (as do most Central Banks).
- Fed claims (at a minimum) a dual mandate of maximum employment, stable prices (controlling inflation), moderate long-term interest rates, promotes the stability of the financial system, regulates (most) banks, monitors systemic risks, fosters payment and settlement system safety, acts as the bank for the U.S. government, oversees credit conditions, promotes consumer protection, community development, administration of consumer laws and regulations . . . and national monetary policy!
- Although the lending afforded by the CARES Act stretches the role of the Fed, at least it is an established piece of legislation (force of law).

And then there are TAXES!

- Since the Internal Revenue Service recognizes crypto as “property”, the Federal Government expects to receive tax revenues from realized capital gains on cryptocurrency and digital assets.
- How this will work in practice remains to be determined.
- But the IRS has already brought crypto-related tax cases.

United States v. Frank Richard Ahlgren, III . . . but it was litigated by the Department of Justice in Federal District Court (Texas) and described as the “first criminal tax evasion prosecution centered solely on cryptocurrency (Bitcoin)”. Ahlgren was sentenced to 24 months in prison and ordered to pay a fine of \$1,095,031.

- Genius Act directs the Treasury Secretary to study and seek public comment on ways to improve detection of illicit crypto activity.

BUT . . . This is the BIG ONE!

- The U.S. Supreme Court just curtailed the power of federal regulatory agencies, shifting the authority back to the Federal District Courts.
[This has been called “The End of the Chevron Doctrine”.]
West Virginia v. EPA (2022), Relentless v. Department of Commerce (2024), Loper Bright Enterprises v. Raimondo (2024), and Corner Post v. Federal Reserve (2024).
- As it relates to financial markets, the Supreme Court curtailed the power of the SEC, stating that they cannot continue to use in-house proceedings to impose fines in securities fraud cases (2024).
- George Jarkesy was found guilty of securities fraud by an in-house SEC tribunal (an Administrative Law Judge Proceeding) which the Supreme Court overruled in June 2024 – stating that the accused had a Constitutional (7th Amendment) right to a Jury Trial in Federal Court.

From Harvard Business Review

- “With the Chevron doctrine gone and the major question theory in force, the balance of power to weigh the legality and efficacy of proposed regulations has reversed, from agencies staffed by experts to any or all of nearly 900 federal judges spread across the U.S. Those hoping to block proposed new regulations need only find one sympathetic court, which will almost certainly lead to an explosion of new legal challenges.”

-- Blair Levin and Larry Downes (2024)

“Substantive debate over regulation will move from less formal administrative procedures to full-throated litigation.”

Prior Crypto-Related Legal Cases

- United States v. Sharma (2022) – fraud (settlement in cryptocurrency)
- SEC v. BlockFi (2022) – unregistered retail crypto lending product
- SEC v. Coinbase (2023) – unregistered securities exchange/broker
- SEC v. Ripple Labs (2023) – SEC: XRP were unregistered securities (institutional sales violated securities law, but what's an investment)
- Coinbase, Inc. v. Bielski (2023) – fraud allegations (procedural)
- Coinbase, Inc. v. Suski (2024) – state precedent vs. federal (venue)
- Roman Storm (2024) – fraud, money laundering, unlicensed money
- Bitnomial Exchange v. SEC (2024) – SEC regulatory challenge (F)
- Frank Ahlgren (2024) – unreported Bitcoin gains (tax return violation)
- Kentucky et al. v. SEC – challenges crypto trading platforms as SEC
- Blockchain Association et al. v. IRS (2024) – required broker reporting
- DoJ/FBI/SS (2025) \$225 Million Crypto Civil Forfeiture Complaint (the largest cryptocurrency seizure; fraud/scams/theft/laundrying)

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On-Going Crypto Litigation: Topics

1. Overview of crypto litigation landscape
2. Crypto litigation trends
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Crypto Litigation Landscape: Growth, Shifts

- **Crypto litigation has surged since 2020**, driven by market volatility, fraud exposures and regulatory ambiguity
- **Shift from SEC enforcement to private and state litigation:**
 - Declining SEC enforcement: major cases dropped
 - State AGs and private firms stepping into enforcement gaps
 - **Private litigation has surged especially since 2023**

Source: Fenwick (2025); Yale J. Reg. (2024); Ashurst (2025)

Crypto Litigation Landscape: Strategic Implications

- In H1 2025, private (crypto class action) litigation already matches 2024's total – **on pace to double**
- Class actions now comprise ~ **40%** of all crypto-related lawsuits
- **Economic expertise: damages, causation and investor reliance**

Source: Cornerstone (July 2025); Dechert LLP (2025), Yale J. Reg. (2024); Ashurst (2025)

