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Regulatory Recap
May 30, 2025

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- **SEC Division of Corporation Finance Publishes Statement on Protocol Staking Activities.**
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- **SEC Charges Unicoin and Top Executives with Fraud**

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- **SEC's Division of Investment Management to Hold Third Annual Conference on Emerging Trends in Asset Management.**
- **SEC Announces Agenda and Panelists for June 9 Crypto Roundtable on DeFi.**
- **SEC Names Katherine Reilly as Acting Inspector General.**
- **Wells Fargo consents to FINRA Charges Regarding Safeguarding of Information**

Notable Developments:

SEC Division of Trading and Markets Publishes Crypto Asset Activities and Distributed Ledger Technology FAQ

On May 15, 2025, The staff of the SEC's Division of Trading and Markets published an important frequently asked questions (FAQs) relating to crypto asset activities and distributed ledger technology. While the FAQs are not rules, regulations, or statements of the Commission, the FAQs provide guidance and clarity on certain critical issues. Among the

questions and answers, staff clarifies that Rule 15c3-3(b) requirement regarding physical possession or control of all fully-paid securities and excess margin securities applies only to securities carried by a broker-dealer for the account of customers or for a proprietary securities account of another broker or dealer, known as a "PAB account" (as further defined in paragraph (a)(16) of Rule 15c3-3); such requirement does not apply to crypto assets that are not securities. Staff further clarifies that a broker-dealer may establish control of a crypto asset that is a security via the method of control set forth in Rule 15c3-3(c). In addition, staff states that, the SEC's statement published on December 23, 2020 regarding custody of digital asset securities by special purpose broker-dealers ("SPBD Statement") is not mandatory for broker-dealers who seek to custody customer crypto assets that are securities. Instead, the SPBD Statement sets forth a temporary position taken by the SEC that is a "safe harbor" that a broker-dealer, under certain specified circumstances, would not be subject to an SEC enforcement action on the basis that the broker-dealer deems itself to have obtained and maintained physical possession or control of customer fully paid and excess margin securities. The SPBD Statement did not amend Rule 15c3-3 or any other rule. Therefore, in staff's view, a broker-dealer carrying crypto asset securities for a customer or PAB account may establish control under Rule 15c3-3(c). Importantly, staff reminds the public that crypto assets that are investment contracts would **not** be treated as securities under the Securities Investor Protection Act of 1970 ("SIPA") and protected by Securities Investor Protection Corporation ("SIPC") if they are not the subject of a registration statement filed under the Securities Act of 1933. The protection by SIPC created under SIPA would mandate that, in a liquidation under SIPA, SIPC and the court-appointed trustee work to return customers' securities and cash as quickly as possible; in addition, within limits, SIPC expedites the return of missing customer property by protecting each customer up to $500,000 for securities and cash (including a $250,000 limit for cash only).

Further, staff also states that a transfer agent may utilize distributed ledger technology as its official Master Securityholder File, as defined under Exchange Act Rule 17Ad-9(b) or a component thereof, provided that the transfer agent complies with all other applicable requirements under the federal securities laws, including the recordkeeping, reporting, examination, and other requirements of Section 17(a)(1) and 17(b) of the Exchange Act; the turnaround and other requirements of Exchange Act Rule 17Ad-2; the recordkeeping and other requirements of Rule 17Ad-6; the record retention and other requirements of Rule 17Ad-7; the prompt posting and other requirements of Rule 17Ad-10; the aged record difference, buy-in, and other requirements of Rule 17Ad-11; the safeguarding and other requirements of Rule 17Ad-12; and the accounting control, report, and other requirements of Rule 17Ad-13. Staff states that, if these requirements are met, the transfer agent would

not need to maintain a duplicate or "digital twin" of its master securityholder file exclusively off-chain.

Concurrently with the publication of the FAQ on May 15, 2025, the SEC staffs of the Division of Trading and Markets and FINRA's Office of General Counsel withdrew, effective immediately, the joint statement issued on July 8, 2019, regarding broker-dealer custody of digital asset securities.

SEC Division of Corporation Finance Publishes Statement on Protocol Staking Activities

On May 29, 2025, the SEC's Division of Corporation Finance ("Corp Fin") issued a statement clarifying that certain protocol staking activities on proof-of-stake (PoS) networks do not constitute securities transactions under federal securities laws.

PoS is a consensus mechanism used to prove that operators of nodes, i.e., unrelated computers within a distributed network, have contributed value to the network that, in some cases, can be forfeited if they act dishonestly. The node operators must commit or "stake" network tokens (referred to as "Covered Crypto Assets") to be eligible to validate and earn rewards. While staking, Covered Crypto Assets are "locked-up" under the terms of the protocol and cannot be transferred for a period of time. The node operators acting as the validator does not take possession or control of staked Covered Crypto Assets, which remain in the control of the custodian, and are not used by the custodian for operational or general business purposes, not lent, pledged or rehypothecated for any reason, and held in a manner designed not to be subject to claims by third parties.

Corp Fin is of the view that "Protocol Staking Activities" in connection with protocol staking do not involve the offer and sale of securities under the federal securities laws because they are not undertaken with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. Therefore, Protocol Staking Activities do not need to register transactions with the SEC or rely on an exemption from registration. The so-called "Protocol Staking Activities" covered by the statement refer to: (i) staking Covered Crypto Assets on a PoS Network; (ii) the activities undertaken by third parties involved in the Protocol Staking process – including, but not limited to, third-party Node Operators, Validators, Custodians, Delegates and Nominators ("Service Providers") – including their roles in connection with the earning and distribution of rewards; and (iii) providing "Ancillary Services" (which are merely administrative or ministerial in nature and do not involve entrepreneurial or managerial efforts). Only Protocol Staking Activities undertaken in connection with self (or solo) staking, self-custodial staking directly with a third-party and custodial arrangements are covered by the Corp Fin's statement.

