



## ADGM Introduces Consultation Paper for Fiat-Referenced Stablecoin Issuers

On 20 August, 2024, the Financial Services Regulatory Authority (**FSRA**) of the Abu Dhabi Global Market (**ADGM**) issued **Consultation Paper No. 7**, proposing a regulatory framework for the issuance of Fiat-Referenced Tokens (**FRTs**). This paper outlines regulations for these tokens. FRTs are stablecoins backed by high-quality, liquid assets denominated in a single fiat currency. The proposed paper addresses key areas such as reserve asset requirements, redemption rights, capital adequacy, and governance to ensure that FRTs are issued and managed in a manner that promotes financial stability, transparency, and consumer protection within the ADGM.

While the FSRA had previously established guidelines for virtual assets, the FRTs necessitate a tailored regulatory approach. Unlike other stablecoins that may be backed by volatile assets, FRTs are intended to maintain a stable value by being backed by high-quality, liquid assets denominated in the same currency as the token to ensure their use as a reliable medium of exchange, distinguishing them from other forms of virtual assets that may be used for speculative or investment purposes.

The FSRA defines FRTs as a type of digital asset designed to maintain a stable value by being backed by high-quality, liquid assets denominated in a specific fiat currency. FRTs are intended to function as a reliable medium of exchange, offering stability through their redemption feature, which allows holders to exchange the token for a fixed amount of the corresponding fiat currency from the issuer upon demand.

The FSRA is the supervisory and regulatory authority overseeing the issuance and management of FRTs within ADGM. Companies wishing to issue FRTs must obtain a Financial Services Permission (FSP) from the FSRA, authorizing them to engage in the regulated activity of issuing Fiat-Referenced Tokens. To apply for a license, an issuer must submit a detailed application to the FSRA, including a proposed white paper that outlines the operational mechanics of the FRT, the reserve asset management strategy, and the redemption policies. The application must be submitted at least 20 business days before the initial issuance of the FRT.

The paper proposes requirements that FRT issuers must fulfill to stay operational in the jurisdiction. Issuers of FRTs must maintain reserve assets that are at least equal to the par value of all outstanding tokens. These assets must be highly liquid and of high quality, such as cash or cash equivalents, debt securities with short maturities, and certain government or central bank-issued securities. The reserves must be independently attested to on a monthly basis, with the results published to ensure transparency. The paper mandates that FRT holders must be

able to redeem their tokens at par value within two business days of a redemption request. The FSRA proposes that FRT issuers maintain a minimum level of capital resources. The requirement is set at the higher of \$2 million or the issuer's annual audited expenditure. This capital buffer is intended to absorb potential losses and ensure that issuers can continue to operate even under adverse market conditions.

Interestingly, the consultation paper introduces stress testing as a vital part of the ongoing obligations for issuers of FRTs within the ADGM. This requirement is designed to ensure that issuers maintain the stability and reliability of their tokens, even under adverse market conditions. The stress tests include liquidity stress, where the issuer's ability to quickly convert Reserve Assets into cash is assessed, especially during periods of high redemption demand. Stress tests simulate sharp declines in the value of Reserve Assets to evaluate whether the issuer can still meet redemption requests at par value to test against market volatility.

The consultation paper outlines the importance of modeling large-scale redemptions, often referred to as a "run" on the issuer, to determine if the issuer can liquidate assets efficiently without significantly impacting the token's value. Operational risks, such as technological failures or cybersecurity threats, are also considered, ensuring that issuers are prepared to manage and redeem FRTs even in the face of potential disruptions.

The FSRA requires these stress tests be conducted annually, though more frequent testing may be necessary if concerns about the issuer's Reserve Assets arise. By incorporating stress testing into the regulatory framework, the FSRA aims to safeguard the stability of FRTs and protect the interests of token holders, contributing to the overall resilience of the digital assets market in the ADGM.

The process of setting up an FRT within the ADGM comes with specific financial commitments. The FSRA has proposed application and annual supervision fees of \$70,000 each for entities wishing to engage in FRT issuance.

The FSRA is currently in the consultation phase, inviting feedback from stakeholders on the proposed framework. Stakeholders can provide feedback on the proposed framework until 3 October, 2024. The final regulations will be enacted based on this feedback, and issuers should refrain from initiating any FRT-related activities until the official rules are published.

