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CryptoLink



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CryptoLink is a compilation of news stories published by outside organizations. Akin aggregates the stories, but the information contained in them does not necessarily represent the beliefs or opinions of the firm. Akin's May CryptoLink update includes developments and events that occurred between April 2024 and May 2024.

May was a historic month for the digital assets industry in Washington, D.C.

On May 22, 2024 the Financial Innovation and Technology for the 21st Century Act (FIT21) ([H.R.4763](#)) passed the House by a comfortable margin of 279-136. FIT21 is a proposed landmark piece of legislation that would enact a comprehensive regulatory framework for the digital assets industry. The bill was crafted collaboratively between Republicans on the House Financial Services and House Agriculture Committees and, to the surprise of many—including outgoing House Financial Services Committee Chair Patrick McHenry (R-NC), crypto's chief advocate on Capitol Hill—it garnered significant Democratic support. In all, 71 House Democrats voted in favor of FIT21, including notable figures like Minority Whip Katherine Clark (D-MA), Democratic Caucus Chair Pete Aguilar (D-CA), and former Speaker Nancy Pelosi (D-CA). Despite SEC Chair Gary Gensler's strong objections to the bill—Gensler issued a statement in the hours leading up to the vote sharply criticizing FIT21, which would blunt the Securities and Exchange Commission's (SEC) ability to regulate the crypto industry by enforcement and give regulatory authorities to its sister industry, the Commodity Futures Trading Commission (CFTC)—the overwhelming bipartisan support for FIT21 indicates that it may well be considered in the Senate before the end of the 118th Congress. However, a number of issues complicate its path towards full passage. Chief among them is time—Majority Leader Chuck Schumer (D-NY) determines what is considered on the Senate floor, and Schumer will almost certainly not allow FIT21 to be considered as a standalone bill. However, this late in the Congress, there are only a handful of bills FIT21 could be attached to, and even if it ultimately passes the Senate, the upper chamber will leave its mark on FIT21—by amending what the House passed or by passing similar legislation, such as Sens. Cynthia Lummis (R-WY) and Kirsten Gillibrand's (D-NY) Lummis-Gillibrand Responsible Financial Innovation Act ([S.2281](#)). In either case, the House and Senate would need to reconcile the differences between their two versions of the bill. It would then, of course, still need to be signed into law by the President—and the White House has been reluctant to sign off on other crypto legislation, having previously stalled McHenry and Financial Services Committee Ranking Member Maxine Waters' (D-CA) Clarity for Stablecoins Act ([H.R. 4766](#)). However, in an election year, and with former President Donald Trump championing crypto as a campaign issue, Biden may feel it necessary to throw his support behind FIT to neuter crypto-centric attacks from the Trump campaign.

On May 23, 2024, the House also passed [H.R. 5403](#), the CBDC Anti-Surveillance State Act, sponsored by Majority Whip Tom Emmer (R-MN), also a Financial Services Committee member. H.R. 5403 would prohibit the Federal Reserve from issuing a central bank digital currency (CBDC) without explicit authorization from Congress. Emmer’s bill, however, was passed along partisan lines, and thus stands little chance of being considered in the Senate.

In May, there were several significant developments in connection with regulatory approvals and enforcement actions in the cryptocurrency space brought by U.S. regulators and prosecutors. On May 23, 2024, the SEC approved exchange-traded funds tied to the cryptocurrency Ether—this was an unexpected approval, which follows the agency’s January 2024 approval of similar products tied to Bitcoin. The SEC has continued to vigorously pursue enforcement actions against digital asset exchanges, and in early May, issued a Wells Notice to Robinhood over its crypto business. Last month, the decentralized finance platform Uniswap also received a Wells Notice, showing that SEC enforcement continues to remain very active in investigations involving the cryptocurrency industry. Last, the CFTC announced a settled order against the prime brokerage firm, Falcon Labs, a Seychelles-domiciled firm, for failing to register as a Futures Commission Merchant, its role in facilitating customer trading on various digital asset exchanges, including Binance, for customers with ties to the U.S. This settled order is notable because of its implication that the CFTC may look past a customer’s place of incorporation to determine whether they are, in operation, a U.S. “located” entity under the Commodity Exchange Act. On this point, one of the CFTC commissioners released a concurring opinion noting that the settled order broke new ground.

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Key Developments

Senate Passes Bill Overturning SEC Accounting Guidance

On May 16, 2024, the U.S. Senate voted to pass H.J. Res. 109, a resolution introduced under the Congressional Review Act to repeal the SEC’s Staff Accounting Bulletin (SAB) 121. SAB 121 directed banks and other custodians to account for digital assets held in custody on their balance sheets. Senators passed H.J. 109 with 60 votes to 38, only a week after the U.S. House of Representatives passed a joint resolution with bipartisan support to overturn SAB 121.

Further information can be found [here](#).

