

Wenchi Hu PLLC
Regulatory Recap
September 30, 2024

Notable Developments:

- **SEC Adopts Improvements to EDGAR System**
- **SEC Announces Virtual National Compliance Outreach Seminar for Investment Companies and Investment Advisers**



Wenchi Hu will moderate a panel on SEC clearing mandate for U.S. Treasury Securities.
[Register today to attend the live virtual panel discussion on October 10th.](#)

SEC Enforcement:

- **SEC Charges Entities Operating Crypto Trading Platform Mango Markets for Unregistered Offerings and Charges Affiliated Entities for Acting as Unregistered Broker-Dealers**
- **SEC Charges Cassava Sciences, Two Former Executives and Affiliated University Scientist for Misleading and Manipulating Alzheimer's Clinical Trial Results**

- **SEC Charges DraftKings with Violation of Regulation Fair Disclosure by Disclosing Nonpublic Information Via CEO's Social Media Accounts Without Disclosing Same Information to All Investors**
- **SEC Charges Former CEO of Tech Startup SKAEL with \$30 Million Fraud**
- **SEC Charges Crypto Companies TrustToken and TrueCoin with Defrauding Investors Regarding Stablecoin Investment Program**
- **SEC Charges Twelve Firms with Recordkeeping Failures and Orders Eleven Firms to Pay More than \$88 Million to Settle Charges**
- **SEC Charges Firms in Late Beneficial Ownership and Insider Transaction Reports**
- **Auditors Settle SEC Charges for Misleading Investors Regarding FTX**
- **SEC Settles Charges Against Flyfish Club LLC for Selling NFTs as Unregistered Securities**
- **SEC Charges Eleven Institutional Investment Managers with Failing to Report Certain Securities Holdings**

In Case You Missed It:

- **FINRA Settles Charges with Independent Financial Group, LLC Regarding Reg BI**

Notable Developments:

SEC Adopts Improvements to EDGAR System and Opens Beta Software for Testing

On September 27, 2024, the SEC announced adoption of final rule and form amendments to enhance the security of the EDGAR system and improve filers' access and account management capabilities. The amendments will require EDGAR filers to authorize individuals responsible for managing filers' EDGAR accounts. Such authorized individuals will need to present individual account credentials obtained from Login.gov and complete multifactor authentication to access EDGAR accounts and make filings. Below is the implementation timeline:

- Beginning September 30, 2024, the SEC will open to the public a beta software environment for filer testing and feedback reflecting the adopted rule and form amendments and related technical changes. The beta will open until at least December 19, 2025.
- On March 24, 2025, a new dashboard will go live. Existing filers will obtain access by enrolling on the dashboard. New filers must complete amended Form ID, which will

reflect the EDGAR Next changes and will be modernized to make the form more user friendly. Filers who have enrolled or been granted EDGAR access on amended Form ID will be able to file and take other actions on EDGAR through the optional APIs.

- Beginning September 15, 2025, compliance with EDGAR Next is required to file. Thereafter, existing filers may continue to enroll until December 19, 2025, but enrollment will be a prerequisite to filing.
- Beginning December 22, 2025, existing filers who have not enrolled or been granted access on amended Form ID will be required to submit the amended Form ID to request access to file and take other actions on their accounts.

The file rule and form amendments will become effective March 24, 2025. The compliance date for amended Form ID will be March 24, 2025 and the compliance date for all other rule and form amendments is September 15, 2025.

SEC Announces Virtual National Compliance Outreach Seminar for Investment Companies and Investment Advisers

On September 20, 2024, the SEC [announced](#) that it will hold a virtual national seminar for investment companies and investment advisers on November 7, 2024. The seminar is intended to help Chief Compliance Officers and other senior personnel at investment companies and investment advisory firms enhance their compliance programs. The agenda is available [here](#). Advance registration is not required. A link to the live webcast will be available in the morning of November 7 on Sec.Gov.