(Source: <https://adgmen.thomsonreuters.com/rulebook/consultation-paper-no-7-2024-proposed-regulatory-framework-issuance-fiat-referenced-tokens>, [https://adgmen.thomsonreuters.com/sites/default/files/net\\_file\\_store/Consultation\\_Paper\\_No\\_7\\_of\\_2024\\_FRTs.pdf](https://adgmen.thomsonreuters.com/sites/default/files/net_file_store/Consultation_Paper_No_7_of_2024_FRTs.pdf))

## WazirX Parent Company Seeks Moratorium in Singapore High Court Amid Financial Crisis

On 27 August 2024, Zettai Pte. Ltd., the parent company of the cryptocurrency exchange WazirX, filed an application with the Singapore High Court seeking a moratorium under Section 64 of the [Insolvency, Restructuring, and Dissolution Act 2018](#). The application, registered as Case No. HC/OA 861/2024, aims to secure a six-month halt on any winding-up resolutions and legal proceedings against the company as it undergoes a restructuring process.

The moratorium application, submitted without notice, requests the Court to prevent any ongoing or new legal actions, including those before courts, arbitral tribunals, or administrative agencies, from proceeding against Zettai during this period. Additionally, the application seeks to restrict any execution, distress, or other legal processes against Zettai's property unless expressly permitted by the Court.

The moratorium, if granted, would provide Zettai with temporary relief from legal actions and financial obligations, giving the company a "breathing space" to restructure its operations. Specifically, the moratorium would prevent any new or ongoing legal proceedings against Zettai, including winding-up resolutions and execution of claims by creditors, for a period of six months. During this time, Zettai plans to engage with potential investors and explore restructuring options aimed at stabilizing the company and improving recoveries for its users.

The affidavit supporting the application, made by Zettai's director Nischal Shetty, outlines the situation the company faces following a devastating cyberattack on 18 July 2024. This attack resulted in the loss of approximately USD 234 million in digital assets from one of WazirX's wallets managed by the digital asset custody firm Liminal. The attack has left Zettai grappling with financial challenges, including the suspension of all user withdrawals and trading activities on the platform.

The affidavit reveals that the cyberattack has not only caused substantial financial loss but has also led to a wave of panic among WazirX's users. With over 4.4 million active users, the platform has been inundated with nearly 10,000 withdrawal requests since the incident, forcing Zettai to take drastic measures to prevent a complete collapse.

In response to the crisis, Zettai has engaged various professionals, including Kroll Pte Ltd as financial advisors and Rajah & Tann Singapore LLP as legal advisors, to explore restructuring options. These options include engaging with potential investors or "white knights" to inject capital into the company, thereby improving recoveries for users and stabilizing operations.

The affidavit also touches on the ongoing ownership dispute between Zettai and Binance, which has complicated the situation further. Although Binance had initially taken over control of WazirX's cryptocurrency wallets, it later distanced itself from the platform, leading to legal and operational uncertainties that continue to affect Zettai's restructuring efforts.

The moratorium, if granted, would provide Zettai with much-needed time to develop and implement a restructuring plan without the immediate threat of legal actions from creditors or users. The company's management believes this breathing space is crucial for negotiating with potential investors and ultimately safeguarding the interests of WazirX's users.

## Latvijas Banka invites Pre-Licensing Consultations Ahead of New EU Regulations

On 29 August 2024, the Bank of Latvia extended an invitation to crypto-asset service providers (**CASPs**) and consulting service providers to engage in pre-licensing consultations as they prepare to comply with the forthcoming European Union (**EU**) Markets in Crypto-Assets Regulation (**MiCA**). This new regulation, set to take effect on December 30, 2024, will introduce a unified regulatory framework across the EU for the crypto-asset industry. One of the key requirements under MiCA is that all crypto-asset service providers must obtain an operating permit to conduct their business within the EU.

Latvijas Banka, in preparation of the formal application process that begins in January 2025, is offering these pre-licensing consultations to help companies understand the regulatory requirements and prepare their applications. The aim of this initiative is to allow companies to gain a clear understanding of the regulatory requirements, the necessary documentation, and the compliance standards they must meet.

