



US CFTC Announces Amendments to Rule Submission Procedures for Registered Entities

On 12 September 2024, the Commodity Futures Trading Commission (**US CFTC**) published amendments to **Regulation Part 40**, impacting the rule submission procedures for designated contract markets (**DCMs**), swap execution facilities (**SEFs**), and derivatives clearing organizations (**DCOs**). These amendments adjust the certification process, update product certification requirements, and improve transparency for market participants, including those involved with digital assets and cryptocurrency sectors.

The amendments to Regulation Part 40 are aimed at enhancing the rule submission and certification processes for registered entities such as Designated Contract Markets (**DCMs**), Swap Execution Facilities (**SEFs**), and Derivatives Clearing Organizations (**DCOs**). In the Amendments the updated product certification requirement, which now mandates that entities provide more detailed information when certifying new products which includes thorough explanations on how the product complies with the legal and regulatory standards set forth by the US CFTC.

The amendments expand the rule certification process, requiring entities to offer comprehensive explanations for any new or amended rules they submit. These explanations must address how the proposed rules will affect market operations and participants. Entities need to be proactive in assessing the potential impact of new rules and providing detailed rationale during the certification process.

In line with increasing regulatory emphasis on transparency, the amendments also require that more information be made publicly available regarding rule submissions. This aims to provide market participants with better visibility into how rules are formulated and how they may affect market dynamics. Transparency of rule submissions not only promotes trust within the market but also ensures that all participants, including smaller traders and stakeholders, have access to crucial regulatory developments.

In terms of product certification, the amendments address the growing importance of digital assets such as cryptocurrencies. Registered entities seeking to certify cryptocurrency-related products need to meet more rigorous standards, ensuring that such products align with existing regulatory frameworks. This is crucial given the rapidly evolving nature of the cryptocurrency market, and it places additional responsibility on entities to thoroughly evaluate the compliance aspects of these products before they are introduced to the market.

To adhere to these amendments, entities must prioritize strengthening their compliance mechanisms. Establishing internal frameworks that focus on comprehensive documentation and legal review before submitting new rules or products will be essential. Close collaboration with legal teams and compliance officers is critical in ensuring that all regulatory requirements are met.

(Source: https://www.cftc.gov/media/11286/FederalRegister091224_RegulationPart40/download, <https://www.cftc.gov/PressRoom/PressReleases/8966-24>)

UK High Court Identifies Tether as Property while Deciding a Case on Cryptocurrency Theft

In the case *Fabrizio D'Aloia v Persons Unknown Category A & B and Others* [2024] EWHC 2342 (Ch), the claimant, Mr. Fabrizio D'Aloia, a successful businessman and founder of Microgame, brought a claim against several defendants after falling victim to a cryptocurrency scam. The defendants included Persons Unknown (alleged fraudsters) and multiple cryptocurrency exchanges, including Binance Holdings Limited, Polo Digital Assets Inc., Gate Technology Corp., Aux Cayes Fintech Co Ltd, and Bitkub Online Co Ltd. While claims against Binance were settled and those against Aux Cayes Fintech struck out, the case focused on the alleged liability of Bitkub in facilitating the laundering of the claimant's stolen cryptocurrency, specifically Tether (USDT).

In its findings, the court first addressed the classification of cryptocurrency as property under English law. It was confirmed that USDT qualifies as property, following the precedent set in *AA v Persons Unknown* [2019] EWHC (Comm) 3556. This classification is based on the "rivalrous" nature of cryptocurrency, meaning that its ownership by one party precludes simultaneous ownership by another. Additionally, the court acknowledged that USDT, backed by real-world assets and administered by Tether Ltd, holds value that can be traced and subjected to proprietary claims, including constructive trusts.

The court concluded that while Bitkub had notice of suspicious activity on the relevant accounts and failed to comply with internal KYC and AML obligations, the claimant was unable to trace his stolen cryptocurrency to Bitkub's platform. As a result, the claims for constructive trust and unjust enrichment were dismissed, and Bitkub was not held liable.