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Crypto Litigation Trends

1. Securities Class Actions
2. Consumer Protection and Fraud
3. Stablecoin & DeFi litigation
4. Market Manipulation
5. Antitrust trends
6. Arbitration trends
7. Insolvency litigation
8. Cross-Border Disputes

Crypto Securities Class Actions

- **Targets include meme coins, celebrity-endorsed tokens, NFT issuers, crypto miners, platforms and exchanges**
- **Common allegations:**
 - Omissions of risk factors (leading to stock drop on corrective disclosures – **violation of 10(b) and 10b-5**)
 - Unregistered offerings (**violations of Sections 5 and 12(a)(1)**)
 - Misleading marketing
 - Examples:
 - **NFT-related class actions** (Dolce & Gabbana, Midnight Hub)
 - **\$HAWK and \$JENNER meme coin cases** (allegations re unlawful offer and sale of respective meme coins without proper registration)
- **Damages analysis includes: assessment of investor reliance, event studies and efficiency of markets for crypto products, token volatility, price inflation and promotional causation**

Source: Dechert LLP (2025); Cointelegraph (2025); Stanford Securities Class Action Clearinghouse.

Consumer Protection & Fraud

- Increasing use of state Unfair and Deceptive Acts and Practices (UDAP) laws
- **Allegations include misrepresentation, exploitative advertising, and concealment of technical flaws**
- Proliferation of meme coin and influencer-based fraud cases
- Examples:
 - **Rojas v. Kelsier Ventures — misleading promotion of LIBRA coin** under deceptive consumer narratives
 - Appeals addressing the application of Securities Act Section 12(a) to crypto assets, like **Risley v. Universal Navigation, Inc.**, will also be significant
- **Economic analysis centers on loss causation, buyer expectations, and harm estimation**

Source: Skadden (2025); Brookings (2024).

Stablecoin & DeFi Litigation

- **TerraUSD collapse (2022): broken peg led to \$40B systemic loss**
 - Collateralized lending platforms (e.g., Anchor, Compound) under scrutiny for **rate misrepresentation**:
 - Advertised **unsustainably high, fixed interest rates**
 - Artificially maintained high yields by **drawing from limited reserve and issuing their own tokens to incentivize borrowing**
 - Promised “stable” rate was not based on market-driven demand and failed to reflect platform’s true financial health
- SEC dropped actions against PayPal USD and Binance USD as regulatory strategy softened
- **Economic modeling examines pegging mechanics, arbitrage incentives, and contagion effects**
- **Damages analysis includes wallet-level user harm, cross-chain ripple effects, and yield fragility**

Market Manipulation

- **Wash trading, spoofing, fake volume, and insider coordination prevalent across exchanges**
- SEC actions targeting market makers and algorithmic trading behavior
- Class actions emerging around manipulated ICOs and DeFi tokens
- Quant methods: volatility analysis, correlation studies, algorithmic trade tracing
- **Damages focus: liquidity distortion, price spikes, timing losses for investors**

Source: Cointelegraph (2024); CCN (2023).

Antitrust Trends

- **UnitedCorp v. Bitmain (2018): horizontal collusion in Bitcoin Cash fork challenged under Sherman Act:**
 - Alleged control of hashing power, exclusionary intent, and denial of network access
- Antitrust issues now emerging in **liquidity coordination and token launch strategies:**
 - Price fixing (wash trading, insider trading, pump and dump)
 - Information sharing and collusion (hash wars, validator concentration)
 - DAO governance consolidation (anticompetitive conduct)
 - Broader resulting regulatory scrutiny
- Market definition challenges: **what constitutes a market in decentralized finance?**
- **Experts play key roles in market modeling, power analysis, and quantifying economic harm**

Source: Harvard JOLT (2023); The Antitrust Attorney Blog (2024).

Arbitration Trends

- **Arbitration is becoming a preferred method for major platforms offering cryptocurrency and NFT services to resolve disputes with users:**
 - A trend is developing among large cryptocurrency platforms to include waivers of class actions and class arbitrations in their terms of service to mitigate class action risks
 - Increasing reliance on ICC, HKIAC, and bespoke arbitration regimes in exchange terms and conditions/terms of service
- Forum selection disputes escalating as exchanges relocate to favorable jurisdictions
- Arbitrator selection clauses and digital evidence admissibility rules now common
- **Need for expert damages quantification and crypto-native forensic analysis**

Source: Pinsent Masons (2024); Clifford Chance (2023).

Insolvency Litigation

- **Insolvency-related litigation is rising as crypto firms collapse or restructure (e.g., FTX, Celsius, Voyager)**
- **Common claims include breach of fiduciary duty, misrepresentation, fraudulent conveyance, and preference actions**
- **Investors and creditors increasingly file suits against executives, board members, and affiliated entities**
- **Poor performance triggers shareholder derivative actions and securities fraud claims tied to token price collapse**
- **Bankruptcy courts now central venues for crypto litigation, with complex jurisdictional overlays**
- **Economic experts model asset recovery, trace complex asset flows, quantify clawback exposure and investor losses**

Source: Fenwick (2025); Goodwin Q2 Update (2025); Yale J. Reg. (2024).