The consultations are part of a broader effort by the Latvijas Banka to support the crypto-asset industry during this transition to a more regulated environment. Latvijas Banka has also published comprehensive guides to assist entrepreneurs in understanding the application process for obtaining an operating permit. These guides offer detailed instructions on how to prepare and submit applications, the types of documents required, and the expected timelines for the Bank of Latvia's review and decision-making process. The guides also include an overview of the classification of crypto-assets under MiCA, helping companies understand which assets fall under the new regulation and which are governed by other legislative frameworks.

The implementation of MiCA will standardise the regulatory environment for crypto-assets across the EU. For CASPs, obtaining an operating permit in Latvia will enable them to offer services throughout the EU, as per the cross-border operation notification mechanism embedded within MiCA. This notification mechanism ensures that once a company is licensed in one EU country, it can operate across all member states, thereby providing equal opportunities for service providers regardless of where they are initially licensed.

Latvijas Banka is hosting an informative webinar on 30 September, 2024, at 11:00 AM (Riga time) for CASPs and consulting service providers interested in learning about the licensing opportunities available in Latvia. This session will provide a comprehensive overview of the licensing process, including a detailed discussion on anti-money laundering (**AML**) requirements, supervisory expectations, and insights into the Digital Operational Resilience Act (**DORA**). The webinar will cover the benefits of participating in Latvia's regulatory sandbox. The event is scheduled for two hours. Registration is open until September 27th .

(Source: <https://www.bank.lv/en/news-and-events/news-and-articles/news/17023-latvijas-banka-invites-crypto-asset-service-providers-to-pre-licensing-consultations>)

## CFTC Approves Kalshi Klear LLC Refistration as DCO: New Era of Event-Based Trading in the Financial Markets

On 29 August 2024, the Commodity Futures Trading Commission (**CFTC**) granted Kalshi Klear LLC an Order of Registration as a derivatives clearing organisation (**DCO**) under the Commodity Exchange Act (**CEA**). Kalshi's affiliate, KalshiEx LLC, was already registered as a designated contract market, and now it's another subsidiary is designated as a DCO which expands its operational capabilities.

Kalshi Klear is the first exchange regulated by the CFTC to focus on trading the outcomes of future events. They have developed a new asset class known as event contracts which allows participants to trade on a wide range of topics, from inflation and federal rates to government shutdowns and Supreme Court decisions. This platform enables individuals and institutions to hedge against risks directly related to their concerns and capitalise on their opinions about future events.

Kalshi's platform introduces trading by allowing market participants to take Yes or No positions on whether specific events will occur. The pricing of these event contracts reflects the market's collective assessment of the probability that a given event will occur, with a chance to make money on their opinion. Kalshi LLC has somehow found a new way to gauge market sentiment.

The introduction of a regulated market for event contracts could influence traditional financial markets by offering alternative ways to hedge risks associated with specific events. For instance, participants concerned about economic factors like inflation or government policies can now engage directly with these issues in a structured and regulated market. This has the potential to diversify the types of financial instruments available and shift market dynamics in ways that extend beyond the confines of traditional asset classes.

However, the long-term implications of Kalshi's platform are still unfolding. While the current market reaction to Kalshi's offerings is at an early stage for any comments, the true position will be revealed as the platform scales and begins to influence broader market trends. If the platform potentially expands internationally, it may face different regulatory challenges that could impact its operations or pave new paths for other event contracts being recognised as a form of financial product across jurisdictions.

The idea of event contracts as derivatives have democratised the finance, by empowering individuals to trade on real-world events that matter to them, by not only offering a new financial product but also reshaping the way people engage with the financial markets. The Event Contract's success as a financial product could start a new era in financial trading, where the outcomes of everyday events become a central component of the global financial system.

(Source: <https://www.cftc.gov/PressRoom/PressReleases/8957-24>)

## Hong Kong Monetary Authority Imposes Penalty on WeChat Pay Hong Kong for Anti-Money Laundering Failures

The Hong Kong Monetary Authority (**HKMA**) has concluded its investigation into WeChat Pay Hong Kong Limited (**WPHK**), resulting in a HK\$875,000 penalty for violations under the Payment Systems and Stored Value Facilities Ordinance (**PSSVFO**). The penalty was imposed for WPHK's failure to meet the required standards under section 6(2)(b) of Part 2 of Schedule 3 of the Ordinance, concerning anti-money laundering (**AML**) and counter-financing of terrorism (**CFT**) controls.

