NELSON MULLINS

FinTech University

FinTech, SEC, and OFAC Investigations
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Agenda

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- Why SEC and OFAC?
- Trending Subject Matter
- Relevant Laws/Regulations
- Unique Aspects of Investigations
- Recent Investigations/Settlements & Trends

Regulatory Authority

- SEC
  - Independent federal agency, established pursuant to the Securities Exchange Act of 1934
  - Headed by 5-member Commission
  - Large – approximately 4800 employees in 2022
  - Responsibilities
    - Protect investors, oversee U.S. equity markets and fixed income markets, review disclosures and financial statements of exchange-listed public companies, oversee activities of registered entities like investment advisors, and oversee securities exchanges
- OFAC
  - Department within the U.S. Department of the Treasury
  - Historically very lean – around 200 employees
  - Administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, drug traffickers, and other threats to the national security, foreign policy or economy of the US

Why SEC and OFAC?

- Both have significantly increased activity in the FinTech space significantly over the past few years
- SEC
  - Most talked about – began with the DAO Report in July 2017
  - Formed the Crypto Assets and Cyber Unit – 50 dedicated positions
  - Brought more than 80 enforcement actions since 2017
  - Just this year: Justin Sun, Paul Pierce, Terraform Labs, Kraken, Genesis, Gemini, Caroline Ellison
- OFAC
  - Sanctions Compliance guidance for the Virtual Currency Industry (Oct. 15, 2021)
  - BitGo, Inc., Bitpay, Inc., Bittrex, Kraken, Uphold HQ, Inc., Poloniex, Tornado Cash

Trending Subject Matter

- SEC
  - Initial coin offerings
  - Cryptocurrency exchanges
  - Token offerors
  - NFTs
  - Stablecoins
  - Fraud
- OFAC
  - Cryptocurrency exchange customers located in sanctioned countries
  - Digital wallet management services

Relevant Laws/Regulations

- SEC
  - Securities Act of 1933 (the “Securities Act”)
  - Securities Exchange Act of 1934 (the “Exchange Act”)
  - The Investment Advisers Act of 1940 (the “Advisers Act’)
  - Investment Company Act of 1940 (the “1940 Act”)
  - Case law – e.g., *SEC v. W.J. Howey Co.* (U.S. 1946)
- OFAC
  - Sanctions Programs (e.g., Cuba Sanctions, Chinese Military Companies Sanctions)
  - Specially Designated Nationals List (SDN List)

Unique Aspects of Investigations

- Structure of agencies
- Agency investigation processes/timeline
- Penalty structure
- Subject matter

Recent Investigations/Settlements & Trends

- SEC
  - Ripple (in Litigation)
  - Coinbase (in Litigation)
  - Bittrex (settled on Aug. 10, 2023 for $24 million)
  - Binance (in Litigation)
- OFAC
  - Bittrex (settled on October 11, 2022 for $24,280,829.20)
  - Kraken (settled on November 28, 2022 for $362,158.70)
  - Poloniex, LLC (settled on May 1, 2023 for $7,591,630)

Presenter Biographies

MATTHEW G. LINDENBAUM

Matthew represents companies in high-stakes litigation with an emphasis on class action defense in the financial services and automotive industries, and the growing FinTech (blockchain and cryptocurrency) industry. He also defends companies and individuals in government investigations and enforcement actions involving the United States Department of Justice (DOJ), the Securities and Exchange Commission (SEC), the Consumer Financial Protection Bureau (CFPB), the Office of Foreign Assets Control (OFAC), the Commodity Futures Trading Commission (CFTC), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Financial Industry Regulatory Authority (FINRA), and various state attorneys general, departments of financial services, and licensing agencies. Matthew also conducts internal investigations for companies and special board committees.

ROBERT L. LINDHOLM

Rob focuses his practice on government investigations and white collar defense, high stakes business litigation and class action defense, and e-discovery and litigation readiness. He represents companies/individuals involved in the FinTech/Cryptocurrency space (including, among others, Poloniex in its August 2021 settlement with the SEC, various companies/individuals under investigation by U.S. regulators, and Poloniex in the Tether putative class action currently pending in the SDNY), financial institutions, Fortune 500 companies, and other clients in a wide array of internal/government investigations, commercial litigation, and class action litigation. Rob is also the former Chair of the White-Collar Crime/Government Investigations Section of the Mecklenburg County Bar.

Moderator Biography

RICHARD B. LEVIN

Richard is chair of the FinTech and Regulation Practice and was one of the first lawyers to focus on the regulation of blockchain and digital assets. He is considered a thought leader in the FinTech space. Richard brings his experience as a senior legal and compliance officer on Wall Street and in London to bear in advising clients on corporate, FinTech, securities, and regulatory issues. A problem-solver by nature, he has been advising FinTech clients on legal and regulatory issues since the start of electronic trading in the late 1990s. His practice focuses on helping financial services and technology clients identify and address regulatory issues as they build their businesses.

Richard's practice focuses on the representation of early stage and publicly traded companies in the FinTech space, including investment banks, broker-dealers, investment advisers, peer-to-peer lending platforms, digital currency trading platforms, alternative trading systems (ATSs), exchanges, and custodians. He represents these firms before the U.S. Securities and Exchange Commission (SEC), the U.S. Commodity Futures Trading Commission (CFTC), the Financial Industry Regulatory Authority (FINRA), the U.S. Department of the Treasury, Office of the Comptroller of the Currency (OCC), state regulators, and Congress. Richard has represented clients before regulators in Australia, Canada, France, Germany, Hong Kong, Ireland, Japan, Singapore, South Korea, and the United Kingdom. His current and past clients include leading national financial institutions, multinational financial services holding companies, leading firms in the FinTech space, and institutions engaging in global investment banking, investment management, securities, and other financial services with institutional clients.

Richard has been identified by Chambers and Partners as one of the leading lawyers in the Blockchain and Cryptocurrencies category since the inception of the category. He has been recognized by Chambers for his knowledge on regulatory matters, great relationships with regulators, for helping clients push the boundaries of the FinTech sector, and for his advice on matters such as broker-dealer licensing and alternative trading systems. Richard is routinely quoted by leading publications including Bloomberg, the New York Times, Reuters, and the Wall Street Journal and is a frequent speaker at conferences around the world on the regulation of FinTech, blockchain, and digital assets.

Contact Details

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