

**Notable Developments:**

- **SEC stayed mandatory climate-related disclosure rules pending judicial review.**
- **Five investment advisers settled charges with the SEC for marketing rule violations.**
- **SEC charged Senvest Management with recordkeeping failures.**
- **Uniswap Labs received Wells notice from SEC.**
- **Second Circuit revived customer class action against Coinbase.**
- **Jury found Terraform Labs and co-founder liable for securities fraud in lawsuit brought by the SEC.**
- **FINRA began disseminating transactions in active U.S. Treasury securities at the end of the day.**



**Happy Tax Day!**

**Notable Developments:**

**SEC stayed mandatory climate-related disclosure rules pending judicial review.**

On March 6, 2024, the SEC [adopted](#) amendments to its rules requiring registrants to provide climate-related information in their registration statements and annual reports, as noted in our prior [coverage](#). On April 4, the SEC [stayed](#) the implementation of these rules following multiple filings seeking review in multiple Federal circuit courts of appeal. The SEC's Order identifies legal challenges in the 5th Circuit, the 6th Circuit, the 8th Circuit and the 11th Circuit. The SEC's order stated that the stay is in place to avoid "potential regulatory uncertainty," and not because it is ceding any of its "long-standing authority to require the disclosure of information important to investors."

## **SEC Enforcement:**

### **Five investment advisers settled charges with the SEC for marketing rule violations.**

On April 12, 2024, the SEC [announced](#) settled charges against five investment advisers for their failures to adopt and implement policies and procedures regarding advertising hypothetical performance to the general public. These firms advertised hypothetical performance on their respective websites that was not relevant to the likely financial situation and investment objectives of the intended audiences. In addition, one of the investment advisers was also [found](#) violating other requirements of the marketing rules, including making false and misleading statements in advertisements, being unable to substantiate performance shown in the advertisements, failure to enter into written agreements for paid endorsements, and recordkeeping failures.

### **SEC charged Senvest Management with recordkeeping failures**

On April, 3, 2024 the SEC [charged](#) registered investment adviser Senvest Management LLC with failure to maintain and preserve electronic communications and to enforce its own code of ethics regarding pre-clearance for all securities transactions in the employees' personal accounts. Senvest [agreed](#) to pay a \$6.5 million penalty and undertake certain remedial efforts to implement improvements to its compliance policies and procedures.

## **In Case You Missed It...**

### **Uniswap Labs received Wells notice from the SEC.**

According to Hayden Adams, developer of Uniswap, "[@Uniswap Labs received a Wells notice from the SEC,](#)" as published on X, formerly known as Twitter.

Uniswap is a decentralized cryptocurrency exchange that uses liquidity pools to execute trades. It operates as an open source (Decentralized finance, or DeFi) project using smart contracts to facilitate trades. The Uniswap protocol facilitates automated transactions between crypto holders on the Ethereum blockchain. Uniswap is a leading DeFi cryptocurrency marketplace and has processed \$2 trillion in volume. A Wells notice signals to its recipients that the SEC is preparing to bring an enforcement action.

Over recent months, the SEC has brought several enforcement actions against crypto firms. For example, the SEC charged [Coinbase](#) with operating as unregistered national securities exchange, broker, and clearing agency and also with failing to register the offer and sale of its crypto asset. The U.S. District Court hearing the suit against Coinbase recently [ruled](#) that the SEC's interpretation of the relevant terms (including "securities" and "exchange") had merit and that the case could move forward. If the SEC is considering formal charges against

Uniswap, it could mean the SEC is seeking to classify and therefore regulate the development of DeFi platforms in addition to crypto assets.

While the content of the Wells notice is not public, Adams' announcement over X detailed a clear desire to contest the SEC's potential allegations. Adams expressed disappointment at the SEC's "unwillingness to provide clarity or a path to registration to those operating lawfully..." and declared his intent to take the defense of his platform and the related blockchain technology "all the way to the Supreme Court."

### **Second Circuit revived customer class action against Coinbase.**

The U.S. 2nd Circuit Court of Appeals [revived](#) a customer-initiated lawsuit against Coinbase that was previously dismissed by the District Court for the Southern District of New York. The suit alleges Coinbase sold unregistered securities and failed to register as a broker-dealer.

The Southern District, in [dismissing](#) the suit, applied the "statutory seller" standard from the Supreme Court's *Pinter v. Dahl* decision, which determines that a person is a "statutory seller" of securities (and thus liable under Section 12 of the Securities Act) if the person either (1) "passed title, or other interest in the security, to the buyer for value," or (2) "successfully solicit[ed] the purchase [of a security], motivated at least in part by a desire to serve [its] own financial interests or those of the securities['] owner." In applying this standard, the court relied on the initial complaint and the December 2021 version of the Coinbase User Agreement, finding that Coinbase did not hold title to the Tokens that Plaintiffs purchased and, thus, was not a statutory seller.

The appeals court disagreed with the lower court's analysis, noting that Coinbase's user agreements materially change over time, and that the initial complaint was later amended and the reliance on these documents to the exclusion of later edits was misplaced.

While the suit was revived with respect to the claims concerning Federal Securities Laws, certain state court issues were affirmed as dismissed.

### **Jury found Terraform Labs and co-founder liable for securities fraud in lawsuit brought by the SEC.**

In February 2023, the SEC [alleged Terraform Labs and its co-founder Do Hyeong Kwon](#) committed fraud. The defendants moved to dismiss the complaint for several reasons, including that the crypto assets sold by Terraform were not securities under federal securities laws and that the SEC lacked jurisdiction. In July 2023, the court issued an [opinion and order](#) to dismiss the defendants' motion and let the case proceed, ruling, in part, that the SEC had sufficiently stated its standards for determining whether crypto-assets may be regulated as securities and that, under that standard, the defendants' crypto assets could

reasonably be classified as such. On April 5, 2024, the jury, agreeing with the SEC's allegations, [found](#) both Terraform and Kwon liable for securities fraud. Kwon also faces criminal charges in the U.S. and South Korea arising out of events surrounding Terraform.

**FINRA began disseminating transactions in active U.S. Treasury securities at the end of the day.**

FINRA began disseminating individual transactions in active U.S. Treasury securities at the end of the day on March 25, 2024, which information is available on a same-day basis for FINRA members and subscribers to the data product, as well as on a next-day basis for the public on the FINRA website. On April 1, FINRA also began offering historical data on a six-month delay.