The disciplinary action follows a self-report from WPHK and an ensuing investigation by the HKMA, which uncovered lapses in WPHK's compliance practices between August 25, 2016, and October 24, 2021. During this period, WPHK failed to conduct customer due diligence (**CDD**) and apply enhanced due diligence (**EDD**) measures, particularly in high-risk scenarios involving potential money laundering and terrorist financing risks.

The HKMA's investigation revealed that WPHK did not properly categorise certain law enforcement agency intelligence as trigger events, which would have required further CDD reviews. As a result, the identification and management of high-risk customers were delayed, with some EDD measures being applied only after significant delays of up to 900 days.

In determining the penalty, the HKMA considered the severity of the compliance failures, the need to reinforce AML/CFT controls within the financial industry, and WPHK's measures to address the deficiencies. The authority also noted WPHK's cooperation throughout the investigation and its clean disciplinary record.

Raymond Chan, Executive Director of Enforcement and AML at the HKMA, stated "SVF licensees should apply enhanced due diligence measures on their customers in situations involving potentially high risk of money laundering and terrorist financing. These enhanced due diligence measures should be effective in ensuring that the associated money laundering and terrorist financing risks are properly managed." highlighting the need of effective enhanced due diligence measures for Stored Value Facility (SVF) licensees to curb money laundering and terrorist financing risks.

(Source: <https://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2024/20240830e7a1.pdf>, <https://www.hkma.gov.hk/eng/news-and-media/press-releases/2024/08/20240830-7/#1>)

## U.S. Court Orders \$230 Million in Penalties for Fraud in Commodity and Digital Asset Trading

On 3 September, 2024, the Commodity Futures Trading Commission (CFTC) announced the penalty imposed by Judge Mary Rowland of the United States District Court for the Northern District of Illinois in the case of **Commodity Futures Trading Commission v. Jafia LLC, Sam Ikkurty (a/k/a Sreenivas I. Rao), and Ravishankar Avadhanam**. The final judgment was delivered on 22 July 2024 in the above mentioned matter related to a Ponzi scheme disguised as crypto and carbon investment funds. The court imposed permanent injunction on the defendants from engaging in any commodity interests or digital asset transactions, and imposed financial penalties, including a restitution obligation of \$83,757,249, disgorgement of \$36,967,285, and a civil monetary penalty of \$110,901,855, for violations of the Commodity Exchange Act (CEA).

The case was lodged by CFTC against the defendants for operating fraudulent investment schemes involving commodities and digital assets. The defendants, Sam Ikkurty, Jafia LLC, and Ravishankar Avadhanam, along with their associated entities, were accused of soliciting funds from investors under the premise of investing in commodity interests and digital assets through investment vehicles such as Rose City Income Fund I, Rose City Income Fund II LP, and Seneca Ventures, LLC. Instead of utilizing these funds for their stated purpose, the defendants were found to have misappropriated the investments for personal expenses, including salaries and loans.

The primary issue in this case was the fraudulent solicitation of investments by the defendants. They promised investors high returns through investments in commodity interests and digital assets. However, instead of using the funds for legitimate trading, as claimed, the defendants misappropriated the money for personal use. This violated **Section 6o(1)(A)-(B)** of the CEA, which prohibits making false statements or engaging in deceptive practices in connection with the offer and sale of commodity interests. Investors were led to believe their funds were secure and being invested properly, but the reality was that they were diverted for improper purposes.

Another issue was the defendants' failure to register with the CFTC. Under **Section 6m(1)** of the CEA, commodity trading advisors and commodity pool operators are required to register with the CFTC to ensure they are subject to regulatory oversight. The defendants' failure to register allowed them to operate outside of these regulations, reducing transparency and accountability in their operations. Without proper registration, investors were denied the protections that come from dealing with regulated entities.