The cause of Action arose in December 2021 when Mr. Fabrizio D'Aloia, the founder of Microgame, opened an account with td-finan.com, believing it to be associated with TD Ameritrade. Acting on this mistaken belief, he began transferring cryptocurrency, including USDT, into wallets controlled by Persons Unknown, the alleged fraudsters behind the operation.

On January 10, 2022, Mr. D'Aloia transferred approximately £2.5 million worth of USDT into a wallet (referred to as 1dDA) controlled by the fraudsters. This cryptocurrency was then laundered through a series of transactions across multiple blockchain wallets, commonly referred to as "Hops." Over the course of these transfers, the funds were dispersed across different accounts, obscuring their origin.

By February 21, 2022, a portion of these stolen funds, specifically USDT 46,291, was transferred into a wallet held by Ms. Hlangpan with Bitkub Online Co Ltd (referred to as the 82e6 Wallet). At this time, Bitkub's internal systems flagged suspicious activity, as the sum transferred greatly exceeded the declared income of Ms. Hlangpan. Furthermore, a series of withdrawals, beginning on February 21, 2022, breached the daily withdrawal limits imposed by Bitkub's KYC/AML protocols.

Between February 21 and 24, 2022, despite these red flags, no meaningful investigation was conducted by Bitkub. Automatic system blocks were imposed on Ms. Hlangpan's account due to her exceeding the daily withdrawal limits, yet these blocks were lifted without explanation, allowing the funds to be withdrawn. The total withdrawn amounted to THB 33 million over three days, far in excess of her stated income.

The failure by Bitkub to investigate these significant breaches of its own KYC and AML obligations is one of the issue in the case. Bitkub failed to scrutinise the suspicious account activity and allowed the funds to be converted from cryptocurrency into fiat currency (Thai baht) and subsequently withdrawn from the platform. This constituted a failure in Bitkub's responsibility to prevent the laundering of stolen cryptocurrency and safeguard the platform from fraudulent activity.

In this case, Bitkub Online Co Ltd is alleged to have breached legal provisions relating to Know-Your-Customer (**KYC**) and Anti-Money Laundering (**AML**) obligations. KYC regulations require financial institutions, including cryptocurrency exchanges, to conduct proper due diligence on their customers to prevent the facilitation of fraudulent or illicit activities. Bitkub failed to meet these obligations by not thoroughly investigating the account of Ms. Hlangpan, despite her transactions significantly exceeding her declared income and daily withdrawal limits. This failure constituted a breach of its duty to verify customer identity, monitor ongoing account activity, and investigate suspicious transactions.

Further, Bitkub allegedly breached its AML obligations, which mandate that financial institutions identify, flag, and investigate potential money laundering activities. Bitkub failed to take appropriate action when Ms. Hlangpan made large, unexplained withdrawals far beyond her account limits, raising clear red flags under AML guidelines. The exchange allowed these transactions to proceed without sufficient investigation, despite the obvious risk of illicit activity.

Additionally, Bitkub allegedly failed to comply with its own internal corporate governance duties by not adequately enforcing transaction limits or investigating breaches of such limits. The failure to impose appropriate controls and trigger immediate investigations into suspicious activity reflects a broader failure in adhering to governance standards aimed at preventing fraud and ensuring compliance with KYC and AML protocols.

While dealing with the issue the court first dealt with the categorisation of USDT and confirmed that USDT, like other cryptocurrencies, is recognized as property under English law. The court relied upon the precedent set in *AA v Persons Unknown* [2019] EWHC (Comm) 3556, where it was established that cryptoassets can be treated as property that can be owned, transferred, and traced. The judgement found that USDT has a rivalrous nature, can be traced, and has real-world value through its backing by Tether Ltd., satisfying the requirements of property law.

While dealing with the issue of Constructive trust and unjust enrichment by Bitkub, held that despite Mr. D'Aloia's efforts to trace his stolen USDT through a series of blockchain transactions (referred to as "Hops"), it was found that he failed to conclusively trace his specific cryptocurrency to the 82e6 Wallet held by Ms. Hlangpan on Bitkub's platform. The claimant's expert evidence was inconsistent, and the sweeping of funds into Bitkub's hot wallet, which mingles different users' assets, made it impossible to identify the specific funds.