Cross-Border Blockchain Disputes

- **Blockchain contracts often lack clear jurisdictional anchors, complicating enforcement across borders**
- Key legal challenges: governing law, forum selection, recognition of digital signatures, and dispute resolution
- Smart contracts may be enforceable in some jurisdictions (e.g., Arizona, Vermont, Singapore) but not others
- Forum shopping and regulatory arbitrage are common in cross-border DeFi and DAO transactions
- Legal harmonization efforts (e.g., G20 frameworks, FATF guidance) aim to standardize enforcement norms
- **Experts and attorneys can help structure contracts to mitigate jurisdictional risk and ensure enforceability across borders**

Source: CoinLaw (2025); The Law To Know (2025); Laws Pulse (2025).

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Strategic Takeaways and Emerging Trends

- **DAOs and DeFi platforms** will face increasing scrutiny in class actions and fraud claims
- Continued crypto securities class actions especially if another crash:
 - **Proliferation of crypto treasury companies** may generate additional securities fraud due to alleged misrepresentations of risks, enforcement actions and claims of breach of fiduciary duty
- **Allowing crypto in 401(k) plans may generate new litigation** (fiduciary breach lawsuits under ERISA, failure of due diligence, excessive fees, custody concerns, etc.)
- **Trust and estate/marital/LLC partner disputes** re crypto
- **Arbitration expansion:** likely use in smart contracts and blockchain-native dispute resolution
- Legislative clarity (e.g., STABLE Act) may reduce SEC activity but **increase private and state-driven lawsuits**
- **Experts will be needed for strategic modeling and damages**

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Likely Forthcoming Crypto-Related Legal Challenges

- Fraud, scams, scandals, misrepresentations, failures to disclose, . . .
- Failure, for example, to preserve the stable value of a stable coin
- Theft, contestable appropriation
- Tax evasion, money laundering
- Market manipulation, front-running, insider trading, other schemes
- Exchanges, custodians, trading platforms, brokerages bad behavior
- Challenges to government/regulatory actions
- New crypto products
- **And what about FINRA arbitrations?**

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The Big Picture

- To reiterate, around 15% of U.S. households own crypto. Why?
“(P)erhaps the most avid users of cryptocurrencies have been a group that explicitly values their opaque nature: criminals.”
- Immediacy of payments? Lower transaction costs? Anonymity?
Government or banking sector avoidance? Less regulation?
Because it’s an attractive alternate investment? Because it’s cool?
- Jamie Dimon, Chairman and CEO of JP Morgan Chase, the largest U.S. bank, once called Bitcoin a “fraud”, “worse than tulip bulbs”, a “pet rock”, “scam”, “waste of time”, “decentralized Ponzi schemes”, said if he was the government, he’d close it down, and he’d “fire in a second” any JP Morgan employee caught trading cryptocurrency.
- More recently, Dimon said he regrets calling Bitcoin a fraud.
JP Morgan partnered with Coinbase (2025), now allows retail clients to invest in crypto ETFs, and launched JPM Coin/Token (JPMD)

The Big Picture



- Cryptocurrency skeptics remain.
- Eugene Fama, the winner of the 2013 Nobel Prize in Economic Sciences and the acknowledged Father of Efficient Markets (if not Modern Finance), has predicted that Bitcoin will go to zero (i.e., become worthless) within the next ten years. They are a “puzzle”.
- If stable coins have a value tied to a “real” asset (like USD), what added value (“use value”) do these stable coins provide?
- President Donald Trump is a staunch advocate (for many reasons) and has promised to make the U.S. the Crypto Capital of the World.
- El Salvador has made Bitcoin legal tender.
- The regulatory environment remains something of a wild card.
- The Supreme Court has opened the door for a wide range of “belated challenges to agency regulation” (due to mandate drift).

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Wrap Up

- If the Federal Reserve is tasked with executing monetary policy, they'll doubtless find that increasingly difficult/challenging given the existence (proliferation) of alternative monetary instruments.
- Conflicting state and federal (and international) legislation/laws/rules (especially with regard to U.S. state-based money transmission laws).
- Will the U.S. Government ever “guarantee” cryptocurrencies (FDIC)?
- “And even though President Donald Trump, who once described Bitcoin as likely a ‘scam,’ has now embraced cryptocurrency with a passion, the overpromoted and underregulated nature of current cryptocurrency transactions **strongly suggests** that more cryptocurrency scams are in the offing.”
 - Senior U.S. Federal District Judge Jed S. Rakoff (July 28, 2025)

Questions?

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