Commissioner Caroline Crenshaw criticized Corp Fin's statement as an example of a "fake it 'till we make it" approach by ignoring the existing law. She pointed out that courts have ruled that locking up crypto tokens in a blockchain protocol to earn rewards, whether performed by an individual or a third-party, involved an investment contract. She also criticizes the SEC Crypto Task Force for rolling out "a flurry of staff statements, enforcement action dismissals, and roundtables, without delivering a "clear regulatory framework."

Treasury Secretary Signals Easing of Bank Capital Rule on Treasury Holdings

On May 23, 2025, appearing on Bloomberg, Treasury Secretary Bessent stated that the Administration was close to easing the bank capital rule known as the supplemental leverage ratio ("SLR") that requires banks to hold capital against Treasury securities on their balance sheets. He signaled that the change to the SLR could come in the summer.

SEC Dismisses Lawsuit Against Binance Entities and Changpeng Zhao

On May 29, 2025, the SEC announced the filing of a joint stipulation with Binance entities and Changpeng Zao to dismiss, with prejudice, the civil lawsuit filed in June 2023 against these defendants.

SEC Dismisses Three "Dealer" Lawsuits

On May 22, 2025, the SEC dismissed three lawsuits against Tri-Bridge Ventures, LLC, LG Capital Funding, LLC and River North Equity LLC, that failed to register with the SEC as "dealers." In each case, the SEC alleged that the defendant purchased debt and converted it into stock sold at high volumes and frequencies. The SEC, in dropping the suits, appears to be advancing the theory that, since the dealers in question had no customers, that enforcement of dealer requirements on these entities create a precedent that would require investment advisers, hedge funds, and others not traditionally understood as dealers to register as such. In two of the dropped cases, courts had already ruled that the SEC's complaint were legally sufficient to proceed. Commissioner Crenshaw, writing a statement in dissent, noted, among other issues raised by such action, that investors invariably lose when the SEC abandons enforcement of those evading law, predicting a rise in "unsavory" financing to come.

SEC Publishes Data on Regulation A, Crowdfunding and Private Fund Beneficial Ownership

On May 28, 2025, the SEC's Division of Economics and Risk Analysis announced publication of three new reports – the first report on Regulation A offerings during 2015 to 2024, second report on crowdfunding under the Jobs Act during 2016 to 2024 and third report on beneficial

ownership concentration and fund outcomes for qualifying hedge funds and their advisers from 2013 to 2023.

SEC Enforcement:

SEC Charges Unicoin and Top Executives with Fraud

On May 20, 2025, the SEC announced charges against Unicoin, Inc. and three of its top executives with fraud for their false and misleading statements in an offering of certificates that conveyed rights to receive Unicoin tokens and an offering of common stock. According to the SEC's complaint filed in the U.S. District Court for the Southern District of New York, the SEC alleged that Unicoin and its executives promised that the Unicoin tokens would be backed by real-world assets, including an international portfolio of real estates, but the SEC alleged that, the real estate assets were worth only a fraction of what the company claimed. The SEC also alleged that the company falsely stated in its offering that it had sold more than $3 billion in rights certificates, when it had raised no more than $110 million. In addition, the SEC alleged that the company falsely stated that the rights certificates and Unicoin tokens were "SEC-registered" or "U.S.-registered" when they were not. SEC also alleged that Unicoin and its CEO also violated the federal securities laws by engaging in unregistered offers and sales of securities. The complaint also charges Unicoin's general counsel with violating the antifraud provisions of the federal securities laws by negligently making similar misstatements in private placement memoranda that was used to offer and sell rights certificates and common stock.

In Case You Missed It:

SEC to Hold Round Table on Executive Compensation Disclosure Requirements

On May 16, 2025, the SEC announced that it would hold a roundtable on June 26, 2025 to discuss executive compensation disclosure requirements. SEC Chairman Paul Atkins issued a statement that provides potential questions for consideration and discussions. Public may submit views and comments on executive compensation disclosure requirements using the SEC's Internet submission form or via email using the rule-comments@sec.gov email address with "4-855" included in the subject line.

SEC's Division of Investment Management to Hold Third Annual Conference on Emerging Trends in Asset Management

On May 27, 2025, the SEC's Division of Investment Management announced that it would hold the third annual Conference on Emerging Trends in Asset Management on Thursday, June 5, 2025.

SEC Announces Agenda and Panelists for June 9 Crypto Roundtable on DeFi

On May 28, 2025, the SEC announced the agenda and panelists for the next and last crypto roundtable focusing on DeFi.

SEC Names Katherine Reilly as Acting Inspector General

On May 19, 2025, the SEC announced the appointment of Katherine Reilly, the then Deputy Inspector General, as its Acting Inspector General.

Wells Fargo consents to FINRA Charges Regarding Safeguarding of Information

On May 19, 2025, Wells Fargo Clearing Services, LLC consented to FINRA's findings that it failed to establish and maintain a supervisory system and procedures reasonably designed to safeguard customer information. According to FINRA's letter of acceptance, waiver and consent, when certain registered representatives departed the firm, the firm failed to notify insurance carriers, resulting in the former representatives maintaining access to firm customer records and information through the carriers' portals. As a result, FINRA found the firm violated Rule 30(a) of Regulation S-P of the Securities Exchange Act of 1934, and FINRA Rules 3110(a), 3110(b), and 2010, as well as NASD Rule 3010.