The court found that Bitkub breached its Know-Your-Customer (**KYC**) and Anti-Money Laundering (**AML**) obligations by failing to investigate suspicious transactions in Ms. Hlangpan's account. Despite numerous red flags, including large withdrawals far exceeding her income and daily limits, Bitkub allowed the transactions to proceed without conducting proper due diligence or investigation.

The court concluded that Ms. Hlangpan was either directly involved in the fraud as a money mule or knowingly participated in laundering the stolen funds. The flow of funds from Mr. D'Aloia's account through the blockchain to Ms. Hlangpan's wallet and the subsequent conversion into Thai baht demonstrated a clear linkage between her and the fraudsters behind the scheme.

The court dismissed the claims for constructive trust and unjust enrichment against Bitkub. Although Bitkub had notice of suspicious activities and failed to adhere to its KYC/AML obligations, the claimant's inability to trace the stolen cryptocurrency to the 82e6 Wallet meant that Bitkub could not be held liable for the fraud. The claim for a constructive trust, which requires that identifiable property be traced to the party holding it, failed due to the lack of evidence. There was no conclusive evidence that Bitkub had received or retained any of his funds. While Bitkub did benefit from the transactions in question, the funds were not traced back to the claimant, making the unjust enrichment claim untenable.

(Source: <https://charltonsquantum.com/wp-content/uploads/2024/09/2024-EWHC-2342-Ch.pdf>)

US SEC Issues Cease-and-Desist Order Against Flyfish Club for Unregistered Offering of Crypto Asset Securities

On 16 September 2024, the U.S. Securities and Exchange Commission (**US SEC**) issued a **cease-and-desist order** against Flyfish Club, LLC, a Delaware-based company, for offering and selling unregistered crypto asset securities in the form of non-fungible tokens (**NFTs**). The US SEC found that Flyfish raised approximately \$14.8 million

between August 2021 and May 2022 through the sale of about 1,600 NFTs, marketed as membership tokens for a luxury dining club in New York. The NFTs were deemed to be investment contracts, and Flyfish violated federal securities laws by failing to register the offering.

The US SEC determined that investors had a reasonable expectation of profits from the resale of the NFTs, making them securities under the Howey test. Flyfish also collected \$2.7 million in royalties from secondary market sales until early 2023.

Between August 2021 and May 2022, Flyfish Club, LLC offered and sold approximately 1,600 non-fungible tokens (**NFTs**) to raise \$14.8 million. These NFTs were marketed as “membership tokens,” granting holders access to an exclusive luxury dining club located in New York. Flyfish emphasized that owning these tokens was the sole means of gaining entry to the club, thereby attracting significant interest from potential buyers.

Following the initial sale, purchasers of the Flyfish NFTs were permitted to resell their tokens on secondary markets. Flyfish earned a 10% royalty on each resale, resulting in an additional \$2.7 million in royalty revenue between August 2021 and early 2023. This secondary market activity enhanced the value and marketability of the NFTs, further promoting their resale and contributing to a perception among token holders that the NFTs represented more than mere club memberships.

Subsequently, the U.S. SEC initiated an investigation into the nature of these NFTs. The US SEC concluded that the tokens, marketed with the possibility of profit through resale, constituted “investment contracts” under the Howey test. This classification meant that the NFTs were subject to federal securities regulations, as they were offered and sold with a reasonable expectation of profit from the efforts of others.

The US SEC determined that Flyfish had failed to register these NFTs as securities, as required under federal law, nor had the company sought an exemption from registration. This failure to comply with registration requirements led to the US SEC’s enforcement action against Flyfish, culminating in charges for offering unregistered securities in the form of NFTs.

The US SEC ordered Flyfish to pay \$750,000 in civil penalties. The payment is scheduled in installments: \$350,000 within 14 days of the entry of the order, \$200,000 by December 31, 2024, and the remaining \$200,000 within 12 months of the order .

Flyfish Club, LLC is ordered to immediately cease offering and selling securities that are not registered with the US SEC, unless a valid exemption from registration applies. This halts the unregistered sales of their Flyfish Membership NFTs.

