

# BFKN Alert: SEC Enforcement Against Crypto

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*BFKN Press Release*

Since he became SEC Chair in April 2021, Gary Gensler has made clear that he believes cryptocurrency products and platforms are governed by existing SEC rules, and that the SEC intends to regulate them. Industry participants had hoped the SEC's regulatory authority over the industry was enough of a question mark that if the SEC broke toward regulation, it would treat violators charitably.

That illusion has been shattered by recent comments of SEC Director of Enforcement Gurbir Grewal. According to Reuters, Grewal told the news agency that the SEC will not offer amnesty to cryptocurrency companies that self-report violations of securities laws. Reuters quotes Grewal as saying, "Our message to them is not, 'Register your product and we'll just ignore the billions you have under management in this crypto lending product and your violations of the securities laws.'" Self-reporting may result in lighter penalties, but that is nothing new.

The SEC may, however, offer other incentives to self-report and settle, particularly the opportunity to register a product and sell it in the future. Last month, BlockFi Inc. settled first of its kind charges that the company had violated SEC regulations by failing to register the offers and sales of its retail crypto lending product. BlockFi paid \$50 million to the SEC and up to \$50 million to 32 states to settle, but now it can register the offer and sale of a new lending product. Mr. Gensler touted the settlement as evidence of the SEC's willingness to work with crypto platforms to come into compliance with securities laws and regulations. The BlockFi settlement will surely be an important precedent for other crypto companies negotiating deals with the SEC.

## **Crypto Companies Should Evaluate Their Compliance With SEC Regulations**

Regardless of a crypto company's line of business—lending, exchange, custody, developer, fund, token issuer, or service provider—your business may have securities law exposure. Indeed, the SEC has pursued enforcement actions against a wide array of cryptocurrency industry participants from BlockFi to Ripple to Floyd Mayweather and DJ Khaled.

### PROFESSIONALS

Edward F. Malone

Justin C. Steffen

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While the risks for each participant are unique, ignoring securities laws is never a viable strategy.

In addition, parties should carefully evaluate and diligence their contractual agreements and counterparties. A token issuer, for instance, who runs afoul of the SEC may precipitate a chain reaction impacting myriad others. Exchanges may be forced to de-list the token, and investors or purchasers may be left without recourse and with little hope of recovering their initial investment. There is no substitute for diligence and companies should DYOR (do your own research).

### We Can Help

The BFKN Financial Institutions Group routinely advises our clients on licensing, regulatory, contractual, and compliance issues relating to cryptocurrency. We help banks and FinTechs, alike, navigate the legal and regulatory obstacles to innovation. And our White Collar Defense and Regulatory Enforcement Group represents clients in investigations conducted by the SEC into potential violations of securities laws and regulations.

**Justin C. Steffen** is a nationally recognized FinTech and cryptocurrency attorney who helps financial institutions navigate the legal and regulatory obstacles to innovation. Justin regularly advises clients on the intersection of technology and the law, including on issues related to cryptocurrency, licensing, and regulation.

In his civil litigation and white collar defense practices, **Edward F. Malone** litigates and tries cases, and argues appeals in both federal and state courts. He also counsels and conducts investigations for clients facing potential civil and criminal enforcement actions, and represents clients in grand jury proceedings. Ed also is General Counsel of the Firm.