The case also raised concerns about the defendants' use of manipulative and deceptive devices, in violation of **Section 9(1)** of the CEA. The court found that the defendants engaged in a pattern of misrepresentation and deceit, making false claims about the nature of their investments. Instead of using the funds for the promised commodity interests or digital assets, they either misused the money for personal gain or failed to make the investments altogether. The case also involved the unauthorized transfer of digital assets. Defendant Sam Ikkurty was found to have transferred assets from court-ordered receivership accounts, which violated previous orders from the court. This action not only breached the court's directives but also violated **CFTC Regulation 180.1(a)**, which prohibits the use of fraudulent schemes in connection with commodities or digital assets. This specific issue led to contempt of court charges and additional financial penalties for Ikkurty, underscoring the seriousness of the unauthorized asset transfers.

The court issued a permanent injunction against Sam Ikkurty, Jafia LLC, and Ravishankar Avadhanam, along with their affiliates, agents, and associates. This injunction prevents them from participating in any activities related to commodity interests or digital assets. This includes prohibition from trading, soliciting funds, or controlling any transactions related to these areas. They are also barred from applying for registration or claiming any exemptions with CFTC.

The court ordered the defendants to pay \$83,757,249 in restitution, to compensate all investors who suffered financial losses due to the defendants' fraudulent actions. The restitution payments will be managed by a court-appointed receiver, who will oversee the collection and distribution of these funds to the affected parties. The receiver will act under the supervision of the court to ensure fair and equitable disbursement to all eligible claimants.

The court further ordered the defendants to disgorge \$36,967,285, for the profits they wrongfully gained from their fraudulent activities. This amount includes all salaries, fees, and revenues earned through their misconduct. The disgorgement amount is set to ensure that the defendants do not retain any financial benefit from their violations. Importantly, any payments made toward the restitution obligation will be credited against the disgorgement amount, preventing duplicate penalties.

In addition to restitution and disgorgement, the court imposed a civil monetary penalty of \$110,901,855 as a punitive measure for their violations of the Commodity Exchange Act. The penalty is immediately due and payable to the CFTC.

The court took a strong stance against the unauthorized transfer of digital assets by Sam Ikkurty, which constituted a violation of previous court orders. As a result, Ikkurty was found in contempt of court and ordered to pay an additional fine of \$13,817,000 corresponding to the value of the digital assets transferred out of the court-ordered receivership accounts. A daily fine of \$254,000 was imposed on Ikkurty, increasing by \$1,000 for each day he fails to comply with the court's orders.

(Source: Judgment: <https://www.cftc.gov/media/11181/enfikkurtyjafiarosecityincomefundsenecajudgment072224/download>, CFTC: <https://www.cftc.gov/PressRoom/PressReleases/8959-24>)

## MAS Issues Prohibition Order Against Former Broker Involved in Market Misconduct

On 3 September 2024, the Monetary Authority of Singapore (**MAS**) issued a five-year prohibition order (PO) against Mr. Chong Yew Mun Alan, a former representative of RHB Securities (Singapore) Pte. Ltd. The order was made following Mr. Chong's conviction for market misconduct offences under the Securities and Futures Act (**SFA**), relating to false trading in the shares of Catalist-listed Koyo International Limited.

Between December 2015 and January 2016, Mr. Chong had participated in a scheme devised by Mr. Lin Eng Jue to create a misleading impression regarding the price of Koyo shares. Acting on Mr. Lin's instructions, Mr. Chong traded Koyo shares in 15 different trading accounts using login credentials that were not his own. The brokerage firms involved were not aware of or had not consented to Mr. Chong's trades being placed on behalf of the account holders, which contributed to the false appearance of rising share prices for Koyo.

The market-rigging activities culminated in Mr. Chong's conviction in May 2023 for abetting Mr. Lin's false trading and for deceiving several brokerage firms by using unauthorized trading accounts. On 13 July 2023, Mr. Chong was sentenced to 11 weeks' imprisonment for his role in the scheme. The misconduct has led MAS to conclude that he is not fit to perform roles within the financial advisory and capital markets sectors.

As part of the prohibition order, Mr. Chong is barred from providing financial advisory services, managing, acting as a director, or becoming a substantial shareholder of any financial advisory firm under the Financial Advisers Act. Similarly, he is prohibited from performing regulated activities or participating in the management or ownership of capital market services firms under the SFA.