Flyfish Club, LLC is prohibited from conducting any future offerings of securities, including NFTs qualifying as securities, without proper registration with the US SEC or securing a valid exemption from registration. This prohibition ensures that Flyfish will comply with the necessary legal requirements for any future securities-related activities.

Flyfish is also directed to fully cooperate with the US SEC, including responding to any requests for documents or other evidence as part of any ongoing investigations or oversight activities related to this enforcement action. Compliance with this requirement will be crucial in ensuring Flyfish’s adherence to the US SEC’s directives.

Flyfish Club, LLC is required to enhance its internal compliance measures to ensure that its future operations remain consistent with US SEC regulations. This entails reviewing and adjusting its current practices to avoid future violations, thereby aligning its business operations with federal securities laws.

(Source: <https://www.sec.gov/files/litigation/admin/2024/33-11305.pdf>, <https://www.sec.gov/newsroom/whats-new>)

Sui Network Integrates with USDC and CCTP to Boost Liquidity and Cross-Chain Capabilities

Sui Network, a layer-1 blockchain, has announced the integration of native USD Coin (**USDC**) and the Cross-Chain Transfer Protocol (**CCTP**), effective from September 17. This integration aims to enhance liquidity and facilitate cross-chain transactions, benefiting users and developers within the Sui ecosystem. The upgrade will transition liquidity from the current bridged version of USDC to the native form, though the Wormhole's Portal bridge will continue operating without interruption.

In preparation for this transition, the Ethereum-bridged USDC will be rebranded as "wUSDC" on block explorers. Nikhil Chandhok, Circle's Chief Product Officer, highlighted the significance of this collaboration, emphasizing Circle's dedication to advancing blockchain applications and improving payment experiences.

This integration follows recent developments, including Grayscale's launch of the Sui Trust, which has contributed to the growing exposure of Sui and other cryptocurrencies. Sui Network, currently valued at US\$2.9 billion, has experienced a notable recovery in its total value locked (**TVL**). After a decline from over US\$1 billion in May 2024 to US\$516 million in August, Sui's TVL has rebounded to over \$700 million, positioning it as the 10th largest blockchain by TVL, according to DefiLlama. Futures market activity has also increased, with open interest reaching US\$230 million, indicating strong demand among traders.

Sui's DeFi sector has seen continued growth, with TVL rising by over 15% in the last 30 days. Leading this expansion are protocols such as NAVI Protocol, Scallop Lend, Suilend, and Aftermath Finance. Additionally, Sui's stablecoin volume has grown to over US\$360 million, and DEX volume has increased by more than 32% in the past week, nearing US\$300 million. Outside the crypto space, companies like 3DOS, a 3D printing device manufacturer, have adopted Sui due to its fast transaction speeds and low costs.

Technical indicators present a mixed outlook for Sui. The Relative Strength Index (**RSI**) and MACD suggest a neutral to positive trend, while the Commodity Channel Index (**CCI**) and Momentum indicators point towards potential selling. Most moving averages indicate buying opportunities, though the 200-period simple moving average signals some resistance.

Stablecoins, such as USDC, play a vital role in bridging the gap between traditional finance and decentralized finance (**DeFi**). By offering a stable and widely accepted medium of exchange, stablecoins enable users to move between fiat currency and cryptocurrency markets with greater ease and security. Stablecoins as a reliable intermediary, allows customers to engage in crypto transactions with the confidence that their assets are tied to a stable, dollar-backed currency.

US SEC Charges Prager Metis with Auditor Independence Violations, Agrees to US \$1.95 Million Settlement

On 17 September 2024, the US Securities and Exchange Commission (**US SEC**) announced a **settlement** with Prager Metis CPAs, LLC and its California affiliate Prager Metis CPAs LLP for violating federal auditor independence regulations in their audits of the now-defunct crypto asset platform, FTX. The settlement resolves allegations that Prager failed to comply with Generally Accepted Auditing Standards (**GAAS**) and engaged in negligence-based fraud in its auditing practices. Without admitting or denying the findings, Prager has agreed to pay US\$1.95 million in penalties and undertake remedial measures to address these violations.

