

SEC v. Wahi: An Enforcement Action that Could Impact the Broader Crypto / Digital Assets Industry

Article By:

Finance Practice Group

The SEC has made a new crypto move. On July 21, the SEC filed a [complaint](#) in the U.S. District Court, Western District of WA against Wahi, a Coinbase employee, and two others alleging insider trading and charging them with securities fraud. The SEC alleged that nine of the crypto assets that Wahi and other defendants traded were “crypto asset securities”: AMP, RLY, DDX, XYO, RGT, LCX, POWR, DFX and KROM. This action is unique; unlike prior SEC enforcement actions brought against Poloniex, Coburn, TokenLot and others, which alleged the existence of digital asset securities being traded on various types of trading platforms, but failed to identify the specific alleged securities at issue or include any legal analysis of those alleged securities, here, the SEC “names names” and offers some analysis, but does not add the issuers of those 9 assets, or the platform upon which they are traded, as defendants.

In short, the complaint alleges that Wahi repeatedly tipped the other Defendants with insider information that he obtained through his employment about the timing and content of Coinbase’s “listing announcements,” in which Coinbase would announce that certain crypto assets would be listed for trading on its trading platform. The employees allegedly used this information “to trade ahead of multiple listing announcements, earning at least \$1.1 million.”

This action may reflect a [new](#) more aggressive strategy by the SEC; by bringing this action, the SEC functionally can argue eleven cases in one: nine cases alleging that certain digital assets are improperly issued securities, one case against the named defendants for securities law violations, and one impliedly against all intermediaries that offer those nine digital assets to US customers. This is also the first instance of the SEC clearly alleging that a digital asset is a security in an action other than one brought against the issuer of that asset. As such, this new action implicates several industry-moving questions:

1. Will all US-based centralized exchanges stop trading the nine assets as was observed industry wide with XRP after the SEC sued XRP’s issuers?
2. Will any of the issuers of the nine assets in question intervene to argue against the allegations that those assets are securities? If not, does a finding in the Wahi case that the assets at issue were securities create a presumption in other matters that those assets are securities?

3. Would any exchange that lists the nine assets in question intervene to argue against them being securities?

This complaint is unique in that none of the nine issuers of the alleged securities is a party to the complaint. The defendants may argue the nine assets are not securities, which would defeat the securities fraud allegations, but in so doing would need to win a nine-front war. Moreover, some of the digital assets at issue used novel issuance strategies compared to others which have previously been the subject of enforcement activities, and thus those arguments may be particularly complex.

Notably, CFTC Commissioner Pham [criticized](#) the SEC for bringing this action, stating that it is “a striking example of ‘regulation by enforcement.’ [since the assets] could be described as utility tokens and/or certain tokens relating to decentralized autonomous organizations (DAOs). . .” Commissioner Pham instead suggested that these major issues should be solved “through a transparent process that engages the public to develop appropriate policy with expert input—through notice-and-comment rulemaking pursuant to the Administrative Procedure Act. Regulatory clarity comes from being out in the open, not in the dark.”

It is unclear how the various intermediaries serving US persons will respond to the allegation that the nine assets at issue are securities; Coinbase so far has publicly [said](#) it does not list securities, and [filed](#) its own a petition for rulemaking from the SEC as to treatment of digital assets by the SEC.

The Wahi case is incredibly important in the digital assets space, because a holding that any one asset is a security may open the door to subsequent actions against exchanges that fail to delist it. These potential actions include class actions by putative claimants against the exchanges. However, without more clarity from the SEC, despite Commissioner Pham’s and Coinbase’s call for such rulemaking, such broad and sweeping actions may chill the digital assets industry.

We acknowledge the contributions to this publication from our summer associate Joshua Durham.

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National Law Review, Volume XII, Number 210

Source URL: <https://natlawreview.com/article/sec-v-wahi-enforcement-action-could-impact-broader-crypto-digital-assets-industry>