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Attorneys at Law

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SEC Charges Binance and Coinbase in Latest Cryptocurrency Exchange Implosions

On November 11, 2022, when we reported on the FTX cryptocurrency exchange bankruptcy following a stunning collapse in a $32 billion valuation over less than a week's time, we noted that FTX's collapse began when rival crypto trading platform Binance's Founder and CEO C.Z. Zhao published tweets questioning FTX's and sister investment company Alameda's financial stability, and stating that he would sell over $500 million of cryptoassets, causing major declines in Bitcoin, Ether, FTT (FTX's native token) and other cryptocurrencies traded on FTX and held by Alameda.

June 5, 2023 was Binance and Zhao's turn, as the Securities and Exchange Commission ("SEC"), the U.S. securities regulator, charged Binance, affiliated entities and Zhao with 13 counts of operating an unregistered exchange, broker and clearing agency; offer and sale of unregistered cryptoassets; failing to restrict U.S. investors from trading on the Binance.com platform (the non SEC-compliant separate exchange supposed to be restricted from U.S. investors); and misleading investors. A copy of the SEC's complaint, filed in the United States District Court for the District of Columbia, is available **Here**.

The following day, the SEC charged the publicly traded Coinbase Global (NASDAQ: COIN) with operating an unregistered crypto exchange, broker and clearing agency; and with unregistered offer and sale of securities as part of its "Staking-as-a-Service" program. The SEC complaint, filed in the United States District Court for the Southern District of New York, can be found **Here**.

Even before FTX, crypto exchanges Celsius Network and Voyager Digital filed for bankruptcy. Also, as we previously reported, in July, the SEC charged a former manager of Coinbase and two associates with securities fraud and insider trading of blockchain-minted digital tokens and other crypto/digital assets. Further information can be found at **Kurtin PLLC Information Technologies, Blockchain & Internet**.

We have discussed this before, and it should not be controversial. Offering for sale a crypto/digital asset that meets the test of a securities investment contract is a securities offering, which must be made pursuant to a Securities Act section 5 Registration Statement, or pursuant to an available exemption from the public registration requirements, such as Reg. D (see our "Raising Capital through Private Placements," available at **Kurtin PLLC Raising Capital**. Crypto/Digital Assets can be offered for sale to the public or in a private placement, but to try to do so without compliance with the applicable laws and regulations risks civil and criminal penalties, including being shut down and having to make restitution to investors. Assumptions that an issuer, promoter, underwriter, broker or dealer can "fly under the SEC radar screen," especially when allegations of securities fraud and insider trading are concerned, are misplaced.

There is nothing inherently risky about offering or trading in cryptocurrency or digital asset securities, as long a principals and intermediaries don't assume that their digital character renders them exempt from the securities laws and regulations in a way that would not be the case for more conventional securities. The "Wild West" era of Web 3.0 is ending. Serious players will learn to adapt; the others are dilettantes.

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