The facts of the case, as presented, outline that between February 2021 and April 2022, Prager issued two audit reports for FTX, asserting that its audits complied with GAAS. However, the US SEC alleges that Prager failed to meet auditing standards, particularly in assessing whether the firm had the necessary competency and resources to undertake the FTX audits. The US SEC's complaint further points out that Prager's audits failed to account for the elevated risks posed by the close relationship between FTX and Alameda Research LLC, a hedge fund controlled by FTX's CEO. The firm's internal control procedures and policies were also found to be deficient, leading to material compliance failures throughout the audit process.

The charges against Prager Metis are linked to two areas. First, the firm failed to comply with GAAS while conducting audits of the now-collapsed FTX platform. Second, Prager did not adequately assess whether it had the expertise and resources required to audit FTX, leading to a failure to recognize and properly audit the risks stemming from the relationship between FTX and Alameda Research LLC, a hedge fund owned by FTX's CEO.

The core issue involved in the SEC's case are Prager's failure to maintain the required level of independence from its clients, as mandated by federal securities laws. Between December 2017 and October 2020, Prager included indemnification provisions in engagement letters for more than 200 audits and reviews, violating auditor independence rules. Despite repeated warnings from regulatory bodies like the United States' Public Company Accounting Oversight Board (**US PCAOB**), Prager did not correct these violations and continued to issue reports in which it purported to be independent. The US SEC brought separate charges for violations of auditor independence rules, indemnification provisions in engagement letters for over 200 audit, review, and exam engagements which affected a wide array of Prager's clients and were not corrected even after the US PCAOB flagged the issue.

As part of the settlement, Prager has agreed to pay a civil penalty of US \$745,000 and will undertake remedial actions, including the retention of an independent consultant to review and evaluate its audit and quality control policies and procedures. Prager will also be subject to restrictions on accepting new audit clients. In a separate but related action concerning the auditor independence violations from 2017 to 2020, Prager will pay US \$1 million in civil penalties and disgorgement, along with US \$205,000 in prejudgment interest. Both settlements require Prager to comply with permanent injunctions, barring the firm from future violations of federal securities laws, particularly those related to auditor independence and compliance with Generally Accepted Auditing Standards. Prager Metis will be legally restrained from engaging in any conduct similar to the violations identified in their audits of FTX and other clients.

(Source: <https://www.sec.gov/files/litigation/complaints/2024/comp-pr2024-133-motion.pdf>, <https://sec.gov/newsroom/press-releases/2024-133>)

DBS Bank to Offer OTC Crypto Options and Structured Notes by Q4 2024

In Fourth Quarter of 2024, DBS Bank of Singapore, is set to launch over-the-counter (**OTC**) cryptocurrency options and structured notes, targeting institutional investors and accredited wealth clients. This move makes DBS the first Asian bank to offer such products, which will include major cryptocurrencies like Bitcoin and Ethereum.

The decision comes as the cryptocurrency market continues to expand, with DBS noting a significant rise in market activity in the first half of 2024. The total market value of digital assets increased by nearly 50%, while active trading clients on the DBS Digital Exchange (**DDEX**) rose by 36%, and assets under custody surged by 80%. This development will provide professional investors with new tools for managing their exposure to digital assets through sophisticated investment strategies.

The new products will complement the existing digital asset services offered by DDEX, which already allows clients to trade cryptocurrencies and security tokens. With the introduction of OTC crypto options and structured notes, DBS clients will have additional methods for managing their digital asset portfolios, either through cash settlements or delivery of the underlying cryptocurrency, depending on market conditions.

Jacky Tai, Group Head of Trading and Structuring for Global Financial Markets at DBS, highlighted the increasing demand from professional investors for exposure to digital assets. "Our clients now have an alternative channel to build exposure to the asset class and incorporate advanced investment strategies to better manage their digital asset portfolios," Tai said.

The expansion into crypto derivatives comes amid heightened regulatory scrutiny globally, particularly in the United States, where the U.S. Securities and Exchange Commission has ramped up enforcement activities in the crypto sector. Despite this, DBS remains committed to innovating within the digital asset space and providing ethical investment solutions.