SEC Enforcement:

SEC Charges Entities Operating Crypto Trading Platform Mango Markets with Unregistered Offerings and Charges Affiliated Entities for Acting as Unregistered Broker-Dealers

On September 27, 2024, the SEC [announced](#) filing of settled charges against Mango DAO and Blockworks Foundation for engaging in the unregistered offering and sale of crypto asset securities—“MNGO governance tokens. Concurrently, the SEC also settled charges against Blockworks Foundation and Mango Labs LLC for engaging in unregistered broker activity in connection with various crypto assets offered and sold on the Mango Markets platform. According to SEC’s [complaint](#) filed with the U.S. District Court for the Southern District of New York, the SEC alleged that MNGO governance tokens are investment contracts. The SEC also alleged that Mango Markets was a trading platform that allowed users to buy and sell the MNGO token and other crypto assets, including crypto assets that were being offered and sold as securities, as well as derivatives contracts; the Mango Markets also allowed users to borrow crypto assets that were being offered and sold as securities and to withdraw

those borrowed crypto assets from Mango Markets. Blockworks Foundation and Mang Labs wrote smart contracts to facilitate transactions through Mango Markets, held themselves out as brokers by advertising on Mango Markets' websites and social media that Mango Markets was a place to effect crypto assets transactions, and actively solicited and recruited investors to use the Mango Markets platform to trade crypto assets being offered and sold as securities. Therefore, the SEC alleged that Blockworks Foundation and Mango Labs was an unregistered broker.

SEC Charges Cassava Sciences, Two Former Executives and Affiliated University Scientist for Misleading and Manipulating Alzheimer's Clinical Trial Results

On September 26, 2024, the SEC [announced](#) settled [charges](#) against Cassava Sciences, Inc., its founder and former CEO and its former Senior Vice President of Neuroscience with misleading statements made in September 2020 about the results of a Phase 2 clinical trial for the company's purported treatment for Alzheimer disease. Separately, the SEC also settled [charges](#) against an associate medical professor at the City University of New York's Medical School and the therapeutic's co-developer, for manipulating the reported clinical trial results.

SEC Charges DraftKings with Violation of Regulation Fair Disclosure by Disclosing Nonpublic Information Via CEO's Social Media Accounts Without Disclosing Same Information to All Investors

On September 26, the SEC [announced](#) settled charges against DraftKings Inc. with violation of Regulation Fair Disclosure by selectively disclosing material non-public information to the followers of the company CEO's personal X account and LinkedIn account without disclosing the same information to all investors. According to the SEC's [order](#), DraftKings' public relations firm published a post on the personal X account and LinkedIn account of the company's CEO regarding the company continuing to see "really strong growth" in states where it was already operating. At the time of the posts, DraftKings had not yet disclosed its second quarter 2023 financial results, nor had it otherwise publicly disclosed certain information contained in the posts. DraftKings did not disclose the information to the public until seven days later when it announced its financial earnings for the second quarter of 2023.

The SEC published a [report](#) in 2013 relating to the use of social media for company announcements. The report concluded that companies can use social media to announce key information in compliance with Reg FD so long as investors have been alerted about which social media will be used to disseminate such information.

SEC Charges Former CEO of Tech Startup SKAEL with \$30 Million Fraud

On September 24, 2024, the SEC [announced](#) fraud charges against Baba Nadimpalli, the co-founder and former CEO of SKAEL Inc., a San Francisco-based private technology company that developed business automation software. According to the SEC's [complaint](#), Nadimpalli falsely claimed that SKAEL had millions of dollars in annually recurring revenue, which was more than 10 times the true amount, and suggested to investors that SKAEL's customers include certain well-known companies. The complaint also alleged that Nadimpalli forged bank statements to show nonexistent payments from customers and spent the corporate money on his own personal expenses.