Crypto Exchanges Form Tech Against Scams Coalition

On May 21, 2024, Coinbase announced the launch of the Tech Against Scams coalition with industry leaders including Match Group, Meta, Kraken, Ripple, Gemini and GASO in order to combat online fraud and financial schemes. According to Coinbase’s announcement, this partnership aims to “protect and educate users, emphasizing that scams are a tech-wide issue, not limited to social media, crypto, or finance. By sharing knowledge and best practices, we strive to create a safer digital environment.”

Coinbase’s press release can be found [here](#).

U.S. House of Representatives Passes Crypto Bill

On May 22, 2024, the U.S. House of Representatives passed the FIT21. The Financial Services Committee referred to the passing of FIT21 as a “watershed moment for the U.S. digital asset ecosystem” as it “provides the robust, time-tested consumer protections and regulatory certainty necessary to allow digital asset innovation to flourish in the United States.” FIT21 establishes federal requirements over digital asset markets, seeking to provide robust consumer protections and regulatory clarity necessary for the digital asset ecosystem. The legislation provides the CFTC with new jurisdiction over digital commodities and clarifies the SEC’s jurisdiction over digital assets offered as part of an investment contract. Additionally, the bill establishes a process to permit the secondary market trading of digital commodities if they were initially offered as part of an investment contract. Finally, FIT21 imposes comprehensive customer disclosure, asset safeguarding, and operational requirements on all entities required to be registered with the CFTC and/or the SEC.

The Financial Services Committee’s press release can be found [here](#) and the FIT21 can be found [here](#).

Key Enforcement Actions

Binance Founder Sentenced to Four Months Imprisonment

On April 30, 2024, Binance founder Changpeng Zhao was sentenced to four months in prison for his failure to implement an effective anti-money laundering program at Binance. U.S. District Judge Richard A. Jones handed down the sentence despite federal prosecutors’ request to imprison Zhao for three years. In November 2023, Zhao resigned as CEO of Binance and pleaded guilty to failing to maintain an effective anti-money laundering program, in violation of the Bank Secrecy Act.

Further information can be found [here](#).

Former CEO, CFO and CCO Of Cred LLC Charged with Alleged Multimillion-Dollar Cryptocurrency-Related Wire Fraud Conspiracy

On May 3, 2024, the U.S. Attorney’s Office for the Northern District of California announced that a federal grand jury had charged Daniel Schatt, Joseph Podulka and James Alexander with wire fraud conspiracy and related crimes in connection with their respective roles in an alleged scheme to defraud customers and investors in Cred, LLC allegedly causing losses of customer cryptocurrency assets with a market value that may have exceeded \$780 million. Cred, a San Francisco-based financial services firm that specialized in making investments in cryptocurrencies, filed for chapter 11 bankruptcy on November 7, 2020. The charges against the defendants are set out in two separate indictments handed down by the grand jury. The

first indictment charges Schatt and Podulka with conspiracy, thirteen counts of wire fraud and money laundering. The second indictment recites many of the same allegations and charges Alexander with conspiracy, four counts of wire fraud and money laundering.

The U.S. Attorney's Office press release can be found [here](#).

Robinhood Crypto Receives Wells Notice from SEC

Robinhood Markets, Inc. announced in its May 6, 2024, Form 8-K filing that on May 4, 2024, Robinhood Crypto, LLC (RHC) had received a Wells Notice from the SEC regarding, among other topics, RHC's cryptocurrency listings, custody of cryptocurrencies and platform operations. According to the filing, RHC has cooperated with the SEC's investigation. The Wells Notice advised RHC that the SEC had made a "preliminary determination" to recommend that the SEC file an enforcement action against RHC alleging violations of Sections 15(a) and 17A of the Securities Exchange Act of 1934, as amended. According to the Form 8-K, the potential action may involve a civil injunctive action, public administrative proceeding and/or a cease-and-desist proceeding and the SEC may seek remedies that include an injunction, a cease-and-desist order, disgorgement, pre-judgment interest, civil money penalties, and censure, revocation and limitations on activities.

The Form 8-K filing can be found [here](#) and Robinhood's announcement regarding the Wells Notice can be found [here](#).

CFTC Issues Order Against Crypto Prime Brokerage Firm: Falcon Labs

On May 13, 2024, the CFTC issued an order simultaneously filing and settling charges against Falcon Labs, Ltd. for failing to register with the CFTC as a futures commission merchant (FCM). The order marks the CFTC's first action against an unregistered FCM that inappropriately facilitated access to digital asset exchanges. Falcon Labs is ordered to cease and desist from acting as an unregistered FCM by providing U.S. persons access to digital asset derivatives trading platforms. The order also requires Falcon Labs to pay \$1,179,008 in disgorgement and a \$589,504 civil monetary penalty. The reduced civil monetary penalty reflects Falcon Labs' substantial cooperation with the CFTC's Division of Enforcement, as detailed in the order. Commissioner Caroline D. Pham also issued a [concurring statement](#).