DBS is not alone in this endeavor, as AsiaNext, a Singapore-based platform founded by SIX and SBI Digital Asset Holdings, also provides crypto derivatives for institutional clients. The launch of OTC crypto options at DBS further solidifies its leadership in the Asian digital asset market and could inspire other financial institutions in the region to follow suit.

Reserve Bank of Australia and Treasury Release Joint Paper on CBDC's and Digital Money Future in Australia

On 18 September 2024, the Reserve Bank of Australia (RBA) and Treasury published a comprehensive joint report '[Central Bank Digital Currency and the Future of Digital Money in Australia](#)' on the role of CBDC and digital money in Australia's financial future. The report summarizes the findings of ongoing research into CBDC, providing insight into the considerations for both retail and wholesale CBDCs in Australia. Additionally, it sets out a three-year roadmap for further work in this space, highlighting the potential benefits of digital money in enhancing financial systems.

The report states that, as of now, there is no strong reason to introduce a retail CBDC (a digital currency for everyday use by the public) in Australia. This is because the current payment systems are already efficient, secure, and serve the public well. Report acknowledges that this could change over time as technology and economic conditions evolve. Therefore, the RBA and Treasury will continue to assess the potential benefits and costs of retail CBDC.

On the other hand, the report shows more support for the idea of a wholesale CBDC, which would be used by financial institutions rather than the public. This type of CBDC could improve how large financial transactions are made, particularly by making them faster, more transparent, and more efficient. The RBA plans to prioritize research into wholesale CBDCs and how they could be integrated into Australia's financial system. The report also mentions the upcoming launch of Project Acacia, which will focus on the use of tokenized money and new settlement technologies in wholesale markets.

The report also explains that if retail CBDC were to be introduced, it would require changes in legislation and close collaboration between the RBA, Treasury, and the Australian Government. The government would play a key role in deciding whether to implement a CBDC, particularly for public use.

In a [speech](#) delivered at the Intersekt Conference in Melbourne on 18.09.2024, Brad Jones, Assistant Governor of the RBA (Financial System), outlined the core conclusions of the report. Jones emphasized that while a retail CBDC, intended for public use, does not yet present a compelling public interest case in Australia, the wholesale CBDC holds more promise. This strategic focus reflects the assessment that Australia's current retail payments system is already efficient and resilient, and that the challenges posed by a retail CBDC, including issues related to financial stability and monetary policy, outweigh its potential benefits at this stage.

Jones explained that unlike retail CBDC, which would introduce significant changes to the financial system, a wholesale CBDC would represent more of an evolution. Wholesale CBDC could enhance the functioning of wholesale markets, offering benefits such as improved transparency, efficiency, and risk management in market transactions.

As part of this focus, Jones announced the upcoming launch of Project Acacia, scheduled to begin its public phase in October 2024. The project will explore how tokenized money and new settlement methods can uplift the efficiency and resilience of wholesale markets. It will form part of the broader engagement between the RBA, Treasury, and industry stakeholders in assessing how Australia's monetary system can be modernized to support the digital economy.

The Australian Government has taken a measured and cautious approach toward the introduction of a CBDC, emphasizing the need for a thorough understanding of its potential impacts. In his speech, Jones established that any decision to introduce a retail CBDC would ultimately lie with the government, requiring careful policy deliberation and likely legislative change. The government's current stance reflects its recognition of the potential risks associated with a retail CBDC, particularly in areas like financial stability and privacy, while also acknowledging that the financial landscape is rapidly evolving. As a result, both the government and the RBA remain open to future reassessments based on ongoing research and international developments.