The prohibition order against Mr. Chong is part of a broader investigation that has seen eight individuals convicted for their roles in a market manipulation scheme designed to artificially inflate the share price of Koyo International. The scheme, orchestrated by Mr. Lin Eng Jue, involved the manipulation of 53 trading accounts opened

in the names of 15 individuals. Between August 2014 and January 2016, Mr. Lin and his associates executed a series of trades to gradually drive up the price of Koyo shares, peaking at \$0.40 on 14 January 2016, with the aim of attracting a buyer for the company through a reverse takeover.

However, the fraudulent nature of the trades was exposed after the Singapore Exchange Securities Trading Limited (SGX-ST) issued a "Trade with Caution" alert due to unusual trading activities. As trading curbs were imposed by several brokerages, Koyo's share price plummeted to \$0.056 by 18 January 2016. The scheme resulted in losses of approximately \$3.28 million for account holders, with brokerages and remisiers bearing \$1.05 million of those losses.

Mr. Chong, along with three other individuals—Mr. Ang Wei Jie Simon, Ms. Koh Cheo Leng, and Mr. Lin Eng Jue—was convicted for their involvement in the scheme. They were sentenced to imprisonment terms ranging from 11 weeks to 42 months. Mr. Lin, as the mastermind of the operation, received the heaviest sentence of 42 months.

Ms. Loo Siew Yee, Assistant Managing Director of MAS, emphasized the gravity of the situation, stating, "The convicted individuals executed a sophisticated market-rigging scheme that resulted in severe market distortion over a prolonged period and significant losses to market participants. MAS will act firmly against such egregious misconduct to preserve the integrity of our capital markets."

As the prohibition order against Mr. Chong takes effect, it serves as a clear warning that individuals found engaging in deceptive market practices will face severe consequences, including criminal prosecution and disqualification from the financial services sector. MAS continues to collaborate with regulatory and enforcement bodies to ensure a fair and transparent financial market environment in Singapore.

(Source: <https://www.mas.gov.sg/regulation/enforcement/enforcement-actions/2024/mas-issues-prohibition-order-against-mr-chong-yew-mun-alan>)

## SEC Charges Six Credit Rating Agencies with \$49 Million in Penalties for Recordkeeping Failures

On 3 September 2024, the U.S. Securities and Exchange Commission (**US SEC**) charged six nationally recognized statistical rating organizations for failing to maintain and preserve electronic communications as required under federal securities laws. The firms, including Moody's, S&P Global Ratings, and Fitch Ratings, admitted to the violations and agreed to pay a total of over \$49 million in penalties. These charges stem from recordkeeping failures that hindered the US SEC's ability to ensure compliance with regulatory obligations, prompting the firms to implement compliance reforms.

The SEC has imposed a \$1 million fine on A.M. Best Rating Services, Inc. for failing to retain key business communications related to credit rating activities, in violation of federal securities laws. The company allowed employees, including senior staff, to use personal devices for business communication, bypassing recordkeeping rules since 2020. A.M. Best agreed to the cease-and-desist order, admitted its violations, and initiated corrective actions.

The SEC has fined Fitch Ratings, Inc. \$8 million for failing to comply with federal recordkeeping requirements related to its credit rating activities. Fitch employees, including senior staff, used personal and company-issued devices to conduct business communications via unapproved messaging platforms such as WhatsApp and WeChat since at least May 2020. These communications were not retained as required by law. Fitch Ratings has agreed to a cease-and-desist order and is implementing corrective actions, including hiring a compliance.

The SEC has fined HR Ratings de México, S.A. de C.V. \$250,000 for failing to comply with recordkeeping rules related to its credit rating activities. Since 2020, HR Ratings employees, including senior staff, used personal and company-issued devices to conduct business communications via unapproved messaging platforms such as WhatsApp. These communications were not preserved, violating federal securities laws. HR Ratings has agreed to a cease-and-desist order and will implement a compliance program to address these violations.

The SEC has fined Demotech, Inc. \$100,000 for failing to comply with recordkeeping rules related to its credit rating activities after it became a nationally recognized statistical rating organization (NRSRO) in 2022. Demotech employees, including senior executives, used personal devices for business communications via unapproved messaging platforms. The company has agreed to a cease-and-desist order and remedial sanctions.

