



July 25, 2022

SEC Charges Former Coinbase Manager and Associates with Crypto/Digital Assets Insider Trading and Securities Fraud

On July 21, 2022, the U.S. Securities and Exchange Commission ("SEC") charged a former manager of publicly traded cryptocurrency exchange platform Coinbase Global (NASDAQ: COIN) and two associates with securities fraud and insider trading trading of blockchain-minted digital tokens and other crypto/digital assets. Coinbase itself was not charged. A copy of the civil complaint filed in the U.S. District Court for the Western District of Washington can be found [Here](#). Simultaneously, the U.S. Attorney for the Southern District of New York announced criminal charges.

According to the civil complaint, which seeks money damages of \$1.1 million, including disgorgement of profits, prejudgment interest and other civil penalties, as well as injunctive and other relief, the Coinbase manager-defendant was a "Covered Person" for purposes of its insider trading policy because he had access to material non-

public information, including what crypto/digital assets Coinbase planned to list on its trading platform. Although on notice of the Coinbase policies and need to maintain confidentiality, the manager repeatedly provided non-public information to his brother and a friend, the other two defendants, concerning future Coinbase listings, including the listings' timing and content, allowing them to purchase the crypto/digital assets prior to listing and profit after listing (it is common in insider trading schemes for there to be conspiracy between an "insider" who has access to the non-public information and one or more "outsiders" who can purchase the securities based on the inside information without tripping any alarms).

There are a couple of important takeaways. First, while legislation and reports pursuant to the President's Executive Order are pending (see, "Bipartisan Senate Bill on Crypto/Digital Assets Introduced," "U.S. Executive Order Issued to Develop Crypto/Digital Asset Regulatory Framework," both available at [Kurtin PLLC Whitepapers and Advisories](#)), the SEC continues to treat cryptocurrency and digital assets, including blockchain-enabled initial coin offerings, or "ICOs," that pass the Securities Act of 1933, Securities Exchange Act of 1934 and "Howey" tests of an investment contract (investment of money in a common enterprise, with a reasonable expectation of profit derived from the efforts of others) as securities, and therefore subject to the securities laws and regulations like any other security.

Second, while we have reported on SEC enforcement actions in larger as well as smaller crypto/digital asset schemes, the complaint in this case, for disgorgement of little more than \$1 million, suggests that assumptions of "flying under the SEC radar screen," especially when allegations of securities fraud and insider trading are concerned, are misplaced. Promoters, issuers, brokers, traders and underwriters of "digital asset securities" or "crypto asset securities," as the SEC currently calls them, need to be as compliant with the securities laws and regulations as their counterparts for any more conventional security. There is nothing inherently risky about offering or trading in digital asset securities, as long as principals and intermediaries don't assume that their digital character renders them exempt from securities laws and regulations in a way that would not be the case for more conventional securities.

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