The CFTC's press release can be found [here](#) and the order can be found [here](#).

Cryptocurrency Futures Market CEO Pleads Guilty to Violating Bank Secrecy Act

On May 7, 2024, the U.S. Attorney's Office for the Southern District of Florida announced that Adam Colin Todd, the former Chief Executive Officer of Digitex Futures Exchange, pled guilty in federal court to willfully causing Digitex Futures to violate the Bank Secrecy Act by failing to establish and implement an anti-money laundering program. According to the U.S. Attorney's Office press release, from 2018 through April 2022, Todd illegally operated Digitex Futures, an online futures exchange company, as an unregistered futures commission merchant within the United States. Furthermore, Todd illegally sold and offered futures contracts to customers of Digitex Futures in the United States, failed to establish, implement and maintain an adequate anti-money laundering program, and publicly stated that he refused to implement know-your-customer policies for Digitex Futures.

The U.S. Attorney's Office press release can be found [here](#).

FINTRAC Imposes Administrative Monetary Penalty on Binance

On May 9, 2024, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) announced that it had imposed an administrative monetary penalty on Binance Holdings Limited of 6,002,000 Canadian dollars for non-compliance with Part 1 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and its associated Regulations. Binance Holdings Limited was found to have committed the following administrative violations: (1) failure to register with FINTRAC as a foreign money services business and (2) failure to report large virtual currency transactions of \$10,000 or more in the course of a single transaction, together with the prescribed information.

FINTRAC's press release can be found [here](#).

Brothers Arrested for Attacking Ethereum Blockchain and Stealing \$25 Million in Cryptocurrency

On May 15, 2024, an indictment was unsealed charging Anton Peraire-Bueno and James Peraire-Bueno with conspiracy to commit wire fraud, wire fraud and conspiracy to commit money laundering. The charges arise from an alleged novel scheme by the defendants to exploit the Ethereum blockchain to fraudulently obtain approximately \$25 million worth of cryptocurrency within approximately 12 seconds. U.S. Attorney Damian Williams for the Southern District of New York stated that “the defendants’ scheme calls the very integrity of the blockchain into question. ... This alleged scheme was novel and has never before been charged. But as the indictment makes clear, no matter how sophisticated the fraud or how new the techniques used to accomplish it, the career prosecutors of this office will be relentless in pursuing people who attack the integrity of all financial systems.”

The Department of Justice's (DOJ) press release can be found [here](#).

Two Foreign Nationals Arrested for Laundering At Least \$73 Million Tied to Cryptocurrency Investment Scams

On May 16, 2024, an indictment was unsealed in the Central District of California charging two Chinese nationals, Daren Li and Yicheng Zhang, alleging they played leading roles in a scheme to launder proceeds from cryptocurrency investment scams. According to court documents, Li, Zhang and other conspirators allegedly managed an international syndicate that laundered proceeds of cryptocurrency investment scams, which are also known as “pig butchering.” Victims of the schemes under investigation were fraudulently induced into transferring millions of dollars to U.S. bank accounts opened in the names of dozens of shell companies whose sole apparent purpose was to facilitate the laundering of fraud proceeds. The fraud scheme involved more than \$73 million laundered through U.S. financial institutions to bank accounts in The Bahamas, and converted to the virtual asset USDT, or Tether. Li and Zhang are both charged with conspiracy to commit money laundering and six substantive counts of international money laundering. If convicted, the defendants face a maximum penalty of 20 years in prison on each count.

The DOJ's press release can be found [here](#).

SEC Opposes Ripple Labs' Motion to Seal and Redact Evidence

On May 20, 2024, the SEC submitted a letter to Judge Analisa Torres in the SEC's ongoing litigation against Ripple Labs Inc., in which the SEC opposed in part Ripple Labs' letter motion to seal and redact evidence related to the parties' briefing on remedies. In its letter, the SEC maintained that Ripple cannot meet its burden to overcome the strong presumption of public access, Ripple has failed to show exceptional circumstances warranting sealing, and Ripple's reliance on past sealing motion practice is unavailing. The SEC further argued that the Court should deny Ripple's request to conceal financial and securities sales information because that information constitutes “judicial documents” at the heart of the

arguments the parties have presented in support of their remedies motion and could therefore tend to influence the Court's remedies decision.

The SEC's letter can be found [here](#).

Akin Thought Leadership

[Bipartisan Legislation Introduced in the Senate to Establish a Regulatory Framework for Stablecoins](#) (April 22, 2024)

[Coinbase Court Embraces 'Ecosystem' Approach to Identifying Crypto-Asset Securities](#) (April 3, 2024)

[Are Crypto Tokens Securities? Terraform Court Says 'Yes' in Extensive Decision](#) (January 12, 2024)



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