The SEC has fined Moody's Investors Service, Inc. \$20 million for failures to comply with federal recordkeeping rules related to credit rating activities. Since at least 2020, Moody's employees used personal devices and unapproved platforms like WhatsApp to communicate about credit ratings, and these communications were not preserved as required by law. Moody's has agreed to a cease-and-desist order, remediation efforts, and the hiring of an independent compliance consultant to address these violations and improve its internal policies.

The SEC has fined S&P Global Ratings \$20 million for violations of federal recordkeeping requirements related to credit rating activities. Since at least 2020, S&P employees, including senior staff, used personal devices and messaging platforms like WhatsApp to discuss credit ratings without preserving these communications, as required by law. S&P has agreed to a cease-and-desist order and will implement corrective actions, including appointing a compliance consultant and improving communication monitoring and retention policies.

All the firms were found in violation of **Section 17(a)(1)** and **Rule 17g-2(b)(7)** of the **Securities Exchange Act of 1934** for failing to retain crucial records. As a result, the SEC has also censured the firms, requiring them to cease future violations. Most firms—except A.M. Best and Demotech—are required to hire compliance consultants to conduct comprehensive reviews of their recordkeeping policies and address non-compliance issues related to the use of personal devices for work communications.

Sanjay Wadhwa, Deputy Director of the SEC's Division of Enforcement, emphasized the importance of maintaining proper records, noting, "We have seen repeatedly that failures to maintain and preserve required records can hinder the staff's ability to ensure that firms are complying with their obligations and the Commission's ability to hold accountable those that fall short of those obligations, often at the expense of investors," further added "In today's actions, the Commission once again makes clear that there are tangible benefits to firms that make significant efforts to comply and otherwise cooperate with the staff's investigations."

(Source: <https://www.sec.gov/newsroom/press-releases/2024-114>, <https://www.sec.gov/files/litigation/admin/2024/34-100907.pdf>, <https://www.sec.gov/files/litigation/admin/2024/34-100906.pdf>, <https://www.sec.gov/files/litigation/admin/2024/34-100903.pdf>, <https://www.sec.gov/files/litigation/admin/2024/34-100904.pdf>, <https://www.sec.gov/files/litigation/admin/2024/34-100902.pdf>, <https://www.sec.gov/files/litigation/admin/2024/34-100905.pdf>)

## CFTC Orders Uniswap Labs to pay \$175K Penalty for Breaking the Rules in DeFi Dealings

On September 4, 2024, the Commodity Futures Trading Commission (CFTC) issued an **Order Instituting Proceedings** and imposed remedial sanctions against Universal Navigation Inc., operating as Uniswap Labs. The action was taken due to Uniswap Labs' violation of the Commodity Exchange Act (CEA) for offering and facilitating off-exchange leveraged token transactions to retail customers who were not Eligible Contract Participants (ECPs). During the period from March 2021 to September 2023, Uniswap Labs allowed users to trade digital assets, including leveraged tokens, through its decentralized protocol on the Ethereum blockchain. These transactions were conducted without the necessary regulatory compliance, leading the CFTC to impose penalties and enforce corrective measures. Uniswap Labs settled the case without admitting or denying the allegations, agreeing to pay a \$175,000 civil penalty and to cease further violations of the CEA.

The case between Universal Navigation Inc., operating as Uniswap Labs, and the CFTC revolves around Uniswap Labs' activities related to decentralized finance (DeFi). Uniswap Labs contributed to the development and deployment of a decentralized trading protocol on the Ethereum blockchain, which allows users to trade digital assets via smart contracts. The protocol enabled users to interact directly with liquidity pools, trading digital assets without a traditional order book. To facilitate access to this protocol, Uniswap Labs developed a web interface through which users could trade, including a limited number of leveraged tokens that provided leveraged exposure to cryptocurrencies like Bitcoin (BTC) and Ether (ETH). These tokens were available to both retail and institutional users between March 2021 and September 2023 (the "Relevant Period"), and trades occurred without proper restrictions.