(Source: <https://www.rba.gov.au/payments-and-infrastructure/central-bank-digital-currency/pdf/cbdc-and-the-future-of-digital-money-in-australia.pdf>, <https://www.rba.gov.au/speeches/2024/sp-ag-2024-09-18.html>, <https://www.rba.gov.au/media-releases/2024/mr-24-17.html>)

SEC Settles Charges with Rari Capital and Founders Over Misleading Investors and Unregistered Broker Activity

On 18 September 2024, the United States' Securities and Exchange Commission (**US SEC**) announced that Rari Capital Inc., along with its co-founders Jai Bhavnani, Jack Lipstone, and David Lucid, agreed to settle charges of misleading investors and acting as unregistered brokers. The case stems from Rari Capital's operation of two blockchain-based investment platforms, the Earn and Fuse pools, which collectively held over US \$1 billion in crypto assets at their peak. Additionally, the US SEC charged Rari Capital for conducting unregistered offerings of securities tied to these platforms. In a separate order, Rari Capital Infrastructure LLC, which took over operations of the Fuse platform in 2022, also settled charges related to unregistered securities offerings and broker activity.

According to the **US SEC's complaint**, Rari Capital's Earn and Fuse pools functioned similarly to traditional investment funds, allowing investors to deposit crypto assets and receive tokens representing their interests in these pools. Investors were promised returns generated by the crypto lending activities of the pools. The complaint highlights that Rari Capital misrepresented the operation of the Earn pools, stating that they would automatically and autonomously rebalance crypto assets into high-yield opportunities. However, the rebalancing process often required manual intervention, which Rari Capital sometimes failed to initiate, misleading investors about the true nature of their investments. Furthermore, Rari Capital and its co-founders allegedly exaggerated the high annual percentage yields (APYs) investors would earn, failing to properly disclose fees and other costs. This resulted in many investors losing money on their investments, contrary to the company's promotional claims.

The US SEC's investigation revealed that Rari Capital operated the Fuse platform, which allowed users to create and manage their own lending pools. However, Rari Capital retained control over the platform's smart contracts and charged a performance fee on interest generated by the pools. The US SEC concluded that these actions amounted to unregistered broker activity, as Rari Capital and its co-founders engaged in selling securities without proper registration or exemption under federal securities laws.

In a separate development, Rari Capital Infrastructure LLC, which took over Fuse's operations in March 2022, continued the unlawful offering of securities and unregistered broker activity. The Fuse platform faced challenges when, in May 2022, a hacking incident resulted in the loss of approximately \$80 million. This event caused Rari Capital to halt new deposits and eventually wind down its operations.

The **settlement**, announced by the US SEC, involves penalties and restrictions for Rari Capital and its founders. Without admitting or denying the allegations, Rari Capital and the co-founders agreed to settle the charges by consenting to the entry of permanent injunctions. These injunctions prevent them from future violations of federal securities laws and bar them from participating in unregistered offerings of securities. Additionally, conduct-based injunctions were imposed, preventing further engagement in unlawful broker activity. The co-founders also agreed to officer-and-director bars for a period of five years, prohibiting them from serving in those roles for public companies.

The co-founders are required to pay civil penalties and disgorgement of ill-gotten gains, along with prejudgment interest. These penalties are aimed at compensating the investors who suffered losses due to Rari Capital's misleading practices. Rari Capital Infrastructure LLC also agreed to a cease-and-desist order, further solidifying the US SEC's stance against unregistered securities activities within the decentralized finance (**DeFi**) sector.

As noted by Monique C. Winkler, Director of the SEC's San Francisco Regional Office, the US SEC will continue to look beyond the labels of "decentralized" or "autonomous" to assess the economic realities of such platforms. In her statement, Winkler emphasized that the US SEC will hold accountable individuals and entities that harm investors and violate federal securities laws, regardless of how these products are labeled or marketed.

The investigation, led by the US SEC's Crypto Assets and Cyber Unit, involved a thorough examination of Rari Capital's practices, which revealed violations of securities laws. The settlement reached with Rari Capital and its co-founders, as well as Rari Capital Infrastructure LLC, is subject to court approval and marks another critical step in the US SEC's broader efforts to regulate the DeFi space and ensure that investors receive the protections they are entitled to under the law.

(Source: <https://www.sec.gov/newsroom/press-releases/2024-138>, <https://www.sec.gov/files/litigation/complaints/2024/comp-pr2024-138.pdf>, <https://www.sec.gov/files/litigation/admin/2024/33-11306.pdf>)

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