SEC Charges Crypto Companies TrustToken and TrueCoin with Defrauding Investors Regarding Stablecoin Investment Program and Unregistered Offer and Sale of Securities

On September 24, 2024, the SEC [announced](#) settled charges against TrueCoin LLC and TrustToken Inc. The SEC's [complaint](#) alleges that TrueCoin and TrustToken engaged in the unregistered offer and sale of TUSD token, which is an investment contract, and profit-making opportunities with respect to TrueUSD on a lending protocol, called TrueFi. The complaint further alleges that TrueCoin and TrustToken falsely marketed the investment opportunity as safe and trustworthy, fully backed by U.S. dollars or their equivalent, when in fact a substantial portion of the assets purportedly backing TUSD had been invested in a speculative and risky offshore investment fund to earn additional returns for the defendants; by Fall 2022, TrueCoin and TrustToken became aware of redemption problems at the offshore fund but continued to make false statements to investors casting TUSD as backed one-for-one by U.S. dollars. As alleged, by September 2024, 99% of the reserves backing TUSD were invested in the speculative fund.

SEC Charges Twelve Firms with Recordkeeping Failures and Orders Eleven Firms to Pay More than \$88 Million to Settle Charges

On September 24, 2024, the SEC [announced](#) settled charges against 12 firms, including broker-dealers, investment advisers and dually-registered broker-dealer and investment adviser, for widespread and longstanding failures to maintain and preserve electronic communications in violation of recordkeeping requirements. One firm is not ordered to pay a penalty because of self-reported, self-policed and demonstrated substantial efforts at compliance.

SEC Charges Firms in Late Beneficial Ownership and Insider Transaction Reports

The SEC announced [settled](#) charges against 23 entities and individuals for failures to timely report information about their holdings and transactions in public company stock. Two

public companies were also charged for contributing to filing failures by their officers and directors and failing to report their insiders' filing delinquencies as required.

The charges announced today stem from SEC enforcement initiatives focused on Schedules 13D and 13G reports and Forms 3, 4, and 5 that certain corporate insiders are required to file. SEC staff used data analytics to identify the charged individuals and entities as filing required reports late.

The firms charged in the SEC's sweep, as reported by the SEC, include Sunbeam Management, LLC, TALANTA Investment Group, LLC, Grays Peak Ventures LLC, Stilwell Value LLC, BSC, LP, Bain Capital Credit Member, LLC, FIG LLC, which conducts business under the name Fortress Investment Group, Adage Capital Management, L.P., Essex Woodlands Management, Inc., The Goldman Sachs Group, Inc., Oaktree Capital Management, L.P., The Bank of Nova Scotia, Alphabet Inc., Legacy Housing Corporation and Celsius Holdings, Inc. All the firms agreed to settle the SEC charges.

Auditors Settle SEC Charges for Misleading Investors Regarding FTX

The SEC obtained a [Final Judgment](#) against the audit firm Prager Metis CPAs, LLC ("Prager") and related entities for conducting deficient audits that contributed to the collapse of FTX.

The US District Court for the Southern District of New York approved a settlement of SEC charges for misconduct concerning the audits of the crypto asset trading platform and violations of auditor independence obligations. The SEC alleged that Prager misled investors by falsely claiming its audits were conducted with generally accepted US auditing standards. The SEC alleged that the audits failed to meet these standards, resulting in the concealment of significant financial risks, particularly as to FTX's relationship with a crypto hedge fund trading firm controlled by the FTX's CEO. The SEC alleges that FTX used this relationship to misappropriate billions in customer assets, which ultimately led to its collapse in November 2022.

The SEC highlighted multiple failures in Prager's audit process, including, but not limited to, lacking experience and knowledge to accomplish the audit of a large crypto trading platform, inadequate due diligence and failing to understand the relationship between FTX and its related hedge fund trading firm. The SEC alleged that Prager also ignored several red flags during the audit.

Further, after the FTX's collapse, the SEC charged that Prager attempted to erase its involvement, removing references to the audit from its website. The SEC considered such act to operate as "fraud or deceit" on the platform's investors, who relied on the audit reports to evaluate the platform's financial health.