The key issue in the case is that Uniswap Labs allowed retail customers who were not ECPs to engage in trading leveraged tokens through its platform. Leveraged tokens increase a user's exposure to the price movements of underlying assets, potentially multiplying gains or losses. The CFTC found that these trades were conducted off-exchange, meaning they were not executed on a registered or designated contract market as required by U.S. law for such leveraged transactions involving retail investors. Furthermore, the trades did not meet the re-



quirement for actual delivery of the underlying assets (i.e., Bitcoin and Ether) within the legally required 28-day period. This means that Uniswap Labs violated specific provisions of the CEA by offering and facilitating these transactions.

Uniswap Labs breached two key sections of the Commodity Exchange Act. First, **Section 4(a)**, which prohibits any entity from offering or entering into commodity transactions unless they are conducted on a registered commodity futures exchange. The leveraged token trades facilitated through Uniswap's platform were deemed off-exchange and thus violated this section, as they involved retail customers who were not ECPs. Second, **Section 2(c)(2)(D)(iii)**, which governs retail commodity transactions conducted on a leveraged or margined basis. Uniswap's leveraged token transactions involving non-ECPs did not result in actual delivery of the underlying assets and were not conducted on a registered exchange, constituting a violation of this provision.

In settling the case, Uniswap Labs agreed to the CFTC's order of settlement without admitting or denying the allegations. The company consented to a settlement that included multiple remedial actions. First, Uniswap Labs was ordered to cease and desist from further violations of Section 4(a) of the CEA. Second, the company agreed to pay a civil monetary penalty of \$175,000, with the payment to be made within 14 days of the order. Lastly, Uniswap Labs agreed to cooperate with the CFTC in any further investigations or actions related to the case.

As part of the settlement, Uniswap Labs waived its rights to judicial review or appeals concerning this proceeding and acknowledged the CFTC's jurisdiction over the matter. The company's cooperation during the investigation resulted in a reduced civil penalty.

In a dissenting **statement**, Commissioner Summer K. Mersinger criticized the CFTC's enforcement action against Uniswap Labs, calling it another example of "regulation through enforcement" against decentralized finance (**DeFi**) protocols. Mersinger expressed concern that the CFTC's approach, which includes de minimis penalties, untested legal theories, and a lack of guidance for compliance, risks driving responsible DeFi developers overseas and could result in expensive and conflicting litigation. She also argued that targeting DeFi platforms without addressing broader regulatory clarity does little to combat real financial fraud, such as the rise in "Pig Butchering" schemes, and diverts critical resources from cases where customers experience actual harm.

Mersinger further stated that Uniswap Labs had taken proactive steps to comply with the CFTC's enforcement actions by blocking certain tokens, yet faced penalties. She warned that penalizing compliance efforts sets a troubling precedent and could stifle DeFi innovation in the U.S. Mersinger criticized the CFTC's broad application of platform liability, which she believes could chill innovation and lead to DeFi development moving abroad. She called for the CFTC to pursue a more transparent, notice-and-comment rulemaking process that engages stakeholders and promotes responsible innovation in line with the agency's statutory obligations, rather than relying on enforcement to regulate the DeFi space.

Commissioner Caroline D. Pham also issued a **statement** where she dissented from the CFTC's enforcement action against Uniswap Labs involving the Uniswap Protocol on the Ethereum blockchain. She argued that there was no evidence in the administrative record detailing the specific terms or characteristics of the leveraged tokens in question, making it impossible to determine whether they fall under the CFTC's jurisdiction. Commissioner Pham expressed concern that the CFTC's approach was overly simplistic and based solely on the term "leveraged" in the tokens' names, leading to a broad and potentially problematic interpretation of the Commodity Exchange Act (**CEA**).

Commissioner Pham also raised concerns about the Administrative Procedure Act (**APA**), criticizing the CFTC for establishing broad legal interpretations in a settlement order without engaging in notice-and-comment rulemaking. She warned that the CFTC's actions could create regulatory uncertainty, negatively impact small cash market businesses, and stifle American innovation.

(Source: <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement090424>, <https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement090424>, <https://www.cftc.gov/PressRoom/PressReleases/8961-24>, <https://www.cftc.gov/media/11201/enfuniswaplabsorder090424/download>)

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