The final judgement concluded violations of various regulations occurred, including SEA Sections [13\(a\)](#), [15\(d\)](#), and [17\(a\)](#) as well as Investment Advisors Act Section [206\(4\)](#).

SEC Charges Eleven Institutional Investment Managers with Failing to Report Certain Securities Holdings

On September 17, 2024, the SEC [announced](#) settled charges against 11 investment managers for failing to file reports, known as Forms 13F, as required due to their discretion over more than \$100 million in certain securities. Two of the advisors, Nationale-Nederlanden and NEPC, LLC, were also charged with failing to file Forms 13H as required for large traders who trade a significant amount of exchange-listed securities.

SEC Settles Charges Against Flyfish Club LLC for Selling NFTs as Unregistered Securities

On September 16, 2024, the SEC settled charges against Flyfish Club, LLC (“Flyfish”) with conducting an unregistered offering of non-fungible tokens (“NFTs”). According to the SEC’s [order](#), the purpose of the offering was to fund the construction and operation of a members-only club, restaurant. Possession of a Flyfish NFT was the exclusive means of obtaining membership in the club. Membership in the club transferred with membership of the NFT.

As alleged by the SEC, Flyfish led investors to expect profits from the entrepreneurial and managerial expertise of Flyfish and its principals in building and running the restaurant. Flyfish told investors they could potentially profit from reselling their NFTs at appreciated prices in the secondary market. Flyfish also told investors they could also make money by leasing the NFTs to others seeking to dine at the restaurant.

The Flyfish NFTs began trading in the secondary market almost immediately after the first sale in December. There have been thousands of trades involving the NFTs on secondary market trading platforms, many at profitable prices for sellers. Flyfish benefited from investors selling Flyfish NFTs in the secondary market by receiving a 10% royalty payment each time a Flyfish NFT sold on certain NFT-trading platforms.

The majority opinion of the SEC concluded that Flyfish offered and sold the Flyfish NFTs as investment contracts, and therefore securities, pursuant to the *Howey* test. In dissent, SEC Commissioners Peirce and Uyeda characterized the decision as “overreaching.” The intent of the NFT, they argue, was to create memberships in “an exclusive dining club.” As further argued, the SEC decision alleges no fraud, but rather that the issued NFTs are “utility tokens, not securities,” and “statements by the founders and NFT purchasers that a successful restaurant would cause the NFT price to rise do not change that.” The fact that the NFTs have a concrete use other than the increase in value at the efforts of others, that is, owning the NFT is required to eat at the club, argues the dissenters, means that “*Howey* is inapt.”

In Case You Missed It:

FINRA Settles Charges with Independent Financial Group, LLC Regarding Reg BI

FINRA [settled](#) charges with Independent Financial Group, LLC for Regulation Best Interest ("Reg BI") duty of care violations in failing to prevent excessive trading in customer accounts. According to FINRA's letter of acceptance, waiver and consent, the Broker Dealer "failed to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to supervise excessive trading and achieve compliance with Reg BI."

According to FINRA, IFG's Written Standard Procedures made compliance staff, who were not responsible for supervising registered representatives, responsible for reviewing an "Excessive Trading Report" available through the firm's clearing firm. However, IFG's staff instead reviewed an internal excessive trade alert. Once staff reviewed an excessive trade alert for an account, for the next six months an alert was not generated even if there was activity that met the designated criteria. The firm did not know that in certain circumstances alerts stopped appearing for review even if they had not been reviewed. Additionally, IFG's procedures failed to provide reasonable guidance about how compliance personnel should conduct review of excessive trade alerts or when they should take action based upon the information contained in those alerts.

FINRA also found that the firm "provided no guidance to supervisors regarding what factors might suggest that a representative was excessively trading an account or what steps they should take if they identified potential excessive trading." In addition, FINRA found that the firm was slow to respond to FINRA's requests for documents, providing incomplete information for nearly two years.